The NPPF in Practice: Panacea, Pariah or Placebo?

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Introduction

The purpose of this paper is to review how the NPPF is working in practice, whether it is meeting its objectives, and whether there is yet scope for this "Nearly Perfect Policy Framework" to be improved. Appraising the effectiveness of the NPPF is problematic because, given its chequered evolution, it is not always easy to distinguish the intended consequences from the unintended. It is also early days. However, certain key themes are emerging from appeal decisions notably the emphasis on "responsible" rather than the "muscular" localism, on the need for a robust approach to housing delivery both in plan preparation and development management and the crucial importance of up to date local plans.

The paradox is that the NPPF is arguably weakest where it attempts to put in place a policy framework on these more strategic issues. The effects of the political imperative to rid the planning system of regional strategies have not to date been adequately mitigated by either a statutory or policy framework which adequately addresses the questions of "how much" and "where." This applies particularly where those questions involve more than one local authority area. That has led to significant delays in local plan preparation and, in some areas, planning by appeal. Whilst that might serve to boost short term housing supply in some areas, it comes at a cost to the reputation of the system and the acceptance of the NPPF given the expectations engendered by its "localist" roots. There are already signs that there is political capital to be made out of the way the NPPF is perceived as operating in practice, with the Labour Party indicating an intention to make a number of "tweaks",[1] whilst others such as the Campaign for Rural England ("CPRE") are already apparently committed to its cancellation.

Given that the NPPF is largely a consolidating document and has successfully edited down thousands of pages of policy and guidance to just 59 pages, there is much in its content which even its fiercest opponents would never wish to change. The real issues are whether or not it is operating fairly and whether the balance it currently strikes between the three elements of sustainable development is itself a fair one and, if not, can it be improved to ensure that it survives its early years. It would be unfortunate if decisions now being taken, whether ostensibly or subliminally "pour encourager les autres" result in its early demise.

The Expectations

The Conservative Party's Green Paper "Open Source Planning"[2] identified three key tenets underpinning their plans to mend what was seen as a *"broken" or "failing"* planning system namely:

- To restore democratic and local control over the planning system;
- To rebalance the system in favour of sustainable development; and
- To produce a simpler, quicker, cheaper and less bureaucratic system.

The emphasis on local control reflected the belief that strong central control had led to the conflict and delay at local level which had discouraged development plan preparation. In consequence, as at 2009 just 50 local development documents had been found sound by the Planning Inspectorate against a Government

[1] The Labour Party's current thinking is that Councils would have to assess their housing needs using a common methodology and that there should be a return to the priority accorded to the use of previously developed land. A policy review is underway chaired by Roberta Blackman-Woods, Shadow Communities and Local Government Minister (see Planning, June 28, 2013).

[2] Policy Green Paper No.14.

target that by 2007 *all* local planning authorities would have an up to date Core Strategy. The concern was that:

> "Local communities feel that their views are being ignored and that they are having development imposed upon them. All too predictably this sense of disenfranchisement often leads to antagonism. The result in an inherently adversarial system with opposing parties spending large amounts of time and money fighting each other, rather than seeking an agreed solution."[3]

However, even at this early stage in the genesis of the NPPF, it was recognised that the combination of collaborative democracy, council tax, business rate and local tariff incentives would not necessarily persuade all local planning authorities to embrace necessary development. To counter any such reluctance the original intention was to legislate to provide the necessary impetus to plan preparation:

> "Specifically, we will legislate that if new local plans have not been completed within a prescribed period, then the presumption in favour of sustainable development will automatically apply. In other words, if a local planning authority does not get its local plan finalised in reasonable time, it will be deemed to have an entirely permissive planning approach, so all planning applications will be accepted automatically if they conform with national planning guidance."[4]

Rather than attempting to grapple with what would have been an interesting amendment to s.38 of the Planning and Compulsory Purchase Act 2004, the Coalition Government chose instead to deal with the presumption, the transition period and the weight to be afforded to development plan policy through policy.[5] The resulting wording of the NPPF is capable of allowing the highly permissive approach hinted at by the Green Paper although on the NPPF's publication, those who had been heavily provoked by the draft NPPF felt able to claim a modicum of success in the revisions made. CPRE's press release for example claimed "victory" in securing a national policy framework that in principle treasured the countryside, reflected their definition of sustainable development and provided strong words of protection of the Green Belt. However, even in "victory" there was a significant note of caution:

> "… these policies are not gold plated. The economic, social and environmental dimensions of sustainability must be considered together, but not necessarily balanced. It is the economy that gets significant weight". Councils will struggle to implement a brownfield first policy because the NPPF only "encourages" and does not prioritise its use. Green Belts will come under greater pressure to shift outward to accommodate garden suburbs. The vital principle of countryside protection is not matched by detailed policy elsewhere in the NPPF. *When the dust has settled, and when the planning inspectors and lawyers have had their day, we may well find that we have rather weaker policies than we at first thought"*[6]

The dust has not settled but it is settling and the big questions after the NPPF's first year are: is it delivering on speeding up the planning system, on growth; and in practice how is it affecting the planning balance undertaken in individual cases.

Delivery

To date there are no obvious signs that the NPPF has done much on a national level either to encourage developers to bring schemes forward, to speed up decision making (whether at authority level or on appeal) or to stimulate development itself. Given that it is only 18 months old, it would unfair to judge the NPPF

[3] Policy Green Paper No.14, p.4.
[4] Policy Green Paper No.14, p.9.
[5] Paras 14, 49, and 214–215.
[6] Press release March 2012.

by reference to measures such as housing completions given the inevitable time lag between decisions and commencement of development (the key period in this respect will be the second anniversary), but some of the data does assist in gauging its effectiveness at this stage.

The most recent statistics from the Planning Inspectorate are not terribly encouraging.[7] For example, whilst the number of appeals received relating to new housing increased by 1.8 per cent compared with 2011/2012, the number of dwellings proposed in those appeals *reduced* by 7.6 per cent.[8] Appeals relating to major housing schemes fell from 576 in 2011/2012 to 470 in 2012/2013.[9] Major retail schemes showed a similar trend[10] and only major manufacturing showed some increase.[11]

In terms of the time taken to decide appeals, there are signs of some improvement for those whose appeals are determined by a hearing or an inquiry. In 2012/2013 the average time taken to decide appeals determined by hearings or inquiries reduced by four and two weeks respectively although it still takes 22 weeks for a hearing decision and 31 weeks for an inquiry decision from the start date. However, this improvement is not reflected in relation to written representation appeals. The average time taken in relation to these was 26 weeks, a full 6 weeks longer than in 2011/2012.

