

Viability in the New NPPF

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Introduction

For some time, those drafting and implementing planning policy have struggled to deal with the (often competing) need to ensure schemes are built out and the need to ensure that specific policy objectives, such as affordable housing and other infrastructure contributions, are delivered. On the developer side, those who build houses say the funding climate in which they operate makes it difficult to meet the requirements of planning authorities and deliver the people who hold the purse strings with reasonable returns. Cynics would argue that to date, developers are content to promise that they will deliver affordable housing at permission stage, in the knowledge that these requirements can be reduced or even dispensed with entirely at a later stage.

So far, national policy has been reasonably favourable to developers who seek to reduce their affordable housing quotas and/or infrastructure contributions. The government's response to this in the draft NPPF was to seek to discourage viability arguments post-permission by declaring them to be the exception not the norm, removing the principle that developers should be able to make a competitive return on their schemes, standardising the approach to viability assessments and increasing transparency. The reforms proposed in the draft NPPF have largely been retained in the final text (notwithstanding mixed consultation feedback) but with some key changes in the accompanying guidance.

Where we are now

The government's proposals secured some easy wins in the consultation. According to the official response to the consultation, there was widespread support for standardisation, increased transparency and attempts to avoid delay. However, the proposals to address viability at the plan making stage were much more controversial, with concerns from all quarters about how this would actually work in practice. The government has responded to this by providing more detail in the guidance, but the key principles and policy changes in the draft NPPF itself have been carried over to the final text.

The new NPPF and planning guidance is as follows:

1. Plans should set out the contributions expected from development, including affordable housing and other infrastructure. The detail of how this is to be achieved is contained in the planning practice guidance.
2. As to decision-taking, new paragraph 57 NPPF states that proposals which comply with an up to date development plan which sets out contributions expected from planning applications are viable. The text has been amended from the draft to make it clear that there is still scope for applicants to submit viability assessments at the permission stage. The guidance has also been expanded to give examples of where this may occur (see below).
3. New paragraph 57 NPPF also provides that viability assessments should reflect the recommended approach and should be made publicly available.
4. Plan makers should collaborate with stakeholders to create realistic, deliverable policies. Policies should avoid the need for further viability assessments at decision making stage.
5. It is the responsibility of promoters to engage in plan making and to take into account their costs, including profit, and ensure proposals are policy compliant. The price paid for land is not a justification for failing to comply with plan policies.
6. Plans should make provision for review mechanisms. These are intended to assist local authorities in securing compliance with their plan policies over time, rather than as a means for developers to seek to reduce their obligations.
7. There is more detail given on the circumstances where a viability assessment can be provided at the decision making stage. For example, where significant economic change has occurred since the plan was brought into force, where development is proposed on an unallocated site or where further information on infrastructure costs is needed.
8. Land value should be assessed as Existing Use Value plus a premium for the landowner.

9. On transparency, the government has now made it clear that the expectation is an executive summary will be published and thereafter it will be up to the parties to decide whether more detailed information (including commercially sensitive information) will be provided.

All change or no change?

The results of the consultation suggest that local authorities in particular were concerned about how this is all going to work in practice, and in particular the resource implications. It is not clear how rigorously viability can be dealt with during plan making given the limitations of the EiP process. The less detailed the consideration of viability at this stage, the more scope there will be for developers to plead changed circumstances when it comes to decision making. It is therefore likely that, despite the government's best efforts, we will continue to see viability assessment at decision making stage.

Is the rest just tinkering? Arguably, the trend towards transparency was already happening (following the lead of the information commissioner and local authorities who voluntarily disclose assessments). Similarly, the approach to land value reflects recent case law (see the *Parkhurst* decision).

Overall, while there has been an attempt to change the approach in national policy, whether or not there is a seismic shift in approach will depend on how local authorities deal with implementation in practice. Despite attempts to secure standardisation, the new policies leave room for local authorities to strike their own balance between delivering housing need and viability.

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