

1. SUMMARY

1.1 Development Plans are the legal bedrock of all local planning decisions. Planning applications must be decided in accordance with the plan 'unless material considerations indicate otherwise'.

1.2 The new planning system has triggered an intense period of local plan making. Development Plans can help fill in the detail now lacking in the National Planning Policy Framework (NPPF). Statutory consultation requirements, including a public examination by an independent inspector, provide many opportunities for local campaigning.

2. TOP TIPS

- Press your local planning authority (LPA) to resource their plan making responsibilities well.
- Use consultation and the public examination to promote CPRE policies and priorities. Submit your ideas at the earliest stage.
- Use the concept of 'smart growth' (explained below) to respond to Government economic priorities, whilst recognising environmental limits and social consequences.
- Support parish councils and community groups seeking to prepare neighbourhood plans.

3. CHANGES AT A GLANCE

PLANNING CAMPAIGN BRIEFING SERIES:

1. Development Plans
2. Green Belts
3. Housing
4. Energy Infrastructure
5. Transport
6. Heritage and Design
7. Light Pollution
8. Rural Economy
9. Economic Development and Town Centres
10. Wider Countryside and Protected Areas
11. Tranquillity

We welcome case studies and feedback to inform future versions of these briefings.

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PRE REFORM	LOCALISM ACT / NPPF / PLANNING PRACTICE GUIDANCE (PPG)
Strategic direction and land use targets (especially housing numbers) in Regional Strategies (RSS). No policy presumption in favour of new development.	No RSS or top down targets, but a new 'presumption in favour of sustainable development'. A 'duty to co-operate' addresses strategic and cross boundary issues.
Local Development Frameworks (LDFs) with specified forms of statutory Development Plan Document (DPD) (e.g. core strategies and allocations DPDs) and Supplementary Planning Documents (SPD). Detailed guidance on preparation (PPS12).	The PPG covers preparation. Flexibility for LPA to prepare different types of statutory DPD, all now known as 'Local Plans'. SPDs should not 'add unnecessarily to the financial burdens on development'. A new form of statutory DPD - Neighbourhood Plans.
Inspector's recommendations binding on LPA, judged against 'tests of soundness'.	LPA discretion to review recommendations and re-submit after examination. Soundness tests now refer to positive preparation, duty to co operate and viability.
Financial incentives not generally a planning matter	Local finance considerations can be taken into account in Plan decisions, provided they help make a development acceptable in planning terms; New Homes Bonus and Community Infrastructure Levy. Local finance through Business Rate Retention may be a future influence.

4. BACKGROUND

4.1 The purpose of this briefing is to assist understanding of reforms to the town and country planning system that have taken place since 2011. It outlines the main changes and the issues to be aware of (Analysis) and advises on specific campaign topics (Campaign Advice).

4.2 CPRE is keen to ensure that our precious countryside continues to be protected and valued, and to highlight significant threats to it where they arise. We will collect evidence of outcomes (good and bad), in the form of cases that illustrate the issues we highlight. We welcome public assistance with this, as well as feedback on the briefing.

5. WHAT ISSUES ARE YOU LIKELY TO FACE?

5.1 Legal status of the development plan: 'Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise' (Planning and Compulsory Purchase Act 2004 s38 - references below use 2004 Act alone). While the NPPF and the operation of the planning system implicitly works to ensure that local plans conform sensibly to national policy, the law itself puts considerable emphasis on LPA prepared plans and does not formally require conformity to national policy. It is a long established principle of the planning system that it is 'plan led'. Local circumstances are very important. This is why it is crucial to influence the content of new local plans. If they say the right things there is a better chance of good decisions on planning applications.

