NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

BRIEFING INCLUDING ASSESSMENT OF IMPACT ON THE HIGHWAYS AGENCY
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INTRODUCTION

Purpose of briefing note

1. The purpose of this briefing note is to provide an introduction for Highways Agency staff to the National Planning Policy Framework (NPPF).

2. It identifies those provisions likely to have an impact on the Agency’s role within the national planning system and/or on the management/operation of the strategic road network. Where possible, it also seeks to provide advice and guidance as to how those impacts should be handled.

3. References to specific entries in the NPPF are designated by the inclusion of paragraph numbers within square brackets using bold text, e.g. [17-19].

Background

4. The National Planning Policy Framework (NPPF) was published by the Department of Communities and Local Government (CLG) on 27 March 2012 as the replacement for all of the previous Planning Policy Statements (PPS) and Planning Policy Guidance Notes (PPG).

5. Through a process of fairly ruthless deregulation and the elimination of process and procedure, which have no place in a policy document, the previous 1300+ pages comprising the combined PPS/PPG\(^1\) & MPS/MPG\(^2\) have been reduced to a single document of only 59 pages including introduction and annexes. Consequently, as every aspect of Planning is to be covered (with the sole exception of waste management), there is little scope for detail. In the case of Transport, the 42 pages of PPG13 have been condensed to 2 pages.

6. A number of other CLG policy documents have been cancelled consequent upon the publication of the NPPF most notably circular 05/2005: Planning Obligations.

7. This briefing should be read in conjunction with the published NPPF. This may be accessed via the CLG website at:

http://www.communities.gov.uk/publications/planningandbuilding/nppf

8. As the result of representations made by the Department of Transport (DfT), using input provided by the Network Services Spatial Planning Team (SPT), some limited changes were made to the proposals as set out in the public consultation draft of the NPPF (published on 25 July 2011), which will be of

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\(^1\) PPS/PPG: Planning Policy Statement and Planning Policy Guidance Note

\(^2\) MPS/MPG: Minerals Planning Statement and Minerals Planning Guidance
benefit to the Highways Agency (“the Agency”) and the interests of the strategic road network (SRN).

9. However, there remain a number of significant issues for the Agency on which DfT were unable to reach agreement with CLG. The Secretary of State for Transport has indicated that these will be addressed in the new DfT policy guidance currently under development as replacement for circular 02/2007: Planning and the Strategic Road Network (see below).

Status/Implementation of NPPF

10. The NPPF is intended to be the sole source of national planning policy. Other Departments may have their own ‘policy’ documents but the status of these within the Planning system will be that of guidance or advice on how to interpret and apply the requirements of the NPPF within the context of the sector concerned.

11. The provisions of the NPPF became effective immediately upon its publication although the earlier policy documents will remain a material consideration in respect of any ongoing planning appeals and court actions.

Impact on DfT Policy

12. The existing DfT circular 02/2007 ‘Planning and the Strategic Road Network’ was not included in the list of cancelled documents. For the present it will remain in operation as the basis for the way in which the Agency delivers its planning functions acting for and on behalf of the Secretary of State.

13. However, the circular will have the diminished status of guidance on the interpretation of the NPPF in the context of the SRN. Consequently, it may carry less weight with Planning Authorities and Planning inspectors than it previously enjoyed.

14. It should be noted that the NPPF will override the circular in respect of any issues where the two documents give conflicting advice.

15. The wider government strategy for development and growth as exemplified by legislative/regulatory provisions of the Localism Act 2011 and the revised policy set out in the NPPF require that changes be made to the Agency’s approach to the delivery of its planning functions. To put this into effect, a revised DfT circular is in preparation which will replace 02/2007.

16. Subject to ministerial approval the new draft DfT policy guidance will be published for public consultation in late spring 2012 at which stage it will become a material consideration for all new planning casework. The target is for formal publication a new circular before the end of the calendar year.

Summary of key provisions

17. The NPPF includes the following key provisions:-
Introduction

• The policies in paragraphs 18 to 219 of the Framework, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system
• Plan-led system perpetuated.

Achieving sustainable development

• Requirement for the identification and co-ordination of development needs, with specific reference to the provision of infrastructure with consequent obligation on all parties to identify and deliver the highway measures necessary for the delivery of sustainable growth.
• Presumption in favour of sustainable development
• The NPPF is deemed to constitute guidance for local planning authorities and Planning Inspectors both in drawing up plans and as a material consideration in determining applications
• Development that accords with an up-to-date Local Plan should be approved without delay but development that conflicts with an up-to-date Local Plan should be refused
• Local Plans should meet objectively assessed needs with sufficient flexibility to adapt to rapid change.
• Where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF.
• 12 planning principles identified which endorse the Agency’s hierarchical approach to its planning role.
• Concept of ‘brownfield’ land re-introduced.
• Requirement to identify priority areas for infrastructure provision.
• Offices are to be included within revitalised in town centre first policy.
• Support for growth of the rural economy.
• Support provided for Agency’s Road Safety & Non-motorised User Audits
• Development should not be refused on transport grounds unless residual impact is ‘severe’, but no definition is provided.
• Requirement for identification of 5 year supply of housing sites.
• Greatly simplified approach to control of advertisements.
• Encouragement for re-use of derelict sites in Green Belt.
• New and existing development should not from contributing to or be put at unacceptable risk from, or be adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability
• Presumption in favour of transport of minerals by rail sea or inland waterway (as opposed to road).
• Requirement for identification of 7 - 25 year (rolling) supply of minerals and aggregates depending on type.
Plan-making

