

Planning and Environmental Law Committee response to the Department of Communities and Local Government consultation on the Draft National Planning Policy Framework

The City of London Law Society (“CLLS”) represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 18 specialist committees. This response in respect of the Draft National Planning Policy Framework has been prepared by the CLLS Planning and Environmental Law Committee.

Introduction

In broad terms, we welcome the proposed National Planning Policy Framework as a breath of fresh air and support the objective of providing simple and clear national policy with the intention of allowing people and communities back into planning. We further support the proposal to sweep away unnecessary restraints on development whilst restating and strengthening necessary protections such as for rural areas.

However, we have identified several areas of concern where we are of the opinion, from a legal perspective, that the draft policy requires revision and enhancement and we comment on these below and in our responses to the consultation questions.

General observations

First, we would make some more general observations:

- We have an overall concern that there is imbalance in coverage between certain areas of policy covered by the draft framework: for some aspects there is a great deal of detail but on other, arguably more important, subjects the policy framework is remarkably brief. It will be important for practitioners, in particular, not to attempt to suggest that relative importance is implied by the quantity of the policy wording relevant to the area in question.
- We are also concerned that the objectives underlying the framework could be challenged by a failure by those within the planning system, i.e. the planning professionals, and by the general public to understand and to adapt to the new approach. Over the last 20 years, all parties, but planning practitioners in particular, increasingly have debated the detailed nuances contained within policy guidance and in the resultant planning inspectors' decisions and court judgments whilst planning legislation and regulations have been trawled over, examined and amplified. If the approach which we

believe underpins the National Planning Policy Framework is to work in reforming, even revolutionising, the planning system every current stakeholder involved with the planning system must understand, appreciate and apply the policy framework as laying down broad themes and a general direction of travel and support this new approach by applying such themes to development proposals in an appropriate and timely manner. If this is not done the current evils in the system will not only be repeated but will be multiplied and many of the savings identified in the Impact Assessment will be illusory.

- Closely connected with the above concern is the need for national and local government to acknowledge that implementation of the policy framework will require a highly motivated planning profession well trained both in the new approach and in assisting and supporting lay members of the public including the community bodies in playing their roles of involvement at the local level. This will be particularly challenging at a time of economic restraint but investment in training and supporting planning professionals working within government will be essential in ensuring the delivery of this new approach and the achievement of the envisaged resultant economic growth.

Concern that a lack of clarity will frustrate the reform objectives

It is absolutely essential that the framework, when implemented, is capable of delivering the positive improvements which Government envisages and which Ministers have explained particularly to the general public during the consultation period.

The dangers arising from misunderstandings as to the intentions behind the policy framework, due in many cases to ambiguities and a simple lack of clarity and proper explanations in the detailed wording, have been demonstrated by the considerable public interest in, and heated public debate over, some key areas in the consultation draft. If the policy framework results in legal wrangles and delays, let alone a material increase in applications for judicial reviews as local planning authorities struggle to make proper and unchallengeable decisions under the framework then this extremely worthwhile reform will not only fail but actually make an imperfect system moribund.

Main areas of concern

Our detailed comments are set out in response to the detailed consultation questions which responses are annexed to this document. However, the main areas of concern relate to:

1. Delivering Sustainable Development

Whilst we appreciate the difficulties in producing a definition of sustainable development which will satisfy all key stakeholders, the absence of a clear and concise definition would result in the policy's cornerstone being left in a state of uncertainty.

2. Transitional arrangements

We believe that it will be essential to transition the move from the existing suite of policy documents to the policy framework carefully if uncertainty, inconsistency and other difficulties are to be avoided.

In addition a number of PPSs and PPGs contain detailed technical guidance on a number of issues. For example, PPG14 (Development of Unstable Land), PPG24 (Planning and Noise) and PPS25 (Development and Flood Risk) contain detailed technical guidance. It will be very difficult for decision makers, whether local planning

authorities, planning inspectors or the Secretary of State to reach informed decisions without having recourse to such technical guidance.

3. Financial incentives

Express mention of financial incentives should be included in the policy framework particularly in light of the Government's emphasis on the New Homes Bonus being a central driver to deliver more housing. Equally, the policy framework needs to emphasise that planning permissions and allocations should not be bought and sold. Development which is fundamentally unacceptable should never be approved simply because of financial considerations.

4. Town Centre impact

Concern has been expressed that the presumption in favour of sustainable development could undermine the primacy given to the town centre first approach in planning policy. Therefore, it would be helpful to clarify in the policy framework that the town centre first policy test must be applied whenever relevant and that the application of the presumption in favour of sustainable development will never mean that development to which the town centre policies apply can be consented without observing the sequential and impact tests.

5. Brownfield/ranking of land used first for development

Whilst we appreciate that the economic growth agenda may demand the flexibility to allow, in limited circumstances, the development of, say, a greenfield site in preference to a previously developed land it is clear from the public response during the consultation period that there is a need to emphasise that the starting point everywhere, and not just within the Green Belt, is to use previously developed land first in order to ensure public support for this reform.

6. Heritage issues

As with the inherent tension between economic growth demanding unbridled development and communities' natural expectation of retaining the well appreciated status quo, heritage issues go to the heart of the people's involvement with and love of their community. On heritage issues arguably the draft policy is too inflexible and instead should emphasise that decision makers need to weigh in the balance what will be gained by the new development and what will be lost.

Glossary

Finally a small but, we would suggest, a significant point on the detail in the framework. It is absolutely essential that the framework is clear and concise and easily understood by the local communities who are to be empowered under the Localism agenda. However, as planning decisions will be made in the light of the policy contained in the framework it is essential that certain key words, phrases and concepts are defined with some precision e.g. "previously developed land". In the consultation draft it is unclear where words or phrases are defined in the Glossary. In the May 2011 proposals this was achieved by footnotes which were attractive and easily understood. On the other hand if a Glossary is to be retained we recommend that defined words or phrases are identified in the text, for example by use of italics, thereby directing the reader to the Glossary

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PLANNING AND ENVIRONMENTAL LAW COMMITTEE**

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National Planning Policy Framework

Consultation questions

We are seeking your views on the following questions on the Government's proposal for a new National Planning Policy Framework.¹

Email responses to: planningframework@communities.gsi.gov.uk

Written responses to:

Alan C Scott

National Planning Policy Framework

Department for Communities and Local Government

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(a) About you

(i) Your details

Name:	Rupert Jones
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(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

Personal views

(iii) Are your views expressed on this consultation in connection with your membership or support of any group? If yes please state name of group.

