

(NPPF extracts highlighted in blue)

National Planning Policy Framework

Response by Lower Sunbury Residents' Association (LOSRA)

October 2011

Introduction

1. This is a consultation document so it is puzzling why the Government has taken such a strong position. Surely this is premature. The Communities Secretary has said *"No one should underestimate our determination to win this battle"*. The Planning Minister has accused people who want to preserve their communities from over-development of *"selfish nihilism"*. The inescapable sub-text to such outpourings is that although this is a consultation document, you are expected to agree with it. It is also very worrying to discover that the Minister for Planning has privately urged property developers to lobby the Prime Minister amid concerns that his planning reforms would be blocked and that the British Property Federation (the developers) *"had earned more brownie points than we could ever imagine"* by helping him. Nevertheless, and despite all this, the Planning Minister contends that *"This is a genuine consultation. It does not imply any agenda of the Government to change the nature of planning."* All very confusing.
2. This impression of predetermination is reinforced when looking at the Department for Communities and Local Government website. The national consultation schedule comprises eleven 2 hour meetings across 5 major cities in England. The first hour of each meeting is taken up with presentations, leaving a total of 11 hours of questions in total. Does the DCLG honestly think this is an adequate level of consultation on a radical new planning policy that significantly changes the rules? One could be forgiven for viewing it as no more than a cosmetic ticking of the 'consultation box'.
3. We do not have some the world's tightest planning laws. Our system does however stop planning chaos. The Framework is a recipe for confusion and a minefield of ambiguity, but this Association's response will not address the manifold terms which cry out for definition and clarification. Such matters are best left to professional planning and legal experts within the Civil Service.

4. Reference is made to the *"presumption in favour of sustainable development"* no fewer than 16 times. The problem is the definition of *"sustainable"* in the draft NPPF: *"development that meets the needs of the present without compromising the ability of future generations to meet their needs"*. How can planning departments and local councillors honestly be expected to determine whether building on farmland, or flood plains, or industrial land, will compromise future generations' needs? Too much responsibility is being placed on LPAs and communities; and developers get off scot-free to challenge at will. It is notoriously difficult to prove a negative especially one which requires a judgement about the future of a site and its possible impact. This will only ever be achieved from the comfortable platform of retrospect and one can foresee that the *"presumption in favour of sustainable development"* will trump theoretical arguments every time.
5. An alternative suggested test might be: *'There will be a presumption against development which fails to demonstrate sustainability (however defined) and community support.'* or that suggested by Mr Simon Marsh (see para.11 below). If developers are so confident that they will be working in the interests of local communities they would surely be unafraid of such alternative definitions. After all, the Minister himself has publicly stated that he *"cannot think of a single example of a place where they don't want to have any housing"*. The presumption against development is as important a principle in managing the rural/urban balance as the presumption of innocence until proved guilty is in law.
6. Criticising the National Trust for making *"risible"* claims, accusing those who want to preserve their towns *"in aspic"* of *"nihilistic selfishness"* or of conducting a *"left-wing smear campaign"* is unworthy of government. This sort of intemperate language seems designed to close down legitimate debate on a subject of great importance to people who are understandably very worried about the proposals.
7. It is evident that the Government, through the NPPF, is seeking to achieve three things:
 1. Getting rid of red tape and streamlining the planning system;
 2. Encouraging economic growth;
 3. Meeting housing needs.This Association's response will address each in turn and will conclude with more general comments.