5.2 Localism: The Government has set 'plan led' in the context of 'localism'. This involves removal of the regional level of planning and the introduction of neighbourhood plans prepared by town and parish councils (or in areas without local councils, a neighbourhood forum). The relationship between Local Plans and neighbourhood plans was not made clear in the NPPF. The PPG, however, advises that neighbourhood plans can be developed before a Local Plan is finalised, but that they should be in general conformity with an already adopted plan. In turn, the LPA has to take a finalised (or 'made') neighbourhood plan into account when preparing a Local Plan. There is also scope for LPAs to adapt useful regional evidence and policies where they choose to do so. For neighbourhood planning CPRE already has strong links with many town or parish councils.

5.3 Up to date plans: A problematic part of the NPPF is the emphasis on plans being up to date in relation to national policy. The PPG reinforces this by advising that most local plans should be updated at least every five years. This has proved to be particularly challenging in relation to maintaining a steady supply of housing development sites. In a number of recent planning appeals, Planning Inspectors have ruled a clutch of local plan policies to be out of date if there is no evidence of sufficient supply. It is good practice to keep a plan as up to date as possible. However, there is no need to accept the suggestion often made that a plan that is, in some respects, out of date is useless. It is usually possible to make a convincing argument that aspects of plans that are quite old are still very relevant to application decisions. This is especially the case where national policy has not been changed by the NPPF, for example Green Belt policy. Similarly, the concept of emerging plans is important. If a LPA has published early work on its new plan this should have some 'weight' in decision making. Weight will increase as the plan completes various stages of consultation. For example, a submitted draft can have considerable importance in decision making, even though some will say it is not finally agreed and should be ignored. Do not accept the argument that as the plan is out of date, anything goes and national policy should always prevail.

5.4 Prematurity: There is growing evidence, since the NPPF came into force, of developers putting in major applications in advance of decisions on local plans. This will sometimes create a position where granting permission would effectively determine a central strategy decision in the plan. This is a 'prematurity' case. The NPPF presumption in favour of sustainable development applies where plans are out of date. This makes it difficult to argue prematurity as a reason for application refusal. Referring instead to relevant 'emerging' Local Plan policies (see 5.3 above) formulated since the NPPF, if these exist, will often carry more weight. However, the point is still important where key strategic issues are involved. The reduced rate of development arising from poor economic circumstances and the non implementation of past permissions can also help justify holding long term decisions on prematurity grounds.

5.5 Strategic planning and the duty to co operate: The strategic level of planning has always been important because it is where big issues (such as the direction of growth of cities, what level of housing need is to be met, or how a Green Belt is reviewed) get decided. As a result of both the Localism Act and the NPPF, 'strategic' issues (defined in para.156 of the NPPF and including housing, jobs, retail and transport) will now be addressed through local plans rather than through a formal county or regional process. The new 'duty to co-operate' applies to these 'strategic issues'. The PPG sets out more detail on local authorities can show that the duty has been met, and when other bodies should be involved. Often it will be necessary to establish a joint approach between LPAs, and in a number of cases Local Plans prepared jointly by two or more LPAs are emerging. Different local approaches to co-operation are emerging and have varying degrees of decision taking formality. The effectiveness of co-operation will be considered and judged by the inspector at public examination (see below). In many cases co-operation has proved difficult to secure, particularly between local authorities in areas such as Sussex with large areas of protected countryside. Conversely, co-operation has been more likely to succeed in areas where local authorities have had a long history of working together on planning issues, such as in Dorset, Hertfordshire and Suffolk. All English local authorities are members of Local Enterprise Partnerships (LEPs), which in early 2014 drafted Strategic Economic Plans (SEPs). LEPs are likely to have an increasing influence on strategic planning, though this will also depend on the degree to which proposals in SEPs have been accepted by Government. More information about LEPs is in paragraph 6.9 of this briefing and Planning Campaign Briefing 9 (town centres and economic development).