The longer wait has not been compensated for in success rates. For written representations the success rate in 2012/2013 was identical to that in 2011/12 at 33 per cent.[12] Similarly the hearings' success rate was 43 per cent in both 2011/2012 and 2012/2013. However, for those who are accorded the benefit of an inquiry the success rate improved by 7 per cent from 55 per cent to 62 per cent.[13]

The position at local planning authority level is similar. There was a 4 per cent decrease in the number of planning permissions determined[14] and an identical fall in the number of planning permissions granted. The success rate at 87 per cent remained the same as in 2011/2012.[15]

As to delivery on the ground, it is too early to draw any conclusions as to the effectiveness of the NPPF. Equally, because the number of planning permissions granted by local planning authorities is no longer centrally recorded, there are no robust statistics on its effect on the development pipeline. Research undertaken for the Home Builders Federation indicates that there has been a 20 per cent rise in the number of residential planning permissions granted by planning authorities,[16] but this includes only projects of 10 units or more with detailed planning permission or approved reserved matters. What this data shows is that in the year to March 2012 118,723 housing units were approved with the corresponding March 2013 figure standing at 144,427. It is interesting to note that 7,220 of the increase came from approvals for social housing.

In terms of completion, what data does exist supports the view that changing policy to be more encouraging of development is unlikely to have anything other than at best a delayed effect until other drivers in the economy recover. For example, annual housing starts in the 12 months to March 2013 totalled 101,290.[17] That is down 3 per cent compared with the period to March 2012. Completions were 8 per cent lower at 108,190. These may be compared with a peak of 183,000 in the year ending March 2006.

[7] *Annual Statistical Report 2012/2013*, June 3, 2013.
[8] To just 41,952 of which only 15,080 were permitted.
[9] Major is defined as 10 or more dwellings or a site with an area of 0.5ha or more.
[10] Forty three appeals in 2011/2012 and 35 in 2012/2013 (major is 1,000m^2 or more/site area of 1ha or more).
[11] Nine appeals in 2011/2012 and 12 in 2012/2013.
[12] Excluding householder appeals.
[13] From 55% to 62%.
[14] DCLG Planning Statistical Release, June 28, 2013—418,500.
[15] DCLG Planning Statistical Release, June 28, 2013.
[16] *HBF New Housing Pipeline Q1 2013 Report*.
[17] DCLG Housing Statistical release, May 16, 2013.

Development Plan Preparation

Given the emphasis in the NPPF on plans being up to date and the consequences in terms of the presumption of sustainable development if they are not, one might have expected the transitional year to have been accompanied by a flurry of plan submission activity. If that was the Government's expectation, then it must be sorely disappointed by what has in fact happened. The most recent data produced by the Planning Inspectorate (August 2013)[18] shows that since publication of the NPPF, just 61 core strategies or "strategic" development plans were submitted for examination and just 19 have so far been found sound by the Inspector. Later in this paper, the fate of some of the remaining 42 will be examined.

Of the 164 authorities with an adopted core strategy or local plan dealing with strategic issues, most have no verified assessment of accordance with the NPPF and only 23 have plans which can safely be said to fully accord with it i.e. 6.8 per cent of authorities.[19]

This record might be less concerning if it was obvious that the planning system was delivering through development management or on appeal. However, the data does not suggest that there is any such balancing happening and the poor progress of development plans may well constrain recovery when the economy strengthens. This concern extends across all types of forward planning including for example minerals. The Minerals Products Association has expressed an increasingly familiar sense of frustration with progress:

> "We believe that action must be taken now to speed up the replacement of outdated development plans and to get a grip on unduly localist" interpretations of national policy in order to make the NPPF work.[20]"

This of course begs the question of whether or not the NPPF provides sufficient guidance on key areas to enable swift and sound reviews of plans. The revocation of regional strategies has left a vacuum for local authorities; for some welcome, for others (if not the majority), unwelcome. The absence of guidance on issues such as how to objectively assess housing need, has simply served to encourage "localist interpretations." Such interpretations were of course a feature in the Green Paper provided that any underlying assessment was "professional."[21] However, experience is showing that there are some issues which do not lend themselves to local approaches and where a clear steer from higher order policy is required.

Decisions: The picture so far

This paper looks at both at appeal decisions and decisions within the plan making process. The focus of the assessment of appeal decisions is principally on decisions at Secretary of State level although where a point of wider interest arises from an Inspector's decision letter that is reflected. The aim has been to see how the NPPF is actually influencing decisions; how it is being interpreted, and what its strengths and weaknesses are proving to be.

(i) Sustainable development: An output or an input?

One of the early criticisms of the NPPF was that, other than repeating UN Resolution 42/187 and referring to the five guiding principles of the UK Sustainable Development Strategy *Securing the Future*, it provided no clear definition of what "sustainable development" actually means or any clear steer as to when development is sustainable or unsustainable. Given that the presumption in favour of this concept lies "at the heart of the NPPF" the ability to identify what is or is not sustainable is crucial.

[18] Local Plans (strategic issues/core strategies).
[19] Research by *Planning Magazine* published May 25, 2013.
[20] Press release, March 13, 2013.
[21] *Green Paper Open Source Planning*, February 2010, p.7.

The consistent approach of the Secretary of State in all post-NPPF decisions has been to treat the issue of whether or not development is sustainable and is therefore capable of benefitting from the presumption as one of balance rather than capable of objective testing. Where the disbenefits are outweighed by the benefits of the development and there is no clear conflict with the NPPF, then it is sustainable. For example, the conclusions in the eventual decision on Cala Homes (South) Ltd's appeal for 2000 dwellings on land at Barton Farm state:

> "Overall the Secretary of State concludes that the factors which weigh in favour of the proposed development clearly outweigh the shortcomings and overcome the relatively modest conflicts with the development plan. He has found no material conflict with the Framework and he considers that the presumption in favour of sustainable development lends further support to the scheme."[22]

This was in the context of a scheme which he had found would be detrimental to the historic integrity of Winchester and failed to comply with the Winchester Local Plan policy which sought to protect and enhance the special and historic character of the City and its landscape setting.

Similarly in relation to a proposal for 366 executive dwellings on safeguarded land at Whitehouse Farm, West Moor, Newcastle upon Tyne, the unsustainable location of the site was outweighed by the need for housing where there was a small five year land supply shortfall and no early prospect of a formally adopted local plan:

> "The proposal would not be on a site that would minimise the need to travel or would allow the maximisation of the use of sustainable travel modes. Nonetheless its location and the measures proposed to engender choice of travel and to promote modal shift away from the private car, would ensure the development would not have significantly poor accessibility characteristics. In this regard the scheme may be said not strictly to comply with paragraph 34 of the Framework. However the proposal should be judged against the range of factors set out in the Framework that together provide the answer to what constitutes sustainable development."[23]

The consequence of this balanced approach is that it is entirely possible that developments which could not on any objective assessment be described as "sustainable" are nonetheless identified as such for the purposes of the NPPF. Approached in the way now adopted by the Secretary of State, what is sustainable is synonymous with what is necessary or desirable in the public interest. In the vast majority of cases it will matter little whether a development is or is not identified as sustainable *before* the balance is applied. However, one risk of the "on balance" approach is that it can lead to some significant adverse impacts being given obviously inadequate weight.

