

MAIDSTONE BOROUGH COUNCIL

CABINET

10th August 2011

REPORT OF DIRECTOR OF CHANGE, PLANNING AND THE ENVIRONMENT

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1. URGENT CONSULTATION ON DRAFT NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

1.1 Issue for Decision

1.1.1 To consider how much weight to attach to the draft National Planning Policy Framework (NPPF) as a material consideration for the purposes of development plan making and for determining applications for development.

1.2 Reason for Urgency

1.2.1 The draft NPPF has been published for a standard 12 week consultation process however guidance published by the Planning Inspectorate for Inspectors has stated that it can be considered to be a material consideration. Cabinet need to determine how much weight, if any to attach to the draft.

1.3 Recommendation of Director of Change, Planning and The Environment

It is recommended that:

1.3.1 Cabinet determine that little weight be attached to the draft National Planning Policy Framework as a material consideration in both plan making and the determination of planning applications.

1.4 Reasons for Recommendation

1.4.1 It is vital that the Council determines how much weight to attach to the draft NPPF for plan making and decision making purposes. It is also important that the Council prepares a formal consultation

response to the Framework as it is intended to replace all current planning guidance in the form of Planning Policy Guidance (PPG) Planning Policy Statements (PPS), Circulars and any other guidance as appropriate.

1.4.2 The consultation on the draft NPPF is taking place against a background of changes that will fundamentally affect the planning system in England. Changes are being introduced via the Localism Bill that will impact massively on the way that development plans are produced and these changes will be aligned to the changes proposed in the current consultation on regulations governing the production of development plans.

1.4.3 There has also been a recent consultation on guidance for Gypsy and Traveller issues that ended on 3rd August 2011. Maidstone's response to that consultation is attached as Appendix 1. It is intended to publish a new Planning Policy Statement for Gypsy and Traveller Sites as soon as the consultation responses have been incorporated. The government then intends to review the new PPS in the light of comments received on the draft NPPF and incorporate guidance into the final NPPF.

1.4.4 **Introduction and Background**

1.4.5 The draft NPPF is intended to bring together all PPSs, PPGs and some Circulars into a single consolidated document. Scattered throughout the draft Framework are references to a presumption in favour of sustainable development and the need to support economic growth, both ideas having been previously trailed in the ministerial statement "Planning for Growth."

1.4.6 The draft NPPS recommends that Local Authorities should :

- Prepare local plans on the basis that objectively assessed development needs should be met, and with sufficient flexibility to respond to rapid shifts in demand or other economic changes;
- Approve development proposals that accord with statutory plans without delay; and
- Grant planning permission where the plan is absent, silent, indeterminate or where relevant policies are out of date.

1.4.7 Even though the NPPF is only at a draft stage and has yet to be fully subjected to a completed consultation process it gives a very clear indication of the way in which the government is intending to develop planning policy. Recent advice given by the Planning Inspectorate to Inspectors says that:

“Therefore the draft National Planning Policy Framework is capable of being a material consideration although the weight to be given to it will be a matter for the decision maker’s planning judgement in each particular case. The current Planning Policy Statements, Guidance Notes and Circulars remain in place until cancelled.” (Appendix 2)

1.4.8 It should also be noted that throughout the document the term Local Development Framework is not used and instead the government have reverted to call the local element of the Development Plan the Local Plan. This does not mean that the planning system has taken a retrograde step but that it has now adopted terminology that may have a heritage from a previous iteration of the development plan process in England.

1.4.9 **Main Issues**

1.4.10 The NPPF introduces a number of key changes that impact significantly on how the planning system may work in England. These changes are highlighted below:

Presumption in favour of development

1.4.11 The so-called presumption in favour of sustainable development (Referred to as the presumption here on in) is seen as central to the government’s overall approach and to the setting of the tone of its overall stance toward planning. It intends to encourage the need to plan positively for new development that is seen as appropriate and to allow for both plan making and development management to be proactive in seeking opportunities to deliver sustainable development rather than putting barriers in the way of such development. There is currently no accepted definition of what comprises ‘Sustainable Development.’

1.4.12 The way in which the NPPF tries to encourage sustainable development is by placing an increased emphasis on the importance of meeting development needs through plans, the need to approve proposals quickly where they are in line with those plans and the role of the NPPF as a basis for decision making to be used where plans do not provide an adequate basis for deciding those applications

Removing office development from ‘Town Centre First’ policy

1.4.13 Current town centre policy, mainly contained in PPS4 applies equally to office development as it does to retail, leisure and other so called town centre uses. Office development is therefore subjected to the requirement to comply with the sequential test approach and for the scheme to be assessed on the likely impacts on a range of impact

considerations. This will no longer be applicable as office development will no longer be required to meet the 'Town Centre First' policy approach.

- 1.4.14 Proposals for office development will be judged on their individual merits but will be expected to take account of local and national policies on the location of new development that generates significant movements of people. Additionally the relative supply of and demand for office space in different locations will also be a consideration.

