

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 06 February 2023

Portfolio:	Planning and Development
Subject:	The Levelling Up and Regeneration Bill – Planning Policy Consultation
Report of:	Director of Planning and Regeneration
Corporate Priorities:	Providing Housing Choices Protect and Enhance the Environment Strong, Safe, Inclusive and Healthy Communities Maintain and Extend Prosperity

Purpose:

To provide the Executive with an overview of the proposals contained within the Government's Levelling Up and Regeneration Bill consultation, and to seek approval for the submission of the consultation response, at appendix 1.

Executive summary:

The Government has launched a consultation on planning policy reforms entitled 'Levelling-up and Regeneration Bill: reforms to national planning policy'. The consultation ranges from discussing proposals that will be brought in as part of the Bill, or subsequent secondary legislation, to changes that the Government hope to bring forward through amendments to the National Planning Policy Framework (NPPF) this spring. The Government further commits to a 'wider review' of the NPPF later this year. Therefore, the consultation contains three sets of proposals to reform the planning agenda, with the most sweeping of changes to the plan-making system being introduced in 2024 onwards.

The consultation closes on 2 March 2023 and this report considers the impact of the changes from the perspective of Fareham in its South Hampshire context.

Recommendation:

It is recommended that the Executive;

- (a) considers the content of the report and approves the suggested approach to the Council's response; and
- (b) delegates authority for the final consultation response to the Director of Planning and Regeneration, following consultation with the Executive Member for Planning and Development.

Reason:

To respond to the Government's consultation on planning policy reform, expressing the views of the Council.

Cost of proposals:

There are no direct financial implications related to responding to this consultation

Appendices: **A: Draft response to the consultation**

Background papers: **None**

Reference papers:

Consultation document <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>

Proposed new NPPF

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126647/NPPF July 2021 - showing proposed changes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126647/NPPF_July_2021_-_showing_proposed_changes.pdf)

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Executive Briefing Paper

Date:	06 February 2023
Subject:	The Levelling Up and Regeneration Bill – Planning Policy Consultation
Briefing by:	Director of Planning and Regeneration
Portfolio:	Planning and Development

INTRODUCTION

1. The Government opened a consultation on planning reform on 22nd December 2022. It is a wide-ranging consultation on proposals both for immediate implementation in a revised National Planning Policy Framework (NPPF) which is presented alongside the consultation document as a tracked change version of the current NPPF. The consultation also includes proposals linked to a wider review of national planning policy scheduled for later in 2023, and proposals which will come through the Levelling Up and Regeneration Bill in 2024.
2. The suite of proposals includes the following;
 - The calculation of housing need and the application of local constraints and character in attempting to meet that need,
 - Changing the circumstances in which the five-year housing land supply requirement needs to be demonstrated,
 - Addressing issues relating to housing delivery and land supply tests as they relate to local authority performance,
 - Increasing the accountability of developers and data regarding their performance on housing delivery,
 - Promoting more beautiful homes, including through ‘gentle densification’,
 - Safeguarding existing biodiversity on sites proposed for biodiversity net gain,
 - Making sure that food security considerations are factored into planning decisions that affect high quality farmland,
 - Seeking views on how planning policy could address climate adaptation, alongside ongoing work on flood risk assessments and exploring a form of carbon assessment for development,

- Enabling new methods for demonstrating local support for onshore wind development,
 - Outlining the programme of transition from the current method of Local Plan preparation to the new approach following the enactment of the Levelling Up and Regeneration Bill
 - Outlining the approach to preparing National Development Management Policies.
3. The consultation closes on 2 March 2023 and the Government have suggested that they will respond to the consultation in the spring, publishing an updated NPPF as part of that response.

