



The new National Planning Policy Framework

Some very welcome steps strongly reflecting Create Streets' arguments but no revolution yet !

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The new National Planning Policy Framework (NPPF) was published on Monday 5th March 2018. It contains many welcome steps. And parts of it, we are delighted to say, very strongly reflect and appear to be influenced by our research, work and arguments. However, (no doubt intentionally) it is not a revolutionary document. It still leaves huge scope for making the British system more predictable, more popular, less weird in historical and comparative terms and one that erects fewer barriers-to-entry to SMEs, small developers, self-builders, custom builders and co-housing development. It also leaves huge scope for professionals to impose unpopular or cheap-to-build designs on the rest of us. But it potentially cuts that scope importantly in some situations. We are moving in the right direction.

Our Mission

Create Streets exists to make it easier to develop high density, beautiful, street-based economically and socially successful developments with strong local support and which residents will love for generations. This brief note examines the NPPF from the perspective of our mission. It asks: how far does the NPPF further the aims of more homes, more popular homes, more homes delivered in sustainable and popular conventional urban streets and squares and a more diverse and high quality home-building sector?

UK planning is odd: the context for understanding the NPPF

In historic and comparative terms it is crucial to understand that the UK has a very strange approach to planning.

- Other than a few 'permitted developments' there is no right for the landowner to develop their own land (unlike, for example, Germany where there is a constitutional right to develop);
- Local Plans are policy documents not regulatory documents which influence but do not control what can and cannot be built – and viability tests can (and are) used to ignore them; and
- The primary permission that is needed is a planning permission unlike the rest of Europe (other than Ireland) where a building permit is required.

In short, the right to develop in the UK has been nationalised with uncertainty of what will be permissible. In much of the world, the right to develop is merely regulated very often with greater clarity about what is permissible.

If anything the system has got worse over the last 30 years. The current morass of uncertainty is due to a mixture of history, common law, 1940s socialism, 1980s free market attacks on the concept of planning and (some) professionals' defence of a discretionary rather than a regulatory approach to development control. (As an aside, other Anglosphere countries are less clearly discretionary in their approach.¹)

¹ Ireland, Australia and New Zealand were all strongly influenced by mid-century UK legislation though have in varying ways and with varying success moved away from it. In the US power formally lies at the state level but is largely devolved to boroughs, cities and counties. They take a very wide range of approaches from the excellent to the very poor and everything in between.

All this matters because the higher level of theoretical control and lower level of permitted clarity increases planning risk. This poses a major barrier to entry to smaller developers, self-builders and other third sector developers. It is not accident that the UK has a consistently more concentrated development sector with a systemically lower proportion of self-build and SMEs than most countries.

Create Streets will shortly be publishing a paper (*From NIMBY to YIMBY: how to build homes and win votes*) which sets out in some detail underpinning analysis on this subject. In advance of that, what impact does the NPPF make?

A little more certainty of process (but not enough)

First of all, there is modestly more focus put on permitted development and Local Development Orders. The previous NPPF saw them as a possible way 'to relax planning controls'. The new NPPF sees them as a good way to create certainty in advance of what is and is not acceptable. This is welcome as, used well and linked to design codes (see below) they are a way of achieving more predictability in the development control process. This makes it easier for communities housing and helps smaller builders and self-builders compete with the major housebuilders making for a more competitive market.

The old text said:

'Local planning authorities should consider using Local Development Orders to relax planning controls for particular areas or categories of development' (Para. 199)

The new text says:

'Local planning authorities are encouraged to use Local Development Orders to set the planning framework for particular areas or categories of development.' (Para. 52)

Similarly Para. 69b in the new NPPF on small sites encourages the use of 'tools such as area-wide design assessments and Local Development Orders to help bring small sites forward.' It looks as if the key need to create more certainty on what is and is not acceptable is being appreciated.