Getting Rid of “Red Tape” and Streamlining the Planning System

8. In his introduction to the NPPF, the Minister for Planning says: *“In order to fulfil its purpose of helping achieve sustainable development, planning must not simply be about scrutiny....people have been put off from getting involved because planning policy itself has become elaborate and forbidding – the preserve of specialists, rather than people in communities”*.
9. In the first place, rules are safeguards against the greedy and acquisitive, and must therefore imply a high level of scrutiny; and in the second, of course communities don't get involved in the intricacies of planning which is why, through community charges, they pay for the services of qualified planning officers at their Local Planning Authorities - rather in the same way that a businessman pays for an accountant to manage his tax affairs.
10. It has been disclosed by the Sunday Times that three of the group of 4 experts who were parties to the drafting of the NPPF have interests in property development, and that the Framework commissioned by the Minister for Planning had no benefit from the input of civil servants, trained to flag up political and legal minefields; and that the Framework has not been stress-tested by the Chief Planning Officer and other senior civil servants.
11. It has also been reported that the one “outsider” in the Group of 4, an environmentalist who was asked to help write the new reforms has publicly stated that he cannot support the proposals now on the table. In repudiating the proposals, Mr Simon Marsh of the RSPB says: *“The essence of good planning is meeting the needs of people, the economy and the environment – and these reforms are threatening that approach....”* More tellingly, he goes on to say; *“After we published our draft, the Department for Communities and Local Government (DCLG) beavered away to turn it into an official Government draft. That meant changes not only from them but from other departments across Government, including those who don't place a high value on either the environment or the planning system. With changes like that on top of a flawed draft, the result is a document that sets out a markedly different emphasis for the future of the planning system....Ideally, the presumption in favour of sustainable development would be just that – a presumption that unless development can prove it is sustainable, against a robust series of tests, it should not go ahead. In the draft*

NPPF, however, it reads more like a presumption in favour of development with the “sustainable” tacked on to quieten the greenies.” (Emphasis added). All of this adds up to a shocking indictment of the draft from one of its co-authors - a man who spent 5 months on its preparation.

12. All the discussions regarding loosening of planning regulations fail to acknowledge one truth: all planning regulations, no matter how restrictive, are already prejudiced in favour of developers. Developers can present proposals time and time again, with only minor amendments each time. They have only to win their argument for approval once, no matter how strong the opposition. Opponents have to win every time. Once approval is given, development can take place. There is, for example, never an opportunity for the opponents to apply to have the development refused other than through a prohibitively expensive judicial review at the High Court.
13. The codifying of behaviour by rules in sport makes them what they are today. They are there to curb unfair competitiveness and to prevent free-for-all bloodbaths. Analogously, the rules (PPGs PPSs, LDFs etc) have evolved and matured over time and for very good reasons. They were developed as a reaction to the urban sprawl that disfigured Britain in the 1930s and 1950s. A carefully evolved system of checks and balances has been junked in favour of a presumption that big development will get its way.
14. The Prime Minister claims that the current system is *“overly bureaucratic and slow”* but has he stopped to consider that it is the rules themselves which protect communities with no resources, to share a quasi legal platform with developers who enjoy almost limitless resources? It is exactly these rules which allow for democratic fair play. The Planning laws may have been reduced to 52 pages but in this case brevity is by no means a virtue in or of itself, precisely because the NPPF has sacrificed clarity in pursuit of brevity. A *“presumption in favour of sustainable development”* is presented by the proposed reforms as *“a golden thread”* running through the planning system. So far ministers have refused to define this – causing lawyers to go weak at the knees at the prospect of lucrative litigation – but it is clear from the detailed proposals that it means whatever, other than in really exceptional circumstances, would be of most benefit to developers.

15. Environmental laws, for that is what they are, are profoundly important which is why they do not fit into the commonly understood definition of “Red tape”. For example, much of this Borough is floodplain (both fluvial and pluvial) yet the withdrawal of Planning Policy Statement 25 which was only published in 2006 leaves the draft Framework *“devoid of the definitions, context and technical guidance necessary to provide essential structure and consistency to the assessment of flood risk from new development”*¹. Absence of such safeguards will damage existing settlements which is likely to occur where patterns of water flow are ruptured. Building over aquifers disrupts the mechanism whereby rain and snow falling on open land are filtered and slowly released into waterways. Instead run-off will increase and be harder to counter. How will the NPPF safeguard communities against such eventualities?
16. In evidence to the Audit Committee, the UK Environmental Law Association said the proposals in the NPPF were so flawed that *“the system may well stumble and fall before it can find its feet”*. The vagueness of the draft would be a field day for planning lawyers, but only if applications are refused. Even if it makes sense to reduce the number of pages of planning policy, the number of loosely worded and overarching statements within the NPPF means that in practice they will not become clear until case law is established through the appeal system. Alternatively, reams of guidance will need to be written to clarify what the Government means. This is precisely how current planning regulations have evolved in the form of PPGs and PPSs which guide us to this day.
17. Proposals contained in this framework will founder in a flood of legal challenges and lengthy court cases. Joan Walley, Chairwoman of the Parliamentary Environment Audit Committee said that the proposals were so lacking in clear definitions that if they were brought in unchanged, it would be a “lawyers’ free-for-all”.
18. David Symons, a director at the global environmental consultancy WSP Environment & Energy says *“Without a clear definition, different planning authorities will interpret sustainable development differently. Some will focus just on what is proposed, others will focus on the design while still others might focus on the impact of the building process itself. Planners and developers alike will be uncertain about what is required.”*

¹ Charles Tucker, Chairman National Flood Forum.