5.6 Evidence: Evidence to support the preparation of any plan is essential (NPPF para. 158). LPAs will refer to the 'evidence base' for their plan. This will comprise a series of studies or documents published and considered during plan preparation. The most important types of study are explained in other, topic specific, briefings. Generally it is important to know what studies are being done and use, or critique, them as appropriate. The PPG advises that key studies should be regularly updated and published as soon as they are completed - which may often be some time before policies are published for consultation. This has caused problems for some local authorities, in particular with regard to housing land supply where new housing need surveys have been used to override existing policies to justify major new housing development (see paragraph 5.8 below). More information about objectively assessed housing need and how to influence its formulation can be found in Planning Campaign Briefing 3 (Housing). Studies on built heritage, ecology and/or landscape are also likely to be of critical interest, as they will provide evidence of the degree to which these issues prevent housing or economic development needs being met in full in a local authority area. Neighbourhood plan work can be a new source of local evidence that might be used to achieve good outcomes. There is also scope for CPRE



work to be used as evidence where it has recognised professional or academic authority, for example our tranquillity maps. It will always be useful to analyse evidence on:

- Population and household forecasts
- Housing market intelligence and need / affordability analysis
- Housing land availability
- Employment land availability
- Retail need, capacity and hierarchy
- Town centres, particularly any information on vitality or 'health checks'
- Transport
- Urban capacity - especially brownfield land availability
- Landscape and countryside characterisation
- Ecological information and designations
- Built / archaeological heritage characterisation
- Open space (also often referred to as green infrastructure) provision and deficiencies
- Built leisure and sports provision and deficiencies

5.7 Viability and deliverability: Economic viability of development and viability assessment of local plans overall is given much greater importance (NPPF paras. 173-7, PPG). Selection of development sites, infrastructure investment and affordable housing will be affected. This is particularly relevant to promotion of development locations with higher site preparation and infrastructure costs, or higher existing use values. It may therefore make greenfield development proposals more likely as it will be more difficult for plans to prioritise urban sites, but see paragraph 5.8 below.

5.8 Infrastructure: A Local Plan should include details on provision of the infrastructure needed to support development proposed (infrastructure covers things like transport, schools, community buildings, open space) (NPPF para.162). This is often known as an infrastructure delivery plan (IDP). The PPG advises local authorities to consider whether there are any infrastructure constraints when evaluating the overall suitability of a site for housing, and to decide what infrastructure is required. Also, housing surveys that imply higher levels of new building (see paragraph 5.6 above) may be given less weight if the figures in them have not been tested against relevant constraints, which include infrastructure as well as landscape considerations. This may help local authorities to take a 'brownfield first' approach to new development and specify the order in which sites are released ('phasing'). The approach to infrastructure provision can form the basis a community infrastructure levy (CIL). Local planning authorities can introduce CIL at their discretion, but if they choose to do so they will need to publish a charging schedule which will undergo public examination in the same way as a development plan document (though the schedule itself is not part of the development plan). In April 2013 regulations came into force that require distribution of a part of the levy to local communities, with particular incentives for areas that have made neighbourhood plans. This is likely to lead to (i) town and parish councils being more influential in delivering small scale infrastructure, as they will be able to access some new funding; and (ii) further neighbourhood planning activity.

5.9 Role of the Planning Inspectorate, the public examination and soundness: The plan is prepared by the LPA, but to be adopted and take full effect, it has to pass through a public examination before an independent inspector from the Planning Inspectorate. Since the adoption of the NPPF, Inspectors have taken on a much more critical role in Local Plan preparation. There have been two key factors in this. First, a 2012 Supreme Court case (see Case Studies) has set a