In this context, the Secretary of State's handling of the appeal in relation to a proposal for 400 dwellings and a replacement swing bridge over the Leeds to Liverpool Canal at Bingley, West Yorkshire is instructive.[24]

One of the issues in the appeal was the effect on local roads in the event that the swing bridge had to be closed to traffic. On closure the emergency access alternative took time to be opened and until it was, traffic would divert onto less satisfactory alternatives. The Inspector recommended refusal of the appeal on the grounds that this traffic diversion would result in a severe impact on highway safety. The Secretary of State disagreed:

> "… he shares the Inspector's concerns that the effect of traffic movement on Micklethwaite Lane and Carr Lane during the intervening period between closure of the road and opening of the emergency access would have a severe impact on highway safety and the movement of road users. He considers

[22] APP/L1765/1/10/2126522—October 2, 2012.
[23] APP/W4515/A/12/2175554—May 8, 2013.
[24] APP/W4705/A/11/2161990—July 19, 2012.

> that this factor weighs significantly against the proposal. Notwithstanding this, he disagrees with the inspector that this amounts to a matter of such weight that planning permission should be refused … He does not consider that the rare instances of the nature anticipated by the Inspector in the circumstances of the case justifies refusing planning permission given that there are a number of significant factors weighing in favour of the appeal proposal which, in his opinion outweigh this and other identified conflict."

In essence the Secretary of State concluded that because the severe highway safety impact was very occasional and of short duration it did not conflict with para.32 of the NPPF and the impact was outweighed by the need for housing.[25] Prior to the NPPF, it would have been truly exceptional for highway safety to yield to other considerations and unsurprisingly this decision led to a High Court challenge and the quashing of the decision.[26] On redetermination, the Secretary of State reached a diametrically opposite conclusion finding that the development:

> "would be likely to severely interfere with the free movement of road users and reduce highway safety and that would fail to comply with paragraph 32 of the Framework that safe and suitable access to a development site should be achieved for all people … Having weighed up all of the relevant material considerations, the Secretary of State considers that factors in favour of [the appeal] could have outweighed the shortcomings of the proposal but for the effect on highway safety."

The "traditional" balance was thus restored.

(ii) Localism: From muscular to responsible

The consistent line of the Secretary of State has been that the localism agenda operates from the base of an adopted up to date local plan rather than plebiscite in the context of individual applications where there is no up to date plan in place. Whilst this has come as a shock to those who believed that the NPPF was all about local choice, it is no more or less than was to be expected given the wording of the NPPF.

However, Tewkesbury Borough Council felt sufficiently aggrieved that it sought to challenge the Secretary of State's decisions to grant planning permission for two housing schemes of 450 dwellings and 550 dwellings on Greenfield sites outside the settlement boundary and in the countryside on the edge of Bishops Cleave.[27] Its local plan policy was based on a housing requirement for the period to 2011 and there was no five-year land supply. It was thus out of date. Accepting his Inspector's recommendation to allow both appeals, the Secretary of State addressed the effect which allowing the appeal would have on localism:

> "The Secretary of State notes the comments in IR14.62 that allowing these appeals may be seen by objectors as undermining the local democratic process and the planning system. However, he is clear that the changes to the planning system that give communities more say over the scale, location and timing of developments in these areas carry with them the responsibility to ensure that local plans are prepared expeditiously to make provision for the future needs of their areas. He agrees that these proposals would not be premature."

In the High Court Males J. rejected the Council's challenge based on the argument that the decision on the appeals failed properly to reflect the localism agenda introduced by the Localism Act 2011:

[25] Which requires that all developments generating significant amounts of traffic should take account of whether safe and suitable access can be achieved for all people.

[26] On October 20, 2012.

[27] APP/G1630/A/11/2146202—July 16, 2012; Homelands and Deans Farm, Bishops Cleave.

> "… for the future, development plans prepared by local planning authorities in accordance with national policy principles set out in the NPPF, including the provision of a five year housing land supply, will represent the starting point for consideration of planning applications, and that it may well be difficult to obtain permission for developments which are not in accordance with such plans. However, the context does not suggest that greater weight should be accorded to the view of local authorities who do not have such a development plan (or during the one year transitional period, a development plan produced in accordance with the PCPA 2004) over and above whatever weight would be appropriate pursuant to the long established prematurity principle. Nor does it cast doubt on the fact that, pending the adoption of local development plans, individual planning applications will continue to dealt with, where appropriate, by the Secretary of State applying existing principles."[28]

The message could not be clearer. In the absence of an up to date adopted local plan, decisions will be made in accordance with the NPPF. However, as the Barton Farm decision indicates, that does not mean that local views are to be entirely disregarded. In that decision the Secretary of State stated that he:

> "has taken account of the Inspector's remarks about local opposition to the appeal development and he shares her view that this is a matter that counts against the scheme."[29]

That said, it is unlikely that this contrary consideration in the planning balance will play any material role where there is a land supply deficit because:

> "The Localism Act 2011 gives communities the power to plan for their own areas, but with this comes the responsibility to plan for and positively seek opportunities to meet the development needs of their areas. The Framework emphasises the desirability of having up-to-date plans in place to manage development."[30]

The recent Written Ministerial Statement on Local Planning and Onshore Wind[31] would tend to suggest that the weight to be accorded to localism may be sensitive to public attitudes about individual types of development:

> "… current decisions on onshore wind are not always reflecting a locally-led planning system … clear action is needed to deliver the balance expected by the National Planning Policy Statement on onshore wind."

New guidance is promised to "assist" planning authorities and the Inspectorate which will set out clearly that the need for renewable energy does not automatically override the environmental protections and the policy concerns of local communities. This of course risks a tension being created between schemes assessed under the Town and Country Planning Act 1990 and Planning Act 2008 projects which benefit from the permissive advice of EN-1 and EN-3.

(iii) Prematurity

The Tewkesbury approach would seem to leave little scope for any argument that the grant of planning permission might prejudice the plan making process. However, prematurity still finds support in *The Planning System: General Principles*[32] and the NPPF itself recognises that, from the day of publication, weight may be given to relevant policies in emerging local plans. Whilst the Secretary of State historically has "form" in supporting prematurity as a reason for dismissing appeals, he has shown markedly less

[28] [2013] EWHC 286 (Admin).
[29] Decision letter, para.35.
[30] APP/R0660/A/10/2141564—Land off Abbey Road and Middlewich Road, Sandbach, Cheshire—February 7, 2013.
[31] June 6, 2013, Rt Hon Eric Pickles MP.
[32] Paras 17–19

enthusiasm for it since the publication of the NPPF and some High Court challenges, other than in the context of housing and Gypsy and Traveller sites in the Green Belt.