¹ (see: <http://www.communities.gov.uk/publications/planningandbuilding/draftframeworkconsultation>)

Yes

No

Name of group:

(iv) Please tick the *one* box which best describes you or your organisation:

Private developer or house builder

Housing association or RSL

Land owner

Voluntary sector or charitable organisation

Business, consultant, professional advisor

National representative body

Professional body

Parish council

Local government (i.e. district, borough, county, unitary, etc.)

Other public body (please state)

Other (please state)

(v) Would you be happy for us to contact you again in relation to this consultation?

Yes

No

DCLG will process any personal information that you provide us with in accordance with the data protection principles in the Data Protection Act 1998. In particular, we shall protect all responses containing personal information by means of all appropriate technical security measures and ensure that they are only accessible to those with an operational need to see them. You should, however, be aware that as a public body, the Department is subject to the requirements of the Freedom of Information Act 2000, and may receive requests for all responses to this consultation. If such requests are received we shall take all steps to anonymise responses that we disclose, by stripping them of the specifically personal data - name and e-mail address - you supply in responding to this consultation. If, however, you consider that any of the responses that you provide to this survey would be likely to identify you irrespective of the removal of your overt personal data, then we should be grateful if you would indicate that, and the likely reasons, in your response, for example in the comments box.

(b) Consultation questions

Delivering Sustainable Development

The Framework has the right approach to establishing and defining the presumption in favour of sustainable development.

1(a) – Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly agree | <input type="checkbox"/> |
| Agree | <input type="checkbox"/> |
| Neither agree or Disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input checked="" type="checkbox"/> |

1(b) Do you have comments? (please begin with relevant paragraph number)

General comments

The CLLS supports the Government's aim to condense existing policy into a concise and cogent single National Planning Policy Framework (NPPF). However, we suggest that further consideration is given to the matters highlighted below if the NPPF is to succeed in its goal of helping achieve sustainable development through a quicker, more efficient planning system at the same time as facilitating economic growth.

Our reservations arise from the fact that, in addition to replacing some 1,000 pages of current policy, the NPPF proposes a number of important policy changes not least the introduction of a presumption in favour of sustainable development.

Our main reservations fall into the following broad categories:

1. The operation of the policy presumption – there are two main issues here. First, how the presumption is to apply given the decision-making duties (affecting the Secretary of State as well as planning authorities) contained in statute, most notably in Section 70 of the 1990 Act and Section 38(6) of the 2004 Act. Second, the possibility that the NPPF must itself be subject to Strategic Environmental Assessment (SEA).

2. The meaning of "sustainable development" - whether a clearer definition is desirable and necessary.

3. Transition management – the need to bring forward the NPPF in a manner which leads to quicker and better policy making and decision taking and less "back end" costs and delays from an increased number of appeals and court challenges.

1. The operation of the presumption

In principle we very much welcome the introduction by the Government of a presumption in favour of sustainable development and with it the clear indication that the planning system is expected to play a positive role in delivering the development to meet the needs of the country.

As lawyers, our interest is in making sure this presumption is effective and does not in its application by local authorities become a basis for repeated appeals and legal challenges, which will slow the planning system down and prevent the delivery of development.

With this in mind we have two principal areas of concern:

- 1). the potential for conflict between the policy presumption in the NPPF and the statutory presumption which establishes the principle of a plan-led system.
- 2). the need for consistency between the concept of sustainable development in the NPPF and the statutory duty on local planning authorities to exercise their plan-making functions with the objective of contributing to the achievement of sustainable development.

We believe that a presumption in favour of development or sustainable development can work – it has done so on many previous occasions in the past – however we have the following reservations arising from the current drafting.

a. Tension with Section 70 of 1990 Act & Section 38(6) of 2004 Act

Planning applications must be decided by local planning authorities and the Secretary of State in accordance with the principles contained in Section 38(6) and Section 70 and related case law.

It is trite law that planning authorities are duty bound to consider all material considerations when determining planning applications although they have a degree of flexibility in the manner in which they do so (see, for example, *Simpson v Edinburgh Corp 1960*).

The development plan need not be followed slavishly. However, regard must be had to it when decisions are made. It cannot be set aside altogether in favour of some other consideration (see, for example, *Camden LBC v Secretary of State 1989*, *Nottinghamshire CC v Secretary of State 1999*).

We suggest that further consideration is given to how the proposed presumption will be applied in situations where the statutory development plan is considered to be "out of date". What, for example, is meant by "out of date"?

More generally, we suggest that further consideration is given to the wording of the proposed presumption insofar as it seeks to alter the

balancing exercise which authorities are obliged to carry out under Section 70 when deciding planning applications.

Paragraph 14 of the draft NPPF states that the proposed presumption, when it applies, means that planning permission should be granted unless:

" ... the adverse impacts of allowing development would **significantly and demonstrably** outweigh the benefits when assessed against the policies in this Framework taken as a whole" (our emphasis).

We have strong reservations about the introduction of a concept of "significance" into the balancing exercise which is to be carried out by planning authorities when determining planning applications. Outside of EIA and Habitats sensitive developments, we believe this to be novel, unclear and most likely difficult for planning authorities to grapple with.

Does this wording mean, for example, that if a development is moderately, as opposed to significantly, harmful when weighed against its benefits, then planning permission should still be granted? Does it mean that if a development is suspected of being significantly harmful but this cannot be proven, for example because communities lack the resources to do so, then planning permission should still be granted?

