

Insights

NPPF CONSULTATION: GREEN BELT REFORM

IMPLICATIONS FOR LANDOWNERS AND DEVELOPERS

Sep 19, 2024

SUMMARY

One of the headline changes proposed by Government in its [consultation \(which closes on 24 September\)](#) on revisions to the NPPF is to Green Belt policy.

These proposed changes are worth detailed consideration as they may have significant implications for landowners and those with development interests in land currently allocated as Green Belt.

In this insight we take a detailed look at how the proposed new Green Belt NPPF policy would apply in plan making, decision taking and to site assembly and what this means for land values, development viability and CPO compensation.

GREEN BELT POLICY REFORM

The 'fundamental aim' of the Green Belt as stated in the NPPF is urban containment. The NPPF contains strong protections by imposing strict tests to be met before Green Belt land can be released for development.

The policy revisions proposed will not change the strict policy tests but are designed to release more land from the Green Belt allocation, particularly for housing, where development needs cannot be met in a local area using non-Green Belt land, so that these protective tests would not apply. Government has repeatedly emphasised its preference for utilising available 'brownfield' land for development before turning to the Green Belt.

IN PLAN MAKING

Currently local planning authorities (LPAs) have a discretion to review Green Belt boundaries during plan making and allow alterations in 'exceptional circumstances'. However, the proposed changes would require:

- mandatory reviews of Green Belt boundaries where LPAs are unable to meet their development needs;
- alteration of boundaries if justified following a review, having considered brownfield and wider opportunities for development first and provided the function of the Green Belt is not undermined; and
- application of new sequential approach to guide the release of land, so that brownfield land, 'grey belt' land (being a new designation for land that makes a limited contribution to the Green Belt), then other Green Belt land is released in that order.

Requiring mandatory Green Belt boundary reviews where development needs cannot otherwise be met is a powerful policy lever to release more land. As such, it is likely to be contentious, not only from the perspective of local protectionist groups but also from competing landowners with well-located land that risks being put into competition with ex-Green Belt.

IN DECISION MAKING

Current NPPF policy regards the construction of new buildings as 'inappropriate' development which is harmful to the Green Belt and should not be approved except in 'very special circumstances', subject to limited exceptions.

The policy changes propose to expand the list of exceptions, so that the types of development that are not considered 'inappropriate'^[1](so as to disapply the 'very special circumstances' test) include housing, commercial and other development provided that:

- 'grey belt' land is used (in essence land that falls within the Green Belt but makes only a limited contribution to its purposes);
- the function of the Green Belt is not undermined; and
- there is a demonstrable need.

THE 'GOLDEN RULES' FOR GREEN BELT LAND RELEASED

The release of land out of the Green Belt will come with certain expectations for development of that land – coined the 'golden rules'. These 'golden rules' would apply to 'major development' on Green Belt land and require 50% affordable housing (subject to viability), infrastructure improvements and enhancements to public green spaces.

Anticipating the demand for concessions on viability grounds arising from application of the 'golden rules', Government is seeking to impose certain expectations on the viability assessment

process, mindful that released Green Belt land should not get off lightly in terms of the provision of public benefits.

VIABILITY

The current NPPF is clear that developers and landowners should adjust their expectations to fit the requirements of planning policy, so that these costs are reflected in transaction prices and not used to negotiate policy reductions.

However, the NPPF also recognises that particular circumstances may justify the need for a viability assessment in plan making and at the application stage to establish whether allocations and development proposals can deliver policy-compliant levels of developer contributions and provide a reasonable return to the landowner and developer. Where proposals are shown to be not financially viable a reduction in policy delivery can be justified.

Current NPPF policy sets out the assumptions around viability, when viability assessments can be justified and the weight to be applied to them in decision making, and the Planning Practice Guidance (PPG) provides more detailed guidance on their preparation including the standardised inputs.

There has always been a theoretical safeguard in the site allocation process i.e. that policy expectations for a site should be consistent with a viable development. However, the inflated land value that accompanies a site allocation can distort that overall viability process.

It is with this distortion in mind that Government is seeking to place constraints on what is known as the 'benchmark land value' (BLV) – an assumed value against which a development appraisal is tested (in other words, if the BLV cannot be met or exceeded why would a landowner agree to release their land for development?).

There are different methods used to establish the BLV, but the PPG requires its calculation primarily on the basis of the existing use value (EUV) of the land (which ignores any prospect of future change to that use), plus a premium for the landowner (the EUV+ method) (a premium neither the NPPF nor the PPG quantify).

It is therefore left to LPAs to decide what premium should be applied to the EUV to establish the BLV using evidence-based judgement. This is a difficult judgment to make (given a number of sensitivities to which it is subject in a given case) but establishing the BLV is critical in determining whether a proposed scheme is financially viable.