His general approach is that emerging local plans are entitled to very little weight even if they have been submitted for examination, because they are still subject to change. For example, in the Barton Farm, Winchester appeal, the Secretary of State attached only limited weight to the City Council's emerging Part 1 Joint Core Strategy despite the fact that it had been submitted for examination because there were outstanding objections to it.

Neighbourhood plans, albeit a particular favourite of Government, have fared no better when in draft. In allowing a housing appeal, the Sandbach Town Strategy prepared by the local community as a neighbourhood planning front runner was accorded little weight where it had been prepared to inform the emerging Core Strategy. Because it had been prepared in advance of the finalisation of the assessment of future housing need for Cheshire East it could not be allowed to prejudge the contribution that Sandbach might make to meeting those needs and was therefore accorded little weight[33].

In housing appeals, the approach which the Secretary of State is taking is that in the absence of an adopted Core Strategy or Part 1 Local Plan, prematurity is not a sustainable objection. In reasoning in decisions on two housing appeals relating to land in Cheshire East he noted representations that other sites not yet the subject of planning applications might come forward but concluded that:

> "… as the district council requirement has yet to be determined through the Core Strategy, he does not consider there is a strong prematurity argument in this case."[34]

Implicit in this reasoning is that provided need has been objectively assessed and established, a prematurity argument might succeed in an appropriate case where a draft site allocations development plan is in preparation. That allows for some vestige of localism in the decision on where development occurs even if the "top down" approach to numbers has to all intents and purposes survived the cull of regional strategies.

In the meantime, attempts by authorities to make up for the absence of an up to date development plan in reliance on so called "interim housing policies" have not proved successful at Secretary of State level. For example, a scheme for 450 dwellings on land at Burgess Farm, Hilton Lane, Worsley, Manchester was allowed on appeal, with the Secretary of State disagreeing with his Inspector on the weight to be accorded to Salford's "Interim Housing Figure". Whilst the figure was derived from updated household growth forecasts, he noted that it:

> "… explicitly seeks to meet only forecast growth and demand generated within Salford; that it has not been tested at examination and has no development plan status."[35]

In consequence, the Secretary of State concluded that the housing requirement should be taken from the most up to date plan which was the Regional Strategy. The case is also important for the statement that:

> "National planning policy in the Framework encourages the use of previously developed land, but it does not promote a sequential approach to land use. It stresses the importance of achieving sustainable development to meet identified needs."

It is interesting to note that prematurity in the sense of premature release of land as opposed to prejudice to the plan-making process is however alive and well where there is a adequate land supply.

[33] APP/R0660/A/10/2141564.

[34] APP/R0660/A/10/2140255—East of Marriott Road/Anvil Close/Forge Fields, Sandbach, Cheshire—December 6, 2012 and APP/R0660/A/10/2141564—Land off Abbey Road and Middlewich Road, Sandbach, Cheshire—February 7, 2013.

[35] APP/U4230/A/11/2157433—July 16, 2012.

In dismissing an appeal for 400–450 dwellings, public open space and allotments on land at Cokerhurst Farm, Wembdon, Bridgwater, Somerset, the Secretary of State noted that the land was within a broad location for housing identified by the Sedgemoor Local Development Framework Core Strategy 2006–2027. This had been adopted as recently as October 2011 and the Council could demonstrate a 5.1 years supply of housing with a 5 per cent buffer. In these circumstances, he concluded that release of a Greenfield broad location before it was needed would significantly undermine the spatial strategy and conflict with the Core Strategy. Whilst the affordable housing contribution which the scheme would have made was significant, the fact that the proposal was below the Council's target percentage was a significant adverse factor:

> "… if the appeal site is released now, the opportunity to achieve a greater proportion of affordable housing at a later date would be lost. The Secretary of State agrees that the fact that the affordable housing yield achieved now would be below the Council's Target B (currently 30%) and so would be contrary to Core Strategy policy D6, is one of the most important factors weighing against the appeal."[36]

Similarly, an Inspector rejected an appeal relating to 89 dwellings on safeguarded land at Wick Road, Englefield Green, Surrey, where Runnymede Borough Council could demonstrate a 5.25 years supply of housing because:

> "If the site is developed now, and is therefore unavailable when the need arises in the future, then there is the expectation that either the development of the Borough would be unduly constrained, or pressure would be placed on the release of Green Belt land. In either case, the result would be detrimental to the long term planning interests of the area, and to the general thrust of the NPPF with respect to the need to plan for sustainable growth, and to protect the permanence of the Green Belt. This harm is of sufficient importance to significantly and demonstrably outweigh the identified benefits of the scheme, and would prevent the proposal from achieving the sustainable form of development for which the NPPF creates a presumption in favour."[37]

The lesson here is that the national need for housing will not of itself trump up to date policy and that if countervailing material considerations are relied upon, the benefit must be tangible and not reduced simply by reason of the accelerated release of the site.

(iv) How constraints are now faring

A review of appeal decisions shows a marked distinction between those constraints which are accorded as much, if not greater weight than before the NPPF and those which are more easily overridden by arguments in relation to need and other considerations.

Green Belt There have been almost no decisions at Secretary of State level granting approval for inappropriate development in the Green Belt, even where compelling need cases have been demonstrated. For example, he disagreed with his Inspector when dismissing an appeal for a continuing care retirement community and eco complex in the Green Belt at Heckmondwike. The Inspector had concluded that the need for the scheme "stands well above the remainder of the other considerations" which would have met the very special circumstances requirement. However, the Secretary of State regarded the case as "finely balanced" and did not feel able to support the Inspector's conclusion that the appeal proposal would meet a serious need for which there was no viable alternative:

[36] APP/V3310/A/11/2159400.
[37] APP/Q3630/A/13/2192120—July 17, 2013.

> "Although the Secretary of State accepts that there are indications of a general need for additional provision across the borough, he does not consider the evidence before him conclusively demonstrates that it is sufficient to outweigh the harm to the Green Belt."[38]

A similarly tough line was taken in relation to Fox Land and Property Ltd's proposal for 165 dwellings on land at Thundersley, Essex. The Inspector had recommended approval of the scheme but the Secretary of State disagreed. He took the view that the proposal would completely remove the open character of the site, encroach upon the countryside and encroach on a particularly vulnerable gap between settlements. He rejected the Inspector's assessment that the site was already heavily compromised by its location adjacent to the A130. He also signalled that, certainly in the context of housing development, a plan lead approach to Green Belt release was expected by the NPPF:

> "… national policy is very clear that amendments to the GB should be undertaken as part of the Local Plan process."