We suggest that further thought is given to how the concept of "significant and demonstrable" harm sits with authorities' statutory duties under Section 70 and other legislation and how the presumption sits generally with key safeguarding policies contained elsewhere in the NPPF (for example, those guarding against Green Belt development).

With regard to the potential for conflict between policy and statutory presumptions, Section 38(6) of the Planning and Compensation Act 2004 Act states:

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

As it stands, the application of Section 38(6) will mean that during e.g. the determination of a planning application a local planning authority can have regard to the NPPF as a material consideration but it must start with the development plan and any departure from the plan will need to be carefully justified with cogent reasoning.

By contrast, at paragraph 14 the draft NPPF indicates that authorities should "grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date"; this applies unless the adverse impacts of allowing development would significantly and demonstrably outweigh the benefits, when assessed against the policies in NPPF as a whole. This part of paragraph 14

appears to be saying that in particular circumstances (where the plan is absent, silent, indeterminate or where policies are out of date) the development plan should be replaced by the NPPF as the framework for decision making and that in principle the default answer to applications for planning permission should be "yes".

In our view, under section 38(6) local planning authorities can not lawfully ignore the development plan simply because they are directed to do so by the NPPF - the provisions of policy cannot displace the legislative principle of a plan-led planning system. First, they will need still to have proper and fully reasoned justification to depart from the development plan. Second, in the course of considering the adequacy of the plan and the weight to be given to paragraph 14 of the NPPF, local planning authorities will need to confront the fact that a development plan (in some shape or form) is unlikely to be "absent" and that in practice it will be rarely be possible to assert with any certainty that a plan is "silent", "indeterminate" or "out of date". These will be grey areas where challenges and appeals are likely.

Our view is that for the presumption in favour of sustainable development to be effective in terms of its relationship with the development plan and the determination of planning applications, it must in some way be reflected in Section 38(6). That could be achieved by qualifying the duty of local authorities to make determinations in accordance with the plan by express reference to the presumption or by statutory recognition of the certification process that the Government has said will be introduced for development plans to demonstrate compliance with the NPPF (so that a decision will be plan-led only if the plan is certified).

An example of this approach would be to amend Section 38(6) as follows:-

*"(6) **Subject to Subsection (6A)** if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*

(6A) For the purposes of Subsection (6) in its application to England:

(a) the requirement for the determination to be made in accordance with the plan shall only apply to a plan which is certified as being in compliance with national policy issued by the Secretary of State for the purpose of this Subsection (6A);

(b) the determination shall be made with the objective of contributing to the achievement of sustainable development;

(c) for the purposes of Subsection (6A)(b) the person or body making the determination must have regard to

national policy issued by the Secretary of State for the purpose of this Subsection (6A);

(d) for the purposes of Subsection (6A)(a) the Secretary of State may make provision by regulations for the procedure by which a plan is to be certified as being in compliance with national policy."

b. Tension with other statutory presumptions/duties

As indicated above, the presumption in the NPPF must apply in a manner which is clear and consistent with a number of other presumptions and duties, notably:

- The statutory duty to pay regard to listed buildings (Sections 66 & 67 of the Listed Buildings Act);
- The statutory duty concerning conservation areas (Sections 72 & 73 of the Listed Buildings Act);
- The statutory duties to be observed through European led environmental, habitats and similar laws;
- Human Rights Act duties; and
- The policy presumption relating to Green Belt land

We note the significant volume of historic litigation over the status and effect of earlier presumptions in favour of development. Case law has established that the language of policy must always give way to the requirements of statute.

We suggest that further consideration is given to the application of the proposed presumption in cases which may conflict with other statutory or policy duties or presumptions.

In this context, we note that one consequence of former presumptions in favour of development was to make more exacting the duty upon the Secretary of State to make clear his reasons, especially for refusing planning permission, on appeal (see, for example, *Thornville Properties v Secretary of State 1981*).

On the other hand, the presumption did not as a matter of law impose any burden of proof on local planning authorities in the event of an appeal against their decisions (see, for example, *Pye v West Oxfordshire DC 1982*).

Consistency

We are also concerned that local planning authorities should have in mind the same principles of sustainable development when applying policies in the NPPF as they do when complying with the plan-making duty under Section 39(2) Planning and Compulsory Purchase Act 2004.

Section 39(2) requires local planning authorities to exercise their plan-making function “with the objective of contributing to the achievement of sustainable development”. Section 39(3) provides that for the purposes of Section 39(2) regard is to be had to national policies and advice in guidance issued by the Secretary of State for the purposes of Section 39(1).

In our view it is highly undesirable for local planning authorities to be addressing their minds during the plan-making process to potentially different concepts of sustainable development appearing in legislation on the one hand and policy on the other, together with two different instructions to plan with the objective of sustainable development in mind. Our view is that consistency should be ensured either by consolidating all of the duties and presumptions in relation to sustainable development within the Planning Acts or, at the very least, acknowledging within the NPPF that it constitutes national policy and advice for the purposes of the existing Section 39(3).

c. The need for Strategic Environmental Assessment (SEA)

The wording of the presumption strongly suggests that the Secretary of State and a good many local planning authorities will regard the NPPF as the default plan where existing development plan policies are absent, silent, indeterminate or they are considered to be "out of date".

The NPPF envisages that core strategies, local plans and other development plan documents (it is not clear at present what the various local policy documents are to be called) must conform with the NPPF otherwise they will not be certified or – in the case of the majority of areas – found to be "sound".

Although the NPPF is not specifically referred to in current or emerging statute, we consider that there is a good case to argue that it should be subject to SEA requirements for the above reasons.

We recommend that further thought is given to this to avoid protracted delays in implementing the NPPF due to court proceedings testing the point.

2. The meaning of "sustainable development"

Case law has established that sound, adequate and clear cut reasons must be given by a decision maker either to follow or not to follow relevant planning policy. This is to ensure that the basis for a decision is well understood and it is a requirement applied by the Courts with equal vigour in relation to the Secretary of State.

