

London Borough of Southwark
Old Kent Road Area Action Plan

NOTE

Transitional Provisions

1. The Government published a new version of the NPPF in December 2024. It contained transitional provisions for plan-making in Annex 1 from paragraph 234 to 243. The central issue to which these provisions relate is whether a local plan document in the course of preparation at the date of publication of the 2024 NPPF should be examined for soundness under the 2023 NPPF or the 2024 NPPF.
2. This issue has particular resonance for the Old Kent Road Area Action Plan. This is a proposed development plan document that builds on the strategic policies contained in the adopted Southwark Plan. The Southwark Plan was adopted in February 2022. The AAP also falls within an area covered by the London Plan 2021, which is a Spatial Development Strategy within the meaning of the NPPF 2024 (see Glossary).
3. The general proposition within paragraph 234 of the NPPF 2024 is that from 12 March 2025 the 2024 NPPF will apply for the purposes of the preparation and examination of local plans. There are a series of exceptions to this set out within paragraph 234. Put simply, if the local plan in question falls within one of those specific exceptions then the NPPF 2023 applies to its preparation and examination before and after 12 March 2025 (para. 235); if not, then from 12 March 2025 it must be prepared and examined under the NPPF 2024. Further, as a point of interpretation, the transitional provisions relate to the individual plan being promoted by the plan-making authority. For example, if the plan-making authority is preparing a number of area action plans pursuant to a single strategic local plan, it is the stage reached and circumstances pertaining to the individual AAP that is determinative of the effect of the transitional provisions. In addition, it is clear from the wording and context of paragraph 234 and 235 of the NPPF

224 that each of the sub-paragraphs represents a freestanding exception to the application of the NPPF 2023.

4. Alongside publication of the NPPF 2024 the Government also published its response to the consultation exercise on it begun in July 2024. That report provides some helpful practical guidance as to how the transitional provisions are intended to operate¹.
5. The Council seeks advice in relation to paragraphs 234(b) and (c) in relation to the OKR APPP.
6. Firstly, footnote 82 should be noted. This reads:

“(82) Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. In this context “reached Regulation 19” refers to when Regulation 19 has been complied with (i.e. when the planning authority has made a copy of each of the proposed submission documents and a statement of the representations procedure available, and the statements required in Regulation 19(b) have been sent to consultation bodies).

7. This clarifies the necessary events that need to occur before a plan is considered to have reached regulation 19 stage, and in this confirms that the decision of the Council of 20 November 2024 is not sufficient to constitute that change having been raised².
8. Secondly, and in relation to 234(a) and (b) NPPF 2024 I understand that it is not intended that the plan be submitted prior to 12 March 2025. As such, these exceptions will not apply. In any event, in my view, paragraph (a) applies in relation to a strategic local plan which includes a housing requirement. In this case, that is addressed through the Southwark Plan and not the OKR AAP – the plan to which the transitional

¹ [Government response to the proposed reforms to the National Planning Policy Framework and other changes to the planning system consultation - GOV.UK](#)

See in particular the answers to questions 103 and 104 including the worked examples and the Flow Chart

Although ultimately the interpretation of the NPPF is a matter for the Court.

² See paragraph 4 of the email of Ms Stevens dated 13 January 2025.

provisions should be applied. The term ‘housing requirement’ should be interpreted in line with paragraph 69 of the NPPF 2024 / 67 of the NPPF 2023³.

9. Paragraph 234 (c) applies where the plan includes “policies to deliver the level of housing and other development set out in a preceding local plan such as a joint local plan contains strategic policies) adopted since 12 March 2020”.
10. In my view, giving the words used their ordinary meaning the OKR AAP would meet this exception. Looking to the purpose of the exception this would seem to enable policies to be adopted to deliver strategic development plan policies adopted against an earlier version of the NPPF.
11. Further, in both substance and form, the OKR AAP in policy terms derives from and delivers earlier strategic policies adopted through the Southwark Local Plan⁴.
12. Paragraph 234(d) applies where the local plan is “for an area where there is an operative Spatial Development Strategy and the local plan has reached Regulation 19 (pre-submission stage) on or before 12 March 2025”.
13. In this case, the London Plan 2021 represents a Spatial Development Strategy. As such, the OKR AAP meets the terms of this exception provide that it reaches regulation 19 stage (as defined in footnote 82) by 12 March 2025.
14. Turning to the purpose of exception (d) this provides a more limited exception for reliance on the 2023 NPPF in that it is time limited to plans that reach regulation 19 stage by the transition date. A plan promoted for consistency with the London Plan but which falls outside of this time frame will be assessed under the NPPF 2024.

