



CONSULTATION RESPONSE

in respect of
Levelling-up and Regeneration Bill: Reforms to National
Planning Policy (published 22 December 2022)

02 March 2023

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1. INTRODUCTION

- 1.1. This representation is made by RCA Regeneration Ltd in respect of the “Levelling-up and Regeneration Bill: Reforms to National Planning Policy” consultation, which is running from 22 December 2022 until 11:45pm on 02 March 2023.
- 1.2. RCA are a planning, development and valuation consultancy operating throughout England, Scotland and Wales. We work for developers, landowners, councils, registered providers and individuals on all aspects of planning and development viability. We are also Registered Valuers.
- 1.3. As set out in the Ministerial Statement of 06 December 2022, the Department for Levelling Up, Housing and Communities (DLUHC) published a draft version of the proposed reforms to the National Planning Policy Framework for consultation. The DLUHC are also seeking views on their proposed approach to preparing National Development Management Policies, how to develop policies in support of levelling up, and how national planning policy is currently accessed by users.
- 1.4. We have responded to the consultation within this document, as an independent planning and development consultancy with extensive experience of working with the NPPF, in respect of the key issues which we believe are likely to most affect our clients.
- 1.5. We therefore only respond to those questions most pertinent to our client base.

2. RESPONSES TO QUESTIONS

Q1. Do you agree that local planning authorities should not have to continually demonstrate a deliverable five year housing land supply (5YHLS) as long as the housing requirement set out in its strategic policies is less than five years old?

- 2.1. No. Five years is far too long a period to assume that the local plan is delivering housing as intended. Footnote 44 allows the possibility of the timeframe being even longer than this, if the LPA has assessed their policies and found them to not require updating. Given the number of LPAs who have at some point in the first five years of a plan period, been unable to demonstrate a five year housing land supply, we consider this approach risks significantly reducing the supply of land for housing if supply trajectories are allowed to remain unchecked for such a long period of time.
- 2.2. It also means that instead of applications and appeals needing to consider whether or not the LPA have a five year housing land supply, there are now additional areas of challenge over whether or not they are required to have produced a five year housing land supply calculation in the first place. This will lead to additional uncertainty and increased costs for housebuilders, with SME builders likely to be most affected.
- 2.3. These changes have clearly been suggested in order to incentivise an LPA to produce and adopt a local plan quickly. However, as is evident from the 20+ councils that have abandoned their emerging local plan reviews so far, this has so far had the opposite effect. Many local authorities are now breaching their statutory duty to have an up to date development plan in place: from these proposed changes, there seems to be very little incentive for those without an up to date development plan to get on with producing one, and for those who do have one there will no longer be sufficient information in the public realm to allow proper scrutiny, since a LPA can simply declare its policies up to date and decline to publish a housing land supply statement.

Q2. Do you agree that buffers should not be required as part of 5YHLS calculations (this includes the 20% buffer as applied by the Housing Delivery Test)?

- 2.4. No. Housing targets should be a minimum not a maximum, and applying a buffer allows for flexibility in supply by effectively including a contingency. At the very least, the 5% buffer should apply to all housing requirement calculations.
- 2.5. In respect of the Housing Delivery Test, removing the 20% buffer as a consequence of delivery falling below 85% is likely to have the effect of further reducing housing land supply so is not supported. This approach effectively promotes the failure to deliver.

Q3. Should an oversupply of homes early in a plan period be taken into consideration when calculating a 5YHLS later on?

- 2.6. No. Housing targets should be a minimum, not a maximum. Given the politicization of housing delivery, it is our view that this will almost certainly incentivize LPAs to plan solely for what they consider to be their housing need and no more. The proposed amendments to footnote 9 have the cumulative effect together with para 11b (iii) of allowing the LPA to discount past oversupply from their housing need figure as well as no longer needing to apply a buffer to the planned housing need, or need to review housing need figures (or supply against those figures) more than once every five years. It is impossible to see how this will have any result other than planning for even fewer homes.

Q4. What should any planning guidance dealing with oversupply and undersupply say?

