
O P I N I O N

1. I am asked to advise Broxtowe Borough Council, Nottingham City Council and Rushcliffe Borough Council in relation to legal submissions that have been made by a consortium of developers to the Greater Nottingham Strategic Plan examination.
2. The consortium has submitted that the transitional provisions in paragraph 234a of the December 2024 version of the NPPF ("NPPF 2024") do not apply to the GNSP. The Consortium contends that in order to meet the test within paragraph 234a, a draft Local Plan must contain a draft housing requirement that meets at least 80% of local need at the date of submission. The Consortium contends that the GNSP did not do this. Thus, the GNSP is to be examined by reference to the policies in the NPPF 2024 and not by reference to the December 2023 version of the NPPF ("NPPF 2023").

Summary of Conclusions

3. I have concluded that the consortium's interpretation of NPPF 2024 paragraph 234a is flawed. A decision-maker who adopted it would make an error of law.
4. Paragraph 234a applies where a draft Local Plan has reached the Regulation 19 stage on or before the 12 March 2025. The draft housing requirement in a draft Local Plan that has reached the Regulation 19 stage before 12 March 2025, is to be compared with the local housing need calculated as at 12 March 2025. Where the draft housing requirement contained in the Regulation 19 stage Local Plan is 80% or more of local housing need, that plan is to be examined against the NPPF 2023 when it is submitted for examination.
5. The result is that the GNSP is to be examined against the NPPF 2023.

The Proper Approach to the Interpretation of Planning Policy

6. In *Gladman Investments v Canterbury City Council* [2019] EWCA Civ 669 Dove J explained in relation to the interpretation of development plan policy:

"The interpretation of development plan policy, however, is ultimately a matter of law for the court. The court does not approach that task with the same linguistic rigour as it applies to the

construction of a statute or contract. It must seek to discern from the language used in formulating the plan the sensible meaning of the policies in question, in their full context, and thus their true effect. The context includes the objectives to which the policies are directed, other relevant policies in the plan, and the relevant supporting text. The court will always keep in mind that the creation of development plan policy by a local planning authority is not an end in itself, but a means to the end of coherent and reasonably predictable decision-making, in the public interest (see the judgment of Lord Reed in *Tesco v Dundee City Council*, at paragraphs 18 and 19; the judgment of Lord Gill in *Hopkins Homes*, at paragraphs 72 and 73; the judgment of Richards L.J. in *Ashburton Trading Ltd. v Secretary of State for Communities and Local Government* [2014] EWCA Civ 378, at paragraphs 17 and 24; and the judgment of Richards L.J. in *R. (on the application of Cherkley Campaign Ltd.) v Mole Valley District Council* [2014] EWCA Civ 567, at paragraphs 16 and 21)."

7. In ***Hopkins Homes***, Lord Gill stated that "the proper context" for interpreting planning policy "is provided by the over-riding objectives of the development plan and the specific objectives to which the policy statement in question is directed" (paragraph 72). He emphasised that policy within the NPPF must always be interpreted in the overall context of the guidance document, which involves "the broad purpose of the guidance and the particular planning problems to which it is directed" (paragraph 75). In relation to housing policy specifically, Lord Gill stated that when interpreting paragraph 49 of the NPPF, "the court must read it in the policy context...having in view the planning objective that the Framework seeks to achieve".
8. This approach has been applied in *Dignity Funerals Ltd v Breckland DC* [2017] EWHC 1492 (Admin), the court cited Lord Gill's statement that proper context is provided by the overriding objectives and specific objectives to which the policy is directed. More recently, in *Warwick DC v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 2145 (Admin), the court summarised that policy language is to be read in the context of the subject matter, the policy framework, and "the planning objectives of the policy in question".

