

NPPF and the Localism Act

Rosemarie MacQueen gives the local authority response to the NPPF and Localism Act



Rosemarie MacQueen is Strategic Director, Built Environment at Westminster City Council. The views expressed are her own. Based on her talk to an NLA seminar.

My comments are made in three parts: in relation to Policy, in relation to Development Management and finally in relation to Neighbourhood Planning.

First looking at Policy Making.

- In some ways the NPPF isn't that different for plan makers, who have always been subject to Section 38 requiring sustainable development in plan making. There is also consistency for us between the NPPF and our aims - economic growth, sustainable development, high quality design, conserving heritage assets and reducing pollution.

- The revised NPPF refers explicitly to the 5 principles of the 2005 UK Sustainable Development Strategy and who could argue other than that the economic, social and environmental roles are mutually dependent and are to be sought jointly and simultaneously through the planning system.

- The transitional arrangements set out in the Annex aren't what we had hoped for - we are going to make minor revision to our Core Strategy (only adopted last year) so we can re-adopt it within the 12 month grace period and make absolutely sure there is no doubt as to its weight. The proposed "certificate of conformity" would have been much easier and cheaper, and cut a bit more of the red tape that surrounds plan development.

- The most obvious impact is that local planning authorities need to get their heads around a whole new set of legislation and completely new (and much reduced) guidance. Not only this, but there are also new Regulations, the entire neighbourhood planning agenda and its attendant queries from the public, and all of the other guidance which is not mentioned in the NPPF, and no-one really knows whether it applies any more or not. The transitional phase is daunting as every new element of the reform will need to be debated and ultimately case law. However, although the reform has been wide-ranging, the huge reduction in the amount of national guidance and repetition of the best parts of PPSs means that it doesn't seem like it will be an insurmountable job.

- We would most like to thank the government for confirming that we are still operating in a plan led system.

- The light-touch approach to plan-making is very much welcomed. It is right that local authorities should be able to set their own agendas. We hope they foster this approach internally and with PINs, because we would like to run a programme of policy review and revision to keep the plan up-to-date. The NPPF suggests this, but the government needs to be able to deliver on it in practice and find quick ways to deal with revisions rather than expecting DPDs to be re-written every 10 years.

- Local authorities need to share information and avoid reinventing the wheel. The brevity of the NPPF and less restrictive

legislation opens up opportunities but also potential for ambiguity and different interpretations. This is obvious in a quick telephone straw poll of some of the London boroughs - there is a wide range of reactions from "we still don't know", to those re-adopting the plan, to those who are hoping that it should be more-or-less compliant. The GLA could play a role in this, supporting London authorities such as with a London-wide statement agreed with CLG that London is exempt from the additional housing requirements and from the policy restricting windfall sites because we all input into the London Development Database and still agree housing targets at a regional level.

- It is really difficult to judge the impact of neighbourhood plans yet, either for us or more widely. It could be a nightmare and a resource intensive programme with a life of its own. It could be a damp squib. Rural parish councils will find it easier



as they already have long-standing mechanisms in place, like Dawlish. For us here in London, we are likely to have to field more calls from interested individuals and may need to do more hand-holding. Of most concern is paragraph 185 which says that: "Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation." I sincerely hope that the adoption of our detailed planning policies is not delayed because a local community are preparing a plan for their area.

Development Management

Still a Plan led system - Para 11 - applications for permission must be determined in accordance with the development plan

Emphasis is on LPA's being more pro-active. Para 186/7 - "LPAs should approach decision-taking in a positive way" "Look for solutions rather than problems". This is the approach taken in Westminster through our development management



process but the system is dependent on the applicant also being willing to work towards solutions. Both parties need to Tango!

If the proposal is in accordance with the plan - permission should be granted "without delay" para 14. However, the weighing up of factors still remains - important to note individual paragraphs in the NPPF should not read in isolation. Para 8 stresses the economic, social and environmental roles are not to be "undertaken in isolation because they are mutually dependent".

Even where the plan is out of date or no plan exists at all - para 14 states permission should be granted "unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits". The inference for the reverse where you do have up to date policies is this test does not apply!