precedent that a policy in the NPPF or the development plan can be interpreted in the context in which it was written, rather than being a matter of judgement for the decision maker. Given the NPPF's overall emphasis on promoting development, this is encouraging developers to challenge local authority draft plans where they seek to restrict development. Second, and linked to this, an increasing number of Local Plans have been delayed or withdrawn at or just before the examination stage, usually because of Inspectors calling for higher housing numbers. Where this happens, existing adopted local policies remain in force, but are more likely to be seen as 'out of date' in relation to the NPPF and thereby overridden in decisions. Through consultation and examination, and in the way it needs to achieve soundness, the plan becomes responsive to a wider community of interest. It is thus more than just the LPA's plan. Inspectors specifically judge the general 'soundness' of the plan. Soundness is defined as a series of tests in the NPPF (Para. 182). The NPPF formulation of soundness is partially new. Specifically the 'positively prepared' test links to the NPPF presumption in favour of sustainable development and the emphasis on development viability (see above). There are also references to meeting development needs assessed with evidence and cooperation with neighbouring authorities. The PPG advises that LPAs can follow approaches accepted as sound for other local authorities if these are 'relevant' and 'appropriate'. This may help some LPAs in areas where there are environmental constraints to development such as Green Belt, as some LPAs have managed to adopt plans with lower housing numbers than their 'objectively assessed' need for this reason. Also, inspectors should only seek to make modifications to plans where a local authority has requested that they do so. This issue has gained political prominence recently following an exchange of letters between Planning Minister Nick Boles and the Planning Inspectorate on whether Inspectors should recommend Green Belt reviews.

5.10 The new form of local plan: The forms of (and terminology for) development plans have changed frequently. A LPA prepares 'development plan documents' (2004 Act) but they are now called 'local plans' in both the NPPF and in Regulations.¹ In some cases 'saved' policies from pre-2004 local plans and structure plans remain in force. Local plans are expected to cover a range of 'strategic' issues, including housing, jobs, transport, and allocating sites for development (NPPF paras. 156/157). Beyond this, they can deal with a range of issues in different ways and documents can be given different titles, such as core strategy, area plan or allocations document. The Government is clearly encouraging simplification (NPPF para. 153) and the PPG advises that additional plans will need 'clear justification'. It is likely, therefore, that many councils will now prepare a single plan document called a Local Plan.

5.11 Supplementary planning documents: Supplementary planning documents (SPDs) do not have the status of the development plan, but can add useful detail. The NPPF and PPG state that SPDs should be used only where necessary and where they can help applicants make successful applications, or aid infrastructure delivery', but they 'should not be used to add unnecessarily to the financial burdens on development'. This limits flexibility and it is important that documents like design guides and development briefs are not devalued or lost.

5.12 Relationship to other plans: Unitary, district, or county councils will have 'sustainable community strategies', which set a general context for how a community will change. These plans are more informal than statutory development plans, and following the passage of the Deregulation Bill through Parliament it will no longer be a legal requirement to prepare a sustainable community strategy, but they will remain politically important in many areas. At neighbourhood level 'parish' or 'community' plans have a similar role. Such plans make links to

¹ The Town & Country Planning (Local Planning) (England) Regulations 2012.

public service and community facility requirements that are seen as necessary to support growth or arise from it.

5.13 Sustainable development (SD): Plan making has a legal requirement to achieve SD (2004 Act, s.39). SD as is a useful and powerful concept. However it is also problematic because it is sometimes used loosely to justify all forms of development. It is therefore important that plans show clear recognition of specific environmental elements of SD, particularly the concept of living within environmental limits. This can often come from the quality of environmental evidence and inclusion of detailed policies on the relevant environmental factors. Guidance was produced for local authorities in March 2011 on this issue by the former Sustainable Development Commission (www.sd-commission.org.uk/data/files/publications/know_your_env_limits1.pdf). For CPRE it is always crucial to refer back to NPPF para 8: 'Economic, social and environmental gains should be sought jointly and simultaneously through the planning system' and to take the new policies as a whole (NPPF para. 6). It is also important to counter suggestions that the planning system itself is a block on economic growth. CPRE has published research with other NGOs on this issue, titled [*Inexpensive Progress?*](#)

5.14 Strategic environmental assessment (SEA) and sustainability appraisal (SA): European Law requires that public sector plans and programmes are subject to SEA. This is a formal, recorded assessment of the environmental implications of various options / alternatives examined in the plan process and of the final plan. The Government has taken this requirement into the development plans system through specific procedures for SA. This is a complex area of planning law and practice. CPRE has issued a detailed briefing on how it has been applied in local planning (www.cpre.org.uk/resources/housing-and-planning/planning/item/download/2143). In general, it is important to note that SA looks at the interaction between environmental, social and economic issues, and sometimes this can obscure environmental concerns.