What is particularly striking about this case is that Castle Point Borough Council were able to demonstrate only 0.7 years supply of housing. Whilst the Inspector criticised the Council's programme to put in place an adopted Local Plan to address the shortfall as "somewhat optimistic" given its track record, the Secretary of State disagreed in a passage which is of more general application:

> "In the Secretary of State's view, whilst the now withdrawn Core Strategy (CS) was in preparation, there were no real drivers to ensure that the Council pressed ahead. With the publication of the NPPF, he is more positive than the Inspector that the Council can achieve its' programme for LP adoption, especially given the drivers within it."

Even the fact that the Council acknowledged that some Green Belt release was necessary to meet its housing needs was insufficient to tip the balance in favour of the grant or permission. The Council had agreed a list of strategic sites for release and the appeal site was not one of them. In those circumstances, the weight to be attached to the need case was diminished.

The final sting in the tail for those with possible housing sites in the Green Belt appears in the overall conclusion:

> "… the Secretary of State is concerned that a decision to allow this appeal for housing in the GB risks setting an undesirable precedent for similar developments which would seriously undermine national GB policy."[39]

Green Belt: Gypsies and Travellers A similarly tough line in the Green Belt has been taken in relation to Gypsies and Travellers. In an appeal relating to land at Travellers' Rest, Felley Mill Lane (South,) Underwood, Nottinghamshire an enforcement notice requiring the removal of four caravans was upheld and planning permission refused for the siting of three caravans on a site in the Green Belt. The Secretary of State acknowledged that the extent of the Green Belt placed a considerable burden on the Council finding new sites for Gypsy provision but concluded that:

> "… in accordance with the thrust of the PPTS, the assessment of need and site allocations should come through a measured and systematic approach."[40]

Even in the context of Green Belt which is previously developed, the grant of even temporary planning permission for the siting of residential caravans has been hard to achieve. For example, the Secretary of

[38] APP/Z4718/A/12/2170080—January 14, 2013.
[39] APP/M1520/A/12/2177157—Land off Glebelands, Thundersley, Essex—June 26, 2013.
[40] APP/W3005/C/12/2170983.

State refused permanent planning permission for Green Belt land which had a lawful use as a parking area associated with a truck stop and although he was prepared to grant temporary permission for five pitches until 2014, it is clear from the reasoning that even this was a finely balanced decision. Only the marginal improvement in the visual appearance of the site tipped the balance so that the harm was clearly outweighed notwithstanding a clear and identified need for additional pitches, the absence of any alternatives and the significant weight attached to the personal accommodation needs of the occupants.[41]

This firmer approach now has the backing of the Written Ministerial Statement on Planning and Travellers.[42] The Secretary of State is not satisfied that planning authorities and the Planning Inspectorate have given sufficient protection to the Green Belt as required by the NPPF and he:

> "… wishes to make clear that, in considering planning applications, although each case will depend on its facts, he considers that the single issue of unmet demand, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to the green belt and other harm to constitute the 'very special circumstances' justifying inappropriate development in the Green Belt."[43]

The lesson to draw from the decisions relating to residential development in the Green Belt is that the Secretary of State generally regards the sanctioning of such development as one for the plan making process, rather than encouraging ad hoc release through development management decisions.[44] That is in marked contrast to housing proposals unaffected by Green Belt where, as we have seen, there is little truck with arguments that releases should await plan revision.

Just how different the treatment of appeals is can be demonstrated by the reasoning in an appeal relating to the use of land at The Street, Hoole Bank, Mickle, Chester for use as a site for five residential caravans. There was no dispute that there was a substantial unmet need in the district but the Secretary of State nevertheless concluded that:

> "… in view of the steps that the Council is taking to release sites to meet at least the minimum identified need by 2016, the outstanding need is only accorded some weight in favour of the appeal."[45]

Green Belt: Material Changes of Use Unlike PPG2 which provided that material changes of use which maintained openness and did not conflict with the purposes of including land within the Green Belt were appropriate development, the NPPF makes no reference to material changes of use in its definition of appropriate development save in relation to the "re-use of buildings".[46] Given that the NPPF was intended to consolidate Green Belt policy rather than to effect any material change to it, the exclusion of material changes of use looks likely to have been an oversight. In a series of decisions, Inspectors have had to grapple with this omission with some surprising consequences.

In an enforcement notice appeal relating to the storage of the Sterefibre (a product of the autoclave process) on a storage pad in a quarry site at Halpole near Doncaster, the Inspector concluded that the breach of planning control was essentially the material change of use of the land with the installation of the storage pad being ancillary operational development. He concluded that the change of use of land was not included in the NPPF's list of appropriate development and in consequence the use was inappropriate development:

[41] APP/W3005/C/12/2170983—Land Adjacent to Hillcrest Café, Great North Road, Peckfield, South Milford, Leeds—August 7, 2012.
[42] July 1, 2013, Brandon Lewis, Local Government Minister.
[43] The recovery criteria of June 30, 2008 have been revised so that appeals involving traveller sites in the Green Belt will be considered for recovery.
[44] Although interestingly, on July 12, 2013, the Secretary of State was prepared to grant planning permission on appeal for re-development and extension of a Gypsy site with a encroachment onto Green Belt land, but only in circumstances where the effect on openness was "at worst, neutral" and the need was compelling. APP/Q3630/A/12/2169543/NWY—land at Walnut Tree Farm, Almners Road, Lyne, Chertsey, Surrey, KT16 0BX.
[45] APP/A0665/A/11/2165224—July 10, 2012.
[46] Para.90.

> "… irrespective of whether or not the openness of the Green Belt is preserved, or whether or not there is any conflict with the purposes of including land within it."[47]

Similarly, the change of use of land for use for leisure and the racing of motor bikes, 4x4 vehicles and non-racing quad bikes was held to be inappropriate development by an Inspector dealing with an appeal relating to land at Tarleton, West Lancashire. He concluded that the list of appropriate developments in para.90 of the NPPF was exclusive:

> "… The use of the words 'These are' in paragraph 90 of the Framework clearly indicates that the list of 'other forms of development which paragraph 90 advises are not inappropriate development is exclusive. Consequently, I conclude that the advice on material changes of use in PPG2 was deliberately not carried forward into the Framework."[48]

This reasoning was the subject of a concerted challenge in an appeal relating to a proposal for a partial change of use of land to equestrian use (polo) together with an improved access, on 34ha of the Green Belt in Berkshire. The Appellants argued that it would be irrational to interpret the NPPF as meaning that changes of use which had no impact on the openness of the Green Belt and did not conflict with any, its purposes were to be treated as inappropriate. The purposes of the Green Belt did not change between PPG2 and the NPPF and there was, it was argued, no linguistic reason why the five categories of development set out in para.90 of the NPPF should be seen as exclusive and precluding other forms of development. The obvious illogicality of treating certain engineering operations as appropriate but all changes of use as inappropriate, including as an example, a change of use of land to use as a country park was pointed out.