Whilst it's still a plan led system SPD's are not encouraged. Para 153 stresses they should only be used where clearly justified. Surely it is a truism that a cash-strapped LPA will not put resources into these unless they are justified. They exist to help developers find the right solutions - whether its shop-front designs, signage or types of extensions. The emphasis against having an SPD may be a source of time-wasting debate at an inquiry if it has been invoked as a reason for refusal.

High quality design runs throughout the NPPF. It is interesting the Ministerial foreword raises the design bar "Our standards of design can be so much higher... confidence in development itself has been eroded by too frequent experience of mediocrity". Para 9 goes on to recommend "replacing poor design with good design". Therefore - Like for like replacements of poor buildings will not be tolerated surely a rich source of prospective appeals.

Local Design Review Panels are recommended in para 62 - this is to ensure high quality design. However many authorities including Westminster, have specialist design officers in place and amenity groups who have architects and historians in their ranks. What added value is achieved by a design panel in such circumstances? Will the lack of a local design review panel be used an inquiry relating to a design refusal and will it impact on the outcome?

Core Planning Principles

The 12 Core Planning Principles will no doubt be analysed, chewed over and debated. Lawyers will take apart all the phrases to support whichever case they are arguing. Will they see a difference in the subjects sometimes just having to "take account of" or "always seek to secure" or "encourage" or "promote" against what would seem to be the stronger requirement to "proactively drive and support sustainable economic development". Nevertheless, it is an important checklist at the heart of the document.

What is missing?

It is disappointing so much emphasis is placed on the rural planning. The NPPF goes as far as promoting the retention of shops, pubs and social facilities amongst other things in para 28 in rural areas. Where are the paragraphs acknowledging the equal need for these facilities in our towns and cities?

There are 4.5 pages on minerals - which is a weighty

amount of advice in such a short document. But where is the advice on vital role our towns and cities play as the real economic drivers for prosperity in this country? This after all is what the Chancellor continually emphasised was to be the outcome of the sweeping planning reforms-and un-burdened and thus burgeoning economy.

Greater Emphasis on Local Circumstances

Para 10 stresses the need to take local circumstances into account. The emphasis is thus definitely moving towards local opinion. Whilst Neighbourhood Plans have to be positive the NPPF para 198 makes it clear that applications that conflict with them "should not normally be granted"! This is the one negative statement in the NPPF which surely must be significant.

Viability. This is one of the most serious and explicit emphasis shift in the document. Para 173 stresses plans should be deliverable and decisions should not be taken that make a development unviable. There is a clear issue here for LPAs as they try to raise standards, particularly for environmental sustainability. Standards that may raise building costs and for the relationship with section 106 agreements and CIL. Affordable housing may be the biggest loser as developers argue this has the biggest influence in making their schemes unviable. The revised NPPF says that the costs of any requirements likely to be applied to a development "should provide competitive returns to a willing landowner and willing developer". This is a phrase that will enter case-law once the first cases go through the inevitable appeal/court process.

Overall LPAs who promote development should not be too concerned with main thrust of the NPPF. Those who resist development as a principle, fail to engage with developers at pre-application stage and during the life of the application, will struggle.

And finally the Localism Act

Part 5: is to do with Community Empowerment. With regard to Council Tax a referendum has to be held if an authority proposes to raise council tax (set at increase of 3.5% for 2012-13) - not yet applicable to minor precepting authorities (i.e. parish councils) but could be implications in the future... This is a "no taxation without representation" underscoring of local government.

The Community Right to Challenge allows community groups the right to express an interest in running a local authority service. Would trigger a procurement exercise to allow the challenger and others) to bid for the service. It is only a right to challenge; not a right to 'takeover'. Challenging to run a library, a park or a school has a link to the next matter.

Assets of Community Value requires local authorities to maintain a list of assets of community value (as nominated by local community). When these assets come up for sale, community groups will have extra time to develop a bid. (However there has been some general misunderstanding of the Community Asset Register. The Government is clear that the legal provisions do not in any way restrict who the owner of a listed asset can sell their property to, or at what price. They do not confer a right of first refusal to community groups. The provisions also do not place any restriction on what an owner

can do with their property, once listed, if it remains in their ownership.)

Nevertheless the setting up of the dual register and the subsequent notification rights places an interesting burden on the local authority.

