

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Executive Committee
<b>Date of Meeting:</b>	1 March 2023
<b>Subject:</b>	Response to the Levelling Up and Regeneration Bill: Reforms to National Planning Policy December 2022.
<b>Report of:</b>	Planning Policy Manager
<b>Head of Service/Director:</b>	Head of Development Services
<b>Lead Member:</b>	Lead Member for Built Environment
<b>Number of Appendices:</b>	One

## **Executive Summary:**

In December 2022 the government published, for consultation, a proposed approach to updating the National Planning Policy Framework (NPPF) – known as the “Prospectus”. It sets out a number of proposed changes to be implemented immediately after the consultation concludes in the spring, together with longer term changes proposed to be introduced later in 2023.

The changes are designed to supplement the legislative changes effecting planning reform currently emerging through the Levelling Up and Regeneration Bill, which itself is expected to receive Royal Assent in the spring.

As well as proposing revisions to the NPPF, the Prospectus also invites views on the government’s proposed approach to National Development Management Policies; and also more generally on how planning policies can support levelling up.

The consultation is accompanied by a track changes version of the NPPF, indicating the immediate revisions that are intended to take effect in Spring 2023.

The overall aims of the planning reforms are to reinforce a plan-led system with a stronger voice for communities, secure community infrastructure and mandate “beautiful” new development. Specifically national planning policies are to be re-focused to deliver enough of the right homes in the right places with the right infrastructure, ensuring the environment is protected and giving local people a greater say on where and where not to place new, beautiful development.

As part of the consultation, a set of 58 specific questions have been published to accompany the Prospectus.

The consultation sets out proposals that would have impact in particular on housing delivery and local and neighbourhood plan-making in Tewkesbury Borough. It is therefore important that a response is made to these proposals. Recommended responses from Tewkesbury Borough Council to each of these questions is set out in Appendix 1 to this report.

However, as set out in the main body of the report, there are some key overarching concerns which relate to the lack of clarity and detail contained within the proposals. As such officers would recommend the suggested formal response to the 58 questions be preceded by appropriate text setting out more general concerns.

The deadline for responding to this consultation is Thursday 2 March 2023.

**Recommendation:**

- 1. That the proposed responses to the Levelling Up and Regeneration Bill: Reforms to National Planning Policy December 2022, set out in Paragraphs 3.4 - 3.6 and at Appendix 1 to this report, are APPROVED by the Executive Committee to be formally submitted as Tewkesbury Borough Council's response to the consultation.**
- 2. That authority is delegated to the Head of Development Services, in consultation with the Lead Member for Built Environment, to make any necessary minor amendments to the response prior to submission.**

**Financial Implications:**

No direct impacts at this stage, but proposals in the proposed reforms could lead to further changes in legislation and regulation.

**Legal Implications:**

Due to the current plan cycle for the Joint Core Strategy (JCS) and Tewkesbury Borough Plan (TBP) the proposed changes in the prospectus will not have an immediate impact upon the Council, if implemented following the completion of the consultation. However, in future, many of the proposals, if implemented, are likely to lead to changes in policy, guidance and regulations which will impact on the current planning framework for the Council.

**Environmental and Sustainability Implications:**

No direct impacts at this stage, but proposals within the reforms could lead to further changes in legislation which will have an impact on Environmental and Sustainability outcomes.

**Resource Implications (including impact on equalities):**

No direct impacts at this stage, but proposals within the reforms could lead to further changes in legislation which put additional requirements on the Council and have resource implications, particularly in regard to officer time. An Equality Impact Assessment is not required at this stage.

**Safeguarding Implications:**

None.

**Impact on the Customer:**

None.

**1.0 INTRODUCTION**

- 1.1** Members will be aware that the government has for some time been reviewing how the planning system should be improved in England to boost housebuilding, provide infrastructure, ensure communities have a stronger say in where homes are built and what they will look like.