FAREHAM'S CURRENT PLANNING STRATEGY CONTEXT

4. Members will be aware that the Council's emerging Local Plan 2037 is currently at examination stage. This process began in September 2021 and whilst the hearings concluded in April 2022, the Inspector has since requested two further consultations, the most recent of which concluded in December 2022. This latest consultation was on a series of modifications to the plan which the Inspector considers necessary in order for her to conclude that the plan is sound, with those modifications. The Inspector has received the thirty-eight responses that were received to that consultation, alongside the Council's views on the consultation responses. It is very much hoped that the examination process is near to the end and will be officially completed when the Council receives the Inspector's report.
5. Importantly for the Council's decision making is the consideration of when planning decisions need to be made in the context of the presumption of favour of sustainable development, often called the 'tilted balance'. There are two routes to this situation; one because the Council cannot demonstrate a five-year housing land supply, but the other is when the Council's results for the Housing Delivery Test falls below a certain level.
6. On the first point, the Council has not been able to demonstrate a five-year housing land supply since late 2017. However, this situation has improved recently, due to the improved position on planning permissions and a report to the Planning Committee on 25th January 2023 confirmed that the Council's five-year housing land supply position is now 5.49 years, based on our current housing requirement of 541 dwellings per annum and applying a 20% buffer to the calculation (see paragraph 7 for the explanation). This is a situation that is anticipated to continue as the Council adopts the Local Plan, as one of the purposes of Local Plans is to confirm a five-year housing land supply going forward. Therefore, the application of the tilted balance due to our inability to demonstrate a five-year housing land supply should be less of a consideration for the Council and its Planning Committee in future years.
7. On the second point, the Council must also apply the presumption of sustainable development if the results from the Housing Delivery Test (HDT) fall below 75%. The HDT measures the number of homes delivered against the housing requirement over the previous three years. Members will recall that the HDT was introduced in 2018 to measure the number of homes required over the previous three financial years against the number of homes actually built, or delivered. Councils have often complained that this is an unfair test given the Councils' often limited role in actually building houses, and particularly as there are different sanctions applied depending on how poor the results are. If results are below 95% of the requirement, then the Council must produce an action plan setting out how it plans to rectify the situation. If results are below 85% of the requirement, the Council must apply an additional 20% 'buffer' to its five-year

housing land supply requirement (which essentially means that permissions should be granted for an additional 20% of homes above the required number in order to avoid the situation where decisions on future planning decisions needs to be taken in accordance with the presumption in favour of sustainable development, the aforementioned 'tilted balance'. If results are below 75% of the requirement, then the council must apply the tilted balance in any case. This is the position that the Council is currently in (see paragraph 7).

8. The latest results covered the period April 2018-March 2021, which were published in early 2022, and showed that 62% of the number of homes required were built. Therefore, the Council must both apply the tilted balance to its planning decisions and add a 20% to the forward-looking five-year housing land supply calculation.
9. The HDT results for the period 2019-2022 would normally be expected to be published in early 2023, but have not yet been published. The Local Plan has been prepared in full acknowledgement of the challenge that poor results in the upcoming HDT 2019-2022 might bring the Council, however, the fact is that under the current terms of the HDT, even with a newly adopted Local Plan, the Council will need to apply the presumption in favour of sustainable development until early 2024, assuming that housing delivery in the Borough precedes as currently projected.

TIMING OF CONSULTATION IN RELATION TO FAREHAM'S EMERGING LOCAL PLAN 2037

10. Officers have undertaken a full review of the consultation in relation to the progression of the Local Plan and consider that none of the proposed changes will impact the conclusion of the examination process of the emerging Local Plan for Fareham. This is because there is clarity that these changes will not take effect until Spring 2023. The Government will need time to review the responses before pressing ahead with the changes and so this is likely to be April or May given that the consultation closes in early March. It is anticipated that the Inspector's report on the Local Plan will be received in advance of this, which will conclude the examination.
11. The narrative within the consultation is strongly supportive of Local Plans and suggests that only 40% of Councils have up to date plans. Many of the proposals are predicated on encouraging the delivery of Local Plans.