- 2.7. We do not consider that the guidance requires amendment. In our view, undersupply should be added to the housing requirement and should be delivered in the first five years of the new plan period unless there are specific justifications for spreading it over a longer period. Oversupply should not be deducted from the housing requirement because the requirement is a minimum and not a maximum.

Q5. Do you have any views about the potential changes to paragraph 14 of the existing Framework and increasing the protection given to neighbourhood plans?

- 2.8. We note the proposed amendment to paragraph 14, where the paragraph 11d 'presumption in favour of sustainable development' will not apply where a Neighbourhood Plan is less than 5 years old (previously less than 2 years) and the proposed deletions of sub paragraphs (c) and (d). We believe this may lead to Neighbourhood Plans being used to resist future development, which is unreasonable given the limited level of examination such plans are subject to. Neighbourhood Plans, if relied upon to deliver housing or contribute to housing delivery on any particular scale could have the cumulative effect of ensuring very little housing is delivered at all. We do not consider this amendment would have a positive effect on housing supply.

Q6. Do you agree that the opening chapters of the Framework should be revised to be clearer about the importance of planning for the homes and other development our communities need?

- 2.9. Yes. Amendments to paragraph 1 to emphasise that up-to-date local plans should be prioritised is welcomed. Further amendment could help clarify the government's priorities further.

Q7. What are your views on the implications these changes may have on plan making and housing supply?

- 2.10. Assuming this question relates to the proposed changes to the NPPF as a whole, whilst there may be an initial flurry of new local plans it is considered that the proposed amendments then disincentivise any further new plan making, with the ability to simply declare the policies still up to date and with the annual scrutiny of a five year housing land supply statement removed. The Housing Delivery Test and its consequences are much less of an incentive than the current consequences of a lack of five year housing land supply. It is impossible to see how the cumulative impact of the proposed changes will have any result other than fewer homes being delivered.

Q8. Do you agree that policy and guidance should be clearer on what may constitute an exceptional circumstance for the use of an alternative approach for assessing local housing needs?

- 2.11. Yes. The proposed drafting does not go far enough to prescribe the circumstances where this would be appropriate. Clear guidance is required at an early stage to ensure that housing requirements are appropriately planned for.

Q9. Do you agree that national policy should make clear that Green Belt does not need to be reviewed or altered when making plans, that building at densities significantly out-of-character with an existing area may be considered in assessing whether housing need can be met, and that past over-supply may be taken into account?

No. We consider that Green Belt should be reviewed when making plans. The proposed amendments to paragraph 142 has already seen the withdrawal of a number of Green Belt authorities from the local plan review process (through delaying their plan indefinitely). It would seem inevitable that as a result of this change, the availability of housing land in those authorities with high levels of Green Belt will fall and will undoubtedly put pressure on neighbouring non-

Green Belt authorities to meet their need, leading to unsustainable patterns of development. We believe that without a regional level strategic policy mechanism to address this conflict between neighbouring authorities, we will see a significant loss of housing land across the country.

- 2.12. We do not agree that density should be considered as part of setting the housing requirement, but we do agree that it should play a role in setting suitable targets for proposed site allocations.
- 2.13. We do not agree that past oversupply should be taken into account, as set out in relation to questions 3 and 4.

Q10. Do you have views on what evidence local planning authorities should be expected to provide when making the case that need could only be met by building at densities significantly out-of-character with the existing area?

- 2.14. We do not consider this to be a national policy matter which should affect the calculation of the housing requirement. We consider this to be a local policy matter to be considered when setting suitable target densities for site allocations.

Q11. Do you agree with removing the explicit requirement for plans to be 'justified', on the basis of delivering a more proportionate approach to examination?

- 2.15. No, we do not agree with the deletion of the "justified" test of soundness for local plan examination. Ironically, we do not consider this deletion to be justified as plans will still need to be evidenced in the usual way. The removal of the word justified will not alter this and we do not understand what the government are hoping to achieve by making this change. We further consider that tests of soundness should also be applied to Neighbourhood Plan making.

Q12. Do you agree with our proposal to not apply revised tests of soundness to plans at more advanced stages of preparation?

