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## National Planning Policy Framework

### Executive Summary

This RTPI Discussion Paper on the Localism Bill sets out the RTPI's position on why the proposed National Planning Policy Framework (NPPF) must be on the face of the Localism Bill and addresses one of the perceived barriers to achieve this – how to do this in sound legislative terms. It sets out a preferred option – of having a stand-alone Clause in National Planning Policy Framework

**The RTPI firmly believes that the NPPF must be embedded in legislation and needs to be on the face of the Localism Bill.** As it stands, the Localism Bill does not contain any Clauses or references relating to the National Planning Policy Framework (NPPF).

There are five reasons why the NPPF needs to be referenced in the Bill:

- It would strengthen the effectiveness of this document if a range of bodies and statutory plans were specifically required to demonstrate that they had had regard to it;
- There is the need to establish its position in relation to other statutory national policy statements, notably National Policy Statements embodied in the 2008 Planning Act;
- There is also the need to establish its status in relation to non-statutory national plans such as the National Infrastructure Plan;
- A statutory basis could be used to commit successive Governments to seek the approval of Parliament for this key document;
- It is already clear from Government statements that the NPPF will contain some fundamental guidance including; the establishment of a presumption in favour of sustainable development and the consequent definition of 'sustainable development'. Such fundamental changes to the planning system do require a statutory basis and the ability of Parliament to approve them.

The RTPI recognises that one reason for the omission of NPPF from the Bill is that legislation already gives the Secretary of State the power to issue guidance to which bodies shall have regard. The RTPI feels that this general power does not give it enough status and clarity.

The RTPI outlines three approaches to embedding the proposed NPPF in statute. These are:

- Establishing the NPPF as a statutory document through a new Clause in the Localism Bill;
- Providing a specific reference to the NPPF as a document that those fulfilling statutory planning functions must have regard to;
- Establishing the NPPF as a statutory document through an amendment to the 2008 Planning Act in order to give the NPPF the same status as a National Policy Statement (NPS). The RTPI does not favour such an option;

Having examined all these options, which are set out below, **the RTPI recommends the first option of having a stand-alone Clause in the Bill.**

## Introduction

1. This RTPI Discussion Paper on the Localism Bill sets out the RTPI's position on why the proposed National Planning Policy Framework (NPPF) must be on the face of the Localism Bill and addresses one of the perceived barriers to achieve this – how to do this in sound legislative terms. It sets out a preferred option – of having a stand-alone Clause in the Bill.
2. The Royal Town Planning Institute (RTPI) has over 23,000 members who work in the public, private, voluntary and education sectors. It is a charity whose purpose is to develop the art and science of town planning for the benefit of the public. The RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, practice advice, training and development.
3. We run Planning Aid in England – supporting communities and individuals through a locally-based network of 1,200 RTPI members who give their time and expertise free of charge – a service at the heart of localism.
4. The RTPI supports the objectives that underlie the Localism Bill and is keen to work with the Government to make the Bill effective. In particular, the RTPI supports a National Planning Policy Framework, welcomes the strengthening of the role of local plans and is pleased that earlier thinking on third party rights of appeal has not been carried forward. The RTPI also supports proposals to increase the democratisation of processes for nationally significant infrastructure projects.
5. The RTPI very much welcomes the Bill placing planning at the heart of the localism agenda. Planning is central to enabling communities to develop their vision for the future of their area, to provide the means for areas and the nation to decide on priorities for investment and to tackle the challenges of climate change, sustainable economic growth and social inequity.
6. Within this overall position, the RTPI has four other main areas of concern:
  - i. arrangements for strategic planning between the local and national levels need to be strengthened;
  - ii. the proposed neighbourhood planning system is overly complex and this, combined with the lack of resources supporting the engagement of communities, may mean that neighbourhood planning will not be as visionary, widespread or effective as intended;
  - iii. the provisions of the Bill relating to local planning, pre-application consultation and enforcement, whilst generally welcomed, could be made more straightforward and may have unintended consequences to the detriment of effective planning;
  - iv. some of the other provisions in the that are not in the 'planning' related sections of the Bill but which have the potential to have a direct impact on the delivery of planning.These are addressed in other RTPI Briefing and Discussion Papers.