The Inspector rejected all of these arguments. He held that as PPG2 had been cancelled by the NPPF it could not be used to determine the effect of Green Belt policies as now contained in the NPPF. He too found that the words "These are" in para.90 of the NPPF denoted an exclusive list of appropriate development and therefore that:

> "The framework cannot therefore be read, as suggested by the appellants, to mean that other forms of development, including a material change of use of land could nevertheless be within the scope of paragraph 90 and need not be inappropriate development. When read straightforwardly, it does not convey the meaning suggested by the appellants that, if a material change of use of land maintained openness and did not conflict with Green Belt purposes, it would not amount to inappropriate development. Indeed to interpret it in that way would be inconsistent with the approach suggested in the Tesco judgment."[49]

This decision and another appeal decision relating to the use of land as a touring caravan and camping site for 112 caravans and 60 tent pitches[50] are both the subject of High Court challenges which are outstanding. It will be interesting to see what approach the Court sanctions to the interpretation of the NPPF, particularly the relevance of PPG2 in that process and the absence of any obvious intention to make the change which the Secretary of State's Inspectors are suggesting must be regarded as deliberate. The rationality of the policy position must be questionable and this is clearly an issue where a simple change to the NPPF to re-instate the PPG2 approach makes sense.

Areas of Outstanding Natural Beauty Despite the footnote 9 reference to AONBs being an example of where the NPPF indicates via a specific policy that development should be restricted, the Secretary of

[47] APP/F4410/C/11/2159653—Land at Hazel Lane Quarry, Hazel Lane, Hampole, Doncaster—July 30, 2012.
[48] APP/P2365/A/11/2165368—Leisure Lakes LX Ltd, Leisure Lakes, Mere Brow, Tarleton, West Lancashire—August 1, 2013.
[49] APP/T0355/A/122177783—Land at Beenhams Farm, Beenhams Heath, Shurlock Row, Reading, Berkshire—March 7, 2013.
[50] APP/A0665/A/12/2182464—Land at Rose Manor Farm, Warrington Road, Mickle Trafford, Chester—May 21, 2013.

State has not accorded the designation the same weight as Green Belt in his decisions. Even with the presumption disapplied, he has granted planning permission for housing development where there is an absence of a five year supply.

For example, 39 dwellings were approved on Land to the South of Berrells Road, Tetbury, Gloucestershire where the structure plan housing requirement covered the period only until 2011 and was so out of date that it was unfit for the purpose of defining the five year requirement. Using the draft Regional Strategy Proposed Changes figure, the Council had persistently under-delivered. In these circumstances the Secretary of State agreed with his Inspector that:

> "… the special emphasis in the presumption in favour of granting planning permission in such circumstances does not automatically apply in this case; because of the specific policies in the Framework that indicate development should be restricted and the duty to have regard to the purpose of conserving and enhancing the natural beauty of the AONB."

However, the benefits of the development still "decisively" outweighed the disbenefits.[51]

On the same day, the Secretary of State also granted planning permission for 250 dwellings at Tetbury on a site at Highfield Farm. He acknowledged that this proposal constituted *"major"* development in the AONB for the purposes of para.116 of the NPPF[52] with the consequence that it should be refused except in exceptional circumstances and where it can be demonstrated to be in the public interest. Taking into account the very limited scope open to the Council to identify development sites outside the AONB, the absence of any harm to the setting of Tetbury and the clear and pressing need for more housing locally and nationally, the Secretary of State concluded that exceptional circumstances existed.[53]

Green Wedges Green Wedges have, however, found more support in appeal decisions.

Between Coalville and Whitwick in Leicestershire there is a Green Wedge dating back to the North West Leicestershire Local Plan 2002. The policies of that plan covered the period to 2006 and it was therefore out of date. There was a significant and demonstrable shortfall in the five-year supply.

However, the Secretary of State agreed with his Inspector that a proposal for housing, a village centre, a primary school and some retail and business development would have a very profound impact on the purpose and identity of the Green Wedge. That would be tantamount to the undesirable coalescence of Coalville and Whitwick. Given the important purpose which the Green Wedge performed, he concluded that it should be lost only for "very compelling land use planning reasons" because it should properly be regarded as a very important part of Coalville's green infrastructure.

Interestingly, in this context, the Secretary of State *was* prepared to give some limited weight to the pre-submission Core Strategy which had been published after the inquiry and which showed the Green Wedge retained although, of itself, this was not determinative. Despite the proximity of the site to the town centre, a good Building for Life rating and the contribution to housing need, he could not conclude overall that it was sustainable development and the appeal was dismissed.[54]

This recognition of the importance to local communities of their separate identity is also reflected in Inspectors' decisions. For example, in an appeal relating to a housing scheme on Land North of The Hills, Longridge Road, Grimsagh, Preston, the absence of a five year land supply did not persuade the Inspector that she should override an Area of Separation policy contained in a recently adopted Core Strategy:

[51] APP/F1610/A/12/2173305—February 13, 2013.

[52] There is now some authority on the meaning of "major" development in this context. In *R. (on the application of Aston) v Secretary of State for Communities and Local Government* [2013] EWHC 1936 (Admin), Wyn Williams J. rejected the argument that it should bear the same meaning as contained in Art.2 of the Town and Country Planning (Development Management Procedure) Order 2010. He held that the decision of the Inspector that a 14-dwelling scheme was not "major" involved no error of law. Rather it should be given its natural meaning in the English language albeit that thus is not "precise".

[53] Both these decisions are the subject of High Court challenge.

[54] APP/G2435/A/11/2158154—August 20, 2012.

> "… the presumption in favour of sustainable development in the Framework has three strands — social, economic and environmental. In this case I consider that the environmental and social aims of maintaining an [area of separation] designation between Preston and Grimsagh to protect the identity and distinctiveness of Grimsagh, as set out in the recently adopted Core Strategy would not be achieved and that, in this case this is an overriding consideration."[55]

Overall, the message in terms of constraints is a mixed one. The Green Belt is, if anything now an even greater constraint to development, the AONB arguably less whilst others which might have been thought to have little future under the NPPF, such as Strategic Gaps, appear to be enjoying a rejuvenation.

(v) Miscellany

The title of this section should not be taken to indicate unimportance: it simply reflects the fact that a number of issues of wider relevance have arisen in appeal decisions which are not appropriately or conveniently included in other sections of this paper.

The Five Year Land Supply The para.47 requirement that a five-year supply of specific deliverable sites assessed against the housing requirement has given rise to the interesting debate as to whether any existing backlog resulting from under delivery should be rectified over the remaining plan period (the Liverpool method) or within the five-year period being assessed (the Sedgefield approach).