- 2.16. Yes, but only because we do not agree that the tests of soundness should be amended.

Q13. Do you agree that we should make a change to the Framework on the application of the urban uplift?

- 2.17. No. The proposed new paragraph 62 to incorporate an uplift for the top 20 most populated cities and urban areas is seemingly included to make up for reduced housing targets in areas outside of these 20 cities. We would question the political motives behind this shift in housing targets, given that 19 of the 20 cities are Labour-controlled areas and already have significant growth needs that they cannot meet inside their administrative boundaries. All this will do is exacerbate the existing undersupply of housing which is unlikely to be met by neighbouring Green Belt authorities who (through these proposed amendments) are unlikely to address neighbouring growth needs as they will not be required to do so. This of course is further compounded by the government's insistence that the duty to cooperate is not a duty to agree. Those cities needing to grow outside their own tightly drawn boundaries will have little choice but to potentially consider wholesale boundary reviews.

Q14. What, if any, additional policy or guidance could the department provide which could help support authorities plan for more homes in urban areas where the uplift applies?

- 2.18. We consider this is likely to require more regional and local-level policy, but likely crossing multiple local authority areas, to see meaningful strategies for each of the cities where the uplift would apply. The NPPF would need to be clear on how this is to be achieved.

Q15. How, if at all, should neighbouring authorities consider the urban uplift applying, where part of those neighbouring authorities also functions as part of the wider economic, transport or housing market for the core town/city?

2.19. We consider this will need strategic level planning to be successful. We have already made it clear that it cannot work under the proposals set out to date.

Q16. Do you agree with the proposed four-year rolling land supply requirement for emerging plans, where work is needed to revise the plan to take account of revised national policy on addressing constraints and reflecting any past over-supply?

2.20. No, because we do not agree to these revisions to national policy. We consider that the requirement to demonstrate a five year housing land supply should remain in place as in some cases it is the only means by which new homes are being delivered in areas where there is strong resistance to any new development.

Q18. Do you support adding an additional permissions-based test that will 'switch off' the application of the presumption in favour of sustainable development where an authority can demonstrate sufficient permissions to meet its housing requirement?

2.21. No. This appears to replace the requirement for a five-year housing land supply with a much more blunt calculation. We consider that the current operation of the presumption in favour of development is far more successful in boosting the supply of housing. We do not object to an additional measure being added to the Housing Delivery Test as it is useful data, but we do not consider this sufficient to "switch off" the presumption. We further consider that strengthening the policy wording in relation to when permissions are considered to be "deliverable" would be a more meaningful policy amendment.

Q19. Do you consider that the 115% 'switch-off' figure (required to turn off the presumption in favour of sustainable development Housing Delivery Test consequence) is appropriate?

2.22. No. We do not support this replacing the current five year housing land supply mechanisms.

Q.20. Do you have views on a robust method for counting deliverable homes permissioned for these purposes?

2.23. We do not think counting permissions alone is an accurate measure of supply given the different delivery rates on different sites. Monitoring, at least annually, at a local authority level is much more accurate and preferably should be better resourced to allow supply to be reviewed more regularly.

Q.21. What are your views on the right approach to applying Housing Delivery Test consequences pending the 2022 results?

2.24. It is assumed that this is proposed to replace the impact of a lack of a five year housing land supply but with even weaker consequences. We do not consider they go far enough to incentivise LPAs to significantly boost the supply of housing.

2.25. We further consider that the Housing Delivery Test results should be published on a fixed date each year. We note the proposed change to the Annex 2 Glossary definition of "Housing Delivery Test". We do not support the change in the final sentence from "every November" to "each Winter". This is far too imprecise and certainty is needed as to when the Housing Delivery Test will be published each year to ensure that it is taken seriously by Local Planning Authorities and can be relied upon as a robust method of scrutiny.

Q.22. Do you agree that the government should revise national planning policy to attach more weight to Social Rent in planning policies and decisions?

