

# Planning for a better future

Our planning manifesto for the government



## Manifesto Background Paper 9

### Spatial Planning: simplifying the process

The new NPPF (February 2019) has now put in place clear requirements for Local Planning Authorities to produce strategic policies and to co-operate at this strategic level when producing their plans. Many Local Planning Authorities are now preparing joint plans to contain these policies. POS considers that this leaves the rest of the development planning process in need of review to see if it's still fit for non-strategic policies (DPDs and Neighbourhood Plans) and their supporting guidance (SPDs) so we can get local and neighbourhood plans in place in the shortest possible time.

## Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to Government so we can plan together for a better future.

## POS Manifesto

This started in early 2014 when we looked ahead to the national parliamentary elections in May 2015. The main parties were drafting their manifestos, so we thought about what we could do to help them. This resulted in Planning for a better future: Our planning manifesto for the next government. The time since then has seen an unprecedented amount of change to the planning system, so our initial planning manifesto for the next government has morphed into an on-going planning manifesto for government.

These are think pieces that tackle a topical area within planning practice and sets out our recommendations for improvement. They comprise a growing series of Manifesto Background Papers that look in detail at specific issues. Those that are still current are summarised in our main Planning Manifesto paper that sets out the current ask from POS to the government.

The views expressed in these documents reflect the initial view of POS. It is a consensus position. It should not be taken as a final position; rather an informed starting point to debate the issues. It is expected that the recommendations will evolve as the debate progresses.

Other titles in the series can be viewed from our website.

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Published: August 2019

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## Summary

The new NPPF (February 2019) has now put in place clear requirements for Local Planning Authorities to produce strategic policies and to co-operate at this strategic level when producing their plans. Many Local Planning Authorities are now preparing joint plans to contain these policies. POS considers that this leaves the rest of the development planning process in need of review to see if it's still fit for non-strategic policies (DPDs and Neighbourhood Plans) and their supporting guidance (SPDs) so we can get local and neighbourhood plans in place in the shortest possible time. Our recommended changes are:

- The plan-making process has two distinct parts: strategy and details. Each part is different and needs to be carried out in the right way. The recent changes in the NPPF and associated guidance have put in place the essential elements that are necessary to enable LPAs to plan at the strategic level.
- POS considers this a job half done. Further improvements should be made to the way detailed policies are produced and how they relate to the production of supplementary planning guidance in Supplementary Planning Documents (SPD).
- Provided detailed Local Plan policies conform to the strategic requirements set out in the strategic part of the plan (or joint plan), their production should be a simpler process.
- It should follow the current procedures for the preparation of SPD with the involvement of PINS only necessary to deal with outstanding objections.
- If such a system was put in place the differentiation between DPD and SPD becomes blurred and we recommend a merging of the two processes to avoid some of the problems caused by the way the courts have interpreted the Town and Country Planning (Local Planning) (England) Regulations 2012 (especially Regulation 5 and 6).

## 1 Introduction

- 1.1 In early 2014 POS produced its first Manifesto aimed at the main political parties as they were preparing for the forthcoming May 2015 General Election. A main element of our pitch was to improve the Spatial Planning regime to tackle the inadequacies of the Duty to Cooperate as a substitute for Regional Planning. Once the new government was in place, those early suggestions crystalized into a more detailed Manifesto document called Local plans: an evolutionary approach to improvement.
- 1.2 Many of the suggestions in that paper have subsequently been taken up by MHCLG and incorporated into national policy and guidance. Local Planning Authorities are now required to:
- agree the strategic geography;
  - agree and address strategic issues;
  - produce a Statement of Common Ground to demonstrate strategic issues agreement; and
  - no longer produce the best strategy – an appropriate strategy is sufficient.
- 1.3 The purpose of this paper is to review the system that has emerged over the last 3 years to see if it is fit for purpose and whether it can be improved to make it more efficient and effective.