## National Planning Policy Framework

### The RTPI's Position

7. **The RTPI firmly believes that the NPPF must be embedded in legislation and needs to be on the face of the Localism Bill.** As it stands, the Localism Bill does not contain any Clauses or references relating to the National Planning Policy Framework (NPPF).
8. There are five reasons why the RTPI considers that the NPPF needs to be referenced in the Bill:
  - It would strengthen the effectiveness of this document if a range of bodies and statutory plans were specifically required to demonstrate that they had had regard to it;
  - There is the need to establish its position in relation to other statutory national policy statements, notably National Policy Statements embodied in the 2008 Planning Act;
  - There is also the need to establish its status in relation to non-statutory national plans such as the National Infrastructure Plan;
  - A statutory basis could be used to commit successive Governments to seek the approval of Parliament for this key document;
  - It is already clear from Government statements that the NPPF will contain some fundamental guidance including; the establishment of a presumption in favour of sustainable development and the consequent definition of 'sustainable development'. Such fundamental changes to the planning system do require a statutory basis and the ability of Parliament to approve them.
9. The RTPI recognises that one reason for the omission of NPPF from the Bill is that legislation already gives the Secretary of State the power to issue guidance to which bodies shall have regard. However, the RTPI feels that this general power does not give enough status and clarity to the NPPF.

### Background to the NPPF

10. The Coalition Agreement, published on 20<sup>th</sup> May 2010<sup>1</sup>, stated that:  
*We will publish and present to Parliament a simple and consolidated national planning framework covering all forms of development and setting out national economic, environmental and social priorities.*
11. The Department for Communities and Local Government draft Structural Reform Plan<sup>2</sup>, which sets out the overall priorities and the actions which the DCLG will undertake states that, new national planning policy will be in place by April 2012.
12. The DCLG is undertaking a period of pre-consultation on the NPPF with Ministerial Roundtables and *the Minister has invited organisations and individuals to offer their suggestions to the Department on what priorities and policies we might adopt to produce a shorter, more decentralised and less bureaucratic National Planning Policy Framework.* The RTPI is fully engaged with this process.

#### footnotes

<sup>1</sup> HM Government (2010) *The Coalition: our programme for government*

[http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

<sup>2</sup> <http://www.communities.gov.uk/documents/corporate/pdf/16359212.pdf>

13. The Government has also committed that the NPPF will be scrutinised by a Parliamentary Select Committee<sup>3</sup> and may be voted on by both Houses of Parliament. This commitment is built into the suggested amendments set out below.

## Proposed RTPI Amendments

14. This paper puts forward three different approaches to embedding the proposed NPPF in statute. These are:
- Establishing the NPPF as a statutory document through a new Clause in the Localism Bill;
  - Providing a specific reference to the NPPF as a document that those fulfilling statutory planning functions must have regard to;
  - Establishing the NPPF as a statutory document through an amendment to the 2008 Planning Act in order to give the NPPF the same status as a National Policy Statement (NPS). The RTPI does not favour such an option;
15. Having examined all these options, which are set out below, **the RTPI recommends the first option of having a stand-alone Clause in the Bill** as set out in para. 16, below.

## New Clause

16. If it is to be a statutory document, this can be done as a new Clause<sup>4</sup>. It may be most effective to base the statutory status of the NPPF on the provisions in the 2008 Planning Act relating to National Policy Statements:

### ***X National Planning Policy Framework***

*(1) The Secretary of State shall issue, designate, and keep updated a National Planning Policy Framework which shall establish policies to achieve sustainable development in the development and other use of land.*

*(2) Such policies should relate to the mitigation of, and adaptation to, climate change*

*(3) Before designating a document as the National Planning Policy Framework for the purposes of this Act or before amending any such document, the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the document or amendment to it.*

*(4) A document may be designated as the National Planning Policy Framework for the purposes of this Act only if any consultation, publicity and the parliamentary requirements set out by the Secretary of State, have been complied with in relation to it.*

*(5) The requirements in (4) apply to any amendments to the National Planning Policy Framework.*

17. **The RTPI favours this approach.**

## footnotes

<sup>3</sup> Hansard 20 Dec 2010 : Column 145WS  
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101220/wmstext/101220m0001.htm#1012204000019>

<sup>4</sup> One approach to this has already been tabled as an amendment, subsequently withdrawn  
<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/pro1261103p.80-83.html>. This is set out in Appendix 1 to this Discussion Paper.

## Referencing in the 2004 Planning & Compulsory Purchase Act

18. If the NPPF is simply to be referenced in the Act as a consideration to be taken into account by those exercising functions under the legislation then methods such as the insertion of a new Clause in Section 39 of the 2004 Planning and Compulsory Purchase Act should achieve this aim.
19. **The RTPI considers that these approaches are less attractive than having a stand-alone Clause** as set out in para. 16, above:

*Insert new Clause x*

### **X Sustainable Development**

*In Part 2 of the Planning and Compulsory Purchase Act 2004 (local development) in section 39 insert -*

*“(4) For the purposes of subsection (2) the person or body must have regard specifically to any National Planning Policy Framework or other statement of national planning policy issued by the Secretary of State.”<sup>5</sup>*

20. This would have the positive effect of relating the NPPF closely to the achievement of sustainable development.
21. Alternatively, the NPPF could specifically be cited as a document that those preparing LDFs should have regard to.