19. A barrister in a Bristol law firm has said *"We don't think the way it's phrased at the moment is going to speed up or simplify anything. It will just provide more fodder for argument"*. She agreed that it would be a financial benefit for lawyers adding *"It will lead to more appeals, more inquiries, more legal challenges. The problem lies in the vagueness of the definition of 'sustainable development'"*.
20. Caroline Nicholas of the United Nations Office of Legal Affairs is even more scornful, saying; *"My fellow lawyers will be rubbing their hands in glee at the prospect of fees for litigating an undefined new 'presumption in favour of sustainable development"*. Perhaps some of them might challenge implementation of the new planning framework on the basis that any rules issued under it would be unreasonable in the 'Wednesbury' sense"² Stephen Tromans, QC and Martin Poldman of the Environmental Law Foundation write that *"The Framework will promote the adversarial tendency in the planning process, not the partnership that the Government encourages. We see increased recourse to judicial review....There is still time to rethink the draft and avoid unintended consequences"*.
21. Shaun Spiers, the Chief Executive of the Campaign to Protect Rural England says *"We do need to build more houses, particularly affordable houses, but anyone blaming the planning system for the slump in house building is ignoring the facts....Developers are sitting on vast land banks with planning permission. The reason they are not building enough houses is that the market has collapsed and investment in social housing has been cut. It has nothing to do with the planning system"*.
22. There is simply no evidence, beyond the howls of lobbyists, that land-use planning impedes growth. Most planning applications are handled within the three month target, and fewer than 1% take more than a year; approvals were 87% in 2009-10 and 80% of those that went to appeal were approved. Additionally 90% of big commercial applications were approved. If a development is to occupy a plot of land for say, the next 50 to 100 years, is it not right that the application should be properly tested against the strict environmental rules that govern town planning?

²Meaning they are irrational. If a presumption is incomprehensible, how can a reasonable person apply it? ***Associated Provincial Picture Houses v Wednesbury Corporation*** [1947] 1 KB 223 is an English law case which set down the standard of unreasonableness of public body decisions which render them liable to be quashed on judicial review. (Hence, ***Wednesbury unreasonableness***.)

23. The NPPF does not represent a reform of the present system but, rather, an attempt to dismantle it and thereby abandon the cherished protection of the Green Belt and countryside. Also abandoned will be towns and cities which, with the removal of the priority currently given for development of brownfield land, will continue to suffer the waste and unsightliness of derelict sites. (In this connection it's interesting to see that a highly relevant requirement is buried in the small print of footnote 5 on page 30).
24. And what about the pre-election promise to local people *"to specify what kind of development and use of land they want to see in their areas"*? More depressing still is the way ministers have abandoned their previous commitment fundamentally to *"rebalance power away from the centre and back into the hands of local people"* – one of the most deeply held, and attractive, tenets of the government when in opposition.
25. Localism will mean that residents will not only have to say "no" to development plans, but will also be forced to pay through the community charge the high costs of fighting the appeals. Alternatively, it will be a charter for poorly trained planning officers to hide behind the framework and to use the framework's imprecision to exculpate themselves when making controversial planning decisions.
26. Local authorities would only be able to refuse planning permission in exceptional circumstances when the damage done by a development would *"significantly and demonstrably outweigh the benefits"*; no easy thing to demonstrate especially under the ferocity of legal advocacy. Even where councils choose to make a stand against inappropriate development, the going rate to fight a planning appeal is around £50,000. Councils will simply be unable to afford to contest them with the consequence that applications will be approved no matter how inappropriate for their communities.
27. Cash strapped councils will wave through developers' proposals in exchange for large sums that could be spent on local authority services. Under section 106 of the 1990 Town and Country Planning Act, developers are required to contribute towards local infrastructure by, for example, building new roads around development estates. Under the new proposals (*"Community Infrastructure Levies"*), councils would be able to use these funds to prop up any of their services. At a time when many local services are under threat of cuts or closure, they will find it hard to reject large developments with the potential for setting councils against their communities. Andrew George, MP

for St. Ives makes the point: *"If [councils] are financially incentivised, they may give permission where they might not otherwise have done. It is clear they will be thinking about the income rolling in to the council....They will be looking at the planning gain, which I call bribes. It will skew planning decisions in a way which they may not otherwise go."*