## 2 The new system

- 2.1 The system, as now set out in the NPPF and supporting PPG, has implemented many of our suggested changes to the strategic stage of the development planning process. As always, the NPPF makes it clear that the Development Plan must include strategic policies to address each Local Planning Authority's priorities for the development and use of land in its area as required by Section 19(1B-1E) of the Planning and Compulsory Purchase Act 2004. The latest NPPF now recognises that these strategic policies can be produced in different ways, depending on the issues and opportunities facing each area, the main options being:
- joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or
  - a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred (NPPF para 17).
- 2.2 This gives Local Planning Authorities more flexibility to craft and produce the strategy for their area.

- 2.3 Strategic policies now have to be explicit in plans and not extend to detailed matters that are more appropriately dealt with through Neighbourhood Plans or other non-strategic policies (NPPF para 21). They should look ahead over a minimum 15-year period from adoption, to anticipate and respond to long-term requirements and opportunities (NPPF para 22). They should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, including planning for and allocating sufficient sites to deliver the strategic priorities of an area (NPPF para 23).
- 2.4 The focus on the Duty to Cooperate has also shifted from “a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities” (NPPF 2012 para 178) to “a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries” (NPPF 2019 para 24). There is now no mention of non-strategic policies in the NPPF paragraphs dealing with cross-boundary cooperation.
- 2.5 The NPPF now clearly requires strategic issues to be addressed and there is strong encouragement for these to be done at a larger geography and for joint plans to be the outcome of the process. The duty to cooperate has now been framed so that it exclusively relates to strategic matters. Strategic cooperation is now effectively a duty to agree the strategic matters where cooperation is required and how it is intended that they will be addressed.
- 2.6 POS welcomes this new focus on and prioritisation of strategic policies. Whilst it falls short of the more compulsory and separate system that we advocated in our Manifesto, it has the essential elements that we think are necessary to enable Local Planning Authorities to plan at this level. There are however three main shortfalls:
1. The new NPPF should have made it much more explicit that joint plans should be the norm – this would make things easier for planners to encourage the transition, particularly in areas where this is the right answer but there continues to be barriers (generally political) to change.
  2. There is no rule book for examining strategic plans – PINs currently have to apply the same test of soundness etc as if testing detailed plans. For example, new joint strategic plans are unlikely to have site allocations.
  3. The opportunity has not been taken to review the rules around the non-strategic policies in a Development Plan and, if our suggestions are taken on board, to look at the role of SPD in the context of a simplified non-strategic policy regime.
- 2.7 The final shortcoming is the main subject of this paper: how can we simplify the way non-strategic policies are produced?

### 3 What still needs to be done

- 3.1 The NPPF states that policies to address non-strategic matters can be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies (NPPF para 18). Other mechanisms such as Brownfield Registers can also be used (NPPF para 23). This gives Local Planning Authorities the flexibility to produce these non-strategic policies in the way that is most appropriate for their area; however we think that MHCLG should have gone further and could have done so without further legislative provision given the flexibility in the 2004 Act.
- 3.2 The Society's proposals are based on a recognition that the plan-making process has two distinct parts: strategy and details. Each part is different and needs to be carried out in the right way. The changes made over the last three years have largely dealt with the strategic part of the plan-making process, although as stated above there are a few further tweaks we consider necessary. What is now needed is a review of the non-strategic, or detailed, part of the process. This has been largely unaltered by the NPPF revisions and we consider that it is now more complex than it needs to be. Neighbourhood Plans should also benefit from our proposed reforms.
- 3.3 Having had the Local Planning Authority's strategic policies fully tested by the Planning Inspectorate against Sustainability Appraisal/Strategic Environmental Assessment and Habitat Regulations requirements, the Duty to Cooperate and all four elements of the Soundness Test, POS questions whether the non-strategic part of the plan-making process needs the same approach. In our previous paper we also set out our concerns about the weight given to development plans in decision-making as they progress through the process. The Soundness Tests can effectively create a cliff edge situation with plans being accepted or effectively abandoned after the Examination. Whilst this is appropriate for the strategy and the strategic policies, we consider it excessive and unhelpful for non-strategic policies. Our suggested changes also have the benefit of creating a clearer basis for Neighbourhood Plans and aligns their preparation closer to that of local plans. This seems to be a more sensible and fairer approach.

