

## CPRE South East eBulletin Special

### The National Planning Policy Framework, Town Greens and Local Plans

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#### The Presumption is a Licence to Kill Good Planning

*These are exciting times in planning, but also very dangerous times for those concerned with protecting the rural environment and its communities. As the Localism Bill continues its stately course through parliament, the government has published three documents that will shape the future of planning and the landscape. The Communities department has begun a consultation on new arrangements for local plans, which will abolish much of the unloved Local Development Framework and all but herald a return to local plans of old. But the new local plans are to be enslaved to the controversial National Planning Policy Framework (NPPF), which has also been issued for consultation. At the same time, Defra has published its plans to radically overhaul, and all but scrap, town green legislation.*

*The most contentious policy in the NPPF is the 'presumption of sustainable development'. It has become so powerful it now referred to simply as the 'presumption', almost as though the government recognises that sustainability has been discarded. Some planners are already calling it the 'presumption in favour of development' (Plan-it Law: <http://bit.ly/odV4DL>). The presumption is little more than an abandonment of good planning. If council planners presume to ignore the presumption, the government will impose it on appeal, or whenever plans are 'absent, silent, or indeterminate'.*

*The consultation draft of the NPPF contains some modest improvements in protection for the environment and heritage, but they are undermined by a wrecking clause that permits development where 'the harm or loss is outweighed by the benefit of bringing the site back into use.' There are very welcome words on light pollution and rights of way. The new Local Green Space (LGS) designation is almost delightful but it comes hand-in-hand with the near abolition of new registrations for town greens, and an apparent restriction to urban areas and large villages.*

*Not so long ago, John Prescott set out to build housing at almost any cost to the environment. He was ultimately frustrated by the measured, consultative pace of a local plan process that his own government introduced. Now Eric Pickles and his ministers may have succeeded where Prescott failed by trading good planning for carrots and sticks. On local plans, the government says that 'as a carrot the presumption strengthens the role of plans as a basis for decisions where they are up-to-date; but the stick is that if they are not, national policy will be the principal basis for making decisions.' Then to drive it home, ministers declare that local councils that fail to meet 'the identified development needs of their areas... will risk development proposals being allowed on appeal.'*

*It will take a while for planners and communities to get to grips with the new planning system. For years to come, the government has issued a Licence to Kill Good Planning and unleashed a rush to develop that will disrupt communities and trash England's treasured green fields and landscapes.*

## THE CONSULTATION NPPF

### The NPPF

**The National Planning Policy Framework** is a radical overhaul of planning regulations that cuts thousands of pages of policy back to less than 50,000 words. For an overview, see our earlier eBulletin (<http://bit.ly/nppfpagse>). It also brings in new planning policies, especially in housing. The government intends to implement the NPPF by the end of 2011 'if possible', though it recognises that 'successful implementation will require a major cultural shift within the planning system.' The NPPF will be reviewed in 2015.

**Consultation.** On 25 July, the government published its draft NPPF for consultation (<http://bit.ly/nppfcon>). This follows an earlier Practitioners Advisory Group (PAG) Draft (<http://bit.ly/nppfpag>; see also the CPRE SE eBulletin analysis of this draft: <http://bit.ly/nppfpagse>). CPRE SE subsequently obtained a leaked government draft dated 14 June (eBulletin analysis: <http://bit.ly/nppfleak>). The current draft has been issued for consultation with a closing date of 17 October 2011 and is accompanied by an Impact Assessment (<http://bit.ly/nppfia>).

**Inquiry.** The Communities and Local Government Committee is to hold an inquiry into the draft NPPF and will hear oral evidence in October and November (<http://bit.ly/r9SSUn>).

**Notations.** In the text below:

- ◆ **Cn** numbers refer to the paragraphs in consultation draft
- ◆ **Ld** numbers refer to paragraphs in the leaked draft
- ◆ **IA** numbers refer to pages in the Impact Assessment.