CONSULTATION PROPOSALS

12. As referenced above, the consultation includes proposals to be brought forward on at least three different timescales. This report attempts to present them in expected chronological order with particular reference to those with the potential to impact Fareham's plan-making and decision-taking functions most profoundly

Changes - Spring 2023

Housing need

13. The consultation has made it clear that should Fareham's housing need change, this will not happen until 2024. This is because the Government has said they will 'review the implications on the standard method of new household projections data based on the 2021 census, which is due to be published in 2024'. Members will be aware that the starting point for calculating housing need is the 2014-based household projections which are now eight years old. It is considered likely that more up to date data on household projections would indicate a lower level of growth, as we know from

published 2021 census data that the number of homes in Fareham grew by 3.9% between 2011-2021 instead of the 8.9% predicted in that 2014-based data set. However, the Government remains committed to delivering 300,000 homes a year in the next couple of years, so what is not known is how any future review of the 2021 census data on household projections would feed into the formula for calculating housing need. In any case, there remains stability in the Government's standard methodology at the present time, for the purposes of moving towards adopting the emerging Local Plan 2037.

'Alternative method' for calculating housing need in limited circumstances

14. There has been widespread dislike of the standard methodology for calculating housing need, particularly as the data used on household projections becomes increasingly out of date. The standard method has, strictly speaking, only ever been a starting point and the Government's current policy is that Councils can put forward a different method if there are 'exceptional circumstances'. There has not been guidance on what these circumstances might be, and it is one of the proposals within this consultation that the Government do set out in planning guidance circumstances where an alternative method might be acceptable.
15. The two examples given are an island with a large proportion of elderly residents, which Officers have taken to apply to the Isle of Wight, or a town or city with a large student population. The draft response includes reference to how Fareham borough also has a higher than average percentage of elderly residents and other characteristics which could be considered to be exceptional, for example its geography 'sandwiched' between the coast and a national park to the north with large urban areas, including large student populations to either side of the borough.
16. In addition, the draft response makes reference to the number of environmental mitigation measures that are required to bring development forward in the Borough. These measures are required to comply with national legislation and therefore should be seen as a significant challenge to addressing housing need in future Local Plans.
17. It is hoped that these characteristics may then be supported by the Government to allow us, in future plan-making cycles, to use an alternative method for calculating housing need. It is however likely that many authorities will be doing the same, and the Government has reiterated its commitment to delivering 300,000 homes a year by the mid 2020s. However, the strengthened clarity that the standard method is only the starting point is to be welcomed, provided that there is an awareness that the requirement proposed in any future Local Plan may be higher or lower than that.

Constraints to meeting housing need

18. In addition to reconsidering the circumstances under which an alternative approach to calculating housing need might be appropriate, the Government has introduced some changes relating to the ability of Councils to meet their need. One of these is particularly relevant to the borough of Fareham. The Government has said that 'if housing need can be met only by building at densities which would be significantly out-of-character with the existing area, this may be an adverse impact which could outweigh the benefits of meeting need in full'. This could be an argument that could apply to future Local Plan cycles as the capacity of the borough diminishes and the availability of suitable sites reduces. It might be the case that in order to meet the need, the number of homes built within a particular size of area is too great in design terms (typically because the type of development, e.g. flatted blocks, are not in keeping with the

character of the existing settlement, or because the height of any building would be out of character). This situation is possible as future Local Plans look to timelines of 2040 and beyond. In those cases, this proposal would provide a justification for not meeting housing needs in full.

19. The Government wishes each authority to develop Local Design Guides or Codes in order to respond to national design guidance and ensure that place-making is consistent with a high-quality standard of design. It will be important for this Council to move ahead with setting a borough-wide design code if it wants to take advantage of this design-led argument in the future. A platform for a Borough-wide code is set out in the strategic design policies of the emerging Local Plan, and design codes associated with particular developments, such as Welborne is becoming more common.
20. Members will be interested to note that the ability for Local Authorities to meet their stated housing requirement has been a regular discussion topic at a Partnership for South Hampshire (PfSH) level. At its December 2022 meeting, PfSH's Joint Committee agreed to prioritise work to understand the sub-regions' capacity for growth in light of the significant constraints, environmental and otherwise, that present challenges to finding sufficient land for housing to meet the current top-down housing targets. The outcome of this work, which is estimated to be the focus of the work over the next three-six months, is that PfSH will collectively be in a stronger position to understand the true capacity of the sub-region and to move forward with a Joint Strategy on housing distribution in the context of potential alterations to calculating housing need from 2024 onwards.