Government wants to ensure that more of the land value uplift is captured and invested in infrastructure and affordable housing. The NPPF consultation proposes a new approach to the preparation of viability assessments setting out three options:

OPTION 1

Imposing a nationally set indicative BLV to inform LPAs in their setting of BLVs which, along with local material considerations, will be used in viability assessments. This figure would allow for an 'appropriate' premium above the EUV with a different approach proposed for agricultural land and for previously developed land to reflect standard practice.

This probably means Government would identify either a percentage uplift over the EUV or an EUV multiplier that it thinks would represent a fair return for landowners and allow for policy delivery against the 'golden rules', but the consultation does not suggest an actual figure.

However, it acknowledges that the 'landowners premium' applied to establish the BLV in assessments of agricultural land and brownfield land that range from 3-times to 40-times the EUV in practice, would not necessarily relate to Green Belt land with its lower EUV (due to the designation) but higher level of policy requirements following release. The consultation seems to suggest a BLV at the lower end of this spectrum may be set and invites views on the impact of this.

Interestingly, the draft NPPF text proposes the nationally set BLV would allow an 'appropriate' premium for landowners, in contrast to the current PPG wording which requires the landowners' premium is 'reasonable'. Government is banking on landowners not being deterred by a more conservative valuation.

OPTION 2

If land has been sold (or optioned) at a price above the nationally set BLV, development should be assumed to be viable and viability negotiations should not take place. Non-policy compliant development would be refused in such cases, subject to other material considerations. Where policy compliant development can be delivered, viability assessment should not be undertaken, irrespective of the price at which land is transacted, and higher levels of affordable housing should not be sought on the grounds of viability.

Again, setting the BLV at the right level will have a major bearing on whether sites are released and the viability of policy compliant schemes. It will therefore be essential that the BLV is considered in transaction prices.

OPTION 3

Where land is transacted below the nationally set BLV but still cannot deliver policy-compliant development, it is up to the applicant to demonstrate whether particular circumstances justify the

need for a viability assessment at the application stage. Late-stage reviews will be required where a reduced policy delivery is agreed.

This policy differs from the policy for non-Green Belt land on the justification of viability assessments as it specifically refers to the land transaction cost. By doing so, it effectively limits the circumstances when the need for a viability assessment at the application stage may be justified.

CPO COMPENSATION

A policy change where released Green Belt land is compulsorily purchased may result in reductions in compensation paid to affected landowners.

Current NPPF policy already supports acquiring authorities in using their CPO powers where necessary. However, the consultation goes further and considers specific support for the use of these powers where released Green Belt land does not voluntarily come forward for development, to enable site assembly and delivery of policy compliant schemes.

In such cases, it proposes CPO compensation would be assessed using the standard CPO compensation rules, but acquiring authorities may include a direction in the CPO for the non-payment of 'hope value' where appropriate and in the public interest. This follows newly introduced powers contained in the Levelling Up and Regeneration Act 2023.

Inclusion of such a direction would essentially cap compensation payable to landowners at a lower level, so that there is more money available to deliver the public benefits required by policy. Whilst this new power has general application and is not unique to Green Belt land, if specific policy support is included the NPPF it would strengthen acquiring authorities' confidence in exercising it, but with significant negative implications for affected landowners in terms of compensation.

COMMENT

The NPPF and PPG reform proposals as they relate to interrogating BLV/scheme viability are an extension of what the Mayor of London has been proposing for several years now given the particular challenges for release of land in the capital.

These changes, along with those to the wider Green Belt policy are worth detailed consideration, given the land value impacts, commercial and viability consequences and, in the case of the compulsory purchase of released Green Belt land, the capped compensation entitlements in certain cases.

In terms of land values, if Green Belt land is subject to stricter requirements imposed through the 'golden rules' and a nationally set approach to BLVs were viability testing is needed, there are concerns that a two-tier market for land may emerge for Green Belt and non-Green Belt land.

Although it may well come to pass that this closer inspection of BLV will be applied across the board in a local authority area where developers are seeking forgiveness for development plan compliant infrastructure or affordable housing.

Many in the development community are wise to this evolution and have been more rigorous in their negotiation of terms for the acquisition of development sites. It is common now for these deals to share the risk of development costs to a certain extent.

As ever, it is imperative for landowners and developers to fully engage in the plan making process where Green Belt boundaries are under review so that local considerations, data, sensitivities and expectations in terms of land values can be articulated and considered by Examining Inspectors to ensure that proposed allocations are deliverable and financially viable.

Whilst the policy changes will expand opportunities for Green Belt development, particularly for housing, the bar to development will remain high and promoting financially viable schemes will continue to be finely balanced. Whilst one can appreciate Government's position on seeking to fully capture the public benefit from the release of Green Belt land, the real issue to overcome will be local NIMBYism that has to date preserved the Green Belt in aspic.

[1] Currently limited to agricultural and forestry buildings, outdoor sport and recreation facilities, cemeteries, burial grounds and allotments, building extensions, replacement buildings and limited infilling in villages, affordable housing and development of previously developed land.

RELATED PRACTICE AREAS

- Planning & Zoning

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