So far, so good but this seems to be all. There appears to be nothing substantively new on permitted development, on the extension of permitted development to raising the height of buildings or on code zones to pilot permitted development urban extensions. However, there is a very hopeful statement in the 'Going Further' section of the consultation:

'The Government is exploring what opportunities there are to further support this approach through a new permitted development right for upwards extensions for new homes where existing buildings are lower than the prevailing roofline. This would be subject to engagement with neighbours. A future consultation will seek views on where best this permitted development right should be applied.' (p.26)

This bodes well. We would urge the government to start this consultation as soon as possible and to focus on ways to achieve this *with* communities rather than *at* them. It should link to consultation on design codes via permitted development. It would also be worth consulting on whether the farm building permitted development regime could be extended with local support.

Some more certainty of design

Despite important research showing that developments delivered via design codes tended to be associated with more successful and valuable developments², the last NPPF downgraded the use of design codes from pre 2010 guidance. This was (we think) due to two reasons: firstly, a slightly naïve focus on the importance of designers' discretion at the expense of certainty of outcome for residents and small developers. And secondly, it was due to a 'free market' focus on freedom from regulation instead of a focus on the importance of certainty when you are regulating anyway. The last NPPF said:

'Local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally.'

'Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.' (Paras. 59-60).

This text has become importantly more robust – and linked to certainty of outcomes. This will be helpful for residents or neighbours trying to insist that what buildings look like and how they fit in with the surrounding neighbourhood does matter:

'Planning policies and decisions should support the creation of high quality buildings and places. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable..... To provide maximum clarity about design expectations, plans or supplementary planning documents should use visual tools such as design guides and codes. These provide a framework for creating distinctive places with a consistent and high quality standard of design.' (Paras. 124-5)

This policy is potentially given some teeth:

'Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards in plans or supplementary planning documents.' (Para. 129)

However, it is also still caveated, though far more reasonably than the previous NPPF:

'However their level of detail and degree of prescription should be tailored to the circumstances in each place, and should not inhibit a suitable degree of variety where this would be unjustified (such as where the existing urban form is already diverse).' (Para. 125)

There is still support for innovation in design (as there should be) but it is, rightly, put in the context of sustainability and local context:

'In determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally'

² DCLG (2006), *Design Code Practice: an evaluation*.

in an area, so long as they are sensitive to the overall form and layout of their surroundings.'
(Para. 130).

What is a design or build code?

All professions and specialisms have their jargon and lingo. And this is necessarily so. Complex ideas, rules and measurements need to be reduced to a word, acronym or brief phrase so that concepts can be swiftly expressed and ideas compared or rules set out. Architecture and planning is no exception. The problem is that when rules, policies and design needs to interact with the public such professional short hand is normally incomprehensible.

For this reason, some designers, planners and developers have increasingly found that setting out ideas about how streets, pavements, blocks and building facades will work visually as opposed to verbally aids clarity and makes it much easier for communities and non-specialists to feed in their ideas and preferences, to say (in short) 'what things will look like round here' and 'what type of streets and homes' we want to build.

This visualisation can be done in various ways and with differing levels of detail. They are often (but not always) known as form-based design codes or protocols, sometimes as design guides. Their modern genesis is largely American. They have been championed by bodies such as the Form-Based Code Initiative. A design code, put simply, defines all or some of the range of possible plots scales, shape, materials, layouts, urban forms, street and style of all development in a certain area. Their advocates have made several key arguments in their favour:

- Firstly, that they are easier for layman and woman (and arguably to the professional as well) to comprehend, permitting more effective community engagement and consensus
- Secondly, that being so clear they permit greater certainty of delivery and outcome both to any community but also to landowners and investors
- Third that they make it easier to deliver 'variety within a pattern' by permitting a range of builders, architects and designers to work within a consistent framework ('one code many hands'). This should lead to better places and higher values.