- 2.26. We consider that previous national policy amendments have given more weight to affordable home ownership options at the expense of social rented homes. We would support policy changes which allow local planning authorities to set local tenure mix requirements in accordance with their demonstrated local need (taken directly from their housing waiting lists). Whilst making home ownership more affordable is supported, rented properties play an important role in the housing market as well. We consider this to be a matter for local rather than national policy.

Q.30. Do you agree in principle that an applicant's past behaviour should be taken into account into decision making?

- 2.27. No. This is a ridiculous suggestion. The planning system is concerned with land use, infrastructure and place planning. Subjective assessments of character and past behaviour have no place in the planning system.

Q.31. Of the two options above, what would be the most effective mechanism?

- 2.28. Neither, we do not agree with the introduction of this policy.

Q.32. Do you agree that the three build out policy measures that we propose to introduce through policy will help incentivise developers to build out more quickly?

- 2.29. No. We do not support these measures. Removing barriers and better resourcing local authorities would be more successful in supporting quicker build out of sites. This is not just in granting planning permissions without delay, but through the (currently) laborious process of discharging conditions, which can itself take years before development can be commenced.

Q.33. Do you agree with making changes to emphasise the role of beauty and placemaking in strategic policies and to further encourage well-designed and beautiful development?

- 2.30. Whilst we are supportive of 'beautiful' design, we consider that the term is completely subjective. We consider that more definition should be provided, and clear parameters need to be set out within this paragraph defining what is meant by "beautiful design" so that this can be practically achieved in new developments. We further note that this will most successfully be facilitated by local level policies and the use of exemplars and design codes, and appropriate resourcing will be required at local authority level.

- 2.31. A clear definition of what constitutes beautiful design would also provide greater guidance to LPAs when preparing their area design codes and local plans which would in turn, lead to a greater understanding of what is expected of applicants from the early stages of the planning process. Whilst insertions are proposed at paragraphs 135 to promote design codes, it is not clear how this will be resourced at local planning authority levels. They are barely resourced sufficiently to delivery statutory planning services at present, with both plan making and development management services extremely stretched and underperforming. Local planning authorities simply do not have sufficient staff to be able to write design codes for their areas.

Q.34. Do you agree to the proposed changes to the title of Chapter 12, existing paragraphs 84a and 124c to include the word 'beautiful' when referring to 'well-designed places' to further encourage well-designed and beautiful development?

- 2.32. Whilst we have no objection to this, please refer to our previous comments.

Q.35. Do you agree greater visual clarity on design requirements set out in planning conditions should be encouraged to support effective enforcement action?

- 2.33. The proposed addition to paragraph 137 regarding clear use of planning conditions is welcomed; it would be helpful if the government would consider re-introducing model conditions to assist local planning authorities so that legally compliant planning conditions which do not hinder delivery of developments can be used nationally.

Q.36. Do you agree that a specific reference to mansard roofs in relation to upward extensions in Chapter 11, paragraph 122e of the existing Framework is helpful in encouraging LPAs to consider these as a means of increasing densification/creation of new homes?

- 2.34. No. This is a bizarre change to what is a strategic national guidance document and one which has already attracted ridicule amongst developers for being a level of detail that should fall outside the remit of the NPPF. We do not believe this proposed text has any place in a national planning policy.

Q.37. How do you think national policy on small scale nature interventions could be strengthened? For example in relation to the use of artificial grass by developers in new development?

- 2.35. Policies relating to ecology and biodiversity protection and enhancement should be embedded in local plan production through the use of strategic policies and potentially the use of planning conditions to prevent the use of artificial grass. Such interventions are part of the bigger picture and a joined-up approach is required if meaningful results are to be produced.

Q.38. Do you agree that this is the right approach to making sure that the food production value of high value farm land is adequately weighted in the planning process, in addition to current references in the Framework on best and most versatile agricultural land?

- 2.36. We consider existing policies on agricultural land to be sufficient to protect the best and most versatile agricultural land. We do not see how this proposed amendment achieves anything further.

Q.41. Do you agree with the changes proposed to Paragraph 155 of the existing National Planning Policy Framework?

- 2.37. Yes, very supportive.