#### Sustainable development

**Synopsis.** *Sustainable development is at the core of the NPPF: 'Sustainable development means development that meets the needs of the present without compromising the ability of future generations to meet their own needs.' However, the specifics of the text and the domineering influence of the **presumption in favour of sustainable development** inexorably undermines the ethos of sustainability.*

**Sustainability.** The consultation draft has deleted the statement that the 'notion that economic growth necessarily leads to environmental degradation must be firmly laid to rest by ensuring that development is undertaken responsibly', along with other paragraphs on sustainability (Ld 7, 8, 11, 13, 17-19). The concept of sustainable development remains at the core of the NPPF, though it is more defined by what it is not, than by what it is. As the minister, Greg Clark, admits in his new foreword, 'this framework sets out clearly what could make a proposed plan or development unsustainable'.

**Presumption in favour of sustainable development.** The presumption continues to hold centre stage, except where 'the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework' (Cn 110). Of course, if it is sustainable development in the first place, it will not have significant adverse impacts and the government is clearly talking about a 'presumption in favour of development', not in 'favour of sustainable development'. The Impact Assessment provides more detail on the expected impacts of the presumption, which: 'should mean that local councils seek to optimise economic, environmental and social outcomes in their planning policies and decisions, seeking multiple gains whenever possible – for example through green infrastructure, low carbon economy opportunities, jobs, housing and social facilities' (IA 30).

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## Planning

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**Synopsis.** The NPPF says that development should be genuinely plan-led through a combination of local and neighbourhood plans. But where plans are ‘absent, silent, or indeterminate’ the national policy in the NPPF and the presumption will apply. Local authorities will have a duty to cooperate together. The Local Development Framework will be scrapped. Local authorities can apply for a certificate of conformity with the NPPF for existing Core Strategies.

**Purpose.** The consultation NPPF gives a new definition of the purpose of planning, which is ‘to contribute to the achievement of sustainable development’ (Cn 9). It declares that: ‘a positive planning system is essential because, without growth, a sustainable future cannot be achieved’ (Cn 13).

**The default answer is still ‘yes’.** The edict that the default answer to planning applications is ‘yes’ remains unchanged and occupies a more prominent position in the NPPF (Cn 19).

**Local and neighbourhood plans.** The consultation NPPF is clearer than previous drafts that the presumption is to be at the heart of the plan making process. Plans ‘should be based upon and contain the presumption in favour of sustainable development as their starting point, with clear policies that will guide how the presumption will be applied locally’ (Cn 14).

**Local plans.** The wording has been strengthened to read: ‘plans should be prepared on the basis that objectively assessed development needs should be met, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits’ (Cn 20). The government sees the presumption as driving plan making: ‘as a *carrot* the presumption strengthens the role of plans as a basis for decisions where they are up-to-date; but the *stick* is that if they are not, national policy will be the principal basis for making decisions’ (IA 24). Local councils that fail to meet ‘the identified development needs of their areas... will risk individual development proposals being allowed on appeal’ (IA 25).

**Neighbourhood plans** now only have to be in ‘general conformity’, not ‘conformity’ with local plans, a change that may allow a tad more freedom on their content (Cn 50). Although many in the planning world have presumed that most neighbourhoods will adopt neighbourhood plans, the government is less certain: ‘The preparation of neighbourhood plans is... discretionary, and it is difficult to gauge the extent to which the presumption will encourage more neighbourhood plans to come forward’ (IA: page 29).

**Town centres.** Planning authorities will not need to assess whether there is a need to expand town centres to ensure a supply of suitable sites (Cn 76), as suggested in the leaked draft. The ‘Town Centre First’ policy remains in place for retail and leisure development but the Impact Assessment makes clear that this no longer applies to office development (IA 34). The government cites high rents and lack of flexibility for businesses as reasons for the change. It says that the easing might lead to less sustainable transport, but fails to recognise that people who work in town centres also tend to shop there. The impact of out-of-centre retail and leisure developments on town centres will be measured over 10 years, not five.

**Land supply.** An important change of wording emphasises that planning authorities must ensure that ‘sufficient land of the right type, and in the right places, is available to allow growth and innovation’ (Cn 10).