- Local Plans are ‘the key to delivering sustainable development’ with planning decisions being taken in accordance with the development plan unless material considerations indicate otherwise.
- Where adverse impacts cannot be avoided, mitigation measures should be considered.
- Local Plans must be based on adequate, up-to-date and relevant evidence.
- Local planning authorities should work with other authorities and providers to assess the quality and capacity of infrastructure for, amongst other matters, transport and take account of the need for strategic infrastructure including nationally significant infrastructure, within their areas.
- Key stakeholders should be consulted in identifying the issues that the strategic environmental assessment must cover.
- Requirement to plan strategically across local boundaries to ensure that plans are in place to provide the land and infrastructure necessary to support current and projected levels of development.

Decision-taking

- Decisions-takers at all levels should seek to approve sustainable development where possible, seeking solutions rather than problems.
- Local planning authorities cannot require that a developer engages with them – or any other stakeholder – before submitting a planning application.
- There is a requirement that statutory planning consultees such as the Agency should adopt an early, pro-active approach to engagement in order to provide advice in a timely manner throughout the planning process.
- There is inferred support for the need of the Agency for additional time (and, hence the imposition of a ‘holding direction’) in cases where key information on highway impacts or mitigation is either absent or inadequate.
- Local planning authorities are encouraged to consider the use of Local Development Orders to relax planning controls for particular areas or categories of development.
- There are tight restrictions on use of planning conditions and obligations.
- Enforcement of planning conditions is discretionary and should be proportionate.
- By inference, the Agency’s powers under the Development Management Procedure Order 2010 are not affected.

Annexes

- Policies in Framework became effective with publication.
- Time constrained transitional arrangements for existing Local Plans.
18. These and other matters are described in greater detail in the following paragraphs, together with the associated implications for the Agency in the execution of its role within the planning system.
NATIONAL PLANNING POLICY FRAMEWORK

Ministerial foreword

19. A foreword would not normally contain issues of substance worthy of mention within a briefing note. However, the NPPF is rather different in that it includes key definitions and statements of intent which may well have bearing on the weight afforded to the Agency’s input to planning casework.

20. Greg Clark, the Minister for Planning, opens his foreword with three definitions:

- The purpose of planning is to help achieve sustainable growth;
- Sustainable means ensuring that better lives for ourselves don’t mean worse lives for future generations; and
- Development means growth.

He then goes on to conclude that, “…sustainable development is about positive growth – making economic, environmental and social progress for this and future generations” and that, “The planning system is about helping to make this happen.”

21. Perhaps most significant of all though is the Minister’s expectation that:

“Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision”.

22. To add context, when invited by the presenter on the Radio 4 “Today” programme (27 March 2012) to explain what amounted to sustainable development the Minster responded with:

“What it means is there is a test as to whether, in effect, it would be in the public interest to approve an application”

Introduction

23. The introduction advises that the NPPF sets out the Government’s planning policies for England and how these are expected to be applied [1].

24. The legal requirement that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise is reiterated [2].

25. This is important to the Agency’s role. It restricts our ability to oppose development that is in conformity to an adopted Local Plan. However, it also means that developers will be required to comply with any highway provisions that a local planning authority might agree to include within its Plan. This emphasises the potential value of our input to the Plan-making process.
26. There is an explicit statement that the NPPF must be taken into account in the preparation of local and neighbourhood plans [2].

27. Finally, the introduction identifies three aspects of planning policy that are not (fully) covered by the NPPF. These are nationally significant infrastructure projects [3], traveller sites [4] and waste management [5]. The nationally significant infrastructure projects, including highway projects promoted by the Agency, are (or will be) covered by sector specific national policy statements.

Achieving sustainable development

28. This section opens by providing a clear statement as to the purpose of the planning system, namely “to contribute to the achievement of sustainable development” [6].

29. Most importantly, it then goes on to state that:

“The policies in paragraphs 18 to 219, taken as a whole constitute the Government’s view of what sustainable development in England means in practice for the planning system” [6]

As will be noted, this is a third definition of sustainable development and, from the perspective of the Agency’s role in the planning system, the one of greatest significance. Effectively development that conforms to the provision of the NPPF will be regarded as sustainable. This is particularly pertinent to the determination of planning applications in the absence of an up to date Local Plan (see paragraph 38 below).