The Courts have ruled that if a decision maker fails properly to understand the relevant policy, his decision will be defective (see, for example, *Surrey Heath BC v Secretary of State 1987*). The proper interpretation of policy is, therefore, a matter of law.

These principles suggest that, in order to avoid a substantive period

of litigation over one of the core concepts underpinning the NPPF, the term "sustainable development" should be specifically defined in the Glossary of the NPPF rather than interpreted by reference to the NPPF as a whole.

If not so defined, authorities and the Secretary of State are likely to adopt inconsistent approaches, the system will be left in a state of uncertainty and the result will be an increased number of appeals and court challenges as parties with differing interests seek to test the matter or delay developments from coming forward.

3. Transitional arrangements

We believe that it will be necessary to transition the move from the existing suite of policy documents to the NPPF carefully if uncertainty, inconsistency and other difficulties are to be avoided.

a. Relationship with existing statutory development plans

The Government remains committed to the plan-led system and the introduction of the NPPF is clearly regarded as an incentive to local planning authorities to ensure that they have in place an up to date local plan.

At present, only one third of authorities have core strategies in place with a number of others approaching the final stages of adoption. That still leaves perhaps the majority of authorities without up to date core strategies and others who will have to undertake a thorough review of their draft plans to ensure conformity with the NPPF.

For those authorities with an adopted core strategy, the NPPF will arguably have the effect of "trumping" these to the extent that they are not in conformity with the NPPF.

Although the NPPF does not require it, in practical terms many authorities will feel the need to redraft potentially large parts of their adopted core strategies to ensure conformity, planning certainty and confidence in decision making.

As a result, there will be a period during which many local authorities will not have local policies in place which they feel confident in making decisions upon and they will have to determine applications in accordance with the NPPF.

Some developers are undoubtedly regarding that window as an opportunity to bring forward applications and appeals in the hope that they can secure consent during a period of unsettled policy. It is not unreasonable to guess that many authorities will adopt a safety-first approach during this period, fearing that refusal could lead to a successful appeal and the potential for an award of costs against the authority should the courts find the refusal to be non-conforming with the NPPF; others may simply delay the determination process in the hope that this will allow their plan-making process to catch up by the time an appeal for non-determination is heard.

There is a strong case for providing a breathing space between publication of the final form of the NPPF and its coming into operation to enable local authorities to catch up.

We urge Government to consider providing transitional arrangements to assist local authorities, many of whom have been awaiting the NPPF before progressing their local policies.

In view of the national need for economic growth one compromise might be for the policy framework to become effective very quickly as a material consideration but for there to be a temporary period, perhaps 12 months, during which that part of the presumption in favour of sustainable development which concerns plans which are absent, silent, indeterminate or out of date (third bullet point, paragraph 14 of the draft NPPF) does not apply. Whilst far from ideal, such a transitional period ought to ensure that the early implementation of the NPPF does not create the open window for developers which fear many objectors to the reform have vocally raised during the consultation period.

It would also be useful for there to be greater clarity on the circumstances when it would be appropriate for planning authorities to resort to supplementary planning documents.

b. Cancellation of current suite of policy and guidance

The NPPF – in its highly condensed form - proposes the cancellation of the existing suite of policy documents and also a great deal of detailed technical guidance and codes of practice.

We would advise caution not least because the principle of consistency of decision making means that the Secretary of State cannot simply cancel earlier guidance since otherwise the Secretary of State is opening himself to be attacked both generally but also through judicial review.

We understand that consideration is still being given as to whether and to what extent further guidance should or will be produced by central government. We would urge the Department to retain at least some of that technical guidance and, where appropriate, updated during any transitional period.

For example, PPG14 (Development of Unstable Land), PPG24 (Planning and Noise) and PPS25 (Development and Flood Risk) include detailed technical guidance. It will be very difficult for decision makers, whether local planning authorities, planning inspectors or the Secretary of State to reach informed decisions on issues covered by the aforementioned guidance without having recourse to have such technical guidance.

We believe there is a strong case for retention of, at least, the more useful technical guidance and codes of practice if the NPPF is to be applied in a sensible manner and consistently in different geographical areas.

(See also our response below to question 3(b).

Plan-making

The Framework has clarified the tests of soundness, and introduces a useful additional test to ensure local plans are positively prepared to meet objectively assessed need and infrastructure requirements.

2(a) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly agree | <input type="checkbox"/> |
| Agree | <input type="checkbox"/> |
| Neither agree or Disagree | <input type="checkbox"/> |
| Disagree | <input checked="" type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

2(b) Do you have comments? (please begin with relevant paragraph number)

Paragraphs 20-25. The simplification of the tests is welcome.

Following on from paragraph 26 the policy framework needs to address the issue of prematurity and, in particular, whether, as currently provided by paragraph 17 of PPS1, it may be justifiable to refuse planning consent on the grounds of prematurity when a Local Plan is being prepared or is under review. If, as currently, this ground for refusal is rarely applicable to smaller proposals it ought to be consistent with the presumption in favour of sustainable development and so not objectionable, per se.

The draft NPPF limits mention of financial considerations as incentives in the planning decision making process to paragraphs 18 and 40 which state:

Paragraph 18:

"National incentives and relevant local charges will help ensure local communities benefit directly from the increase in development that this Framework seeks to achieve. The revenue generated from development will help sustain local services, fund infrastructure and deliver environmental enhancement".

Paragraph 40:

"The Community Infrastructure Levy should support and incentivise new development by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place".

It is surprising that there is no mention of the New Homes Bonus and this is all the more surprising given the Government's emphasis on the New Homes Bonus being a central driver to deliver more housing. The NPPF should, therefore, expressly refer to the role that the New Homes Bonus is expected to play in encouraging local

authorities to bring forward more housing.