Q.42. Do you agree with the changes proposed to Paragraph 158 of the existing National Planning Policy Framework?

- 2.38. Yes, very supportive.

Q.43. Do you agree with the changes proposed to footnote 54 of the existing National Planning Policy Framework? Do you have any views on specific wording for new footnote 62?

- 2.39. Yes, very supportive.

Q.44. Do you agree with our proposed new Paragraph 161 in the National Planning Policy Framework to give significant weight to proposals which allow the adaptation of existing buildings to improve their energy performance?

- 2.40. Yes, very supportive.

Q.46. Do you agree with the proposed transitional arrangements for plans under the future system?

2.41. No, please refer to our answer to Question 16. Whilst the clarity on timelines is welcomed, it is unlikely that two years will be needed to implement the changes to emerging plans arising from these revisions to the NPPF. It will also not motivate planning authorities to adopt new plans in a timely fashion, which is particularly relevant to authorities with out of date plans, where housing delivery is already suffering.

Q.48. Do you agree with the proposed transitional arrangements for supplementary planning documents?

2.42. There is concern that the abolition of supplementary planning documents and the higher resourcing implications for preparing supplementary plans may lead to a policy vacuum at local authority level on important matters of detail.

Q.49. Do you agree with the suggested scope and principles for guiding National Development Management Policies?

2.43. Whilst we support the publication of National Development Management Policies to promote consistency across local authority areas on key planning matters, we have noted the irony of the realisation by the government that slimmed down national guidance has not in fact removed barriers from the planning system, and that wider national guidance is actually required to ensure greater consistency and certainty in decision taking and remove additional burdens from local plan making. Reintroduction of national standard model planning conditions would also be supported.

2.44. We consider the proposals for new National Development Management Policies should be subject to separate, focussed consultation to allow detailed matters to be considered.

Q.50 – Q.58. inclusive

2.45. We consider these proposals should form part of a separate, focussed consultation to allow the detail to be considered further.

3. OTHER COMMENTS

- 3.1. There is not a question relating to the proposed changes to paragraph 61, which has amended to establish the Standard Method as purely “*advisory*” and as a “*starting-point for establishing a housing requirement for the area*”. This advisory status formerly applied to areas that were constrained by footnote 7 designations, such as the Green Belt, but will now extend to the whole of the country. We believe this will have a strong negative impact on the Government’s ambitions to target 300,000 homes built annually, which already is not being met, as the number of homes being planned for by local planning authorities is bound to reduce as a result of this change.
- 3.2. Further ambiguity is added to housing targets at paragraph 75 where the requirement to hold a 5 Year Housing Land Supply (5YHLS) now only applies where the housing requirements established in strategic policies is more than five years old, and footnote 44 further sets out that even this will not apply if the LPA have assessed their policies and found them to not require updating. Amendments to paragraph 75 also gives LPAs the ability to deduct previous oversupply from their 5YHLS and abolishes the requirement for a buffer. This reflects a ‘race to the bottom’ approach to housing targets and will undoubtedly reduce the supply of housing land and housing delivery through the reduction in housing requirements. It also means that instead of applications and appeals needing to consider whether or not the LPA have a five year housing land supply, there are now additional areas of challenge over whether or not they are required to have produced a five year housing land supply calculation in the first place.
- 3.3. Finally, whilst not a question forming part of the consultation, we note no changes are proposed to the PPTS (2015) or NPPF in light of the Lisa Smith Judgment (October 2022)¹ which we consider is deeply unhelpful to members of the gypsy and traveller community as well as decision takers. We would urge the government focus on clarifying this issue quickly in order to address how councils are supposed to deliver culturally appropriate accommodation for gypsies and travellers that does not leave them in a situation where they are accused of not meeting need. As part of this the definition as set out in the PPTS should be clarified as a matter of great urgency.
- 3.4. We also consider a regional-level approach to GTAAs would work better than individual authorities, given the inter-dependencies between many authorities who often deal with ‘overspill’ from neighbouring authorities as new gypsy and traveller households are formed.

¹ <https://www.no5.com/media/2884/smith-judgment-31-october-2022.pdf>