#### The non-strategic policy part of the process

- 3.4 The starting point has to be that Local or Neighbourhood Plan policies must conform to the strategic requirements set out in the strategic part of the plan, which in turn have been tested against compliance with the NPPF. If the policies meet those tests, then decisions on the precise location of new development and development management policies should be left to the Local Planning Authority and the local community to decide through their Local and Neighbourhood Plans. There should be wide flexibility for Local Planning Authorities and communities to develop plans tailored to their areas and communities. The Planning Inspectorate/Independent Examiner role should be confined to dealing with outstanding representations against the proposed policies.

- 3.5 We also consider that in this context the distinction between DPD and SPD preparation processes becomes less clear. The process that we are promoting for detailed policies to support delivery is based on the current process for SPD, plus a PINS involvement to deal with any outstanding objections to those policies and allocations. Therefore, we recommend that the two processes should be combined in legislation. This would enable LPAs to produce both DPD and SPD as part of a single document or separately. This would also present an opportunity to deal with the unintended consequences of the restrictive wording of Regulations 5 and 6 (Town and Country Planning (Local Planning) (England) Regulations 2012) which has caught out some Local Planning Authorities when preparing SPD.
- 3.6 The process that POS is suggesting for the preparation of non-strategic policies and other such plan content is:
- One or more Local Planning Authorities or a Neighbourhood Forum/Parish Council decides:
    - to produce a plan, partially review or alter/add policies to an existing plan
    - the geography: joint / borough wide / partial / neighbourhood
    - the type of plan: spatial policies or detailed guidance for policies (current SPD)
  - Local Planning Authority/Forum/Parish Council produce whatever further evidence they consider is necessary to support their plan.
  - Produce a Statement of Conformity to the strategy/strategic policies and the NPPF.
  - Produce a Consultation Draft of the Plan containing the necessary elements – eg for non-strategic policies it would comprise the following:
    - Detailed policies
    - Detailed proposals including allocations/ locations for land uses not covered in sufficient detail in the Strategic Plan
    - Key diagram
    - Sustainability Appraisal/Strategic Environmental Assessment: only needed where there are potentially significant environmental effects which have not been assessed in the strategic part of the plan
  - Planning Inspectorate to sign off non-strategic policies against NPPF para 35(d) “Consistent with National Policy” test and Statement of Conformity to the part 1 strategy – this should be done via correspondence
  - Formal 6-weeks consultation
  - If there are no outstanding representations against the policies in the plan (as amended to take account of representations) a Local Planning Authority can adopt the plan at Full Council and a Neighbourhood Forum/Parish Council can go to Referendum
  - If there are outstanding representations:
    - Produce a Submission Version of the Plan taking into account consultation responses and other representations as the Local Planning Authority consider appropriate
    - Planning Inspectorate/Independent Examiner to consider outstanding representations usually by written representations – an informal hearing would be an option but only where considered necessary by the Inspector

- 3.7 If a Local Planning Authority considers that an adopted strategic plan combined with the NPPF gives them all they need to plan for growth and development in their area, then they should be able to adopt it as their Local Plan without the need to produce any further policies.
- 3.8 These proposals would ensure that the main Duty to Cooperate and Soundness responsibilities were discharged in the strategic part of the process, where the overall strategy for the pattern, scale and quality of development was determined (para 20 NPPF). The cost of the evidence base for the strategic part of the process (such as SEA, SHLAA & SHMA) would be shared amongst several Local Planning Authorities thereby making it more cost effective.