**Infrastructure.** The leaked draft suggested the NPPF is relevant to Nationally Significant Infrastructure Projects. The consultation draft makes it clear that it does not apply and NSIPs are guided only by National Policy Statements (Cn 6).

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## Planning Applications

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**Synopsis.** Developers are encouraged to sort out issues with planning authorities, bodies like the Environment Agency, and communities before they apply but there will be no compulsion to do so. Planners will be expected to approve an application when it conforms to the local plan or apply the presumption if the plan is ‘absent, silent, or indeterminate’—which will normally mean approval. Planners will be able to impose planning obligations and conditions, and negotiate S106 agreements. Statements that planning authorities should take into account financial considerations (bribes) in deciding an application have been deleted from NPPF.

**Pre-application consultation.** The NPPF now says that planning authorities cannot insist on pre-application consultation by developers but should encourage such engagement (Cn 57). A new paragraph urges pre-application discussions with statutory planning consultees on ‘whether a particular development will be acceptable in principle’ (Cn 58). But developers are no longer urged to ‘recognise the benefits of considering the views of professional bodies’ (Cn 122).

**Financial considerations.** Two of the most controversial paragraphs in the leaked NPPF have been axed (Ld 70, 71). They began: ‘It is legitimate for financial considerations (for example the New Homes Bonus and the Community Infrastructure Levy) to be taken into account in the determination of planning applications’. This is in line with a commitment made in the House of Lords that ministers will look again at the wording of a contentious clause in the Localism Bill that will give weight to financial considerations in planning applications (Planning: <http://bit.ly/rg2PCs>).

**Planning conditions and S106.** The leaked draft had placed onerous restrictions on councils using planning conditions and obligations, and it all but abolished S106 agreements. The restrictions on planning conditions have now been substantially reduced (Cn 69) and the paragraph on S106 has been deleted altogether.

**Design.** The statement that ‘development *will be expected* to be of good design and appropriately located’ has been weakened to read ‘development *should be* of good design and appropriately located’ (Cn 18; our emphasis). However, a new paragraph later in the NPPF sets out government expectations for good design and says that ‘good design is indivisible from good planning’ (Cn 114). Local planning authorities can also introduce design codes, which were banned in the leaked draft, providing they are not unnecessarily prescriptive (Cn 117).

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## Housing

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**Synopsis.** National targets for affordable housing provision and brownfield use are scrapped. Planning authorities must identify land for five years worth of available land for housing plus an additional 20%, exclusive of windfall sites. The Exception Sites policy is axed and market housing can be built on greenfield sites to fund affordable rural housing.

**Housing.** In line with recent ministerial promises to the armed forces (<http://bit.ly/nRcewC>) and to promote self-build (<http://bit.ly/rfZHQH>), new wording says that plans should: ‘address the need for all types of housing... and the needs of different groups... such as families with children, older people, disabled people, service families and people wishing to build their own homes’ (Cn 28). Financial contributions can be used to ‘improve or make more effective use of the existing housing stock’ rather than new build (Cn 111). Housing should be in areas with ‘range of community facilities and good access to key services and infrastructure’ (Cn 126, 112).

**Rural housing.** There have been significant changes to emphasise that ‘some market housing would facilitate the provision of significant additional affordable housing to meet local needs’. The **rural exception sites policy** will be removed, allowing councils to set their own policies (IA 66). The government is urging councils to follow the Cornwall Council model where market housing is allowed on greenfield exception sites to fund affordable rural housing.

**Affordable housing threshold.** The NPPF removes the national minimum site size threshold of 15 market housing units for requiring affordable housing to be delivered through a S106 agreement. It will now be locally set (IA 59).

**Brownfield.** The current target of 60% of housing development on previously developed land has been abolished, with the claim it is ‘arbitrary and has led to distortions in the housing land market’ (IA 49). The government anticipates brownfield being allocated instead for industry and retail sites, as well as leisure and community uses. The PPS3 definition of brownfield is continued, including the exclusion of gardens.

**20% additional sites.** The new policy requires local councils to allocate at least 20% additional sites over and above the five-year housing land requirement, which the NPPF continues from PPS3 (IA 56). The Impact Assessment complains that councils have been underestimating the land supply needed, and this has created insufficient choice and competition in the land market. Where local councils cannot or do not identify sufficient land they will be required to apply the presumption, that is approve anything that does not conflict with the NPPF.