30. It is recognised that there are three dimensions to sustainable development: economic, social and environmental, which give rise to a number of roles [7].

31. The economic role requires, amongst other things, the identification and co-ordination of development needs, with specific reference to the provision of infrastructure. Consequently, there is an obligation on all parties to identify and deliver the highway measures necessary for the delivery of sustainable growth.

32. Conversely, the environmental role includes using natural resources prudently and the mitigation of and adaption to climate change. This supports the Agency’s hierarchical approach to its planning role (see paragraph 56 below).

33. The three roles are considered to be mutually dependent and they should not be undertaken in isolation [8]. However, it is noted that Plans and decisions need to take account of local circumstances [10].

The presumption in favour of sustainable development

34. It is noted that the NPPF does not change the statutory status of the development plan as the starting point for decision making (i.e. the determination
of planning applications). Development that accords with an up-to-date Local Plan should be approved [12]. Consequently, the Agency would have difficulty in opposing such a development. There could be a risk of costs award against the Agency should such a site go to appeal.

35. However, the NPPF then goes on to say that proposed development that conflicts with an up-to-date Local Plan should be refused [12]. Therefore, the Agency is well placed to oppose windfall development at unallocated sites where this would be likely to cause unacceptable impact on the SRN.

36. Both alternatives are subject to the caveat, “... unless material considerations indicate otherwise”.

37. The NPPF is deemed to constitute guidance for local planning authorities and Planning Inspectors both in drawing up plans and as a material consideration in determining applications [13].

38. In terms of the operational provisions of the NPPF, uniquely, the following paragraph [14] is the subject of emphasis by enclosure within a ‘blue box’. As such the text is worthy of reproduction in full:

“At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision taking

For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this framework indicate that development should be restricted.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.”
39. From the above, it must be inferred that where the adverse impact of development proposals merely outweigh the benefits (but not significantly) then approval should follow. This has major implications for the Agency in terms of its response to planning consultations, as is described in paragraphs 64 & 65 below.

40. However, of potentially far greater significant is the approval of development proposals that accord with the development plan. Although this has been the general position for many years, the explicit way in which this has been set out in NPPF would suggest that such outcomes will become a matter of practice rather than principle.

41. Consequently, notwithstanding the duty to co-operate imposed by Localism Act 2011, there will be a self interest need for the Agency to seek proactive engagement in the Plan-making process as, otherwise, it may find itself devoid of the ability to influence patterns of development. In that light, the proposed Agency Local Development Framework Protocol takes on added significance.

42. The NPPF requires [15] that policies in Local Plans should follow the approach of the presumption in favour of sustainable development and include policies that guide how the presumption will be applied locally.

43. Finally, in this section there is advice as to how the presumption should translate into neighbourhood planning [16] (see also paragraphs 132 - 134 below).

Core planning principles

44. This section of the NPPF [17] sets out a set of 12 core land-use planning principles that should underpin both plan-making and decision-taking. In summary these principles are that planning should:

- be genuinely plan-led. Plans should be kept up-to-date, and be based on co-operation to address larger than local issues;
- be a creative exercise in finding ways to enhance and improve places;
- proactively drive and support sustainable economic development to deliver homes, business and industrial units, infrastructure and thriving local places, based on assessments of need;
- always seek to secure high quality design and good standards of amenity;
- take account of the different roles and character of different areas, promoting the vitality of urban areas whilst protecting the green belt;
- support the transition to a low-carbon future;
- contribute to conserving and enhancing the natural environment and reducing pollution;
- encourage the effective use of land by reusing land that has previously been developed (brownfield land);
- promote mixed-use developments;
- conserve heritage assets;
• actively manage patterns of growth to make fullest use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and
• take account of and support local strategies to improve health, social and cultural well-being for all.

45. The penultimate item on this list is of particular significance to the Agency. It effectively endorses the hierarchical approach to development management adopted by the Agency in delivering its planning role as described in paragraph 56 below. It will provide justification for the Agency’s in its objection to proposals that would give rise to unnecessary traffic generation on the SRN.

Delivering sustainable development

1. Building a strong, competitive economy

46. There is an expectation that the planning system should operate to encourage and not act as an impediment to sustainable growth [19].

47. To achieve economic growth local planning authorities should plan proactively to meet the needs of business [20]. Planning policy expectations should not be allowed to inhibit investment; rather they should seek to address barriers to investment, such as the lack of infrastructure [21].

48. The NPPF sets out a series of actions for planning authorities to achieve this aim. Amongst these is a requirement they should identify priority areas for economic regeneration, infrastructure provision, and environmental enhancement.

49. Given the duty to co-operate imposed by the provisions of the Localism Act 2011 (see separate briefing note), this requirement will require proactive input on the part of the Agency. As yet, it is unclear as to the impact there might be on the prioritisation of investment in the SRN. However, the Pinch Point Programme is may provide the means to meet many of the Agency’s obligations in the short term.