The role of the New Homes Bonus, CIL and the emerging proposals for local retention of at least a part of the local business rates changes the landscape within which planning decisions will take place. Quite rightly, they are intended to encourage local authorities and local communities to embrace development, rather than to resist it.

This raises two key issues that need to be addressed in the NPPF: Firstly, the NPPF should make it absolutely clear (as was originally proposed in clause 124 of the Localism Bill) that financial considerations can be material to planning decisions. They should, clearly, influence local plan determinations about the scale of development that will be encouraged. They should encourage local authorities to permit development. In order to do so, without raising the prospect of legal challenge, financial considerations must be material. The NPPF is an obvious vehicle for making this clear. Secondly, the NPPF is also the place to emphasise that planning permissions and allocations should not be bought and sold. Development which is fundamentally unacceptable should never be approved simply because of financial considerations. There should be a very clear and absolute statement to this effect in the final form of the NPPF.

Paragraph 48 sets out the concept of "soundness" and two of the soundness criteria cross-refer to the concept of "sustainable development". In our response to question 1(b) above we have set out our concerns about the uncertainty surrounding this concept and if these concerns are not addressed that uncertainty would, in our view, create doubt in the application of the soundness test. If a proper workable definition of sustainable development were included in the NPPF, thus removing the uncertainty our response to question 2(a) would be "agree" or even "strongly agree".

The policies for planning strategically across local boundaries provide a clear framework and enough flexibility for councils and other bodies to work together effectively.

2(c) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly agree | <input type="checkbox"/> |
| Agree | <input type="checkbox"/> |
| Neither agree or Disagree | <input type="checkbox"/> |
| Disagree | <input checked="" type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

2(d) Do you have comments? (please begin with relevant paragraph number)

Paragraphs 44-47. We are concerned how in practice planning strategically across local boundaries will work, particularly if there are financial impacts from a new development, because of the localism agenda facilitating widely different approaches towards planning policy between adjoining areas. Indeed, there is an inherent tension between the localism agenda and planning strategically across local boundaries which the NPPF should expressly address.

Decision taking

In the policies on development management, the level of detail is appropriate.

3(a) Do you agree

- Strongly agree
- Agree
- Neither agree or Disagree
- Disagree
- Strongly Disagree

3(b) Do you have comments? (please begin with relevant paragraph number)

Paragraphs 53-70. As mentioned above, we are concerned by the loss of technical guidance and know-how contained in the current arrangements. Whilst we support the government's wish to reduce policy, proper comprehensive technical advice is key to ensuring certainty and reducing the areas of disagreement between planning authorities and applicants and ensures, from a technical perspective, that development management is undertaken in a consistent manner across the country. If technical guidance is retained at a national level as the default position it might be attractive to allow local variations to support the localism agenda by recognising any differences between the various local planning authorities relating to locally derived decisions and priorities rather than differing technical assumptions and procedures.

Any guidance needed to support the new Framework should be light-touch and could be provided by organisations outside Government.

4(a) Do you agree

- Strongly agree
- Agree
- Neither agree or Disagree
- Disagree
- Strongly Disagree

4(b) What should any separate guidance cover and who is best placed to provide it?

There is a clear need to distinguish between policy and guidance. Policy should be dealt with in the NPPF. On the other hand, guidance should be aimed at best practice and, in our view, must be provided independently and authoritatively. Our preference, subject to our comments below, would be for central government to continue to provide technical advice on the basis that the guidance is describing best practice and is authoritative. Since they would need to harness best practice for the purposes of determining appeals the Planning Inspectorate may in fact be the most appropriate body to act as custodian of that guidance.

If central government is not to provide it then professional bodies or local government associations may be the next obvious source but the issue of who would bear the costs thereby incurred may make that solution unattractive or just fanciful. In the absence of authoritative independent provision the task could be taken up by quasi-governmental organisations or by industry groups but they may have their own agendas (real or perceived). In which case alternative guidance will be sought by applicants (and vice versa by planning authorities if the technical guidance is perceived as being developer friendly) in a “pick and mix” approach intended to identify technical guidance which best supports the interpretation and implementation being sought, by the applicant on the one hand and by the authority or indeed community objectors on the other.

Administrative acts of public authorities should be consistent across the country which demands authoritative central guidance. Under the localism agenda it may well be open to the relevant local authorities to modify the application of the central guidance if they can show good reasons to support such modification in their locality but the default position should be central guidance and, in general terms, modifications should be seeking relaxation not increased restriction. If this is not done and there is inconsistency of application of the technical guidance across the country that will create further delays in the determination of development proposals and thus delay the development needed to achieve the desired level of economic growth.

Business and economic development

The 'planning for business policies' will encourage economic activity and give business the certainty and confidence to invest.

5(a) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly agree | <input type="checkbox"/> |
| Agree | <input checked="" type="checkbox"/> |
| Neither agree or Disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

5(b) Do you have comments? (please begin with relevant paragraph number)

Paragraph 71-75. Our agreement is conditional on there being certainty over the definition of sustainable development and the application of such definition in practice. It is also paramount that there will be appropriate transitional arrangements to ensure that there is immediate certainty about the application of the NPPF from the date of its implementation.

5(c) What market signals could be most useful in plan making and decisions, and how could such information be best used to inform decisions?

Our concern is that market signals are reflections of current or recent issues in the market whereas plan making and decisions are explicitly directed to the medium term horizon if not longer. Our view is that plans and decisions should be informed by medium/long-term forward-planning for the economy and a variety of organisations, not least new Local Enterprise Partnerships, will play a key role in providing this.

The town centre policies will enable communities to encourage retail, business and leisure development in the right locations and protect the vitality and viability of town centres.

6(a) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly agree | <input type="checkbox"/> |
| Agree | <input checked="" type="checkbox"/> |
| Neither agree or Disagree | <input type="checkbox"/> |

Disagree

Strongly Disagree

6(b) Do you have comments? (please begin with relevant paragraph number)

Paragraphs 76 to 80. However, whilst agreeing with the broad policy principles, we disagree with the apparent weakening of the Town Centre First policy and we believe the final form of the NPPF should be strengthened in that regard.