## 4 The role of the Planning Inspectorate

- 4.1 The soundness tests towards the end of the plan-making process can undermine the potential weight that could be afforded to an emerging plan as it produces a binary outcome: the whole plan is either sound or not. This does not support the NPPF's aim that a plan should receive increased weight as it progresses through the system. What we are proposing is that the test to be applied by the Planning Inspectorate to the two parts of the process needs to be different, thereby enabling greater weight to be afforded to uncontested non-strategic policies as they progress through the plan-making process.
- 4.2 Furthermore, the role of the Planning Inspectorate will be different in each part of the process. This is in tune with our design principle of only deploying resources where they are necessary and can add value.
- 4.3 Following submission to the Planning Inspectorate it is very common for a change of circumstances and/or legislation to occur which can lead to delay in the examination process and receipt of the Inspector's report. To ensure examinations or hearings progress in a timely manner the Planning Inspectorate should be given authoritative guidance that enables them to be pragmatic when addressing such matters. For example, as part of post-examination modification consultation, such matters should be able to be addressed comprehensively prior to drafting of the Inspector's report. However, if such matters emerge after publication of the Reg 19 plan and they require a substantial amount of work, a LPA should have the option of proceeding on the basis of the submitted plan with no further changes to the assumptions used and evidence produced etc at the point of publication. Essentially, if the issue is minor and can be dealt with, let's do so, but if it's more substantial then getting the plan in place may be the best way to proceed.

## Part one: Strategic Plan

- 4.4 The overall strategy of the plan and the strategic policies and proposals would be discussed and examined at a statutory inquiry that is chaired by a Planning Inspector. The strategy would be tested against Sustainability Appraisal/Strategic Environmental Assessment and, where necessary, habitats Regulations requirements, the Duty to Cooperate and all four elements of the Soundness Test. Because it is concentrating on strategic matters and operating at that strategic geography, the Inspector has the best possible opportunity to repair any shortcomings in the process and get to a position where the strategy can be supported as being appropriate (para 35(b) of the NPPF). These represent a new approach to examining development plans and MHCLG will need to produce guidance for Planning Inspectorate to ensure a consistent approach is followed.
- 4.5 A Planning Inspector's report would still be produced and submitted as per the current process to enable the strategic plan to be adopted.

## Part two: non-strategic policies

- 4.6 The Planning Inspectorate would have three roles:
1. To ensure that the non-strategic plan accords with the strategic plan.
  2. To ensure that the non-strategic plan is in accordance with the NPPF. We are suggesting that this is called the NPPF Conformity Test and is essentially the "Consistent with National Policy" part of the Soundness Test (para 35(d) of the NPPF).
  3. To consider any outstanding representations against the non-strategic policies in the plan.
- 4.7 The conformity of the draft detailed policies and proposals with the adopted strategic policies to support its delivery and the National Planning Policy Framework (and the London Plan within London) could be demonstrated through the completion of a standard proforma, which would show how the detailed policies deliver the agreed strategy and strategic policies. The Planning Inspectorate would sign this off in advance of any consultations on the plan.
- 4.8 If through consultation, no representations against the proposed non-strategic policies are received (or they are negotiated away) from the statutory consultees and non-statutory bodies/individuals, the Council should be able to adopt its plan with no further involvement from the Planning Inspectorate.
- 4.9 If such outstanding representations exist, then the Planning Inspectorate's role would be to consider those, but not in a manner that the whole Development Plan Document would fail should issues emerge. It would only be the specific "problem" policy that would be deleted or amended. Objections to non-strategic policies should be considered either through written representations or, in exceptional circumstances, through a much more proportionate and streamlined hearing process. Whether to follow the hearing route would be a decision for the Inspector to make. There would be no right to be heard.
- 4.10 This approach could be easily adapted and applied to Neighbourhood Plans and carried out through the Independent Examiners. It has the advantage of aligning the two processes more closely.