2. Ensuring the vitality of town centres

50. In drawing up their Local Plans, local planning authorities should set out policies for the management and growth of town centres. As a key element of that role they are required to allocate a range of suitable sites to meet the scale of retail, leisure, commercial, office, tourism cultural, community and residential development needed in those town centres [23].

51. Local planning authorities should apply a sequential test to planning applications for town centre uses that are not in an existing centre. They should require that such uses be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre locations be considered [24].
52. The inclusion of office development within these provisions represents a major change from the public consultation draft version of the NPPF. This will be of significant assistance to the Agency in resisting proposals for business parks at out of town locations adjacent to junctions with the SRN. Indeed, the only forms of development appropriate to such locations would seem to be warehousing/distribution and manufacturing. However, the latter may well be difficult to justify in terms of sustainability, particularly in terms of access for the associate workforce.

3. Supporting a prosperous rural economy

53. However, notwithstanding the ‘town centre first policy’, the NPPF also supports the sustainable growth and expansion of businesses and enterprises in rural areas [28], through the conversion of existing buildings and the construction of new buildings.

54. Consequently, the Agency will need to account for a degree of development around the rural parts of its network

4. Promoting sustainable transport

55. The transport section of the published NPPF includes a number of changes to the proposals contained in the public consultation draft. As a consequence, the Framework is now considerably more supportive with the Agency’s role as operator of the SRN.

56. In particular, taken collectively, the transport policies of the NPPF advocate the hierarchical approach that the Agency currently adopts in undertaking its planning role, namely:

1. direction of development to sustainable locations (through development plan allocations);
2. minimization of travel demand (through the implementation of travel plans)
3. management of residual demand to constrain flows within the existing capacity of the highway network; and
4. capacity enhancement only as a last, undesirable resort, and then to be delivered through the Plan-making process.

Consequently, this approach will be perpetuated into the new policy guidance circular (see paragraphs 14 & 15 above).

57. From the outset the transport element of the NPPF unreservedly acknowledges that transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives [29]. In that context, it is made clear that the transport system needs to be balanced in favour of sustainable modes such as walking, cycling & public transport (step 2 of the hierarchy)
58. Encouragement is given to solutions that reduce congestion (steps 2 & 3 of the hierarchy). Local Plans should support a pattern of development, which facilitates the use of sustainable modes of transport (step 1 of the hierarchy) [30].

59. Local authorities should work with neighbouring authorities and transport providers, which, in this context, includes the Agency, to develop strategies for the provision of viable infrastructure necessary to support sustainable development such as rail freight interchanges or transport investment [sic] necessary to support major generators of travel demand (step 4 of the hierarchy) [31].

60. Also identified in the necessary infrastructure are ‘roadside facilities for motorists’, whose primary function should be to support the safety and welfare of motorists [31]. This element of NPPF policy is most helpful to the Agency. Not only does it inhibit the ability of local authorities to introduce policies opposing all such development but it also empowers the Agency to resist the over-commercialisation of such sites. The principle that roadside facilities should not become a ‘destination in own right’ will still stand.

61. The NPPF then includes a requirement that, “all developments that generate significant amounts of movement should be supported by a Transport Statement (TS) or Transport Assessment (TA)” [32]. This explicit statement is very helpful to the Agency in terms of its requirements of developers. Unfortunately, though DCLG declined to introduce a definition of ‘significant’. This is addressed in the DfT/DCLG publication, “Guidance on Transport Assessment”, which, for the present, remains extant.

62. Plans and decisions should take account [32] of whether:

- the opportunities for sustainable transport modes have been taken up to reduce the need for major transport infrastructure;
- safe and suitable access can be achieved for all people; and
- improvements can be undertaken that cost-effectively limit the significant impacts of development. Development should be prevented or refused on transport grounds where residual cumulative impacts of development are severe.

63. These three provisions are highly significant to the Agency in the discharge of its planning duties. The first supports the hierarchical approach whilst the second provides policy justification for the Agency’s design standards and its requirements for both Road Safety Audits and Non-motorised User Audits.

64. However, it is the third that is worthy of particular attention. From one perspective it represents a significant improvement when compared to the proposals contained in the public consultation draft. The reference to ‘cumulative impacts’ will support the Agency’s requirement that any TA or TS should take account of existing and forecast flows on the SRN and the impact of other committed development (in terms of Plan allocations or permissions granted).
65. Unfortunately though, despite representations from DfT, DCLG refused to include a definition of ‘severe’. Potentially, this could be a source of serious conflict. Fortunately, DCLG accepted the argument of the Secretary of State for Transport that, since national planning policy would be silent on the subject, it effectively would become a matter of transport policy. Therefore, it has been agreed that a definition of severe impact will be included in the new DfT policy guidance.