*Insert new clause x:*

### **X Preparation of local development documents**

*In Part 2 of the Planning and Compulsory Purchase Act 2004 (local development) in section 19(2) [as proposed to be amended by clause 9 of schedule 8 of the Localism Bill] insert –*

*“(2) In preparing a local development document the local planning authority must have regard to—*

*(a) national policies and advice contained in guidance issued by the Secretary of State and, in particular, any National Planning Policy Framework or other statement of national planning policy issued by the Secretary of State;”<sup>6</sup>*

## footnotes

<sup>5</sup> Following the RTPI amendment, the relevant section of the 2004 Planning & Compulsory Purchase Act would read:

### **39 Sustainable development**

*(1) This section applies to any person who or body which exercises any function—*

*(a) under Part 1 in relation to a regional spatial strategy;*

*(b) under Part 2 in relation to local development documents;*

*(c) under Part 6 in relation to the Wales Spatial Plan or a local development plan.*

*(2) The person or body must exercise the function with the objective of contributing to the achievement of sustainable development.*

*(3) For the purposes of subsection (2) the person or body must have regard to national policies and advice contained in guidance issued by—*

*(a) the Secretary of State for the purposes of subsection (1)(a) and (b);*

*(b) the National Assembly for Wales for the purposes of subsection (1)(c).*

*(4) For the purposes of subsection (2) the person or body must have regard specifically to any National Planning Policy Framework or other statement of national planning policy issued by the Secretary of State.*

22. Another alternative would be to have an overall Clause modelled on Section 34 on the 2004 Planning and Compulsory Purchase Act which stated that:  
*In the exercise of any function conferred under or by virtue of Parts [x, x, x] the local planning authority must have regard to the designated National Planning Policy Framework issued by the Secretary of State.*

### Nationally Significant Infrastructure Projects

23. The preceding suggested amendments focus on the roles of the local planning authority. The RTPI considers that the NPPF should also be given some status by the successor body to the Infrastructure Planning Commission in deciding on and making recommendations on nationally significant infrastructure projects. The proposed RTPI amendment would, therefore, be to Section 104(2) of the 2008 Planning Act rather than to Section 104(3)<sup>7</sup>.
24. **The RTPI considers that this approach is less attractive than having a stand-alone Clause** as set out in para. 16, above:

Delete Clause 104(2)(d)

*(d) any other matters which the Panel or Council thinks are both important and relevant to its decision.*

Insert new Clause 104(2)(d)

*(d) any other matters which the Panel or Council thinks are both important and relevant to its decision, including policy set out in the designated National Planning Policy Framework issued by the Secretary of State.<sup>8</sup>*

### footnotes (cont.)

<sup>6</sup> Following the RTPI amendment and the amendment proposed in Schedule 80 of the Localism Bill, the relevant section of the 2004 Planning & Compulsory Purchase Act would read:

**19 Preparation of local development documents**

*(2) In preparing a local development document the local planning authority must have regard to—*

*(a) national policies and advice contained in guidance issued by the Secretary of State and, in particular any National Planning Policy Framework or other statement of national planning policy issued by the Secretary of State;*

*(c) the spatial development strategy if the authority are a London borough or if any part of the authority's area adjoins Greater London;*

*(e) the Wales Spatial Plan if any part of the authority's area adjoins Wales;*

*(f) the community strategy prepared by the authority;*

*(g) the community strategy for any other authority whose area comprises any part of the area of the local planning authority;*

*(h) any other local development document which has been adopted by the authority;*

*(i) the resources likely to be available for implementing the proposals in the document;*

*(j) such other matters as the Secretary of State prescribes.*

<sup>7</sup> *(3) The Panel or Council must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.*

<sup>8</sup> Following the RTPI amendment, the relevant section of the 2008 Planning Act would read:

*104 Decisions of Panel and Council*

*(1) This section applies in relation to an application for an order granting development consent if the decision-maker is a Panel or the Council.*

*(2) In deciding the application the Panel or Council must have regard to—*

## Amending the 2008 Act

25. Finally, the RTPI has also considered whether a new sub Clause (c) could be inserted into Section 5 of the 2008 Act.
26. This is discussed below but **the RTPI does not favour this approach** for the reasons given.

### ***Xx National Policy Statements***

*In Part 2 of the Planning Act 2008 (national policy statements) in section 5(1)(b) delete ‘and’ and insert ‘or’*

*and insert —*

*“(c) sets out national planning policy in relation to the whole of, and or specified parts of, England.”<sup>9</sup>*

27. This sub-clause would have the effect of giving the NPPF the same status as a National Policy Statement with the same responsibilities with regard to consultation, Parliamentary process, climate change and the need for evidence.
28. The drawback to this approach is that it would give the NPPF the same status as National Policy Statements in relation to decision making by the IPC and recommendations by its successor body. The RTPI do not consider that the NPPF should have similar status to NPSs as a) to do so would lead to potential tension between the two documents and b) the NPPF is not designed to fulfil the same function as an NPS.