In more detail: concern has been expressed that the presumption in favour of sustainable development could undermine the primacy given to the town centre first approach in planning policy. However, we note that the presumption will only apply if the local plan is absent, silent, indeterminate or where relevant policies are out of date. In those circumstances, the presumption only applies if the proposed development accords with the policies in the NPPF. This should ensure that the town centre first policy applies in all circumstances. However, in our view, it would be helpful to clarify in the NPPF that the town centre first policy test must be applied whenever relevant and that the application of the presumption will never mean that development to which the town centre policies apply can be consented without the sequential and impact tests being applied.

The loss of technical guidance could impair the applicability of the sequential test and lead to uncertainty and greater delay and, therefore, this is a good example of where such guidance should be retained.

Paragraph 78 of the draft framework states that "local planning authorities should **prefer** applications for retail and leisure uses to be located in town centre uses where practical [...]. Contrast this with policy EC17.1 of PPS4 which states that applications for main town centre uses that are not in an existing centre and not in accordance with an up to date development plan **should be refused** where the applicant has not demonstrated compliance with the requirements the (sic) sequential approach. In our view, this weakens the town centre first policy. Is this the Government's intention?

Paragraph 80 of the draft framework states that policies and decisions should "**assess the impact** of retail and leisure proposals, including [...] the impact of the proposal on town centre vitality and viability". We contrast this with policy EC17.1 of PPS4 which states that edge and out of centre uses **should be refused** permission where "there is clear evidence that the proposal is likely to lead to significant adverse impacts [on the town centre]. This does, in our view, have the effect of weakening the town centre first policy. Again, is this the Government's intention?

In our view, we would expect the presumption in favour of sustainable development to support the town centre first policy and any weakening in policy from the current position would be

inconsistent. Accordingly, if there is any real intention to weaken that policy that should be stated expressly.

We presume that the reference to commercial development is intended to include office use but it may be sensible to expressly include that clarification in light of the current policy wording.

Transport

The policy on planning for transport takes the right approach.

7(a) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly Agree | <input type="checkbox"/> |
| Agree | <input checked="" type="checkbox"/> |
| Neither Agree or Disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

7(b) Do you have comments? (please begin with relevant paragraph number)

Planning policy relating to planning for transport is a very technical area and whilst we agree that the policy as set out in the draft NPPF is appropriate, technical guidance to identify and quantify the issues and to introduce certainty with regard to the sustainability arguments would be essential. For example, both applicants and decision makers would be greatly assisted in preparing and approving an appropriate and applicable travel plan by the continuance of technical guidance.

Communications infrastructure

Policy on communications infrastructure is adequate to allow effective communications development and technological advances.

8(a) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly Agree | <input type="checkbox"/> |
| Agree | <input checked="" type="checkbox"/> |
| Neither Agree or Disagree | <input type="checkbox"/> |

Disagree

Strongly Disagree

8(b) Do you have comments? (please begin with relevant paragraph number)

No.

Minerals

The policies on minerals planning adopt the right approach.

9(a) Do you agree?

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree

9(b) Do you have comments? (please begin with relevant paragraph number)

The loss of technical guidance set out in the current mineral policy guidance would be a matter of some concern.

There are some 15 Mineral Policy Guidance Notes (MPGs) nearly all of which contain detailed technical guidance on the winning and working of minerals and after use restoration. As with the PPSs and PPGs it will be very difficult for decision makers to reach informed decisions with out recourse to such technical guidance.

We suggest much of this technical guidance in the PPSs, PPGs and MPGs should be retained and also updated during any transitional period.

Housing

The policies on housing will enable communities to deliver a wide choice of high quality homes, in the right location, to meet local demand.

10(a) Do you agree?

- Strongly Agree
- Agree
- Neither Agree or Disagree
- Disagree
- Strongly Disagree

10(b) Do you have comments? (please begin with relevant paragraph number)

Paragraph 109: in view of the public concern expressed during the consultation period with regard to the additional allowance of 20%, would not the same objective be achieved but in a less inflammatory way by the NPPF referring to the identification and maintenance of a rolling supply of specific deliverable sites sufficient to provide **six** years worth of housing against their housing requirements?

As mentioned above in our response to question 2(b) further policy guidance regarding the role of financial incentives with regard to the provision of housing such as the New Homes Bonus should to be expressly included in the policy.

We assume that the "compelling evidence of genuine local circumstances " referred to in paragraph 109 would include such items as a coast line being evidence of high restraint.

Planning for schools

The policy on planning for schools takes the right approach.

11(a) Do you agree?

- Strongly Agree
- Agree
- Neither Agree or Disagree
- Disagree
- Strongly Disagree

11(b) Do you have comments? (please begin with relevant paragraph number)

No comment.

Design

The policy on planning and design is appropriate and useful.

12(a) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly Agree | <input type="checkbox"/> |
| Agree | <input checked="" type="checkbox"/> |
| Neither Agree or Disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

12(b) Do you have comments? (please begin with relevant paragraph number)

Paragraphs 114 to 123.

One of the major criticisms of planning over the last 20 years, and some would argue for far longer, has been that the market cannot be guaranteed to deliver good design. Too often, in the rush to meet some target or simply to catch a financial tide, planners have accepted a drive for quantity rather than quality. The current need for economic growth might well produce similar pressures for quantity over quality. Against such pressures, it is too easy to allow development which within a relatively short time period is perceived to be below an acceptable standard. Building regulations are accepted as necessary and welcomed as ensuring that new developments are safe, i.e. don't fall down and are not hazardous to their occupants or neighbours. In recent years the building regulations have been used to ensure compliance with government objectives such as sustainability and the move to zero carbon construction.