66. The requirement that Plans and decisions should ensure that development is located where the need for travel is minimized and the use of sustainable transport modes can be maximized (steps 1 and 2 of the hierarchy) is reiterated [34 & 35]. Priority for pedestrian and cycle movements is advocated as is access to high quality public transport. Consideration must be given to “the needs of people with disabilities by all modes of transport” [sic].

67. The Travel Plan (step 2 of the hierarchy) is recognised as a key tool to deliver these aims and all developments generating significant amounts of movement should be required to provide a Travel Plan [36]. Planning policies should aim for a balance of land uses so as to encourage people to minimize journey lengths for employment, shopping, leisure, education and ‘other activities’ [37 & 38].

68. Parking standards are to be established locally and local authorities should seek to improve the quality of parking in town centres [39 & 40].

69. The final transport provision in the published NPPF is a requirement that local planning authorities should identify and protect sites and routes, which could be critical in developing infrastructure to widen transport choice [41]. The meaning is not clarified but it would not seem unreasonable that this is intended to refer to matters such as the development of rail freight interchanges and park and ride sites or the re-opening of rail lines.

5. Supporting high quality communications infrastructure

70. This section of the Framework would seem to have little impact on the SRN.

71. There is general encouragement for the expansion of electronic communications networks [43]. This would support the wider use of the Agency’s own network.

72. The NPPF does not change the provisions of the Telecommunications Act regarding the powers to site equipment within the highway.

6. Delivering a wide choice of high quality homes

73. Local planning authorities are required to ‘boost significantly’ the supply of housing. They should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for their area, including the identification of key sites [47]. This should include additional buffers to allow for under delivery.
74. The duty to co-operate imposed by the Localism Act combined with the need to manage demand on the SRN together establish a significant role for the Agency in assisting those authorities to identify suitable sites.

75. Housing applications are to be considered in the context of the presumption in favour of sustainable development. In that light it should be noted that relevant policies for the supply of housing won’t be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites [49]. In such circumstances, planning applications for housing developments would be considered against the policies set out in the NPPF (see paragraph 38 above).

76. Local planning authorities should normally approve planning applications for the conversion of commercial premises to residential use [51].

7. Requiring good design

77. In terms of design per se, the only provision of relevance to the Agency contained within this element of the Framework is a requirement that planning policies and decisions should aim to ensure that, amongst other objectives, developments support transport networks [58].

78. However, of significance to the Agency is the inclusion of revised policy on the control of outdoor advertisements [67]. Only those advertisements, which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority’s detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

79. This greatly simplifies the policy position. Either there is a defined safety hazard, in which case the Agency should object, or there isn’t and it shouldn’t. Given that there is little or no evidence to link distraction to motorists occasioned by advertisements with detriment to road safety objection is likely to be a rare occurrence in cases where there is a prima facie evidence of hazardous distraction e.g. frequently changing LED displays at high stress locations.

80. However, given the provisions of the Road Traffic Regulation Act, nothing in the NPPF would constraint the Agency’s ability to refuse to allow the erection of advertisements within the highway even in cases where consent may have been obtained. Likewise the Agency should continue object to advertisement proposals that contain elements of road signs (e.g. directional arrows).

81. Notwithstanding any of the above, DCLG circular 03/2007 The Control of Advertisement Regulations has not been cancelled and its provisions remain extant.

8. Promoting healthy communities

82. Again, this section of the NPPF does not have great bearing on the Agency. It is stated that planning policies and decisions should aim to achieve places that
promote safe and accessible developments [69] and that planning policies should protect and enhance public rights of way [75], both which may provide support to the Agency’s position in certain circumstances.

9. Protecting Green Belt land

83. Although at first site this section of the NPPF would not seem to have a great deal of significance to the Agency. Generally, that is true but with one significant exception in that there are repeated references to the re-use of derelict land and buildings [80, 81, 89 & 90]. See also [111].

84. This may create difficulties for the Agency in opposing the re-use of redundant roadside facilities sites for other development purposes.

85. However, the DfT position on this matter remains unchanged. Such sites were permitted access to the network purely on the basis that they provided a service to the motorist. The re-use of such sites for other purposes would be contrary to the provisions set out in paragraph 41 of DfT Circular 02/2007. A similar provision will be perpetuated into the new policy guidance.

86. One further point to note in this section of the NPPF is that local transport infrastructure, which can demonstrate a requirement for a Green Belt location will not be deemed to be inappropriate development [90]. Although the meaning of ‘local’ is undefined, this provision may give some support to Agency improvement schemes in rural locations.

10. Meeting the challenge of climate change, flooding and coastal change

87. Although there are no specific references to highways in this element of the Framework, its content gives support to the Agency’s work on climate change adaptation and mitigation.