- 1.2 To this end, the Secretary of State published a Written Ministerial Statement on 6 December 2022, signalling that a new National Planning Policy Framework (NPPF) “Prospectus” would be published for consultation by Christmas. This was to complement measures being introduced through the new Levelling Up and Regeneration Bill (LURB) which amongst many other measures aims to address the above objectives for planning reform.
- 1.3 The Prospectus was duly published on 22 December 2022 titled the ‘*Levelling Up and Regeneration Bill: reforms to National Planning Policy consultation*’. The consultation seeks views on immediate changes being proposed to the NPPF which are expected to take effect in Spring 2023, as well as further changes to be introduced at a later date in 2023, dependent on the enactment of the LURB. In addition, the government is seeking views on separate proposed measures including the preparation of National Development Management Policies, policy to support levelling up, and how national planning policy is currently accessed by users.
- 1.4 The consultation has been published in two separate documents:
- [The Prospectus - Levelling-up and Regeneration Bill: reforms to national planning policy](#) – this is arranged over 15 chapters and sets out the background to the proposed short and longer term proposed changes to the NPPF, introduction of National Development Management Policies and other issues related to plan-making and wider reform. Comments are invited in response to 58 specific questions.
  - A [tracked changes NPPF document](#) provides textual changes to the NPPF that are proposed to be implemented immediately (i.e. in spring 2023), subject to the outcome of this consultation.

Responses are required to be submitted to the Department of Levelling Up, Housing and Communities (DLUHC) by the deadline of **2 March 2023**.

- 1.5 The consultation covers a very wide range of measures and an informal briefing and Q&A for all Members was held on 30 January 2023. This report summarises the key proposals and is accompanied, at Appendix 1, by suggested responses to the individual consultation questions. However, as set out below there are some overarching observations which officers would recommend be included in a covering paragraph to set the Council’s response in context.

## 2.0 SCOPE AND DETAIL OF THE CONSULTATION

- 2.1 The Prospectus states the overall objectives of the changes are as follows:
- Building beautiful and refusing ugliness.
  - Securing infrastructure.
  - More democratic engagement on Local Plans.
  - Better environmental outcomes.
  - Empowering communities.
  - Overall –to deliver more homes in the right places supported by infrastructure and there is a commitment to delivery of 300,000 new homes per year.

2.2 Turning to specific reforms, the Prospectus sets out a wide range of issues across 15 chapters. However, these are to some extent interlinked and, for the purposes of this report, the issues have been grouped into 13 key themes. A brief summary of the key proposals is set out under each theme below, followed by an assessment and recommended response in section 3.0:

1. Changes to the calculation of 5 Housing Land Supply.

It is proposed that the requirement to demonstrate a rolling 5-year housing land supply be removed where local planning authorities have a (strategic) local plan which is less than 5 years old. In addition, the requirement to include a “buffer” would also be removed. As a transition measure, where emerging Local Plans are being drawn up, there would only be a need to demonstrate a 4-year housing land supply. Authorities will also be entitled to make adjustments to their housing land supply assessments to take into account any past over delivery since the start of their local plan period.

2. Standard Method for calculating housing need to be ‘advisory’.

It is proposed that the government’s ‘Standard Method’ formula for calculating housing targets will remain for the purposes of establishing ‘objectively assessed needs’ in drafting local plans, including a 35% uplift for the largest 20 largest towns and cities (none of which are in Gloucestershire).

However, the revised NPPF would be clearer that the figures would be an ‘advisory starting point’ for plan making and not ‘mandatory’. Planning for annual housing targets below the Standard Method calculation would be allowed in circumstances such as where meeting needs in full would mean building at densities significantly out of character with the existing area. This change is echoed in other revisions to the NPPF which would be amended to make clear that, in order to be sound at examination, a plan’s strategy should meet the area’s objectively assessed needs “*so far as possible ...*”.

Alternative methods for calculating housing needs would also, exceptionally, be acceptable.

3. Green Belt

The overall aims and purposes of keeping land open in the Green Belt is proposed to remain unchanged in the NPPF. However, an important policy shift would make clear that Green Belt boundaries would not need to be reviewed or altered when making plans, even if this would be needed to meeting housing needs. However, the NPPF does not expressly prohibit reviewing boundaries where exceptional circumstances are fully evidenced and justified.

The Prospectus also refers to future proposed reforms to ‘green’ the Green Belt.

4. Local Plan Examination Tests of Soundness

The draft revised NPPF would remove the existing requirement for local plans to be examined for their soundness in respect of whether the plan’s strategy is ‘justified’ taking into account reasonable alternatives and based on proportionate evidence. Transitional arrangements are proposed to be put in place as to when this should take effect given emerging plans are at different stages of development.