28. **If the concern is delay in the planning process, then the correct action is administrative reform, not destruction of the policy structure.**

Encouraging Economic Growth

29. A spokesman for the National Trust has said: *"Not only does the process seem to be flawed, the framework is wrong in its overall tone: planning should not be used as a tool to deliver economic growth, and as it stands it will result in inappropriate development which will scar the landscape forever"*.
30. The proportion of approved planning applications has been described at para. 22 above. It will be seen that under the present arrangements, 95 percent of applications succeed. How can the developers possibly complain about this success rate? What evidence has the Chancellor got that the *"planning system is holding up growth"*? A House of Commons Committee that examined such claims found that they were made *"without evidence"* and no one seems to have produced any since. The dogged insistence that the planning process damages growth would therefore appear to be unproven.
31. Even if a case for growth were supportable, it is difficult to see how the Treasury would benefit, at least in the lifetime of this Parliament, if there is no compulsion to develop once plans have been approved. The NPPF will simply facilitate a market place for applications to be bought and sold. If this problem were to be overcome, and the Chancellor is really serious about growth, there should be a compulsion to develop straight away or lose the planning permission; and all current plans should cease to be extant, with sites becoming vulnerable to compulsory purchase in default.
32. In his "Plan for Growth" issued in the last budget, the Chancellor complained that on average it takes more than twice as long, 95 days, to go through the procedures to build a warehouse in the UK as the USA. That figure comes from the "Doing Business" rankings of the International Finance Corporation and the World Bank. What the

Chancellor failed to mention is that the rankings also show Britain's 95 days to be far below the developed country average of 166 days, and make it the third fastest country in western Europe.

33. The Government must accept that the planning system does not exist primarily to drive through economic growth but rather, to protect the long-term interests of both countryside and town. Such growth that might accrue from development should be viewed as a favourable economic by-product, not as an end in itself. The Chancellor claims that *"planning delays cost the economy £3bn a year"*, and are *"a deterrent to international development"* but, at the time of writing, this figure has not been authentically sourced but appears to have come from the British Property Federation. There is a great deal of myth propagated by the construction industry and this would appear to be an example of it.
34. Tim Yeo, Conservative MP for Suffolk South has said *"I'm not convinced that facilitating planning for residential development is essential for economic growth. I fully understand the reasons for concern. It's a highly sensitive area.... We've seen that happen in other countries and we really don't want it happening here"*. Nick Reeves, Executive Director of the Chartered Institute of Water and Environmental Management puts it even more plainly: *"A new planning framework is an opportunity to do things better but, sadly, this government's proposals are little more than a builder's charter and a sop to the powerful construction lobby."*
35. An example of the Government's myopia in relation to the countryside as a vehicle for economic growth may be found in a letter from the Ramblers to its 115,000 members (September 2011). *"For any walker [The English Coastal Path] would be the ultimate path. It would encompass exhilarating cliff-top walks, breathtaking shorelines, and abundance of wildlife and millions of years of earth's history. The path would be a landmark creation, loved by many generations of walkers as well as breathing new life to our coastal villages and seaside towns.... And we could be about to lose it before any of us have even set foot in it.... Our plans for the English Coastal Path are in danger of grinding to a halt – and they've barely started.... Two years ago, thanks to the support of people like you, the Ramblers secured the Marine and Coastal Access Act. This groundbreaking legislation opened up the prospect of one continuous route along the entire coast of England.... But a shift in government focus now means that this amazing coastal path has dropped to the bottom of the priority list. The planning and design of*

the route is being delayed and there is a lack of commitment from those in power to create this wonderful path around the entire English coast. At this rate the dream of a national trail that explores England's stunning coastline may remain just a dream"