The NPPF Transitional Approach

9. Paragraph 234(a) of the NPPF 2024 provides:

For the purpose of preparing local plans, the policies in this version of the Framework will apply from 12 March 2025 other than where one or more of the following apply:

- a. the plan has reached Regulation 19⁸² (pre-submission stage) on or before 12 March 2025, and its draft housing requirement meets at least 80% of local housing need⁸³

10. Footnote 83 explains that “local housing need” is to be “calculated using the standard method in national planning practice guidance, published on 12 December 2024.
11. Where paragraph 234a applies, a Local Plan will be examined under the relevant previous version of the Framework (i.e. the NPPF 2023).
12. As can be seen from the language used, the policy approach is that the NPPF 2024 will apply from 12 March 2025 unless paragraph 234a applies. Paragraph 234a has two parts to it
 - a. “The plan has reached Regulation 19 (pre-submission stage) on or before 12 March 2025” and
 - b. “its draft housing requirement meets at least 80% of local housing need.”
13. The reference to the NPPF 2024 applying “from the 12 March 2025 unless” is important. In my view, this means that the policy approach must be capable of application on the 12 March 2025 such that there is clarity at that date as to whether the NPPF 2024 applies to plan preparation or not.
14. The first of the parts of paragraph 234a is fulfilled in the present case since the GNSP Regulation 19 consultation began on the 12 March 2025.
15. The issue arises in relation to the second part of paragraph 234a and turns on the meaning of “its” within the second part of paragraph 234a.
16. “Its” must be referring to something already referred to in the paragraph. It seems to me that the word could in theory be construed to mean:
 - a. The draft Local Plan generally; or
 - b. The draft Local Plan in its form at the Regulation 19 Consultation stage
17. A Court will resolve which of these two approaches to adopt by seeking to discern the “sensible meaning” of the policy approach in its full context. That context includes reading the transitional provisions as a whole.
18. In my view, a Court will identify that the Policy is to be applied to the preparation of local plans. A Court will recognise that the NPPF 2024 is to be applied to plan preparation with effect from 12 March 2025 unless one of the criteria a to e applies. It follows that the Government must have intended a person to know with effect from 12 March 2025 whether or not the local plan which is being prepared is subject to the policies in the NPPF 2024 or not.

19. With that in mind it is important to examine paragraph 237 of the NPPF 2024. This provides:

“Those local plans that reach Regulation 19 (pre-submission stage) on or before 12 March 2025 and whose draft housing requirement⁸⁷ meets less than 80% of local housing need⁸⁵ should proceed to examination within a maximum of 18 months from 12 December 2024, or 24 months of that date if the plan has to return to the Regulation 18 stage⁸⁸.”

20. Footnote 87 is important since it explains in relation to the phrase draft housing requirement

“Set out in the most recent Regulation 19 (pre-submission stage) consultation.”

21. In essence, paragraph 237 includes language that precisely reflects the wording of the criterion in paragraph 234a. It is directly related to the operation of paragraph 234a. It identifies the timescale for those plans that have reached Regulation 19 stage but whose drafting housing requirement do not provide at least 80% of local housing need. Paragraph 237 has not relevance to any of the other criteria in paragraph 234.

22. What is important here is that the footnote makes it clear that it is the draft housing requirement set out at the Regulation 19 stage that is to be used for comparison against the Local Housing Need figure. In my view, this brings complete clarity to the application of paragraph 234a, since the transitional policy in the NPPF needs to be read as a whole. There is no rational reason why the phrase “draft housing requirement” in paragraph 234a should mean anything different from the same phrase in paragraph 237.

23. Further, since the transitional provisions are to be applied to enable those involved in plan preparation to know with certainty which version of the NPPF is to be applied with effect from the 12 March 2025, the comparison between the draft housing requirement and local housing need must be one that can be conducted at that date.

24. In my view, paragraph 234a contains a test to enable it to be determined once and for all, as at 12th March 2025, whether a Local Plan that has reached Regulation 19 stage by that date should progress pursuant to policies in the NPPF 2023 or the NPPF 2024. That test is:

- a. Has the draft Local Plan reached Regulation 19 (pre-submission stage) on or before 12 March 2025?; and
- b. Does the draft housing requirement set out in the Regulation 19 (pre-submission stage) consultation draft of the Local Plan meet at least 80% of local housing need calculated applying the standard method on 12 March 2025?