88. Local Plans should take account of flood risk [99], whilst inappropriate development in areas at risk of flooding should be avoided [100]. One specific provision that may be of assistance to the Agency in safeguarding the resilience of the SRN is the requirement that, when assessing planning applications, local planning authorities should ensure flood risk is not increased elsewhere [103].

11. Conserving and enhancing the natural environment

89. It is a matter to be regretted that no specific reference is made within this part of the Framework to the environmental aspects of transport impacts. The issue will be addressed in the new DfT policy guidance. However, there are provisions that will assist the Agency when considering planning proposals.

90. It is stated that the planning system contribute to and enhance the natural and local environment by (amongst other measures) preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise.
pollution or land instability [109] and that in preparing plans to meet development need, the aim should be to minimize pollution [110].

91. To those ends, planning policies and decisions should ensure that new development is appropriate to its location [120].

92. Therefore, it will be entirely legitimate under the NPPF for the agency to object to development proposals that would result in unacceptable noise levels and/or air quality issues. This will be equally true whether the pollution would arise elsewhere as a consequence of the traffic generated by the development proposed or at the development site itself as a consequence of its proximity to the SRN.

93. The environmental provisions also assist in the safeguarding of the Agency’s own assets since the stability of the earthworks and structures on the SRN must not be compromised. Likewise the SRN drainage system cannot be subjected to pollution arising from development. This adds planning policy support to the Agency’s stance that there should be no third party connections to SRN drainage assets.

12. Conserving and enhancing the historic environment

94. There are no provisions of direct relevance to the Agency included in this section of the NPPF.

13. Facilitating the sustainable use of minerals

95. The key provision to note here is a strong presumption in favour of the bulk transport of minerals and aggregates by rail, sea or inland waterways and that, in preparing Local Plans, authorities should safeguard that potential [143]. By implication, there is an equally strong presumption against the use of road transport.

96. The Agency should be aware of this when responding to proposals for mineral extraction that may cause significant impact on the SRN.

97. Minerals planning authorities are required to plan for a steady and adequate supply of aggregates and industrial minerals for, depending on type, periods of 7 to 25 years. The Agency will need to take this into account in providing its input to the plan-making process.

Plan-making

Local Plans

98. In preparing its input to the plan-making process and, in particular, in responding to proposals included in draft Plans, the Agency must be aware of the restrictions within which the local authorities must operate. It would be unacceptable for the Agency to adopt a stance that would prevent an authority from meeting its
obligations under the NPPF. Potentially, it would result in considerable harm to the Agency’s reputation.

99. Consequently, the adopted position must be one of constructive engagement with the objective of achieving a mutually satisfactory outcome. In this context, as has been noted on numerous occasions elsewhere, the Localism Act 2011 imposed on the Agency a statutory duty to co-operate at all stages of the planning process.

100. Local Plans are described as ‘the key to delivering sustainable development’. Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise [150] (see also paragraph 35 above).

101. Local Plans must be (note use of absolute) prepared with the objective of contributing to sustainable development and they should be consistent with the principles and policies set out in the NPPF [151]. Local planning authorities should seek to achieve net gains across each of the three dimensions of sustainable development (see Paragraph 30 above) [152].

102. Of particular importance to the Agency guidance is given on the way in which adverse impacts of development are to be addressed [152]. The relevant entry is confusing in that, initially, it refers to the need to avoid significant adverse impact (as per paragraph 39 above). However, it then goes on to say that, where adverse (unqualified) impacts are unavoidable, measures to mitigate the impact should be considered.

103. Since here we are addressing the Plan-making stage, the Agency would not have use of its powers of direction under the provisions of Article 25 of the Development Management Procedure Order 2010. Consequently, there will be the need to produce a convincing argument for the inclusion of measures for the mitigation of impact on the SRN within the Plan itself. It must be remembered that development that accords to an up-to-date local plan should be approved (see paragraph 34 above) so the Agency may not be able to raise valid objection at the time that a planning application should come to be submitted.

104. Each local planning authority is required to produce a Local Plan for its area. Supplementary may be used but they should not add to the regulatory burden on developers [153]. Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where [154].

105. Local planning authorities should set out the strategic priorities (NPPF emphasis) for the area in the Local Plan, including strategic policies to deliver, amongst other matters, the provision of infrastructure for transport [156]. Consequently, not withstanding the duty to cooperate, local authorities should be proactive in seeking early and meaningful engagement with the Agency.

106. Clearly, this is to be welcomed. However, there may well be significant implications for the resource demand that will be placed upon the Agency.
107. Given the presumption that permission will be granted where the Plan is absent, there now is significant pressure on local authorities to make sure that an up-to-date Core Strategy is put in place at the earliest juncture. Unfortunately, well under half of local authorities were in that happy position at the time of publication of the NPPF and in the light of the time constraint imposed on the transitional arrangements (see Annex 1 below), the Agency is likely to face numerous competing demands for input and cooperation in the short to medium term.