On the other hand controlling design has become unacceptable because it is interpreted by developers, planners and the general public as interference with how a building looks. However, we would suggest that the policy framework must encourage good design meaning the quality of facilities to be provided within the development. Whilst a return to Parker Morris standards may not be appropriate because the lives and needs of our communities have evolved since those standards were first drafted, the value of the concept has been demonstrated by the Mayor of London's London Housing Design Guide. The incorporation of design standards by reference into the planning policy framework would help to ensure that in particular all new housing constructed as a result of the framework will be of the right quality as well as in the right quantities.

Again, something like the London Housing Design Guide could be identified by central government as the default position whilst allowing/encouraging local authorities, as part of the localism agenda, to proscribe modifications which would result in an increased quality of the facilities in new developments in their locality.

Green Belt

The policy on planning and the Green Belt gives a strong clear message on Green Belt protection.

13(a) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly Agree | <input checked="" type="checkbox"/> |
| Agree | <input type="checkbox"/> |
| Neither Agree or Disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

13(b) Do you have comments? (please begin with relevant paragraph number)

Whilst we agree that a strong clear message is given, equally the public concerns expressed during the consultation period may necessitate an even clearer message being given (and as mentioned above transitional arrangements may play an important part in such message giving).

In a similar vein, we are concerned that in paragraph 142 there is no express carve out of the overall presumption re sustainable development. We do not believe that to be the intention but the omission does raise the query whether appropriate development is “trumped” by the overall sustainable development presumption. In view of the public concerns with regard to green belt, the Department might wish to emphasise the dual hurdle.

We note that the proposed definition in the Glossary for previously developed land excludes all land occupied by agricultural and forestry buildings. However, in Open Source Planning it had been proposed that the designation of brownfield land would be extended to include land previously occupied by agricultural buildings (erected before a specified date) so as to facilitate the development of disused buildings for other purposes. We would support such an extension as being consistent with the economic growth objectives of the NPPF and as a way to reduce development pressure on greenfield land in general.

Climate change, flooding and coastal change

The policy relating to climate change takes the right approach.

14(a) Do you agree?

- Strongly Agree
- Agree
- Neither Agree or Disagree
- Disagree
- Strongly Disagree

14(b) Do you have comments? (please begin with relevant paragraph number)

Paragraphs 148 to 162: this part of the NPPF is an example of where the document has dealt with an important area of policy in short-hand, in contrast with e.g. policies on the green belt which seem to have occupied a disproportionately large part of the NPPF. Along with an ageing and growing population and economic growth, climate change is the most important pressing challenge facing our society and one in which planning can play a critical role. These challenges should in our view be recognised expressly and given greater prominence in the NPPF than is currently the case.

The policy on renewable energy will support the delivery of renewable and low carbon energy.

14(c) Do you agree?

- Strongly Agree
- Agree
- Neither Agree or Disagree
- Disagree
- Strongly Disagree

14(d) Do you have comments? (please begin with relevant paragraph number)

No comments.

The draft Framework sets out clear and workable proposals for plan-making and development management for renewable and low carbon energy, including the test for developments proposed outside of opportunity areas identified by local authorities.

14(e) Do you agree?

- Strongly Agree

- Agree
- Neither Agree or Disagree
- Disagree
- Strongly Disagree

14(f) Do you have comments? (please begin with relevant paragraph number)

We feel very strongly that this is an area where technical guidance is essential.

The policy on flooding and coastal change provides the right level of protection.

14(g) Do you agree?

- Strongly Agree
- Agree
- Neither Agree or Disagree
- Disagree
- Strongly Disagree

14(h) Do you have comments? (please begin with relevant paragraph number)

We feel very strongly that this is an area where technical guidance is essential.

Natural and local Environment

Policy relating to the natural and local environment provides the appropriate framework to protect and enhance the environment.

15(a) Do you agree?

- Strongly Agree
- Agree
- Neither Agree or Disagree
- Disagree
- Strongly Disagree

15(b) Do you have comments? (please begin with relevant paragraph number)

However, particularly in view of the public response to the draft, we would strongly support the strengthening of the brownfield first principle and, indeed, such a provision may need to be set out expressly in the final form of the NPPF.

Historic Environment

This policy provides the right level of protection for heritage assets.

16(a) Do you agree?

- | | |
|---------------------------|-------------------------------------|
| Strongly Agree | <input type="checkbox"/> |
| Agree | <input type="checkbox"/> |
| Neither Agree or Disagree | <input checked="" type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

16(b) Do you have comments? (please begin with relevant paragraph number)

Paragraphs 176 to 191.

As with the inherent tension between economic growth demanding delivery of development and many a community's natural expectation of retaining the well appreciated status quo, heritage issues go to the heart of people's involvement with and love of their community. It is trite law but a conservation area is not a preservation area. Equally, the need to develop a built environment fit for purpose today in the 21st century ought not to be frustrated by retention of arguably second rate older buildings. One of the saddest reflections on the current planning and listed building regimes is that together they often dissuade commercial developers from commissioning developments which in the future could have been recognised as reflecting the highest current architectural standards; too many developers ask why build today tomorrow's listed building?

Against this background we would suggest that in many of the paragraphs in the policy framework dealing with Heritage Assets that the policy is too inflexible. There needs to be much more of a balance between what will be gained by the new development and what will be lost. The grading of listed buildings has worked well in practice and has ensured the retention of the gems whilst allowing something with some minor interest to be replaced by something which over time could be exceptional or to allow a trade between using the development potential for part of a site to fund the

restoration and reuse of part of a heritage asset.

With specific reference to paragraph 179, we would query how many potential conservation areas there are which haven't been so designated. In which case, is paragraph 179 envisaging the possibility of allowing existing areas which are now considered to lack "special interest" to be de-designated? If that is envisaged the policy should be clearly stated.

With regard to paragraph 180, we would query the need to limit so widely the minimum standards to be followed when the future of heritage assets is being considered.

It has long been accepted that the deteriorated state of a heritage asset should be ignored when the local planning authority is deciding a development proposal. The legal obligations to keep in repair heritage assets are well established and support the policy set out in paragraph 182 where there has been deliberate neglect or damage. We would suggest that, as in current policy, local planning authorities should be reminded to consider exercising their repair and compulsory purchase powers to remedy such deliberate neglect.