Changes to five-year housing land supply

21. As referenced above, there is a tracked change version of the NPPF that, subject to responses on the consultation, the Government will introduce this spring. One of the changes within that is to remove the need to demonstrate a five-year housing land supply if the Council has a newly adopted plan. There is a point of clarity that the draft response seeks confirmation of, in relation to the precise wording of the redrafted text which states '*as long as the housing requirement set out in its strategic policies is less than 5 years old*' as it is not written as clearly as '*within five years of adopting a Local Plan*' which would be a helpful clarification if that is the Government's intention. However, the understanding is that for a number of years following adoption of the Council's emerging Local Plan, the Council would not be required to justify its five-year housing land position. This is definitely a positive and logical step as part of the purpose for preparing a Local Plan is to secure a five-year supply. The consequence of this is that the tilted balance could not apply to the determination of planning applications for a number of years because of a lack of housing land supply (however, it could still apply because of poor results in the Housing Delivery Test).
22. Therefore, should the Council adopt the emerging Local Plan 2037 before the new NPPF is published in the 'spring', we are unlikely to have to produce five-year housing land supply statements for up to five years and one of the reasons why the Council might need to apply the tilted balance in favour of sustainable development would be disapplied in the early years of the new plan. Should the NPPF be published before the Council has adopted its new Local Plan, the Council would need to demonstrate a four-year housing land supply for a period of two years whilst we moved to adopt the plan. Either scenario is beneficial to the Council, but there is a clear advantage to adopting the plan before the new NPPF is published.
23. The consultation also proposes to remove the need to apply a buffer to the five-year

housing land supply calculation. Members will recall that in normal circumstances of 5% buffer is required to aid 'choice and flexibility in the market', however where HDT results fall below 85%, this is increased to 20%. This is a positive proposal and it is supported in the draft consultation response.

Changes to the Housing Delivery Test

24. Another proposal due to come forward in the Spring 2023 updated NPPF is the inclusion of a permissions-based test in the Housing Delivery Test (HDT). As set out in paragraph 7, this test looks at the past three years' housing delivery against the housing requirement, and there are three penalties should delivery fall below 95%, 85% or 75%. The latest results have resulted in the Council needing to apply a 20% buffer to its five-year housing land calculation and apply the tilted balance to its decision making.
25. The inclusion of a permissions-based test should be welcomed, as it recognises that the focus of a Council's role in delivering homes is the granting of permissions. The purpose of the permissions-based test is that in situations where delivery falls below 75%, the requirement to consider future applications with the presumption in favour of permission could be 'switched off' if the Council can demonstrate that it has permitted a sufficient number of homes, and therefore that the failure to deliver rests outside of the Council's control.
26. However, in order to make sure that the number of permissions will generate the required number of homes being delivered, the Government's proposals are to include a buffer on top of this part of the test. This buffer relates to the number of permissions that are never actually built, termed 'lapsed permissions'. Their evidence suggests that on average the number of permissions that do not translate into homes built on the ground is 15%, and so the proposal is that in order to be able to take advantage of this permissions-based test, a Council must demonstrate that it has permitted sufficient homes for its requirement and an additional 15% of homes. The draft response questions whether this buffer is too high and suggest that locally determined 'lapse rates' should be used to ensure that the number of permissions granted is not excessive. For example, the number of permissions in Fareham borough that do not generate houses being built, ranges between 5 to 10%, therefore we should argue that if a buffer is required on this permissions-based test it should be smaller than 15%.
27. The draft response also makes the point that this Council is likely to be in the odd position of having a recently adopted Local Plan, assuming the Fareham Local Plan 2037 is adopted at a future Council meeting, but will need to apply the presumption in favour of sustainable development due to poor results in the HDT. This is contrary to the plan-led system and therefore, the draft response calls for the abolition of the HDT, at least in situations where the Council has an up-to-date plan.

Design and energy proposals

28. The changes to the NPPF proposed for spring 2023 include greater reference to beauty in the chapter on design, and also to the importance of food production in relation to the value of farmland. There are also changes to the NPPF to support onshore wind development and greater energy efficiency of buildings.