25. Where the answer to these questions is in the affirmative, then the draft Local Plan is to be examined against the 2023 NPPF.

26. The Consortium's approach, however, would bring an inexplicable inconsistency to paragraphs 234a and paragraph 237. On the Consortium's approach, the draft housing requirement means the housing requirement at the date of submission, but the very same phrase is clearly to be construed for the purposes of paragraph 237 as meaning the draft housing requirement as set out in the draft Local Plan at the Regulation 19 stage. The draft housing requirement for the purposes of applying paragraph 234a is then a fixed figure: it is the housing requirement set out in the Local Plan at the Regulation 19 stage.

27. Further, the consortium's approach would give rise to significant issues in practice, since the inputs into the calculation of local housing need change twice a year. As footnote 85 explains Local Housing need is to be "calculated using the standard method in national planning practice guidance, published on 12 December 2024."

28. The NPPG explains that:

"The standard method uses a formula that incorporates a baseline of local housing stock which is then adjusted upwards to reflect local affordability pressures to identify the minimum number of homes expected to be planned for.¹

The standard method calculates a minimum annual local housing need figure as follows:

Step 1 - Setting the baseline – 0.8% of existing housing stock for the area

Set the baseline using the value of existing housing stock for the area of the local authority (Dwelling stock (including vacants), Table 125: dwelling stock estimates by local authority district). The baseline is 0.8% of the existing housing stock for the area, and the most recent data published at the time should be used.

Step 2 - An adjustment to take account of affordability

The housing stock baseline figure (as calculated in step 1) is then adjusted based on the affordability of the area.

¹ Reference ID: 2a-002-20241212

The affordability data used is the median workplace-based affordability ratios, published by the Office for National Statistics at a local authority level. The mean average affordability over the five most recent years for which data is available should be used....”²

The standard method is thus dependent upon two inputs: estimates of housing stock and affordability ratios. As the NPPG explains:

“New estimates of housing stock are published annually (usually in May) and updated affordability ratios are published annually (usually in March).”³

29. Thus, the calculation of local housing need has the potential to change twice a year, in March and in May, where housing stock for an area changes and where the affordability ratio for an area changes. The Government would have been well aware of this when it published the transitional approach in the NPPF 2024, referencing plans which were at the Regulation 19 stage on or before the 12 March 2025. The Government envisaged that such plans should proceed to examination within a maximum of 18 months from 12 December 2024, i.e. by 12 May 2026.

30. Thus, after 12 March 2025, the inputs into the calculation of local housing need changed for the three GNSP authorities, changed on 24th March 2025 new affordability ratios were introduced on 24 March 2025, and the dwelling stock figures were updated on 22 May 2025 (Table 125 updated).

31. Applying the consortium's approach means that

- a. As at 12 March 2025 the GNSP was to proceed by reference to the NPPF 2023 over time as follows:
- b. As at 24th March 2025, the new affordability ratios were to apply, meaning that two of the three LPAs within the GNSP no longer met 80% of housing need.

32. Thus, the consortium’s approach would be that the NPPF 2023 applied to plan preparation between the 12th March 2025 and the 24th March 2025, but from 24th March 2025, the plan was to proceed against the NPPF 2024.

33. That cannot be a correct approach. It is wholly inconsistent with the words of paragraph 234, which provides that the NPPF 2024 is to apply **with effect from the 12 March 2025** unless

² Reference ID: 2a-004-20241212

³ Reference ID: 2a-009-20241212

one of the criteria in paragraph 234 is met. For the very sound policy reason of providing certainty for plans moving towards examination, the NPPF seeks to determine as at the 12 March 2025 which version of the NPPF is to be applied from that date going forward. It does so on a once-and-for-all basis.