6. CAMPAIGN ADVICE

6.1 Key themes to press for: Localism, plus a briefer form of national policy, allows for local interpretation and application of key planning principles. This creates a new opportunity for influence. CPRE aims are best promoted by advocating consideration of the following areas of local evidence and policy;

- Identification of local environmental limits (see above)
- Local characterisation of landscape and built environment (much can be done on this by local communities through neighbourhood plans)
- Policy designations for local landscape and built environment features
- CPRE initiatives around tranquillity and light pollution (see other briefings in this series)
- Useful, well established policies from the old regional spatial strategy (RSS) for your area. Para. 218 of the NPPF gives scope for RSS policies to be 'reflected' in Local Plans.
- Promoting 'smart growth' (see below).

6.2 Using the idea of 'smart growth': This is a popular term that originated in the USA and describes policies aimed at creating walkable neighbourhoods, achieving brownfield urban

regeneration, minimising the energy and transport demands of urban areas and reducing greenfield development pressures. Smart growth is a concept CPRE promotes to encapsulate our approach to necessary economic growth. More information is at [Smart Growth UK](#). The term is also used in the EU's 2020 Strategy, though with a meaning more specifically related to education, innovation through information and communications technology.

6.3 Organisational arrangements: Find out who is responsible, at officer level for plan preparation at your local council and try to establish a positive working relationship. Usually there will be a senior officer who is a qualified planner responsible for planning policy. The senior manager team above this officer will also be interested in the plan and influential, but less able to deal with detailed planning issues.

6.4 Political arrangements: The key politicians (known as 'members' of the authority) will be the cabinet member or portfolio holder responsible for planning policy. Often the cabinet will establish an advisory or working group of councillors who look at details of the plan as it is being prepared. They have no formal decision powers but are very important to the process, as they can become a group of 'supporters' for the plan within the wider council and will understand it in more detail than most councillors. This group will be cross party and will usually include members who have planning knowledge. Make as much contact as possible and build support.

6.5 Consultation: There are statutory consultation requirements for plan making. This gives you a clear opportunity to promote CPRE's views within a process that should be formally recorded and debated. Try to combine this formal process with informal contact and lobbying of the people referred to above. Clarify the consultation programme and be sure to note deadlines and stick to them. Use consultation responses as media and political lobbying opportunities.

6.6 Previous plans: Find out about the history and current status of the development plan for your area. Normally you will be able to view all plan documents on the Council's web site. Decide what parts of the existing plan are still important. Some aspects of plans can become out of date quickly, (for example housing land requirements / allocations), but others such as overall strategy for countryside protection and village development will not need to be changed or updated very often. Find out what stage has been reached in updating the plan. The programme for plan preparation should be set out in the 'local development scheme' (a project management plan for policy preparation).

6.7 LPA resources: Current public finance pressures often mean that the resources and skills available for plan making are under stress. The new emphasis on localism puts more pressure on LPAs to take the initiative as they cannot rely on clear strategic plans. Test the level of political understanding and commitment to plan-making at your LPA. Provide arguments for why plan making is important and encourage councils to allocate resources. You can use the threat of the NPPF in this (i.e. out of date plans open up opportunities for developers and planning by appeal). Suggest that neighbourhood planning approaches, where local councils fill in some of the detail 'for free' can assist this. In some areas you could suggest a strategic policy that allows rural communities to make their own decisions about the level and location of small scale development set within very broad parameters in a local plan.