(Emphasis added). Now, if ever there was an opportunity to stimulate growth in the rural economy this would be it. The British Tourist Board would delight in promoting the continuous coastal path, a world's first for an Island nation, to attract both home and overseas visitors to England and without having to go back to Parliament to do it. Sadly though, for the Government advisers, this initiative does not involve development (at least not on the scale or type they have in mind). Bill Cash, Tory MP for Stone said: *"My argument is the economic benefit of a beautiful landscape...In practical terms, we have to get the balance right so that the value of landscape or heritage asset is all given the same kind of criteria in terms of economic benefit as any other parts of the country".*

36. Frank Mc Donald the Environment Editor of the 'Irish Times' says: *"Ireland offers a sad and salutary lesson in what not to do; its liberal planning legislation has led to a despoiling of the countryside with consequences that will take years to unravel....The knock-on effects of liberal planning policies over several decades have been ruinous not just for the countryside, but also for towns and villages; as residential development spreads outwards, many are losing population rather than being reinforced. The British Coalition's "presumption in favour of sustainable development" could be similarly devastating....Notoriously, Dublin's commuter belt now extends to 100 kilometres – roughly on a par with Los Angeles....there's now time to reflect on the mess we've made of our once beautiful Country. Britain would do well to reflect on it, too."* Paul Stack, a senior planner in Co. Kerry said *"I drove around areas such as the Cotswolds and to see the tourism product they have in comparison to what we have done to ours is embarrassing and upsetting".*

37. Northern Ireland, too, had a planning policy which presumed in favour of development and it was abandoned but not before huge harm had been done to its countryside as unscrupulous developers and acquisitive landowners built with little or no control. It is sad that the Government refuses to acknowledge protection of the countryside as one of the greatest achievements of our planning system and with it, the incremental benefits to the rural economy. One only has to see how the Celtic Tiger mauled Irish landscape to understand what England may face. *"Why should the countryside be*

sacrificed on the altar of the greed and incompetence that has resulted in the national deficit” (as one correspondent to a national newspaper put it). In short, **There must be protection of the countryside for its own sake and a presumption that development will go first to brownfield land.** According to authoritative sources, there are enough brownfield sites to build more than 1.2 million homes so it is indeed mystifying why the draft has dropped the prioritisation of developing brownfield sites over greenfield sites.

38. The Minister for Planning has said *“For companies expanding or relocating, they need a new building, and it’s crucial that when they’re thinking of Britain as a place to relocate they know they won’t have to wait years with vast expense and uncertainty”*. In contrast, a recent Grimley³ Industrial survey put commercial space availability as *“the highest for 14 years. The business park vacancy is 17%”*. Whatever is causing the recession, it is not land shortage. Even if it were, The Planning Officers’ Society has told Ministers that the Framework would make it harder for small businesses to grow because land now set aside for such enterprises would increasingly be used for housing instead.
39. The much-cited fall in house completions to 140,000 last year had nothing to do with planning and everything to do with economy. Housing supply correlates with the economic cycle and the availability of mortgage finance. The argument confuses “housing need” with “housing demand”. The economy is not short of building land. It is short of cash. Short term political desperation has produced a conflation of the two distinct concepts.

Meeting Housing Need

40. The big housebuilders and their lobbyists have for years been colluding with governments to blame the planning system for housing shortage. Governments of all parties have for decades declared the need for more homes to be built so that prices would become affordable. The Planning Minister claims that the reforms are necessary. (*“We have a crisis of housing and growth in this Country that needs to be addressed”*) yet, in this Associations’ experience that is often the last thing developers want. They are more than happy to restrict the supply to support their profitable

³ GVA – The top UK adviser on Commercial Property and Property Management

margins.⁴ Developers will switch from brownfield to greenfield without necessarily building more houses because its much cheaper (and therefore more profitable) to build on virgin land. In September 2011 Steve Morgan, Chairman of housebuilder Redrow described dealing with Britain's planning restrictions as a *"living nightmare"* and dismissed opponents of the NPPF as *"selfish, emotional scaremongers"*. He then announced a £25.3m pre-tax profit for the previous year, up from £700,000 in the previous one! As the writer and broadcaster Jonathan Dimbleby wryly observed *"I was struck by the number of times 'business' appears in the document, which is about 300 times, and the number of times 'countryside' appears, which is four times"*.