34. The consortium's approach would result in the very opposite of certainty; it would mean that plans that had been proceeding on the basis of the 2023 NPPF might suddenly have to be prepared against the NPPF 2024 in the period between the Regulation 19 stage and submission, depending on the further publication of affordability ratios and housing stock figures. Such an approach would jeopardise plans at an advanced stage and after the date on which the NPPF 2024 was to apply if the 234 criteria were not met. That cannot have been the government's intention.

The 2024 Proposed Reforms to the NPPF

35. As I have explained, part of the context within which paragraph 234a is to be construed includes the objectives to which the policy is directed, having in mind that the creation of this policy is a means to the end of coherently predictable decision-making. A Court will ask "what is the planning problem to which it is directed"?
36. In July 2024, the Government went out to consultation on proposed reforms to the NPPF. These included significant changes to the Standard Method used in the calculation of housing need.
37. Under the Heading "Transitional arrangements for emerging plans in preparation", the consultation paper explained

"4. We propose transitional arrangements to maintain the progress of plans at more advanced stages of preparation, while maximising proactive planning for the homes our communities need. These will apply differently depending on what stage of preparation the plan has reached and the extent to which it is meeting the Government's housing growth aspirations. These transitional arrangements are set out in Annex 1 of the NPPF and outlined below.

5. To provide stability and certainty for plans at latter stages of scrutiny, those plans at examination will continue to be examined under the version of the NPPF they were submitted under. However, if the revised LHN figure is more than 200 dwellings per annum higher than the annual housing requirement set out in the adopted version of the plan, upon introduction of the new plan-making system, the local planning authority will be required to begin

preparation of a plan under the new system as soon as possible, or in line with any subsequent arrangements set out to manage the roll-out of the new system.

6. To help local planning authorities with advanced plans to proceed to examination at pace and support the Government's ambition to build more homes, those plans that have reached Regulation 19 publication stage but not yet been submitted for examination one month after the revised framework is published, with a gap of no more than 200 dwellings per annum between the local planning authority's revised LHN figure and its proposed housing requirement (as set out in the Publication version of the plan), should also progress to examination under the version of the NPPF it has used when preparing the plan thus far^[footnote 17].

7. However, those with a more significant gap of over 200 dwellings per annum between the local planning authority's revised LHN figure and the emerging housing requirement will need to revise its plan in line with the revised NPPF before submitting the plan for examination no more than 18 months after the publication of the revised NPPF. **We recognise that these arrangements would require some local planning authorities to undertake unforeseen additional work and reopen engagement with communities. Therefore, the Government will provide direct funding support to help these authorities progress their plans to examination quickly.**

8. All plans at earlier stages of preparation - (i.e. plans that have not yet reached Regulation 19 stage one month after the revised NPPF is published) - should be prepared against the revised version of the NPPF and progressed as quickly as possible." (emphasis with underlining added)

38. The draft NPPF text for consultation stated at paragraph 226:

"The policies in this Framework (published on [publication date]) will apply for the purpose of preparing local plans from [publication date + one month] unless one or more of the following apply:

- a. the emerging annual housing requirement in a local plan that reaches or has reached Regulation 19⁸⁴ (pre-submission stage) on or before [publication date + one month] is no more than 200 dwellings below the published relevant Local Housing Need figure...

Where a... applies, the plan will be examined under the relevant previous version of the Framework"

39. Paragraph 228 of the draft NPPF is also important:

"After applying the policies of this version of the Framework, local plans that have reached Regulation 19 (pre-submission stage) on or before [publication date + one month] with an emerging⁸⁸ annual housing requirement⁸⁴ that is more than 200 dwellings lower than the relevant Local Housing Need⁸⁶ figure should proceed to examination⁸⁹ within a maximum of 18 months from [publication date]."

40. Footnote 88 is important as it provides in the context of an emerging annual housing requirement:

"Set out in the most recent Regulation 19 (pre-submission stage) consultation."

41. At Question 103 of the consultation, the Government asked "Do you agree with the proposed transitional arrangements? Are there any alternatives you think we should consider?"