6.8 Local councils and neighbourhood planning: Try to use branch contacts with town and parish councils (many will be CPRE members) to find out where there are neighbourhood plan aspirations or progress. Try to get local branch volunteers involved in some of these plans and

promote CPRE aims and expertise. CPRE has produced guidance on this; [Supporting Communities and Neighbourhoods in Planning](#)

6.9 Strategic planning issues: Find out what the LPA is doing about strategic planning. How is it satisfying the 'duty to co operate'? Look out for the behind the scenes influence of Local Enterprise Partnerships - LEPs (see Planning Campaign Briefing 9 on this). Point out any strategic deficiencies and ask for a response. Often there will be significant issues, particularly in city regions where pressures on adjoining countryside need to be considered co-operatively rather than competitively. If so, it may be useful to feed comments to the affected adjoining LPAs.

6.10 Make your case at the public examination: When it comes to public examination stage the job of the independent inspector is to resolve conflict. This is the time to push hard on important outstanding issues.

6.11 Beware financial incentives: Campaigners should be aware that the New Homes Bonus (a scheme that provides part of local government finances on the basis of a cash reward for houses built), together with the change in the Localism Act to allow overt consideration of financial issues in planning (s143) could start to influence development plans. If this appears to be the case (e.g. in the selection of easy to develop greenfield over regeneration options) you can highlight the PPG which advises that financial considerations will only be relevant if they would help make the development acceptable in planning policy terms.

6.12 Development Plan departures: It is a legal requirement that a planning application is formally advertised when it departs from the provisions of the development plan and the LPA is 'minded' to approve it. In a few limited cases there is a legal requirement for the LPA to refer the application to the Secretary of State so that he can decide whether to call the application in for his decision. Since 2010 it has been more common for the Secretary of State to intervene by calling in or 'recovering' a planning appeal that has been previously refused or left undetermined by a local authority, so that the decision is made by the Secretary of State rather than by a planning Inspector. The departure issue can often provide a good campaign link between the policies of the plan and major application cases, especially if a LPA is seeking to permit a development that does not accord with the Plan. Separate guidance is available on the Planning Help website (see below) on requesting a call-in.

6.13 A range of resources to help you plan an effective campaign, communicate your message, and gather people to your cause can be found on Planning Help:

<http://www.planninghelp.org.uk/improve-where-you-live/campaign-tips>

7. FURTHER INFORMATION

Planning Inspectorate (www.gov.uk): *Inspectors' reports on local plans: letters from Planning Minister Nick Boles and Sir Michael Pitt, Chief Executive of the Planning Inspectorate about inspectors' reports on local plans.* 17 March 2014.

Stephen Whale (Landmark Chambers), 'NPPF and Housing Land Supply - Recent Case Law', presentation given 14 March 2014.

CPRE Resources:



Campaign to Protect
Rural England
Standing up for your countryside

PLANNING CAMPAIGN BRIEFING 1 - DEVELOPMENT PLANS (July 2014)

Community Control or Countryside Chaos: a CPRE report analysing the first year of implementation of the National Planning Policy Framework, March 2014.

How to Respond to Planning Applications, September 2011.

How to Shape Where You Live: a guide to neighbourhood planning, January 2012.

Planning Explained, December 2011.

Case Studies:

The main source of case studies on how development plans are currently prepared is the Planning Advisory Service (PAS). The page <http://www.pas.gov.uk/plan-making> provides a number of accounts written from the local authority perspective.

Duty to co-operate (paragraph 5.5 above): Local CPRE groups have highlighted the London Waste Plan (as good practice) and Mid-Sussex (in terms of difficulties and challenges).

Supreme Court case on planning policy interpretation (see paragraph 5.9 above): case law reference *Tesco Stores v Dundee City Council* [2012] UKSC 13

Case studies relevant to the briefings and to future national campaigning will be stored on our website: www.cpre.org.uk/what-we-do/housing-and-planning/planning