41. The Prime Minister defends the draft framework saying *"We need to build more houses, to help more young people to get on the housing ladder."* The Minister for Planning says *"The consequences [of turning our backs on his reforms] would be to deny our young people the chance of owning a home...."* Both statements reveal a fatal tendency to confuse cause and effect. The average deposit required to buy a house has increased tenfold to almost £66,000 since 1990. Deposits have grown at more than double the rate of house prices, making it hard for millions of Britons to get a foot on the housing ladder. The amount of money required for a deposit is spiralling because mortgage companies have cut back on the amount of money they are willing to lend. The average deposit required to buy a house in 1990 was £6,793 with a loan-to-value rate of 88 percent. Today it is £65,924 with a loan-to-value rate of 73 percent.⁵ It is for this reason that more young people can't get onto the housing ladder, not the lack of housing. In this connection, The DCLG would do well to refer to the excellent book, *"Jilted Generation: How Britain Has Bankrupted its Youth"* co-authored by Ed Howker.
42. Property developers are sitting on an estimated 347,000 plots with planning permission for new homes.⁶ The "land banks" are enough for more than two years of

⁴ From experience, this Association knows that developers are not altruistic and are extremely reluctant to provide affordable housing. The reasons given: Affordable housing eats into their profits and 2. The more affordable housing provided on a site, the greater the impact on the market valuation of the houses which remain. One developer even confided to the author that "They lower the tone. Who wants to live next door to dross" For this reason they go to inordinate lengths to reduce the AH requirements.

⁵ Bruno Genovese, First Direct, Sept. 2011

⁶ A survey of the top 20 building companies has revealed they are holding 347,240 plots of land with some form of planning permission, 170,000 of them in London. Plots of about a tenth of an acre without any form of consent take the total to 671,000. Bovis, one of the main developers, has said that as "visibility over the effects of the changes to the planning environment improves, the group intends to increase its investment in strategic land (land without planning permission). Taylor Wimpey bought nearly 5,000 more such plots in 2010 than it did in 2009. The developers land bank now includes 77,000 plots that have no planning permission. (Sunday Times).

housebuilding but where no construction has taken place. Mr Stewart Basely, executive chairman of the Home Builders Federation (HBF) accuses environmental groups of ignoring the “*acute housing crisis*”. Given the size of the land bank, his claim is quite simply breathtaking. Whitehall documents suggest that the planning changes could lead to more than 1000 extra “major developments” being approved every year. In reality and without any compulsion to develop, these additional approvals will serve no useful purpose other than to be shown as appreciating assets on the balance sheets of developers.⁷ If there is to be any change in the planning laws it should include a legal requirement for planning authorities to ensure that realistic construction schedules and funds are in place before permission is granted to start building. In default, permissions would cease to be extant. (See also para. 30 above). Such a measure would at least go some way to giving credibility to the stated intentions behind the draft. It should be remembered that the developers also held similarly sized landbanks in the good times when credit was much more freely available, preferring to hang on to it so as to benefit from its increasing value.

43. If it were that unfulfilled (and affordable) demand were truly an issue, surely developers would have started to build on the 347,000 plots already approved for development. Developers have stopped building more homes, not because the planning system prevents them as the planning minister says, but because, for the reasons given, demand for them has dramatically reduced in recent times due to unavailability of credit. Oliver Letwin, the Cabinet Minister who oversees policy recognises this too and calls into to doubt the Coalition’s policy saying that “*the main issues were a lack of demand for homes and problems for developers in raising finance*”.
44. In France, in the National Assembly of Deputies has faced down similar demands from developers and are instead investigating the redevelopment of unused properties in Paris and the immediate suburbs. Pursuing this option in London and other major cities would be less costly than new building, though admittedly less profitable for developers. Such a measure would meet the Government’s objective of providing homes where employment is more readily available whilst avoiding the prohibitive costs of travelling into city centres. Scotland, Wales and Northern Ireland will also

⁷ The Borough of Spelthorne, in which this RA is situated, currently has on its books planning permission for 554 houses which are yet to be build. In addition a further 500 dwellings await s.106 agreements before proceeding to development.

escape the planning blight that could hit England. Each of the three has its own national strategies that decide where it is appropriate to allow new development and have very clear definitions of what constitutes “sustainable development”.