108. Finally, in respect of Local Plans, the Framework sets out [157] a list of crucial requirements. Amongst these, it is stated that Local Plans should:

- plan positively for the development and infrastructure required in the area;
- be drawn up over an appropriate time scale, preferably a 15-year time horizon, take account of longer term requirements (i.e. beyond the 15-year horizon), and be kept up-to-date; and
- be based on cooperation with neighbouring authorities, public, voluntary and private sector organisations.

In this context, the Agency is a public organisation.

Using a proportionate evidence base

109. The Framework requires that Local Plans be based on adequate, up-to-date and relevant evidence [158].

**Housing**

110. There are no additional provisions of relevance to the Agency under this heading.

**Business**

111. Local planning authorities are required to develop a clear understanding of business needs within their area [161]. They should work with the business community to understand their changing needs and identify and address barriers to investment, including a lack of infrastructure.

**Infrastructure**

112. Local planning authorities should work with other authorities and providers to assess the quality and capacity of infrastructure for, amongst other matters, transport and take account of the need for strategic infrastructure including nationally significant infrastructure, within their areas [162].

113. As far as the SRN is concerned, this will involve input from the Agency, of course. However, what is unclear is precisely what is meant by ‘take account of’. It could imply the need to work within the constraints imposed by any deficiency or, alternatively it could mean taking steps to address such deficiencies. Most likely, this will be determined on a case specific basis.
**Minerals**

114. There are no additional provisions of relevance to the Agency under this heading.

**Defence, national security, counter-terrorism and resilience**

115. There are no additional provisions of relevance to the Agency under this heading.

**Environment**

116. The production of a sustainability appraisal, which meets the requirements of the European Directive on strategic environmental assessment should be an integral part of the plan-preparation process and should consider all the likely effects on the environment, economic and social factors [165].

117. The Agency will need to ensure that environmental aspects of any transport impacts relating to the SRN receive appropriate consideration. In that context, it is noted that assessments should be proportionate. The assessment process should be started early in the plan-making process and key stakeholders should be consulted in identifying the issues that the assessment must cover.

**Historic environment**

118. There are no additional provisions of relevance to the Agency under this heading.

**Health and well-being**

119. There are no additional provisions of relevance to the Agency under this heading.

**Public safety from major accidents**

120. This provision of the Framework requires that planning policies should be based on up-to-date information on the location of major hazards and on the mitigation of the consequences of major accidents [171].

121. It is unclear as to whether the accidents referred to are in connection with those specific major hazards or alternative whether it is a general requirement for contingency planning. However, this could provide the Agency with an opportunity to seek protection to it assets within the Local Plan. Regardless suitable provision will be made within the new DfT policy guidance.

**Ensuring viability and deliverability**

122. It is noted [173] that the pursuit of sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Sites and the
scale of development identified in the plan should not be subject to such a scale of obligations or policy burdens that their ability to be developed viably is threatened.

123. Consequently, to ensure viability, the costs of any requirements likely to be applied to development, such as mitigation measures for the SRN should, when taking account of the ‘normal’ cost of development and mitigation, provide competitive returns to enable the development to be deliverable.

124. In that light, there will be significant pressure upon the Agency to provide realistic estimates of cost of any infrastructure enhancements that may be required.

125. However, this provision of the Framework gives added policy significance to the need for the Agency to seek alternative solutions to the delivery of development that do not involve large scale construction as per the hierarchical approach described at paragraph 56 above.

126. It is considered [177] important to ensure that there is a reasonable prospect that planned infrastructure is deliverable in a timely fashion. Consequently, infrastructure and development policies should be planned at the same time, in the Local Plan. Consequently, there will be significant pressure on the Agency to provide accurate and reliable input. See also paragraphs 127 to 129 below.

Planning strategically across local boundaries

127. Public bodies, such as the Highways Agency, have a duty to co-operate on planning issues that cross administrative boundaries, particularly those which relate to strategic priorities including the provision of infrastructure for transport [178]. The Government expects local planning authorities to undertake joint working with other bodies to ensure that those strategic priorities across local boundaries are properly co-ordinated [179].

128. Consequently, it seems likely that there will be an expectation of proactive input from the Agency in identifying any improvements to the SRN that are necessary to remove barriers to growth.

129. There should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected levels of development [181]. Taken at face value, this would suggest that the future Roads Programme is likely to become increasingly development-led.

Examining Local Plans

130. The Local plan will be subject to examination by an independent inspector whose role will be to determine whether the plan has been prepared in accordance with the Duty to Co-operate and whether it is “sound” [182].
131. Any objection to the draft plan, including any relating to the impact on or capacity of the SRN, must be made in terms of the soundness of the proposals.

**Neighbourhood plans**

132. Parishes and neighbourhood forums can use neighbourhood planning to set policies through neighbourhood plans to determine decisions on planning applications and to grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders [183].