One of the key benefits of the current policy is that conservation of a heritage asset can be part of the "price" that a developer bears to achieve the development such developer desires. On the other hand in paragraph 185 there is no concept of the benefit of the development which would seem to be even more applicable when considering non designated heritage assets.

In paragraph 186 we would have expected policy to at least suggest that the default step would be an appropriate condition. Only in exceptional circumstances would one expect other lesser steps being taken; the developer seeks to harm or destroy the heritage asset and in those circumstances it is imperative that the benefits promised by such replacement development are delivered,

We see a conflict between paragraph 187 and the preceding paragraphs and would argue for the deletion of such paragraph as being unnecessary.

We fear that paragraph 190 could be used to permit the loss of a heritage asset prematurely: we believe that English Heritage's technical guidance on enabling development should remain the keystone policy document.

Impact assessment

The Framework is also accompanied by an impact assessment. There are more detailed questions on the assessment that you may wish to answer to help us collect further evidence to inform our final assessment. If you do not wish to answer the detailed questions, you may provide general comments on the assessment in

response to the following question:

17a. Is the impact assessment a fair and reasonable representation of the costs, benefits and impacts of introducing the Framework?

In respect of the Impact Assessment, if all the technical guidance is revoked the cost benefits express and implicit in the Impact Assessment will not be achieved. Instead over the next several years uncertainty in the system will create delays and expenses and, therefore, ensuring that the objectives of the NPPF will not be achieved.

Planning for Travellers

18 Do you have views on the consistency of the draft Framework with the draft planning policy for traveller sites, or any other comments about the Government's plans to incorporate planning policy on traveller sites into the final National Planning Policy Framework?

No comment.

Specific questions on the impact assessment

QA1: We welcome views on this Impact Assessment and the assumptions/estimates contained within it about the impact of the National Planning Policy Framework on economic, environmental and social outcomes. More detailed questions follow throughout the document.

See our response to question 17a above and, in the light of which, we have not responded to these specific questions on the impact assessment. In any event, the majority of these specific questions are not aimed at legal issues as such.

QA2: Are there any broad categories of costs or benefits that have not been included here and which may arise from the consolidation brought about by the National Planning Policy Framework?

See our response to QA1 above.

QA3: Are the assumptions and estimates regarding wage rates and time spent familiarising with the National Planning Policy Framework reasonable? Can you provide evidence of the number of agents affected?

See our response to QA1 above

QA4: Can you provide further evidence to inform our assumptions regarding wage rates and likely time savings from consolidated national policy?

See our response to QA1 above

QA5: What behavioural impact do you expect on the number of applications and appeals?

See our response to QA1 above

QA6: What do you think the impact will be on the above costs to applicants?

See our response to QA1 above

QA7: Do you have views on any other risks or wider benefits of the proposal to consolidate national policy?

See our response to QA1 above

QB1.1: What impact do you think the presumption will have on:

- (i) the number of planning applications;
- (ii) the approval rate; and
- (iii) the speed of decision-making?

See our response to QA1 above

QB1.2: What impact, if any, do you think the presumption will have on:

- (i) the overall costs of plan production incurred by local planning authorities?
- (ii) engagement by business?
- (iii) the number and type of neighbourhood plans produced?

See our response to QA1 above

QB1.3: What impact do you think the presumption in favour of sustainable

development will have on the balance between economic, environmental and social outcomes?

See our response to QA1 above

QB1.4: What impact, if any, do you think the presumption will have on the number of planning appeals?

See our response to QA1 above

QB2.1: Do you think the impact assessment presents a fair representation of the costs and benefits of the policy change?

See our response to QA1 above

QB2.2: Is 10 years the right time horizon for assessing impacts?

Do you think the impact assessment presents a fair representation of the costs and benefits of the policy change?

See our response to QA1 above

QB2.3: How much resource would it cost to develop an evidence base and adopt a local parking standards policy?

See our response to QA1 above

QB2.4: As a local council, at what level will you set your local parking standards, compared with the current national standards?

Do you think the impact assessment presents a fair representation of the costs and benefits of the policy change?

Not applicable

QB2.5: Do you think the impact assessment presents a fair representation of the costs and benefits of the policy changes on minerals?

See our response to QA1 above

QB3.1: What impact do you think removing the national target for brownfield development will have on the housing land supply in your area? Are you minded to change your approach?

See our response to QA1 above

QB3.2: Will the requirement to identify 20% additional land for housing be achievable? And what additional resources will be incurred to identify it? Will this requirement help the delivery of homes?

See our response to QA1 above

QB3.3: Will you change your local affordable housing threshold in the light of the changes proposed? How?

See our response to QA1 above

QB3.4: Will you change your approach to the delivery of affordable housing in rural areas in light of the proposed changes?

See our response to QA1 above

QB3.5: How much resource would it cost local councils to develop an evidence base and adopt a community facilities policy?

See our response to QA1 above

QB3.6: How much resource would it cost developers to develop an evidence base to justify loss of the building or development previously used by community facilities?

See our response to QA1 above

QB3.7: Do you think the impact assessment presents a fair representation of the

costs and benefits of the Green Belt policies set out in the Framework?

See our response to QA1 above

QB4.1: What are the resource implications of the new approach to green infrastructure?

See our response to QA1 above

QB4.2: What impact will the Local Green Space designation policy have, and is the policy's intention sufficiently clearly defined?

See our response to QA1 above

QB4.3: Are there resource implications from the clarification that wildlife sites should be given the same protection as European sites?

See our response to QA1 above

QB4.4: How will your approach to decentralised energy change as a result of this policy change?

See our response to QA1 above

QB4.5 Will your approach to renewable energy change as a result of this policy?

See our response to QA1 above

QB4.6: Will your approach to monitoring the impact of planning and development on the historic environment change as a result of the removal of this policy?

See our response to QA1 above