Wider Review – Late 2023

29. This consultation sets out the scope of a wider review of national planning policy to be undertaken later in 2023. There is little detail on these proposals but it is understood

that there will be further consultation later this year.

30. Many of the proposals relate to the potential to introduce measures to encourage developers to build, including publishing data on poor delivery and also measures to support smaller builders who have a contribution to the delivery of homes.

National Development Management Policies

31. This consultation references the introduction of a suite of National Development Management Policies (NDMPs) which will be implemented following the passing of the Levelling Up and Regeneration Bill (LURB) later this year. There is limited idea of the scope of these national policies but there is a commitment to consulting on the detail of them before their introduction. The consultation makes it clear that these policies would be separate to the NPPF with the same weight applied to them as to the development plan, i.e. the Local Plan. This is important because to date government guidance has been of a lesser status in the determination of planning applications than policies within the Local Plan, but the intention is to streamline the Local Plan production process and to avoid repetition of policies that are largely consistent across the country.

Biodiversity and Climate Change

32. Other proposals planned as part of the future wider review relate to the potential for further protection for irreplaceable habitats, such as ancient woodland, and the intention to work with Defra to avoid the degradation of sites before planning applications are submitted, which will be important in terms of calculations of biodiversity net gain. Other proposals that may come as part of a wider review include ways of the planning system making a greater contribution to climate change mitigation and adaptation including the potential for quantifiable carbon reduction guidance for statutory Local Transport Plans.

Ending the Duty to Co-operate

33. Another proposal to follow in the wider review which has been mentioned before in earlier government consultations is the abolition of the duty to cooperate. However, this duty is to be replaced by alignment policy and further consultation will be undertaken to understand what that might mean in practise. This is likely to have implications for the work of the Partnership for South Hampshire, particularly because the consultation is clear that any unmet need arising from authorities which have to apply an 'urban uplift' to their housing needs targets, which includes Southampton, should not be exported to neighbouring planning authorities, unless a voluntary agreement is reached.

Revised Planning System - 2024

34. The final timescale for introducing planning reform is via a revised planning system which is predicted to be in place in late 2024, following the enactment of the LURB and potentially secondary legislation.

Streamlining Local Plans

35. This new planning system largely relates to a requirement to deliver local plans more quickly. Local planning authorities would be required to start a review by five years after the date of adoption of their latest local plan and would have no more than 30 months to adopt the next one. For Fareham, this is likely to mean that we would have to start a review of our emerging Local Plan in the first half of 2028 and adopt it by the end of 2030. The consultation document sets out complicated transitional arrangements for the introduction of a new plan-making system. However, if this Council moves forward with

adopting our emerging Local Plan this spring, these would not affect us.

Taking account of developer's past 'behaviour'

36. Another proposal referenced with the same timescale is the potential to take into account past 'irresponsible behaviour' by planning applicants in the determination of future applications and the Government is seeking views on that proposal. Also of note for this Council, is that Supplementary Planning Documents (SPDs), of which the Council has several including on topics of design, parking and affordable housing would need to be replaced by Supplementary Plans which would carry the same weight as Local Plans, and that the existing SPDs would cease to have effect at an as yet undefined point in time.

SUMMARY AND NEXT STEPS

37. This consultation is far reaching and sets out policies in relation to housing need, housing supply, design, protecting the environment and tackling climate change, new national development management policies and a future plan making system, all within the context of enabling levelling up and regeneration. This report has attempted to bring to members attention those proposals that are most significant for the borough of Fareham, and tried to distinguish between those proposals, if any that will impact the final stages of plan making for the emerging local plan 2037, against proposals that will come in spring of this year come out later this year and even into next year. Many of the proposals within the government consultation are not detailed and will be subject to further consultation, which are likely to be the subject of further reports to this executive.
38. The draft consultation response is provided as appendix 1 for Members' consideration. Comments are invited on that draft, in order for the Council to submit its response before the closing date of 2 March 2023.

Enquiries:

For further information on this report please contact Gayle Wootton (01329 824328).