45. In England no brown or greenfield sites should be developed until builders have substantially used up the land bank already in their hands. Simply giving developers the green light to build what they want rather than what the country needs is hardly sustainable. It is also impossible to square the Government’s approach with its supposed commitment to localism. Any revision of the policy **must** include a rewording of the “presumption in favour of development” and grant unambiguous powers for local plans and communities to override it. Of particular concern is the indication in the draft framework that a local authority should always grant planning permission “*where the local plan is absent, silent, indeterminate or where relevant policies are out of date*”. This will be a charter for planning lawyers to argue about the inadequacies or otherwise of local plans, and will add to the difficulties of local authorities in their defence of planning refusals.
46. Just six weeks before the draft NPPF was published, the Natural Environment White Paper was issued; this seems to have come from a different government altogether. The White Paper promised that “*through reforms of the planning system, we will take a strategic approach to planning for nature within and across local areas. This approach will guide development to the best locations, encourage greener design and enable development to enhance natural networks*”. There does not appear to be any joined-up policy making in evidence here.

General Comments

47. The draft Framework contains a new requirement requiring local planning authorities to set aside “*at least 20 percent*” extra land for housing. Spelthorne Council (in which this RA is situated) does have a local plan that was subjected to an Examination in Public (EIP) before being approved by the then Secretary of State. It did not require that 20 percent extra land should be set aside (in common with the majority of local plans it is suspected). So, even where local approved plans exist they will, according to the NPPF, surely be “*out of date*” and therefore prey to the developers’ free-for-all. In short what the NPPF is saying is that if you do not have a plan, hard luck, you will be vulnerable to any application for development; and even if you do have a plan, it will

be out of date because you haven't complied with a completely arbitrary requirement which was not in existence at the time your plan was passed. Despite assurances by the Prime Minister to the contrary, it will be easier to build on Green Belts as some councils won't be able to find their extra 20 percent of housing land without encroaching on them. No account has been taken of the vast land banks which have been in existence for many years and pre-date the current era of credit crunch. John Howell, the Conservative MP and a parliamentary adviser to the planning minister has warned that property developers could be free to build "*what they like, where they like*" under the changes. (presumably where local plans have either not been written or 'are out of date' – ie because they haven't set aside 20 percent extra land for development). In short, there are no reassurances that local plans will not be trumped by the Government's centralised planning rules.

48. Researchers at the independent House of Commons library have said that the Government's legal presumption in favour of sustainable development will apply "even within the Green Belt" Other planning documents from the DCLG have offered clearer protections for the green belt but since those assurances are not contained in the main framework they would "*probably not*" carry any weight in individual planning decisions. The framework's legal presumption tells councils to "*plan positively for new development, and approve all individual proposals wherever possible*". Ironically, the Planning Minister, as MP for Tunbridge Wells has until now been a long-standing advocate of giving local communities more power to decide on planning applications. In 2007, he strongly opposed the Labour government's central target for building 6,000 homes in his constituency.
49. There is nothing in the draft that would enable people to protect beauty in the wildest sense, either by protecting landscapes outside protected areas, or by turning down ugly buildings. Such limitations are antithetical to the philosophical thrust which underpins the concept of "localism". In his book *Visions of England* Roy Strong makes the point very eloquently saying that the countryside remains the "*touchstone of English identity*".
50. What about the economic premium that will attach to agricultural land in 50 – 100 years time? Will the notion of "sustainability" capture the future supply implications for a population set to increase to 70 million by the middle of the century? The NPPF,

perhaps unsurprisingly given its authorship (see para. 52 below), is silent on such matters.

51. In its submissions to the NPPF consultation, Sport England warns that the new legislation “significantly weakens the current protection on sports facilities....” Only one in five clubs owns its facilities, while two in three hire.... This means the majority of clubs are reliant on sports facilities in public spaces.”. Is Sport England’s claim that the NPPF significantly weakens the current protection on sports facilities correct? If not why not?
52. John Rhodes, a leading planning consultant who helped write the draft NPPF has stated that local residents are not meant to be able to “resist” new developments under the proposals. He said the new rules would inevitably mean “more development, not less” despite ministers’ promises to give residents more powers. It is noted that Mr Rhodes was one of the four expert advisers who wrote the first draft of the NPPF and his consultancy, Quod, advises clients including Asda, Comet, Furniture Village and 10 housing developments in London. Apart from Mr Marsh who is seen as a mere concession to the environmental lobby, and who has since denounced the draft (see para.11 above), it’s more worrying that the remaining three co-authors should have such obvious vested interests. Apart from Mr John Rhodes, Peter Andrew is a director of Land and Planning at Taylor Wimpey which already has enough land to build 140,000 houses; and Gary Porter, Conservative leader of south Holland district council has set up its own housing company. Key sections of the panel’s draft rules are repeated word for word in the government version, including most controversially the declaration that *“At the heart of the planning system is the presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision making.”* Putting foxes in charge of the chicken coop would be an appropriate epithet⁸.