³ The text is the same in referring to a “housing requirement figure for their whole area”

⁴ E.g.1 – the relationship between the plans is shown and described on pp8-9; E.g.2 The AAP seeks to deliver the 20,000 new homes and 10,000 new jobs that are identified through the Area Vision for Old Kent Road (A13). E.g.3 The AAP relies on and provides further guidance on the delivery of sites allocated through the Southwark Plan.

15. On this basis it seems to me that the OKR AAP will be examined under NPPF 2023. For additional comfort, if the plan reaches regulation 19 stage by the transition date then this would enable reliance on paragraph (d) as well as (c).
16. Paragraph 236 of the NPPF 2024 applies explicitly where paragraph 234(b) applies. My view, as expressed above, is that paragraph (a) only applies to a plan which contains a strategic housing requirement. Where a plan is reliant on strategic housing requirements set out in earlier development plan documents / local plans then the appropriate exceptions will be (c) and / or (d). Where the plan does contain a housing requirement then the critical substantive issue (in addition to the timing requirements of sub-paragraph (a) is whether or not the housing requirement contained within it is at least 80% of the local housing need assessed pursuant to the 2024 methodology.
17. Sub-paragraph (b) addresses a different procedural stage where the plan has been submitted prior to the transitional date of 12 March 2025. It confirms that the plan will remain subject to the 2023 NPPF for the purposes of examination and adoption. This is the case whether the housing requirement is above or below 80% of the local housing need figure as now calculated. However, in the situation where the submitted plan does contain a housing requirement of less than 80% of the local housing need figure then the plan-making authority should begin to promote a new plan under the legislative provisions yet to be brought into force under the LURA 2023 as soon as they are brought into force. The focus of this plan will be to address the shortfall. This provision does not apply however where there is an operative Spatial Development Strategy that provides the housing requirement.
18. In my view, paragraph 236 has no application to the OKR AAP because (a) it does not contain a housing requirement which meets less than 80% of local housing need, and footnote 86 applies.
19. It may be emphasised that Annex 1 of the NPPF 2024 is concerned only with transitional provisions. Where transitional provisions are not contained, then the necessary policies for ensuring plans are kept up-to-date are contained within the main body of the NPPF (e.g. paragraph 34 of the NPPF 2024).

20. Paragraph 237 relates to plans that reach regulation 19 stage by the transition date but whose draft housing requirements meets less than 80% of local housing need. In my view, this paragraph would not apply to the OKR AAP regardless of the date at which it reaches regulation 19 stage. This is because it does not contain a housing requirement.
21. It follows that in my view that the advice in that paragraph that the plan should proceed to examination within 18 months of 12 December 2024 (the publication date of the NPPF 2024) does not apply.
22. I am aware that the local housing need pursuant to the 2024 methodology has increased, and that this is necessarily not reflected in the Southwark Plan or the London Plan. I also understand that GLA intends to provide an apportionment of the London increase to local authority areas. This will enable an assessment of the extent to which the housing requirement(s) in those adopted plans sits against the up-to-date local housing need figure. However, in my view, for the reasons given above that exercise relates to the desirability of reviewing those adopted plans in accordance with current national planning policy and not the transitional provisions that apply to the OKR AAP.
23. For the avoidance of doubt, in my opinion, the up-to-datedness of the adopted plans, and the need / desirability of any review of them, is to be considered as against the NPPF 2024 not the NPPF 2023. The transitional provisions from paragraph 234 relate to plan-making, and the preparation of plans. The adopted plans, and their policies, are not covered by these provisions. Instead, if there is an issue as to whether an adopted plan is up-to-date then that should be addressed against current national policy (subject to the specific transitional provisions in 232 and 233). For example, in the development control context, if the policies that are most important for determining an application are out of date for the purposes of 11(d) of the NPPF. Paragraph 231 is explicit that for the purposes of decision-taking the NPPF 2024 is a material consideration from the date of publication. As a second example, para. 234 of the NPPF 2024 refers to the review of plans every five years, and refers to changing local housing needs figures. In my view, this paragraph is applicable from 12 December 2024.
24. I am asked a related question as to the demonstration of a five year housing land supply. In my view, it is not necessary for the Council to demonstrate a five year housing land