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### Communities

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**Synopsis.** *Previous drafts had little to say about communities, but now the NPPF contains a clear commitment for the planning system to support healthy communities. The Community Right to Build is brought into the scope of the NPPF, which also now gives significant additional protection for local services.*

**Communities.** In new paragraphs (124 & 125), the NPPF states that the government’s objective is to create strong, vibrant and healthy communities. It says the planning system should create a built environment that facilitates social interaction and inclusive communities; deliver community facilities, schools, hospitals and services to meet local needs; and ensure access to open spaces and recreational facilities that promote the health and well-being. It insists that the planning system can play an important role in facilitating social interaction and creating inclusive communities, and planning authorities should create a shared vision with communities of the residential environment and facilities.

**Community Right to Build.** A new paragraph puts the CRB into planning policy with a requirement for local planning authorities to take a positive approach to developments of housing and community facilities agreed in a local referendum (Cn 66; see also Green Belt below).

**Local services.** The NPPF gives significant additional protection for local services. It now requires planning authorities to ‘safeguard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs’ and ‘established shops, facilities and services are able to develop and modernise’ (Cn 126). The Impact Assessment, however, is rather timid on protecting community facilities (page 69).

**Health and wellbeing** have been added to the NPPF at several points to ensure that they are an objective of the plan process (Cn 10, 19, 38). The health role of open space is recognised (Cn 128).

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### Green Belt

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**Synopsis.** *The overall protection for green belts remains intact but the NPPF is nibbling away at the edges of the policy, and as always with our green belts the edges matter.*

*Community Right to Build schemes, transport infrastructure, renewable energy developments and a wider range of brownfield sites all now get a look in. The nibbled green belt regimes will also apply to the Local Green Space designation.*

**Openness and purposes test.** The changes to current green belt policy are outlined in the Impact Assessment (IA 71). All developments will have to pass the openness and purposes test: ‘In all cases, the test to preserve the openness and purposes of including land in the Green Belt will be maintained.’

**Community Right to Build.** The NPPF gives a green light to Community Right to Build (CRB) developments which are described as ‘not inappropriate in Green Belt’ (Cn 145). But the Impact Assessment acknowledges these schemes would not normally be allowed in the green belt: ‘Community Right to Build will apply in all areas, but is expected to be most relevant in rural areas [for] small-scale, approximately 5 to 10 units per scheme. Without a specific policy in Green Belt, these schemes are likely to be considered inappropriate development’ (IA 72).

**Brownfield.** PPS2 already permits development on previously-developed Green Belt land where the site is identified in the local plan as a major developed site. This policy will be extended to all brownfield sites in the green belt.

**Transport infrastructure.** Park and Ride schemes are already permitted in the green belt and the NPPF proposes to extend this to a wider range of local transport infrastructure, ‘such as opening new routes, providing bus shelters and small public transport depots.’ Rail parkways are not mentioned but the wording of the NPPF would seem to permit them.

**Redevelopment.** The alteration or replacement of dwellings is already permissible and it is proposed to extend this to include all buildings. The revised policy proposes to change the word ‘dwelling’ to ‘building’ but maintains the current limitation on size set out in current policy.

**Renewables.** The wording remains unchanged from the leaked draft and opens the door for renewable energy policy to over-ride green belt protection. ‘When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.’ Although the openness and purposes test applies, the caution in PPS22 that ‘careful consideration will... need to be given to the visual impact of projects’ has been dropped.

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### Energy and Waste

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**Synopsis.** *The NPPF simplifies but does not change renewable energy policy which remains very much as set out in PPS22. The NPPF no longer deals with waste.*

**Energy.** In the consultation NPPF, planning authorities will no longer be required to set decentralised energy targets in local plans (Cn 31; IA 87). They will be required to ‘identify suitable areas for renewable and low-carbon energy sources, and supporting infrastructure’ and to support community led initiatives (Cn 152; IA 89). The same criteria for identifying those suitable areas must also now be applied to individual planning applications for renewables outside those areas (Cn 153).