Co-design not consultation

Sadly, many developers and councils all but flagrantly manipulate the 'consultation' process. We have seen numerous examples of computer-generated images with impossible angles, diagrams that only show the ground floor not the tower above it (really) or 'questionnaires' that focus on 'motherhood and apple pie' style questions (Do you support investment in the local park?) rather than the real issues. Indeed a whole submarket of the PR industry has grown up to run these ersatz processes and draft their leading question. Ultimately this is why we need to 'bring the democracy upstream' to clearer, popular, locally-set rules about what is and is not acceptable. But part of the answer is also to work *with* local residents not just *at* them. We call this 'co-design not consultation.' It is good to see some modest steps in the right direction within the draft NPPF:

'Early discussion between applicants, the local planning authority and local community about the design of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.' (Para. 127)

We are not naïve. Manipulation of the process will still continue. The NPPF still talks about design quality not popular design. This matters due to the findable 'design disconnect' between designers and everyone else.³ It also matters because quality design is ultimately a debatable quality. Popular design can be measured. But again, there is progress.

Viability – the need for predictability and transparency

Create Streets does not focus in detail on the viability system. However, alongside others we have consistently argued that for the current approach to work it needs to be both more *certain* and more *transparent* so as to set land values and prevent the type of manipulation which undermines trust in the whole system. As Rose Grayston at Shelter recently expertly summarised the issue:

*'The problem is that some developers have been upping their bids for land by assuming that they won't provide affordable homes, then using the high cost of land as evidence for why they can't provide affordable homes – a circular logic that has 'planned out' affordable homes and inflated land values.'*⁴

At first glance, the proposals set out by the government will break this vicious circle as developers will no longer be able to use price paid for land as evidence to cut affordable housing numbers. They will instead need to use 'existing use' value and add a premium. Quite how this will work needs further investigation, consultation and discussion. Also welcome is the government's declaration that:

'the expectation is that all viability assessments will be conducted on an open-book basis and published except under limited circumstances.'

This should make it harder for developers to use one set of assumptions when calculating viability assumptions and another when calculating their own expected profits. We would never say that all developers do this but there certainly have been some. And at least one experienced (and actually rather good) developer has explained to us in detail how easy it is to do.

Encouraging not banning town and city streets please

It is not just a question of trying to make the British system more certain. It is also a question of building the types of towns and cities that tend to be popular, associated with good health and wellbeing outcomes for residents and which are also valuable for investors and sustainable for all of us. Fortunately, the data is becoming increasingly clear that, as long as it is not overwhelmed with fast traffic and one-way gyratories, a conventionally-designed town or city tends to be very well associated with higher values, more walking, more neighbourliness and higher resident satisfaction. It can also be associated with less car use as long as public transport is good enough.⁵

One of the great tragedies of the current complex morass of planning practice, planning guidance, and building regulations (including daylight and sunlight rules) is that it has made it too hard to design and build the types of medium rise, high-density 'finely grained' city streets that are so (provably) beloved of most of us and so valued and so valuable. Good planners, designers and developers can (and do) 'get round' these rules but it's a bit like pushing water up hill. Does the NPPF help them?

³ See Boys Smith (2016), *A Direct Planning Revolution for London?*, pp.19-22.

⁴ Grayston, 'New viability rules: fair, limited, transparent?', Shelter blog, 7 March 2018, blog.shelter.org.uk/2018/03/new-viability-rules/

⁵ For good summaries of the evidence see Montgomery, (2013) *Happy City*, Boys Smith (2016), *Heart in the Right Street* and Boys Smith, Venerandi & Toms (2017), *Beyond Location*.

One barrier are the technical requirements that come with each use class category and can be challenging to combine in a mixed use setting – such as the required distances between habitable rooms to avoid overlooking. This can force down residential densities which would impact reduce potential catchment for surrounding shops.⁶

Also making it hard to deliver traditional town-like neighbourhoods are specific rules or guidance on street design, daylight and sunlight, turning circles, access, staircases, on-street-parking, lifts and many others all of which collectively mitigate against high density low rise development.⁷ They tend to have the unintended cumulative effect of ‘pulling the city apart’ with fewer bigger buildings further apart from each other. This is why so many recent urban development feel so ‘blocky’ and unnatural.

To deliver density at a human scale and replicate the best of our traditional cities, we need new guidance for urban areas which take into account available open space near the development, the benefits of traditional streets of various widths as an amenity and different building types at varying scales – terraced housing, mansion blocks and mid-rise flats.