⁸ Perhaps the most powerful evidence of the NPPF’s self-serving authorship may be found at Para. 21: *“Supplementary Planning Documents should only be necessary where their production can help to bring forward sustainable development at an accelerated rate, and must not be used to add to the financial burdens on development”*. (Emphasis added). However, in his introduction to the document, the Housing Minister says: *“Our standards of design can be so much higher. We are a nation renowned worldwide for creative excellence yet, at home, confidence in development itself has been eroded by the too frequent experience of mediocrity”*. SPDs are precisely the means by which the Minister’s statement will be given teeth; and will necessarily imply some expense for those developers who have little or no regard for the aesthetics or separation distances (for example) which might be specified within SPDs. In short they are the vehicle by which *“confidence in development itself”* might stand any chance of being achieved. Paragraph 21, arguably more than any other, suggests a complete absence of ministerial oversight in the preparation of the NPPF.

53. It is also very worrying to discover through the national press that the Minister of Housing at a recent Conservative Party Conference spoke at a platform sponsored by Taylor Wimpey, a director of which served on his advisory group; and that the Conservative Party had benefitted from £3.3m over the past three years.
54. Government claims that the Localism Bill will restore power to the people appear to be misleading. The Bill encourages “local” decisions on planning but only if they are decisions which favour more development. This is not localism by any definition but extreme centralism, where a development-led agenda is the only legitimate option for local communities.
55. The new policy would scrap the present requirement that 60 per cent of new housing should be built on previously developed ground. As Geoffrey Lean⁹ pointed out *“That policy exceeded all expectations with up to 80 per cent of new homes constructed on such brownfield land in recent years – up from 55 per cent in 1989. Between 1995 and 2007, 117 square miles of it were developed for housing, an area of open countryside more than six times the size of Southampton would have been swallowed up.”* The Homes and Communities Agency estimates that there is enough brownfield land for three million new homes without using an acre of countryside.

Conclusion

56. Over the past 25 years this area has seen an explosion of housing developments without supporting increase in local infrastructure. It is envisaged that the consequences of the NPPF will be as follows: Developers apply for planning permission on inappropriate sites - Planning Authority refuses permission – Developers appeal – Lawyers on both sides rack up huge bills arguing what “sustainable development” means - High proportion of appeals successful – Local planning authorities wilt and concede future applications to avoid bankruptcy – communities left feeling angry and betrayed.
57. A letter to a national newspapers reads as follows: *“As past Presidents of the Royal Town Planning Institute, this is the first time in more than 50 years that so many of us have come together to sign a public letter”* (with 23 signatories) *“....the unintended consequences of this haste are greater confusion, uncertainty for the development*

⁹ Environment Editor, Daily Telegraph

industry and anxiety for communities". This is perhaps the most significant and authoritative contribution to the current debate and neatly encapsulates the sentiments expressed in this Association's response.

58. Much has been achieved by the planning system: our cities have been regenerated and urban sprawl contained; our countryside has been protected; our coastline has been protected, as have our conservation areas. We are one of the most densely populated countries in the world but we still generally enjoy a high quality of environment thanks to the planning system as it exists today. It is no exaggeration to say that this Association's reaction to the draft NPPF is one of dismay and disbelief.

59. This Association urges the Minister to reconsider this deeply flawed and controversial document. The NPPF is after all a consultation document and, as such, no Government U Turn could possibly be alleged or inferred were it to be shelved. In the words of Sir Angus Stirling, Director General of the National Trust; *"It [The Framework] bears to the hallmarks of having been written by individuals with a vested interest in development. It is not an effective instrument of local democracy"*.

John Hirsh, Hon. Chairman

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