**Waste.** The NPPF no longer deals with waste, which will be governed by the National Waste Management Plan (Cn 7).

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## Green Space

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**Synopsis.** The NPPF introduces the new Local Green Space designation, which can be introduced through local or neighbourhood plans. There is welcome encouragement for green infrastructure. Rights of way also get a mention.

**Green Infrastructure.** Picking up the main theme of the Lawton report, *Making Space for Nature* (<http://bit.ly/lawtonmsn>), the Impact Assessment states the government's objective 'is to secure more and greater coherence of strategic networks of green infrastructure by planning positively for their creation, protection, enhancement and management' (IA 75). The policy is however limited to encouragement to 'take a more strategic and big picture approach to green infrastructure'.

**Local Green Space.** This new designation will quickly replace town green legislation (see below, page 4). But the latest consultation NPPF insists that the LGS must be 'reasonably close proximity to a centre of population or urban area', wording that might exclude dispersed rural communities and hamlets from designating an LGS. The consultation NPPF also clarifies that the LGS designation can only be applied through the plan preparation process, not on an ad hoc basis (Cn 130). The government admits 'one of the risks of the new designation is that it may encourage NIMBYism' (IA 81).

**Rights of way.** New sentence: 'planning policies should protect and enhance rights of way and access' (Cn 128).

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## Landscapes and the Environment

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**Synopsis.** The NPPF has ditched the special position of the countryside in planning policy. The consultation draft weakens further protection for designated landscapes but has welcome new text on light pollution.

**Minerals in designated landscapes.** Protection for designated landscapes has been weakened. In previous drafts, planning authorities had to ensure sufficient levels of permitted reserves are available from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage sites. Now they must do so only 'as far as practical' (Cn 102).

**Biodiversity.** The NPPF now gives clear guidance that 'development likely to have a significant effect on sites protected under the [EU] Birds and Habitats Directives would not be sustainable under the terms of the presumption in favour of sustainable development' (Cn s 16 & 170; Impact Assessment, page 82). Planners must also consider 'networks of biodiversity' in their local plans (Cn 167). Protection of geodiversity has been added to the NPPF (Cn 168).

**Environment enhancement.** The NPPF no longer calls for planning to 'play an active role in... mitigating significant impacts and promoting positive strategies for environmental enhancement' (Cn 11). However, a later paragraph retains the statement that 'the planning system should aim to conserve and enhance the natural and local environment' (Cn 164).

**Tranquillity and pollution.** Recognition of tranquil landscapes remains but planning authorities no longer have to 'ensure that, wherever practicable, noise-sensitive developments are separated from major sources of noise' (Cn 173). A new paragraph integrates EU air quality legislation in the NPPF (Cn 174), another new paragraph champions reduction of light pollution: 'By encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation' (Cn 175).

**Coasts.** A new paragraph directs planners to 'take account of marine plans and apply Integrated Coastal Zone Management across local authority and land/sea boundaries' (Cn 159).

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## Transport

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**Synopsis.** There are a number of minor changes to transport policy. Bottlenecks are set to become even more a fact of life, but walking and cycling will be encouraged.

**Walking and cycling** are to be encouraged through the planning system (Cn 19). The also acknowledges that 'smarter use of technologies can reduce the need to travel' (Cn 82).

**Rest stops.** New text says 'the primary function of roadside facilities for motorists should be to support the safety and welfare of the road user' (Cn 85), reflecting minister's promises to create more truckstops and rest areas (DfT: <http://bit.ly/iJXsjH>).

**Bottlenecks.** 'Sustainable economic development' has been added to the reasons for approving development despite it creating bottlenecks (Cn 86).

**Ports and airports.** Local authorities will no longer need to consider 'the economic, environmental and social impacts on the local and wider economy' of planning applications for airfields, airports and ports. This change will reduce the pressure to approve applications to create jobs but potentially also reduce environmental protection (Cn 87).