## The Primacy of the NPPF

29. The RTPI has not suggested amendments which establish the primacy of the NPPF. The RTPI strongly supports the retention of the primacy of the Local Development Framework in legislation and would not want references to the NPPF in the Bill to override that. However, by requiring both local planning authorities and the successor body to the IPC to have regard to the NPPF, the NPPF is afforded the status that a document of this importance requires.

15<sup>th</sup> April 2011

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### **footnotes (cont.)**

*(a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”),*

*(b) any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2),*

*(c) any matters prescribed in relation to development of the description to which the application relates, and*

*(d) any other matters which the Panel or Council thinks are both important and relevant to its decision, including policy set out in the designated National Planning Policy Framework issued by the Secretary of State.*

<sup>9</sup> Following the RTPI amendment, the relevant section of the 2008 Planning Act would read:

#### **5 National policy statements**

*(1) The Secretary of State may designate a statement as a national policy statement for the purposes of this Act if the statement—*

*(a) is issued by the Secretary of State, and*

*(b) sets out national policy in relation to one or more specified descriptions of development, or*

*(c) sets out national planning policy in relation to the whole of, and or specified parts of England.*

## Appendix 1: Clause tabled as NC7 10<sup>th</sup> February 2011 [withdrawn]

*(1) After Part 1 of the Planning Compulsory Purchase Act 2004 insert—*

### ***“1A National Planning Policy Framework***

*(1) There is to be a National Planning Policy Framework for England that is to set out in broad terms how the Secretary of State considers that the development and use of land could and should occur.*

*(2) The National Planning Policy Framework must contain—*

*(a) a statement of what the Secretary of State considers to be the economic, environmental and social priorities and objectives for the development and use of land;*

*(b) general policies for the implementation of those priorities and objectives;*

*(c) an account of such matters as the Secretary of State considers affect, or may come to affect, the development and use of land;*

*(d) any other matter which the Secretary of State considers appropriate to include.*

*(3) The National Planning Policy Framework may contain such maps, diagrams, illustrations, descriptive matter (if any) or other matters as the Secretary of State thinks appropriate.*

*(4) The Secretary of State is to—*

*(a) prepare and publish the framework, and*

*(b) keep it under review.*

*(5) At least every five years after publishing the framework under subsection (4)(a), the Secretary of State is either—*

*(a) to revise the framework, or*

*(b) to publish an explanation of why the Secretary of State has decided not to revise it.*

*(6) If the Secretary of State revised the framework, the Secretary of State is to publish it as revised.*

*(7) The National Planning Policy Framework, or a revised framework, may be published only if the consultation and publicity requirement set out in section 2, and the parliamentary requirements set out in section 3, have been complied with in relation to it.*

### **2 Consultation and Publicity**

*(1) This section sets out the consultation and publicity requirements referred to in section 1(7).*

*(2) The Secretary of State must carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate in relation to the National Planning Policy Framework, or a revised framework. This is subject to subsection (3).*

*(3) Regulations may make provision in connection with additional requirements for consultation and publicity that the Secretary of State must comply with.*

*(4) The Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with publishing the National Planning Policy Framework, or a revised framework.*

### **3 Parliamentary requirements**

*(1) This section sets out the parliamentary requirements referred to in section 1(7).*

*(2) Before publication, the Secretary of State must lay the National Planning Policy Framework, or a revised framework, or a revised framework, before Parliament.*

*(3) Section 9 of the Planning Act 2008, which makes provision about the parliamentary requirements for national policy statements, is to apply in relation to the National Planning Policy Framework, or a revised framework.*

#### **4 Sustainable Development**

*(1) The Secretary of State must exercise the functions of preparing and revising the National Planning Policy Framework with the objective of achieving sustainable development.*

*(2) For the purposes of this section, the Secretary of State must act under any guidance, strategies or frameworks relating to sustainable development that may be adopted in England from time to time.*

#### **Status and Effect**

*(1) For the purposes of a planning decision, where there exists any conflict or inconsistency between the policies and objectives contained in the National Planning Policy Framework and any other planning document, the National Planning Policy Framework shall prevail.*

*(2) In this section—*

*(a) “planning decision” means—*

*(i) a development consent order under the Planning Act 2008;*

*(ii) planning permission under the principal Act;*

*(b) “planning document” means—*

*(i) a national policy statement under Part 2 of the Planning Act 2008;*

*(ii) the development plan;*

*(iii) a neighbourhood development plan.”.*