Localism Act - Part 6: Planning

Community Infrastructure Levy - Requires charging authorities to allocate a 'meaningful proportion' of levy revenues raised in each neighbourhood from development back to that neighbourhood. The amount is yet to be divulged.

Neighbourhood Planning introduces 'Neighbourhood Plans' which cannot be anti-development and Neighbourhood Development Orders. Neighbourhood Plans have to be in general conformity with the strategic elements of the development plan and with the NPPF.

Qualifying bodies for Neighbourhood planning:

- Parish Councils also referred to as Community Councils in urban areas;
- Nearly 9,000 in England, but none yet in London though there are a handful in development;
- Democratically elected local tier of government;
- Wide range of powers, such as crime prevention measures, provision of litter bins, provision of car parking, public conveniences, allotments, street lighting;
- Can raise funds through precept.
- Neighbourhood Forums
- Can only operate where no parish councils in place;
- established to promote social, economic and environmental well being of a Neighbourhood Area (no overlapping);
- Membership open to minimum of 21 individuals who live or work in the area (or are elected members of the Council);
- Neighbourhood Business Areas;
- Primarily concerned with 'Neighbourhood Planning'.

The key issues:

- Funding - there are no formal funding arrangements for Neighbourhood Forums
- Resources - there are likely to be significant resource implications for the City Council in terms of:
 - Managing the application process for 1-the area and 2-the forum for the same
 - Statutory duty to provide support to Neighbourhood Forums, although recognise that this is proportionate to scale and level of expertise already in place.
 - Assistance with neighbourhood planning, i.e. drafting neighbourhood plans.
 - Potential for competition - there could be competing applications for Neighbourhood Forum status within the same geographic area. There is a need for effective collaboration (including with LA).
- Boundaries - there may be issues with regard to applications for overlapping Neighbourhood Forum areas (not permitted), and Forum areas which transect local authority boundaries (permitted).
 - Nature of neighbourhood forum - decision will have to be made which neighbourhood forums should be designated as 'business areas'. It is likely to be 2 referendums - 1 business, 1

resident for neighbourhood business areas. But, referendum legislation not yet been finalised!

- Slight element of first come first served. What about those hard to reach groups.
- Time - anecdotal evidence that most advanced neighbourhood plans are those (white middle class) rural areas with existing parish councils...

Westminster Community Governance Review

What we've been doing in readiness for the new order.

Background

- A governance review was formally triggered by a valid petition to form a Queen's Park Community Council
- Local Government and Involvement in Health Act 2007 allows formation of parish/community councils
- The Review Terms of Reference were agreed on 27th June 2011:
 - whether or not to establish parish councils in Westminster;
 - the electoral arrangements of any new parish councils; and
 - whether to introduce any new governance arrangements other than parishes (such as Neighbourhood Forums as set out in the Localism Act 2011).

Community Governance Review: Public Consultation

- Started on the 14th November 2011 and was extended until the 17th February 2012 (was 3rd February).
- 408 responses have been received.
- The majority of responses have been in support of formation of Queens Park Community Council.
- There has also been interest in the creation of a Parish Council in Mayfair.
- There has been some initial interest to form individual Neighbourhood Forums (under the Localism Act) in Marylebone and Fitzrovia; Paddington and Maida Vale; Covent Garden; Mayfair; St James's; Soho; Westbourne; and Belgravia.

Community Governance Review: Latest position

- Going to undertake a referendum in Queen's Park ward in May to ensure full support for Community Council. Final decision on June 25th by full council as required by the act.
- Ongoing dialogue with potential neighbourhood forums. No formal applications yet*. Cabinet Report recommendation that applications for Neighbourhood Areas should accurately reflect whole neighbourhoods that are clearly identifiable, established and recognised areas of Westminster. There will be a role for existing Amenity Societies alongside businesses and landowners - business neighbourhood areas.
- In meetings to date with existing amenity societies they have generally expressed little appetite to become forums and, gratifyingly, have said that their engagement with policy making and planning applications works well as it is. However some have said that were a single issue group to step forward in their areas then they would contest such a forum application with an alternative bid.

*The first application for a neighbourhood area now received and triggered the legal process. It is the St John's Wood area, coincidentally the same as that covered by the St John's Wood Amenity Society who are the proposers. ■