**Good and services.** Planning strategies should ensure that developments are located and designed to 'accommodate the efficient delivery of goods and supplies' (Cn 89). But larger scale residential developments no longer need to be within walking distance of health facilities (Cn 99).

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## Heritage

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**Synopsis.** There have been a number of changes to bring parts of the policy closer to the widely admired PPS5. But protection of the setting of heritage assets, which features so strongly in PPS5, has been dropped from the consultation NPPF.

**PPS5.** The Impact Assessment claims that the impacts of moving from the recently issued PPS5 to the NPPF 'for those involved with the historic environment should be de minimis' (IA 91). There are hints that some of the existing guidance and documentation culled for the NPPF will be resurrected as supplementary guidance (IA 91).

**Protection of heritage assets.** Stronger wording on the archaeological potential of landscapes aims to ensure that developers recognise that much archaeology remains unknown (Cn 37). Heritage assets in townscapes are given broader protection, which is no longer restricted to assets 'protected by a national designation' (Cn 151). The consultation NPPF also has stronger wording to protect heritage assets generally: 'As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification' (Cn 183).

**Destruction of heritage assets.** But just as a cheer is raised for increased heritage protection, a new bullet point sweeps safeguards away where 'the harm or loss is outweighed by the benefit of bringing the site back into use' (Cn 184). The paragraph protecting heritage assets from harm caused by inappropriate development within its setting has been discarded. This is a major change of emphasis with the text of PPS5 (Ld 190).

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## NPPF Reaction

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**Synopsis.** *The predictable cheers from the development lobby, have been well outnumbered by shouts of rage from the environmentalists. The National Trust has drawn angry responses from the government and industry*

**National Trusts sparks row.** Fiona Reynolds said the reforms could lead to unchecked and damaging development in the undesignated countryside on a scale not seen since the 1930s: ‘Weakening protection now risks a return to the threat of sprawl and uncontrolled development that so dominated public debate in the 1930s’ (<http://tgr.ph/qEmRXn>; Guardian: <http://bit.ly/rnb8CY>). The Communities department was so outraged, it issued a hasty press rebuttal (<http://bit.ly/nziTRs>; Guardian letter: <http://bit.ly/p1DPrg>), which even claimed that the green belt is an environmental objective (which, of course, even the department believes it is not, see IA 73). In a letter to the Telegraph, the British Property Federation and British Chambers of Commerce joined in the criticism of the Trust saying the new system ‘does not diminish the ability to protect the green belt’ (<http://tgr.ph/qtGNIR>).

**CPRE.** Shaun Spiers for CPRE said: ‘This will make the countryside and local character much less safe from damaging and unnecessary development. If it is not amended, there will be battles against development across the country that will make the public revolt against the sale of the forests look like a tea party’ (Guardian: <http://bit.ly/rpJVG>; BBC: <http://bbc.in/qwnDUm>).

**Wildlife groups.** Martin Harper of the RSPB said key wildlife habitats are under threat: ‘The planning system is what protects the England we all hold dear - our iconic landscapes and our wildlife-rich habitats... it will fail us all if one factor – economic growth – is set higher than any other. Welcome phrases within the draft NPPF... could turn out to be green-wash unless they are strengthened.’ Steve Gilbert for RSPB South East said: ‘It’s clear that what we’re leaving for future generations is looking increasingly poor, and we need to urgently rethink our planning policy. This couldn’t be more pertinent than in the densely populated south east of England, where our species, landscapes and natural resources like fresh water face new pressures on a daily basis’ (<http://bit.ly/pCaLM>).

**Environment groups.** Friends of the Earth called the NPPF a ‘developers charter which puts the interests of business ahead of people and the environment’ (Guardian: <http://bit.ly/rpJVG>). Environmental Protection UK said: ‘We do not believe that the emphasis of this draft strikes sufficient balance between providing a framework for development, providing healthy sustainable communities and protecting our natural heritage for future generations’ (<http://bit.ly/oqIQaD>). The Environmental Services Association said ministers have ‘missed a trick’ by leaving out any meaningful reference to waste management infrastructure (letsrecycle: <http://bit.ly/owB2w9>).