133. Thus neighbourhood planning can be used to increase the quantum of development but it cannot be used to block other Local Plan provisions.

134. See also separate briefing note on Local Development Orders.

**Decision-taking**

135. Local planning authorities are told that they should look for solutions rather than problems and that decisions takers at all levels (one must assume that this is meant to encompass PINS inspectors and the Secretary of State for communities) should seek to approve sustainable development where possible [187].

**Pre-application engagement and front loading**

136. Local planning authorities are stated to have a key role in encouraging other parties to take maximum advantage of the pre-application stage [189]. However, they cannot require that a developer engages with them – or any other stakeholder – before submitting a planning application.

137. Consequently, the Agency cannot insist that developers enter into pre-application discussions. However, in common with other statutory planning consultees, there is a requirement that the Agency should adopt an early, proactive approach to engagement and that it should provide advice in a timely manner throughout the planning process.

138. It is considered that the participation of ‘other consenting bodies’ in pre-application discussions should enable early consideration as to whether a particular development will be acceptable in principle. The parallel processing of ‘other consents’ is encouraged. However, as is set out in the Agency’s Improvement Plan, its primary aim should be to find solutions that avoid the need for any highway consents.

139. In order to avoid delay, applicants should discuss what information is needed with the local planning authority and ‘expert bodies’ as early as possible [191].
140. This provision would seem to support the need of the Agency for additional time (and, hence the imposition of a ‘holding direction’) in cases where key information on highway impacts or mitigation is either absent or inadequate

Determining applications

141. This section of the Framework merely reiterates the earlier advice that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise and that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development [196/7].

Tailoring planning controls

142. Local planning authorities are encouraged to consider the use of Local Development Orders to relax planning controls for particular areas or categories of development, where the impacts would be acceptable [199].

143. Where such an approach is adopted, it will be essential that the Agency should provide considered input to the Order-making process as there will be no subsequent opportunity to comment on conforming, site-specific development

Planning conditions and obligations

144. Although circular 05/2005 Planning Obligations has been cancelled by the NPPF, DoE circular 11/95 Use of Planning Conditions would seem to remain extant. Nevertheless, the NPPF would seem to provide authoritative, if somewhat succinct, guidance on both topics

145. Local planning authorities are told to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations, although the latter should be restricted to circumstances in which it is not possible to address unacceptable impacts through a planning condition [203].

146. Planning obligations should only be sought where they meet all of the following tests [204]:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

147. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects [205].

148. Effectively these provisions replace (reiterate) the six tests for conditions set out in the circular. Consequently, it is essential that any conditions directed by the Agency under the provisions of Article 25 of the Development Management
Procedure Order (DMPO) are compliant with the requirements of paragraph 205 of the Framework.

149. In that context, it should be noted that the DMPO and, hence, the Agency’s planning ‘powers’ are unaffected by the NPPF.

Enforcement

150. Enforcement action is stated to be discretionary, and local planning authorities should ‘act proportionately’ in responding to suspected breaches of conditions [207].

151. Consequently, the Agency cannot require authorities to enforce its directed conditions. On that basis, every endeavour should be made to draft conditions that will be self-enforcing.

Annexes

Annex 1: Implementation

152. The policies in the Framework became effective upon publication [208].

153. As noted previously, planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise [210]. In that context the policies contained in the framework are deemed to be a material consideration [212].

154. For the purpose of decision-taking, the policies of a Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the Framework [211]. However plans may need to be revised to take account of the policies in the framework [213]. Nevertheless, for 12 months from the date of publication of the NPPF decision-makers (at all levels) may continue to give full weight to relevant policies adopted since 2004 [214] even where there is limited (not defined) conflict with the Framework.

155. In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework [215].

156. As may be surmised, this will create significant pressure on local planning authorities to review their plans.

157. As noted above, there also are many authorities who do not benefit as yet from an adopted plan. As a consequence, application for planning permission in those areas must be taken in accordance with the policies set out in the NPPF. Therefore, the authorities will also be under significant pressure to put a Local Plan in place, in order to reassert local control over development.
158. These two pressures combined are likely to result in a significant peak in demand for input from the Agency. Because of the extended statutory duty to cooperate established by the Localism Act 2011, such input must be substantive in nature and provided to tight statutory deadlines.

Annex 2: Glossary

159. The definitions contained in this glossary should be noted. Those for sustainable transport modes, transport assessment, transport statement and travel plan were provided by the Agency based largely on those set out in the Guidance on Transport Assessment.

Annex 3: Documents replaced by this framework

160. The key point to note is that DfT circulars 02/2007 Planning and the Strategic Road Network and 01/2008 Policy on Service areas and other Roadside Facilities on Motorway and All-Purpose Trunk Roads in England are not included on the list of cancelled documents. However, as mentioned above, their status is now that of policy guidance and where there may be conflict the policies of the NPPF will take precedence.
FURTHER ADVICE

Contact details

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