5. Housing Delivery Test

The Housing Delivery Test (HDT) is a measure set out in the existing NPPF which complements five year housing land supply monitoring. It is based on actual net homes delivered (as distinct from those which are judged to be ‘deliverable’ in the future). Although HDT has not historically been punitively engaged in Tewkesbury Borough, it can trigger the ‘tilted balance’ in deciding planning applications for housing where actual completions over the preceding three years have significantly

lagged behind the number of homes required. Changes to the HDT rules would mean a softening of this approach in some circumstances to take into account the grant of planning permissions.

## 6. Strengthening Neighbourhood Planning

Neighbourhood Plans are proposed to have enhanced status and protection against the implications of an authority facing a shortfall in five year housing land supply. Future reforms are proposed which relate to the timeline for preparing Neighbourhood Plans as part of the new planning system.

### Small and Medium Size (SME) Housebuilders

The consultation seeks views on the effectiveness of existing planning policies in delivering small sites through local plans to support small and medium housebuilders and how these can be improved. This is alongside wider government initiatives such as providing developer finance to smaller housebuilders.

### Affordable Housing and Community Led Development

Specific changes to the NPPF are proposed aimed at ensuring the needs of older people are assessed and provided for by planning a better choice of specialist accommodation. In line with the Levelling Up White Paper, much greater value is also proposed to be attached to the most affordable housing tenure - Social Rent - in policy and decisions. The Prospectus also seeks views on whether the definition of 'affordable rent' should be amended to make it easier for organisations that are not Registered Providers to develop new affordable homes such as community groups. There are further proposals to support community groups bringing forward affordable housing on rural exception sites.

## 7. Developer Planning History of Delivery

The government is already seeking ways to improve planning enforcement through the LURB. However, future changes to the NPPF are signalled to go further in improving developer accountability including punishing 'irresponsible behaviour' such as past persistent breaches of planning. This could involve giving Local Planning Authorities (LPAs) the power to make such behaviour a material consideration or to decline to determine applications from applicants with a poor track record.

It is also proposed to make further changes to the NPPF at a later date to speed up delivery, require developers of larger schemes to report annually on build out rates and explain how the proposed tenure mix can maximise the sale/occupation of homes. This would complement a range of measures in the LURB which, for example, will require developers to formally notify the LPA of commencement of development and allow LPAs to issue "completion notices". Delivery could also be a material consideration in planning applications, meaning that proposed build out rates may carry weight in deciding whether to grant planning permission.

Further separate consultation is also promised to include proposals to introduce a financial penalty against developers who are judged to be building out too slowly.

## 8. Asking for Beauty and Refusing Ugliness

In reflecting the government's wider levelling up reforms to encourage "building beautiful" and to encourage communities to welcome new housing, changes are proposed to the NPPF to reflect the aspiration for 'beauty' as a benchmark for all development, and for the NPPF to emphasise the role of beauty in placemaking. It is also being proposed that planning permissions should contain conditions to refer to plans and drawings. The government is furthermore keen to embrace the concept of 'gentle density' by proposing changes to the NPPF to encourage well designed upwards extensions of buildings, particularly mansard roofs. Alongside this, the Prospectus asks for general views on how the development of brownfield land can be supported with a view to "gentle densification" of urban cores.

## 9. Importance of Agricultural Land

The government is seeking views on how to recognise food production value of farmland, in addition to the current references in the NPPF about the importance of best most versatile agricultural land.

## 10. Protecting the environment and tackling climate change

The government intends to review national planning policies in due course to further support a range of environmental objectives including adaptation and net zero. In the meantime, views are being sought on the delivery of Biodiversity Net Gain and protecting Ancient Woodland. Further consultation is expected on quantifiable carbon reductions and guidance for Local Transport Plans and Strategic Flood Risk Assessments.

Significant weight is to be given to the adaptation of existing buildings to improve energy efficiency and delivering a more localist approach to onshore wind, including supporting the re-powering of existing wind turbines.

## 11. Wider/parallel changes to the NPPF to reflect the Levelling Up and Regeneration Bill

Major changes are proposed to the plan making system to enable faster adoption of local plans, to be implemented in late 2024 following enactment of the LURB. It is intended that the time needed to prepare and adopt a local plan should be reduced to 30 months. Transitional arrangements have been suggested which would mean that Local Plans already underway would need to be submitted by 30 June 2025 to be examined under the current system and adopted by 31 December 2026. New local plans under the new system would need to be commenced immediately.

Supplementary Planning Documents (SPDs) are also to be replaced with 'Supplementary Plans'. These would need to be subject to their own examination and would have equal weight to local plans. Existing SPDs will remain in place until an Authority has a new local plan in place but will expire if not prepared within 30 months.