The **National Housing Federation** warmly welcomed the NPPF: ‘It’s a hugely significant milestone in delivering a reformed planning system that better supports ‘good growth’ to create jobs and meet housing need’ (NHF: <http://bit.ly/pHDJu3>).

**Politicians.** Labour said ‘Pushing this document out during the recess, when it should have been published to support the scrutiny of the Localism Bill and whilst parliament was in session, is unacceptable’ (Inside Housing: <http://bit.ly/nsBoTi>).

**Retailers.** The Association of Convenience Stores (ACS) said: ‘The best case scenario is that local authorities will devise imaginative, high street-centred plans that promote diversity in retail... But under a worst case scenario... sophisticated developers will look for and find loopholes for development that harms town centres’ (Grocer: <http://bit.ly/rdSTa9>).

**Guardian.** The Guardian has run a series of articles and commentaries on the NPPF. In an editorial, it said: ‘The draft national planning policy framework is caught at the crossroads between communities, the state and the marketplace. The fear is that the latter will triumph... Development is something that cannot be reversed and planning should involve restriction as much as encouragement. As things stand, the presumption in favour of sustainable development will reward developers while neglecting sustainability’ (<http://bit.ly/qkRh8X>). Simon Jenkins raged: ‘This localism bill will sacrifice our countryside to market forces... The word sustainable should never appear in an act of parliament. It is a weasel word, an adjective not qualifying a noun but lightly dusting it with vague political approval. The localism bill now before parliament is a straight developers’ ramp (<http://bit.ly/qeMBPq>). More calmly, Damian Carrington wrote: ‘the crux is what the government means by sustainable development... [it] feels to me heavily weighted to saying yes to all building and rather light on avoiding harmful developments (<http://bit.ly/ol5qOK>). In a Guardian vote, respondents overwhelmingly believe that the NPPF ‘will take power out of council’s hands’ (<http://bit.ly/nUp0YA>).

**Farmers.** The NFU said the NPPF is ‘encouraging’ and could help development within the sector to help it meet the challenges it faces in the future (FWI: <http://bit.ly/q0IMIX>).

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## TOWN GREENS

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**Synopsis.** *Defra is proposing changes that will give communities two years to apply to register any land they believe is a town green. After that, they will only be able to register land that landowners have omitted to declare inadmissible for town green status. The Local Green Space designation is presented as an alternative. This will operate through the local plan process, where desire for green space will be balanced against ambitions for development.*

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## The Consultation

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**Town Greens.** Legally, the term *town green* means the same as *village green* and refers to common land. For a patch of land to be declared a town green it must have been used by local people in common, without permission or hindrance from the landowner, and without force for at least twenty years. There are now around 200 applications for town green status each year. Registration authorities are usually local authorities.

**Consultation.** Defra has launched a review of town green legislation, hated by developers and landowners, but often the saviour of local campaigns such as Warneford Meadow in Oxford (Closing date 17 October 2011: <http://bit.ly/towngn>).

**Aims.** The government says it wants to strike a better balance between protecting high quality green space valued by local communities and enabling the right development to occur in the right place at the right time. It also wants to reduce the burden on local authorities and on landowners. It intends to introduce a new Local Green Space (LGS) designation with the same level of protection as green belt land by April 2012, and expects this to dampen the demand for town greens.

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## The Proposals

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**Proposals.** Defra presents five proposals, intending that all should be adopted as a package. If there is a need for new legislation, the government also wishes to allow temporary parking and permanent visitor facilities on town greens. Defra does not propose to relax the criteria for registration of new greens or to diminish the level of protection afforded to greens.

**Streamline sifting of applications.** Registration authorities will be permitted to reject applications at an early stage where insufficient evidence has been submitted or where there is strong evidence, including from the landowner, that the application could not meet the registration criteria. There would be no appeal from the decision except through judicial review, but an improved application could be submitted later.

**Declarations by landowners.** Landowners will be able to make a renewable declaration that for a defined area of land no evidence of use can be used in a town green application over the next ten years. Communities will have two years after the declaration within which to register a town green application. The government expects the declarations to be 'quickly adopted by many landowners, particularly where the land is professionally managed'. The government clearly believes that this change will allow almost all landowners to withdraw land from any threat of future town green applications.