Consistent with the NPPF's emphasis on delivery, the Sedgefield approach is clearly in the ascendency and should now be regarded as the norm. However, there is scope in appropriate cases for the Liverpool approach to apply. This will principally be in those areas where the local plan assumes that it will be rear end loaded, usually due to the likely progress on strategic sites. In an appeal into Bloor Homes' proposal for housing on 4.4ha of land East of Groby, Leicestershire, they argued for the Sedgefield method. Hinckley and Bosworth Borough Council contended that the Liverpool method was more appropriate to their local circumstances. The Inspector, whilst acknowledging that the Sedgefield method had some force, sided with the Council:

> "… the Liverpool method is a recognised way of calculating housing land supply. The Core Strategy inspector anticipated that there would be shortfalls in housing land supply in the early years and that these would be made up later in the plan period when, for example, the SUE's come on stream. Given the inherent uncertainties in any prediction of future supply and the fact that it is a method that chimes with the approach in the Core Strategy I consider that it does provide a reasonable basis for assessing future supply."[56]

The weakness of the Liverpool method is that historically it has led to an unrealistically high housing requirement for planning authorities in the latter part of the plan period and the backlog is therefore simply rolled continually forward. Unsurprisingly therefore the circumstances in which an authority will be allowed to rely on it are likely to be few particularly where there has been sufficient time to appreciate that the underlying strategy is failing and to put a review of the local plan in place.

On a separate issue, one decision on housing land supply has been trotted out at inquiries and examinations up and down the country in support of the need for the release of more land. In an appeal relating to 105 dwellings on land at Manchester Road/Crossings Road, Chapel-en-le-Frith, High Peak, Derbyshire, the Inspector interpreted the NPPF as preventing reliance on sites without planning permission contributing to the deliverable supply:

[55] APP/N2345/A12/2182325—March 1, 2013.
[56] APP/K2420/A/12/2181080/NWF—January 22, 2013.

> "Footnote 11 to paragraph 47 explains that sites with planning permission should be considered deliverable until permission expires unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable…The inclusion of the phrase "until permission expires" strongly implies that a site which no longer has or, significantly, has not yet received planning permission for housing is not to be considered deliverable in terms of the Framework."[57]

With the greatest respect to the Inspector, not on any proper reading of footnote 11 can it be said to have that implied meaning. The principal test for deliverability is contained in the first sentence of the footnote.[58] It does not exclude reliance on sites without planning permission. The second sentence is simply intended to allow planning authorities to rely on all extant planning permissions save where shown to be undeliverable. The decision should not be followed and this has now been confirmed by the Secretary of State in the context of a housing appeal in Wealden.[59]

Preservation of Community Uses Paragraph 70 of the NPPF which states that planning policies *and decisions* should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs, is proving to have real teeth. In relation to public houses it has been used to refuse redevelopment schemes for housing even in the absence of any local policy protecting such uses. For example, proposals to redevelop a pub in Comberton Cambridge for 10 dwellings were refused because the appellant had failed to provide evidence that there was no business interest in continuing the public house use.[60]

However, it has been held to afford no protection in circumstances where the building has been demolished and prior to demolition there was a significant period of disuse. Again in Cambridge, the former Dog and Pheasant Public House, last used in 2011 was demolished to make way for a proposal of 11 dwellings. The Inspector found that the absence of a suitable building for re-use and the period of disuse was sufficient to mean that the appeal proposal would not conflict with para.70.[61]

Inevitably these decisions will be fact sensitive but prior to the NPPF it was rare for the preservation of existing uses to be held to justify refusal of permission for alternative uses in the absence of a specific development plan policy.

Planning and other regimes There are however limits to the NPPF's extension of previous policy. Paragraph 69 states that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. In an appeal relating to a shisha bar on the High Street in West Bromwich, Sandbach Primary Care Trust had objected on the grounds that tobacco was harmful to health and the use of shared waterpipes would increase communicable diseases such as TB and hepatitis C. This led to a refusal. However, the appeal was allowed because the Inspector found that smoking was controlled by other legislation which the planning system should not seek to duplicate. There was therefore no conflict with para.69.

Interestingly, the inspector's reasoning would suggest that had the proposal been for a fast-food restaurant then para.69 would have been engaged because "there are no age-related restrictions on its sale and consumption".[62]

[57] APP/H1033/A/11/2159038—August 22, 2012.
[58] "To be considered deliverable, sites should be available now, offer a suitable location for development now and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that the site is viable."
[59] APP/C1435/A/12/2186147—June 18, 2013—Oaklands, Ersham Road, Hailsham, East Sussex: "He agrees with the Inspector's view that there is nothing in the wording that says that sites without planning permission should be excluded as a matter of principle."
[60] DCS 200-000-180
[61] APP/Q0505/A12/2181660—January 29, 2013.
[62] APP/94620/A/12/2184719—January 28, 2013.

(vi) Local Plans

As the statistics outlined at the beginning of this paper indicate, the NPPF is having a significant but adverse effect on plan preparation. The picture is one of stalled or protracted examinations, withdrawn plans and little by way of adoption. This in large measure is due to the difficulties presented by the duty to cooperate and the absence of any clear guidance on the objective assessment of housing need. Both these issues may benefit from the output of the Taylor review of planning policy but there is a risk at present that the NPPF is seen as creating unfairness particularly to those authorities who are keen to meet their objectively assessed needs in full but who are struggling with how those are identified in a way which will satisfy an Inspector at examination and whose neighbours may be uncooperative in the process.

The Duty to Cooperate There are a number of existing examples of Inspectors finding that the plan making authority has failed to comply with the duty to cooperate. The North London Waste Plan was withdrawn on the Inspector's recommendation because, whilst the seven constituent authorities had cooperated with themselves and the other London Boroughs, the Inspector concluded that there had been no cooperation with anyone else "or at least effectively".[63]

The principal concern was the reliance on the continued exportation of 290,000 tons of waste out of London to other authorities' areas. The Inspector accepted that the London Regional Technical Advisory Board had engaged with representatives from the South East and East of England in the preparation of the London Plan which set the London apportionment and effectively established the need for the exportation of waste but that this did not absolve the Councils from separately discharging the duty. He stressed that:

> "The Act and the NPPF use the term 'cooperation' and not 'consultation'. If the duty had been merely to consult, the Act and subsequent advice would have said so."

The Council had also argued that because they were not proposing any *developments or use of land* which would have a significant impact outside the seven Boroughs, the duty was not in any event engaged because it applied only to "particular" development proposals. The Inspector rejected this argument:

> "… the lack of provision for managing all the waste arising from within north London will result in its continued export albeit perhaps at a reduced level … this is in my opinion likely to have a very significant impact on the areas where the waste is received and possibly on the transport routes along which it is moved. The import of waste could also take up landfill or other waste management capacity which might be better used by locally produced arisings … Consequently the North London Councils have a duty to cooperate with the councils representing the planning areas" within which the waste would be managed or deposited.""