## 5 Keeping the system nimble

- 5.1 It is important to set up the system so that it can be flexible and deal efficiently with changes in circumstances. Recent changes to the PPG allow a LPA to either partially review the strategy or produce additions or amendments to strategic and non-strategic policies and proposals.
- 5.2 If a Local Planning Authority (or a group of them) wish to amend an approved strategy and/or add, delete or review some of its strategic policies, a partial review should be possible. If this is being undertaken by part of a strategic group of authorities then, provided the views the other authorities are considered, this should also be possible. Otherwise the process should follow the same procedure as setting up the initial strategy.
- 5.3 When the current Development Plan system was introduced in 2004 the concept was a suite of documents: Development Plan Documents (Core Strategy, Detailed Policies, Area Action Plans etc) and Supplementary Planning Documents. The original NPPF introduced and advocated the formulation of a single Local Plan for a local authority, which addresses strategic policies, site allocations and detailed policies necessary to support the delivery of the spatial strategy. The new NPPF is less prescriptive. POS believes that if our recommendations are adopted the distinction between Development Plan Documents and Supplementary Planning Documents can be dropped. In fact, the way the courts have interpreted the Town and Country Planning (Local Planning) (England) Regulations 2012 (especially Regulation 5 and 6) means that the scope of the content that a Supplementary Planning Document can include is very narrow and their benefits therefore have become limited. If the detailed layer of policies and proposals can be prepared in the simplified way that we have suggested and the option is there to produce additions and amendments to the Local Plan, then we will have all the tools that we need to plan for growth. Furthermore, it is recommended that like the national PPG, a Local Plan should be web based. This further enables it to be added to as circumstances change.
- 5.4 Our recommendation therefore is that amendments and additions to the non-strategic policies and proposals in a Development Plan should be capable of being promoted in the same way as the original plan, provided that they are in conformity with the main strategy and strategic policies. Proposals that are not in conformity with the main strategy and strategic policies would require that strategy to be amended, before they can be advanced.
- 5.5 The current suite of design guides that are usually adopted as Supplementary Planning Documents can simply be part of the Development Plan with the detailed guidance in an appendix to its associated plan or policy. Masterplans for key development areas could also be prepared as part of the Development Plan with the key land use and development management policies in the main plan and the detailed guidance elements of the masterplan in an appendix. The production of such guidance after the main DPD has been produced would also be an option for LPAs. The use of a web-based format for these documents will enable the information to be presented and structured on a subject or a spatial basis as appropriate.

- 5.6 These refinements provide the opportunity for the system to respond quickly to specific circumstances or new issues that emerge. They allow either the single Local Plan approach or the suite of documents approach as appropriate. This would always be contingent on the fundamental strategy being adopted and remaining intact in the context of changes and additions to the Development Plan.

## 6 Making the system efficient

- 6.1 Whilst these changes may seem to create a two-stage process, the reality is that plan-making does have two distinct parts: strategy and details. Under the current legislative arrangements, a Development Plan Document is unlikely to take less than three years to produce from inception to adoption. However, this is often not the case and production can be longer due to changing circumstances and complications around engagement and agreement from cross-boundary working.
- 6.2 POS believes that by stripping out the detail from the current approach and concentrating initially on strategic matters, the process should be capable of being speeded up.
- 6.3 The adoption of non-strategic policies and proposals, without the requirement to meet Sustainability Appraisal/Strategic Environmental Assessment and Habitat Regulations requirements, the Duty to Cooperate and the Soundness Tests and with a streamlined involvement of the Planning Inspectorate, should be capable of production in a timescale more closely related to SPD production than DPD production. In most circumstances a degree of twin tracking of the two parts of the process would be possible.
- 6.4 POS believes that this new approach is the most time-efficient way to get a local policy framework in place.

## 7 Conclusions

- 7.1 Recent changes in the NPPF and its associated guidance has improved the spatial planning system from the point of view of strategic planning. POS considers this a job half done. Further improvements should be made to the way detailed policies are produced and how they relate to the production of supplementary planning guidance in SPD. These sensible simplifications to the process will enable LPAs to produce plans more quickly and amend them more efficiently. The approach we recommend will align neighbourhood plans more closely to the detailed policies in a Local Plan so that the two processes are more complementary.

## Appendix: Detailed policies production process

Flow chart showing the new process to produce the detailed policies (stage 2) for a Local Plan or a Neighbourhood Plan.