In this context, this statement in the NPPF is very welcome:

‘When considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site.’ (Para. 123c)

Even more welcome, would be an announcement of a review of how elements of the building codes inhibit good traditional towns and places. Perhaps this could follow on from Dame Judith Hackett’s current review of fire safety in the building codes.

Streets are good for you

We’re fans of streets (surprise) and the role they play in promoting settlements in which humans can flourish and prosper. You can see a summary of why in our study into the links between urban form and wellbeing, *Heart in the Right Street*.⁸

And we’re pleased to see the role that urban design and streets can play in promoting wellbeing is clearly now contained within the NPPF as it was not in its predecessor:

‘Planning policies and decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for multiple connections within and between neighbourhoods, and active street frontages.’ (Para. 86)

From three references in the last NPPF (of which only one was one was even tangentially associated with urban form), there are now six of which the majority are substantive.⁹ This is progress.

Neighbourhood Planning with teeth

We’re great fans of Neighbourhood Planning for all sorts of reasons and we work with a growing number of community groups, parish councils and neighbourhood fora to try and help them prepare

⁶ Douglas Wheeler Associates (2009), *Research examining the barriers to achieving mixed use development and identifying approaches to overcome these barriers*.

⁷ See Boys Smith (2016), *A Direct Planning Revolution for London?*, pp. 22-7. London First (2017), *Guiding Light: Unlocking London’s residential density*

⁸ Boys Smith (2016), *Heart in the Right Street*. A summary is available here: dev.createstreets.com/wp-content/uploads/2017/09/Heart-in-the-Right-Street.pdf

⁹ For those checking our facts, there is actually a seventh reference but it is the address of the Ministry!

good and impactful plans. Sadly, however, there is no point denying that far too many plans end up as largely ineffective documents hobbled by vagueness or distracted into aspirational statements of little real consequence. One very experienced planning inspector has told us that he reckons about half them were a waste of time and have no or next to no actual impact. To have influence we normally suggest two key tactics to neighbourhood planning teams we talk to or work with:

- Allocate sites; and
- Set a visual design code for development in your parish or neighbourhood area¹⁰.

There has essentially been support for both of these strategies within the new NPPF. We have already seen the greatly enhanced support for design codes to promote certainty of build outcomes. This is explicitly linked to the work of neighbourhood plans.

'Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development.' (Para. 124)

We know of at least one neighbourhood planning group who at the time of writing are currently getting a very rough ride from their local council on their proposed neighbourhood plan. Hopefully this will help.¹¹ The NPPF also gives support to neighbourhood plans allocating site. It now suggests that;

'Neighbourhood Planning Groups should also consider the opportunities for allocating small sites suitable for housing in their area.' (Para. 70)

This was not present in the former NPPF and should encourage neighbourhood planning groups to choose and focus on allocating sites. This will be a good thing in building homes away from the volume housebuilder model and with local support.

And finally

Fans of Brexit will rejoice to learn and opponents will lament that the new NPPF also marks a small step in the UK's departure from Europe. All mentions of the EU in the previous NPPF are gone, particular the requirement in Para. 2 of the previous NPPF that *'planning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements'*.

Even if it marks that wider revolution in the British body politic, the new NPPF is no revolutionary document. Maybe that is right. Britain doesn't do revolutions – at least not since the seventeenth century. So we at Create Streets are delighted to welcome the new draft and the accompanying and promised consultations. We are moving in the right direction. However, more is required. The NPPF will *need* to be part of a process to change fundamentally the way we plan and permission development in the UK or, who knows, a generation denied the chance of a place to call home may become every built as revolutionary as the levellers and roundheads of four hundred years ago. It is not inconceivable.

Nicholas Boys Smith

CREATE streets, March 2018

¹⁰ We set out these suggestions in our Neighbourhood Planning note, *Love thy neighbourhood*. dev.createstreets.com/wp-content/uploads/2017/09/Love-thy-Neighbourhood-2016.pdf

¹¹ The neighbourhood planning group are in London and Policy H2 of the new draft London Plan which requires borough-wide design codes for small sites will hopefully also prove helpful to them.