42. It is paragraph 6 that is of relevance to the issue that I am addressing. It applies to "those plans that have reached Regulation 19 publication stage but not yet been submitted for examination one month after the revised framework is published". Such plans that have a "gap of no more than 200 dwellings per annum between the local planning authority's revised LHN figure and its proposed housing requirement" "should also progress to examination under the version of the NPPF it has used when preparing the plan thus far".

43. This could not be clearer – the criterion was to apply to plans at the Regulation 19 stage but not yet submitted which had a gap of no more than 200 dwellings. Such plans are to be examined pursuant to the 2023 NPPF.

44. The Government published its Response to the Consultation on 12 December 2024, the same day that the NPPF 2024 was published. The response to Question 103 contains the following of relevance:

"The government's proposed transitional arrangement for local plans seek to maintain the progress of plans at more advanced stages of preparation, while maximising proactive planning for the homes our communities need.

The government has considered the range of responses to the consultation and wider sector engagement and has concluded that further changes should be made to the transitional elements in light of those. The changes have sought to balance the views of those respondents who considered that the new National Planning Policy Framework should take effect

immediately and those who considered the transitional arrangements should be more lenient and allow local authorities more time to get plans in place.

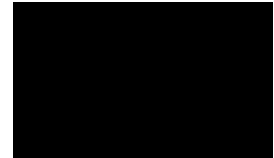
We had considered a 200 dwellings per annum threshold struck the right balance between allowing plans to continue or requiring them to be reworked to meet the government's housing aspirations. However, given the strength of support for a percentage-based threshold we have decided to take this forward, to enable a more nuanced and locally specific application of the threshold. **In order to strike a similar balance to the previous 200dpa threshold in terms of which plans continue and which need to be revised we have decided that for plans at Regulation 19, if the draft housing requirement meets less than 80% of local housing need, authorities will be required to update their plan to reflect the revised local housing need figure and the revised National Planning Policy Framework prior to submission.** For authorities with plans at examination, where the draft housing requirement meets less than 80% of local housing need the authority will be expected to begin a plan in the new plan-making system as soon as it is brought into force in 2025.

We will also make some changes to the proposed timings. Firstly, the changes to the National Planning Policy Framework for plan-making will take effect 3 months after the National Planning Policy Framework is published, with the exceptions as set out in the transitional arrangements. This is because there was a strong view from some consultees that one month did not allow local authorities sufficient time to respond to the changes. In addition, **where plans at reg 19 need to be revised to account for the revised National Planning Policy Framework and local housing need, the expectation for plans to be submitted in 18 months will be extended to December 2026 where LPAs have to do significant additional work (defined as returning to the regulation 18 consultation).** All earlier stage plans progressing under this version of the National Planning Policy Framework will be expected to be submitted for examination under the existing 2004 Act system no later than December 2026.

45. As can be seen, the Government, in response to consultation, changed the 200 dwellings test to an at least 80 % of local housing need test and changed the one-month period to a three-month period. There is nothing in the response that signifies any change of approach to that set out in paragraph 6 of the consultation documentation. That approach was that those plans that have reached Regulation 19 publication stage but not yet been submitted for examination and which met the other criteria should "progress to examination under the version of the NPPF it has used when preparing the plan thus far."

Conclusion

46. For the reasons I have set out above, in my view, the consortium's interpretation of NPPF 2024 paragraph 234a is flawed. A decision-maker who adopted it would make an error of law.
47. Paragraph 234a applies where a draft Local Plan has reached the Regulation 19 stage on or before the 12 March 2025. The draft housing requirement in a draft Local Plan that has reached the Regulation 19 stage before 12 March 2025, is to be compared with the local housing need calculated as at 12 March 2025. Where the draft housing requirement contained in the Regulation 19 stage Local Plan is 80% or more of local housing need, that plan is to be examined against the NPPF 2023 when it is submitted for examination.
48. The result is that the GNSP is to be examined against the NPPF 2023.



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