National Development Management Policies are to be introduced which would be given the same weight as local plans and will be separate to the NPPF. They are intended to be limited to key national planning issues which are commonly encountered in decision making.

Other changes emerging through the LURB will require further changes to national planning policies in due course, including for example the replacement of the Duty to Co-operate with a new 'Alignment policy' where strategic planning considerations cut across boundaries.

More legislative changes are proposed to address various of the proposals outlined throughout the Prospectus.

### **3.0 ASSESSMENT AND PROPOSED RESPONSE**

- 3.1** Although the consultation sets out a wide range of planning reforms and changes to national policies, the fundamentally nature of the 'plan-led' system would remain unchanged. The Council's broad approach to joint plan-making with Cheltenham and Gloucester Councils, and its work in supporting neighbourhood plans, would therefore remain consistent with planning law and policy, and this is to be welcomed.

**3.2** The package of proposed measures would nevertheless be significant in terms of the practical operation of decision-taking, plan-making and monitoring of planning policies. The overriding objectives of the reforms appear laudable, in particular where they would support levelling up, achieving quicker local plans, building more affordable homes and increasing home ownership, empowering communities, securing infrastructure and creating beautiful places and so on.

**3.3** There are measures which it is recommended the Borough Council support in principle. These are reflected in Appendix 1 but most notably include:

#### **Five year Housing Land Supply and Housing Delivery Test**

The proposed reforms to monitoring housing delivery would simplify the system and can be welcomed as an incentive for local plans to be kept up to date. However, it is unclear as to how past oversupply will be taken into consideration. Clear guidance on definitions and timescales are needed to avoid the use of different methods which could be scrutinised through lengthy appeals. These observations are also applicable to accounting for past over-delivery in plan-making.

#### **Neighbourhood Plans**

A considerable amount of work has and is taking place on preparing neighbourhood plans in Tewkesbury Borough and the proposal to refine the NPPF to enhance their importance can be welcomed.

#### **Affordable and specialist forms of housing**

Whilst the detail of revised national planning policies is not yet available, the intended future focus on Social Rent as a preferred affordable housing tenure is consistent with needs arising in Tewkesbury Borough, and this change can be welcomed.

Similarly, the proposed sharper focus on the need to plan for older people's accommodation can be supported. However, the proposed changes to paragraph 62 of the NPPF and the specific solutions listed such as care homes and retirement homes should be left to be defined locally by Local Planning Authorities as part of a Local Housing Needs Assessment.

The shift in focus on how LPAs manage supply to the delivery and increased accountability of housebuilders is also welcomed and developers should be penalised for not delivering permissions. What remains unclear is how this will be introduced, how it will be monitored and Council's jurisdiction in giving planning weight to past behaviour. Further planning policy is welcomed as part of the reforms on this proposed change, but still the governments requirements remain unclear.

**3.4** Nevertheless, the Prospectus gives rise to some significant areas of concern. The consultation, together with its accompanying 58 questions is confusingly interlinked with and/or overlaps other reforms being promoted through the LURB and other proposed legislative changes. Furthermore, the detail of many of the proposed measures is not yet available. In reviewing the consultation, therefore, it is difficult to gain a coherent sense of the overall package of planning reform the government is seeking to promote.

**3.5** Moreover, it is striking that many of the proposed reforms are excessively vague in how they are to be interpreted or intended to operate and officers are concerned that many of the proposed changes are likely to prove counter-productive.

**3.6** Whilst Appendix 1 sets out proposed responses to the individual questions, the following are highlighted as being areas of particular concern. Whilst the government has invited responses to the prescribed questions, it is therefore recommended that the following overarching text also be included in the Borough Council's response.