supply as part of the examination of soundness of the OKR AAP. This is for two reasons:

- (1) The OKR AAP is not a plan that sets a housing requirement for the borough. The question therefore of balancing the requirement against the supply does not arise (see the requirements for strategic policies under NPPF 2024 para. 20 and 36(a); NPPF 2023 para 20 and 35(a)) – the substance of these policies has not changed). The OKR AAP relates only to part of the area addressed by the Southwark Plan housing requirement and as such its role is to contribute towards housing delivery and not to balance supply against the borough requirement.
- (2) The five year housing land supply issue has more than one role within the NPPF (2023 and 2024) across plan-making and decision-taking. For reasons addressed above, the plan is likely to be assessed against the NPPF 2023. Paragraph 75 of that document is explicitly about strategic policies and providing a trajectory and monitoring supply against their requirement. Paragraph 76 is clear that such authorities are not required to identify and update annually a five year supply where the adopted local plan is less than five years old and it identified a five year supply – both of which apply to the Southwark Plan.

25. Accordingly, I see no requirement in preparing and examining the OKR AAP to demonstrate a five year borough wide housing land supply in order to demonstrate the soundness of the OKR AAP. I can see that an examining inspector may be interested to understand the housing supply picture in the borough as part of their consideration of the issues being raised – but it is not in my view an element of soundness of the OKR AAP itself.

26. It should be noted that this view relates specifically to the exercise of preparation and examination / adoption of the OKR AAP. As noted above, the NPPF 2024 now applies for development control purposes. Paragraph 232 of the NPPF 2024 provides a specific transitional approach where the new local housing need figure exceeds the housing requirement in an adopted local plan that is less than five years at the date of the

development control determination. Paragraph 233 also provides a specific exception where an authority publishes an Annual Position Statement examined by the Inspectorate. This then feeds into paragraph 78 of the NPPF 2024 which contains the equivalent provisions to 75 and 76 of the NPPF 2023 – but with specific variations which preserve the housing requirement within the adopted local plan where this is less than five years old. These provisions then become the focus of attention for development control purposes as to whether there is a five year housing land supply.

Conclusion

27. In summary, and for the reasons given above, my view on the central questions raised is that:

- (1) (Para. 5 of Instructions email): Yes, my view is that the AAP should be prepared and assessed for soundness under the NPPF 2023 (on the current timetable);
- (2) (Para. 6 of Instructions email): paragraph 236 of the NPPF 2024 does not apply directly to the OKR AAP because the AAP does not contain or promote a housing requirement for the borough. Questions relating to the need to review the Southwark Plan arise by consideration of the main body of the NPPF 2024, rather than the transitional provisions: e.g. and particularly paragraph 34.
- (3) (Para. 7 of Instructions email): Paragraph 237 does not directly apply to the AAP for the same reason. A plan will have “reached Regulation 19 stage” where regulation 19 has been complied with i.e. a copy of each of the Proposed Submission Documents and a statement of the representations procedure has been made available for consultation (see footnote 82 NPPF 2024 and regs 17 and 19 of the TCP(Local Planning) (England) Regulations 2012).
- (4) (Para. 10 of Instructions email): it is not a necessary element of demonstrating soundness of the OKR AAP to show a five year housing land supply as against the housing requirement in the Southwark Plan for the borough.

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