A rather more relaxed approach to the duty was taken by the Inspector examining the Waverley Borough Council Core Strategy. Their draft Core Strategy apparently relied on developments outside its boundaries for meeting its 230 dwellings per annum housing requirement but the Council had not secured agreement to that effect with either Rushmoor or East Hampshire. However, fortunately for Waverley, these two authorities considered that their objections could be met by amendment to textual references and the Inspector was therefore prepared to regard the issue as one of soundness rather than a show-stopping failure to comply with the duty. Any relief will have been short lived because he has also recommended that the plan be withdrawn because the Council has failed to robustly and objectively assess housing need. His particular criticisms relate to reliance on a 2009 Strategic Housing Market Assessment which the Council themselves acknowledge is out of date, demographic and household data within the Borough

[63] Report, March 14, 2013.

rather than the market area with no allowance for in-migration and rigid adherence to the South East Plan requirement without evidence that the constraints justified such capping.[64] Waverley have to date resisted the recommendation and, following an exchange of correspondence, the Inspector is to hold an exploratory meeting to probe whether the Core Strategy can be salvaged.

What is obvious is that these issues with housing need cannot sensibly be addressed without full compliance with the duty to cooperate. There is between the two, an inevitable link which is perhaps not well understood by some authorities.

This link is well demonstrated by Coventry City Council's recent examination experience. The circumstances were described by the Inspector as "highly unusual if not unique." The Council had withdrawn a Core Strategy making provision for 33,500 dwellings (26,500 within the City itself and 7,000 in adjoining districts) in favour of a new Local Development Plan. This new plan made provision for just 11,373 dwellings. The City Council said that this reduction was largely due to Nuneaton and Bedworth Council's withdrawal from a commitment to accommodate 3500 dwellings in the their district and this had led to the original requirement becoming undeliverable. The new plan also made provision for just the City Council's housing requirement and not (as previously) requirements arising in South Warwickshire.

The City Council sought to rely on a Statement of Common Ground with surrounding districts (not signed up to by Birmingham City Council or Nuneaton and Bedworth) which stated that although there was no single up to date sub-regional SHMA, there was a series of individual SHMA's between which there was a broad consistency of methodology and assumptions. The statement also stated that that the current interpretation of the evidence was that all member authorities could meet their housing requirements within their own borders.

The Inspector was unpersuaded. His analysis of the SHMAs showed no broad consistency which inevitably called into question the statement that each district could meet its own needs. That in turn meant that it was impossible to conclude that the full objectively assessed needs of the housing market area were being met as required by para.47 of the NPPF. Without a joint up to date SHMA, there had been a failure to comply with the duty to cooperate.

This of course causes problems where there is no commitment to cooperate and this was alluded to by the Inspector but in terms which will have provided little comfort to the City Council:

> "I accept that cooperation is not a one way street … and it would have been open to its neighbours to take more of an initiative in cooperating with Coventry. But it is the Council and not its neighbours that has submitted its plan for examination, and the Council not its neighbours, that is required to demonstrate that it has discharged its duty to cooperate."

This of course leaves open the possibility that an authority which has done all that it reasonably can to discharge the duty, is knocked back because of the intransigence of a neighbouring authority or other relevant body. The risk of that occurring will only be eliminated by better guidance on what is required of all planning authorities and a consistent firm line from Inspectors which penalises any authority which seeks to take advantage of its intransigence.

The importance of both is signalled by the Inspector examining the Kirklees Council Core Strategy who has recommended withdrawal:

> "I would re-iterate the point which I made in my earlier letter that sections 20(7B) and (7C) of the Act do not provide for the rectification of a failure to meet the 'duty to cooperate'. Once the plan is submitted, no changes can be made or additional work undertaken which would remedy a failure to fulfil the duty to cooperate."[65]

[64] Inspector's Letter, June 13, 2013.

[65] The Inspector noted that the Core Strategy was likely to fail to meet the duty but on July 8, 2013 Kirklees Council postponed making a decision to withdraw the plan pending the outcome of an initial hearing into neighbouring Leeds City Council's Core Strategy.

The rigour attached by Inspectors to the duty, coupled with the inadequate guidance on key issues will do nothing to speed up local plan preparation and whilst there is no doubt merit in ensuring that all authorities take a properly strategic approach to their forward planning, it must be doubtful whether a statutory framework which prevents any remedial action following submission is sensible, particularly where the consequences are likely to be capable of being addressed as soundness issues. The balance here may need to be reviewed once any new guidance has had a chance to bed in.

Does the NPPF need improving? There are some signs that the NPPF is the game changer that it was intended to be. There is undoubtedly a more positive approach to necessary development and signs that, certainly in respect of some constraints, a re-balancing of priorities. There is a need for some minor revision to address obvious detailed weaknesses such as the status of material changes of use in the Green Belt, but a key success of the NPPF is that it is a practical and user friendly source of policy. It has served to demonstrate that endless policy and practice guidance adds little to the planning process.

That said, the increased emphasis on up to date local plans demands better guidance on both the duty to cooperate and the assessment of housing need. There need to be rules of engagement, formal mechanisms for collaborative working and a much clearer indication of what the Planning Inspectorate will find acceptable. Unless this is done, it will remain the case that it is now harder to get plans adopted than at any time since the introduction of the plan led process of development control and therefore the risk is that the NPPF will be self-defeating.

Panacea, Pariah or Placebo? There is no simple answer to the question raised in the title to this paper. For those anxious to get Greenfield housing sites permitted in areas of high demand, then the NPPF is showing itself to be a game-changer. Provided of course that the land is not in the Green Belt, in a Green Wedge or close to a European site.

For those whose sites are only realistically likely to be permitted once allocated in a local plan and for cash strapped local authorities without the resources or the strategic planning skills base necessary easily to discharge the duty to cooperate, the NPPF has had a chilling effect on plan preparation. Where that has given rise to planning by appeal, the local response is, predictably, to call for the NPPF's cancellation. This will only worsen unless the policy lacuna is properly grappled with.

What is of course impossible to identify is which of the decisions referred to in this paper would have been decided differently before the NPPF. The drop in the number of appeals and the absence of any noticeable change in success rates would suggest that in the majority of cases it is seen as positive but not determinative. That is entirely consistent with the view of the Secretary of State who, in relation to all of his decisions issued after the publication of the NPPF where the inquiry had been held prior to March 2012, did not in a single instance, refer any issues back to the parties for further representations to be made.

This displays the inherent flexibility of the NPPF. Allowing the decision as to whether development is sustainable to be the output of a balance within which the weighting can change to suit the views of the Secretary of State or the public mood is one of its strengths. Provided that it can be amended or supplemented to ensure that it does not operate to frustrate pragmatic plan making then the early weaknesses will be rectified.