- **Planning for Rural Areas**. Tewkesbury Borough is predominantly a rural area and hosts a diverse range of small settlements and communities with their own character and needs. It is concerning that even with the changes proposed in the Prospectus, both the NPPF and the associated priorities for Levelling Up would remain distinctly urban-focused. There are clear patterns of urban/rural inequality, solutions for which need to be explicitly acknowledged and addressed. In particular, rural areas often suffer from a lack of suitable housing which is appropriate to local needs in terms of size, type and affordability, including for older people wishing to remain in their villages in secure accommodation. Furthermore, rural areas lag well behind in the provision of public transport, health, education, digital and other types of public and community infrastructure.
- **Standard Method Housing Targets as an “advisory starting point”**. Arguably, these “targets” are already advisory but the deliberate re-phrasing would appear to indicate that planning for objectively assessed needs will be merely optional. In contrast, however, DLUHC officials have recently suggested that regardless of the words used, there would still be a “high bar” for Councils to justify departing from the targets. This contradiction merely highlights the ambiguous phraseology which would not assist with swift or robust plan-making. Instead, it would (a) create uncertainty for Councils, communities, businesses, infrastructure providers and developers as to the government’s policy on growth; (b) be a disincentive for preparing ambitious local plans and (c) lead to protracted and costly debate with developers at plan examinations. This will delay plans, not speed them up, and leave local authorities ever more vulnerable to unplanned development by appeal with all the associated uncertainties and costs for LPAs, communities and developers.

This is an important issue for Tewkesbury Borough because, as its Council Plan recognises, the geography and characteristics of the Borough and surrounding areas mean it has great potential for economic growth, and this needs to be supported by building enough homes in the right places through a plan-based strategy.

The Borough Council is committed to preparing a strategic plan jointly with Cheltenham Borough Council and Gloucester City Council to replace the Joint Core Strategy without delay. In order to plan with confidence, the purpose and intended application of the Standard Method local housing needs figures should be clearly and unambiguously set out in any revision to the NPPF.

**Reasons for not meeting needs in full** – linked to the above, the draft revised NPPF indicates that planning for lower levels of growth may be justified in situations including where meeting need in full would mean having to build at densities “significantly out character” with the existing area. Again, this is vague and in practice would be likely to need a significant body of design code evidence which is very unlikely to be available at the time of writing the first generation of new local plans. It also begs the question of how an examiner could feasibly consider detailed evidence relating to the character and capacity of large parts of wide geographic areas in the face of inevitable robust challenges from the development sector and other parties. There is a real risk that this amendment would simply be another cause of costly delay in plan-making.

- **Justifying Local Plans with Evidence** – the aspiration to reduce the evidence needed at plan examinations appears well intentioned but would require much more clarity to work effectively in practice. It is notable that the deletion of the reference to strategies being “justified” immediately raises a conflict with many other parts of the NPPF which (quite rightly) require plans and policies to be informed by clear evidence. In addition, evidence relating to ‘reasonable alternatives’ is currently a requirement under separate environmental legislation. Whilst that legislation is itself due to be replaced, it seems likely that plans may still be challenged in the courts if developers or objectors feel that alternative

strategies have not been tested in a fair and open way. The objective of speeding up plan examinations is therefore to be warmly welcomed but the proposed amendment is, in itself, inadequate in introducing confusion and uncertainty.

- **Green Belt** – The Green Belt is precious and quite rightly enjoys a high degree of protection under national planning policies which will be retained. However, as well as containing sensitive Green Belt land, Tewkesbury Borough is heavily constrained by AONB and areas of high flood risk which necessarily limits the realistic area of search for future housing and economic growth. In order to plan for its future housing and economic needs, options for development should be within the discretion of the local planning authority in consultation with its communities rather than, effectively, reviews of the Green Belt being vetoed as a matter of principle at the national level.

#### **4.0 SUMMARY**

**4.1** In summary, the above key issues highlight key concerns set out of the proposed response in Appendix 1 to this report. Many of the proposed responses agree in principle to the reforms but the consultation lacks detail and until further details and legislation emerge, the Prospectus represents a confusing and muddled consultation.

**4.2** Appendix 1 to the report proposes a draft response to each the 58 consultation questions as part of the consultation to be submitted to the government by 2 March 2023.

#### **5.0 CONSULTATION**

**5.1** An informal briefing for Tewkesbury Borough Council members was held on 30 January.

#### **6.0 ASSOCIATED RISKS**

**6.1** None.

#### **7.0 MONITORING**

**7.1** The outcomes of the government's consultation will be carefully monitored and incorporated as necessary in the Council's plan-making and related functions.

#### **8.0 RELEVANT COUNCIL PLAN PRIORITIES/COUNCIL POLICIES/STRATEGIES**

**8.1** Tewkesbury Borough Council Plan 2020 – 2024.

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031.

Tewkesbury Borough Plan 2011 – 2031.

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**Background Papers:** None.

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**Appendices:** 1 – Proposed responses to DLUHC Prospectus consultation questions.