**Character.** New legislation will add a character test to the criteria for registration as a green. Only land which is unenclosed, open and uncultivated, and 'recognisably similar to the popular perception of a traditional green' will be eligible. The government expects that 'fields, post-industrial land, public parks and playing fields would be likely to fail the character test', admitting the test will be difficult to apply.

**Integration with local and neighbourhood planning.** The government intends to prevent registration of land which is subject to a planning application or extant permission for development, or which is designated for development or as a Local Green Space in a local or neighbourhood plan.

**Charging fees.** An town green applicant will be required to pay a fee when making an application. Legislation will allow each registration authority to set its own fee subject to a prescribed ceiling. The cap is suggested as £1,000. Fees could be refundable if the application were granted.

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## THE NEW PLAN SYSTEM

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### The New Regulations

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**Consultation.** The Communities department has issued a consultation on regulations for the new plan system of local plans and neighbourhood plans, which implement parts of the Localism Bill and replaces the Local Development Framework (closing date 7 October 2011: <http://bit.ly/pYjDQx>).

**Plan making.** The basic process of plan preparation is largely unchanged in order to meet EU rules. The process for preparing development plan documents will retain an engagement stage and one formal consultation stage before submission to the Secretary of State for examination in public and approval, or rejection.

**Duty to cooperate.** The regulations set out the list of bodies that will have the duty to cooperate as defined in the Localism Bill. They include local authorities, statutory consultees such as the Environment Agency, English Nature and English Heritage, and transport authorities.

**Local plans.** The regulations allow for the adoption, withdrawal and inspection of local plans. Inspectors will no longer be able to impose changes on local plans, though they will make recommendations.

**Local development scheme.** Local councils must maintain a scheme which specifies the documents and timetable in the local planning process but it will no longer be overseen by the Secretary of State. Neither will councils have to report on progress to the Secretary of State, though they will have to provide online information to communities on progress.

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## The Planning System in Transition

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**Synopsis.** *Neither the NPPF or the new plan making regulations say much about transition arrangements from the Local Development Framework to the NPPF system of local plans. Planning authorities will be able to apply for a certificate of conformity for existing Core Strategies, but more than two-fifths of councils do not have a sound or adopted Core Strategy.*

**Certificate of conformity.** More than half of planning authorities already have sound or adopted Core Strategies, but they will now need to apply for a 'certificate of conformity' with the new regime. There is no mention of the implications of this requirement in the Impact Assessment for the NPPF. It is not clear whether this will be a rubber stamping process or whether significant changes will be required, in which case the Core Strategy will need to be issued for consultation. Some authorities may decide to scrap their exciting Core Strategies, following the example of Brighton and Hove (Argus: <http://bit.ly/pgAFIC>).

**Plans in progress.** There are 145 planning authorities which have not completed examination of their Core Strategy. What will the impact be on these? This is more than an academic point as 'local planning authorities should... grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date' (Cn 14). As the government puts it in the Impact Assessment: 'as a 'carrot' the presumption strengthens the role of plans as a basis for decisions where they are up-to-date; but the 'stick' is that if they are not, national policy will be the principal basis for making decisions' (IA 24).

Core Strategies by status	Number of local councils	Percentage of local councils
Not Published	159	47%
Published	176	53%
Submitted to Sec of State	145	43%
Found Sound	104	31%
Adopted	100	30%

### Progress in preparing core strategies as at May 2011

Source: Impact Assessment, page 22.

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### And Finally...

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In trumpeting the NPPF, Planning Minister Greg Clark declared, not for the first time, that: 'National planning policy and central government guidance has become so bloated that it now contains more words than the complete works of Shakespeare.' I am grateful for Full Fact for pointing out this is just a guess and undoubtedly a wildly inaccurate one at that (<http://bit.ly/clarkballs>). How can we expect ministers to get right the biggest overhaul of planning since the Town and Country Planning Act of 1947, if they can't be bothered to check their facts?

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### About CPRE SE eBulletin

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**Andy Boddington, Editor.**