Time horizon for assessing impacts

- 1.4.15 The current time horizon for assessing the impacts of unplanned retail and leisure schemes in edge of centre or out of town locations is currently up to 5 years from the time that the planning application is made. The government feels that this is not long enough to allow the full impacts of a large scheme to be assessed. The likely impact of new retail and leisure development in terms of the potentially substantial consequences to other local businesses, residents, transport, infrastructure and the environment may take some time to be felt and for the costs and benefits of such a new development to be properly assessed.

- 1.4.16 Five years for assessing the impacts is felt to be too short a timescale and the NPPF suggests a change to 10 years. A time horizon of ten years would allow for the full operational impact of the development to be felt and to be assessed.

Removing the maximum non-residential car parking standards for major developments

- 1.4.17 PPG13 Transport currently sets out national maximum parking standards for non-residential uses and the size thresholds that these standards should apply to so that both councils and developers would be encouraged to use land efficiently and also to allow them to take measures to minimise the need for parking.

- 1.4.18 The government feels that current policy on non-residential standards for major developments is too centralised and that it prevents local councils from developing policies that are appropriate to local communities and circumstances. It is felt that centrally prescribed maximum non-residential parking standards do not reflect local circumstances.

Peat

- 1.4.19 Whilst of little relevance to MBC the government's aim is to remove the requirement for local authorities to set criteria for the selection of

sites for future peat extraction. This will also support the aim of phasing out the use of peat.

Landbanks

1.4.20 The policy change that is being introduced by the NPPF is to make changes to the length of landbanks making it less prescriptive for scarcer/no-aggregate minerals. This change may be of some significance given that Kent County Council is currently consulting on the draft Waste and Minerals plan. The new proposed wording is as follows:

“Allocating sufficient land to maintain landbanks by ensuring landbanks of ... at least 10 years for crushed rock. Landbanks for scarcer minerals, (Silica and brick clay) should be for at least 10 years and longer landbanks may be justified in specific circumstances, such as the need to ensure the viability of proposed new investment.”

Removing the brownfield target for housing development

1.4.21 Following an earlier target in 1998 a target of 60% for all new dwellings being built on brownfield land was established. The draft NPPF is moving away from prescriptive land designations and towards a concept of ‘developable’ land where local areas decide the most suitable locations for housing growth based on local circumstances.

1.4.22 Local Authorities will then be able to assess land for suitability for development based on its characteristics and local needs. The government would prefer to remove brownfield target and so allowing local councils to determine the most suitable sites for housing. This should give greater discretion and decision making powers to local councils in consideration of the fact that land supply constraints are likely to vary across local councils.

1.4.23 The biggest impact of these changes is likely to be on sites brought forward for housing in the local plan. MBC will be able to consider sites that are considered to be the most suitable for development without being required to comply with a national brownfield target.

Requiring local councils to allocate an additional 20% of sites against their five year housing requirement

1.4.24 The government have signalled that they expect councils to plan to meet their full market requirement for housing and to ensure that there is choice and competition in the land market to facilitate the delivery of actual dwellings.

1.4.25 The NPPF is advocating an approach whereby councils identify an additional 20% of deliverable sites for housing above the current five year housing supply. What this means in practice is that councils should seek to identify sites to meet 120% of the annual housing requirement during the first five years.

Remove the national minimum site size threshold for requiring affordable housing to be delivered

1.4.26 Current national policy sets a minimum site threshold of 15 units for requiring affordable housing to be delivered therefore any development of 15 units or over would trigger a negotiation over the amount to be provided or to be paid in lieu via a S106 Agreement. The NPPF suggests the removal of the threshold with the level to be determined by local authorities. This should allow a greater degree of flexibility and therefore councils to seek optimum solutions for their areas.

Removing rural exceptions sites policy

1.4.27 Local Authorities can set a 'rural sites exception' policy to allocate sites for the permanent provision of affordable housing in small rural sites that otherwise would not be acceptable for housing due to policy constraints such as landscape designations. Rural exception sites are intended to address needs of the local community and are currently for affordable housing only

1.4.28 The government wishes to maintain a focus on affordable housing but also wants to give greater flexibility to councils to set their own approach to the delivery of housing including an element of market housing where this would facilitate the delivery of significant additional affordable housing to meet local requirements. In order to ensure that development is sustainable rural housing will not be allowed if the site is distant from local services.

Protecting community facilities

1.4.29 As part of the plan making process MBC will be asked to consider the availability and viability of community facilities and to develop policies to safeguard against their unnecessary loss. This policy approach is to be applied to all community facilities and not just those within defined local centres and villages.

1.4.30 The policy is not intended to prevent unviable businesses closing but will impose additional costs as councils will need to develop an understanding of the availability and viability of community facilities within their area. Developers will also be expected to produce evidence

to demonstrate that a community building or development used by a community facility is no longer required or viable for community use.

Green Belt

1.4.31 Four changes are proposed to current green belt policy:

- Development on previously developed Green Belt land is already permissible if the site is identified in the local plan as a major developed site. It is proposed to extend this policy to similar sites not already identified in a local plan;
- Park and Ride schemes are already permissible and it is proposed to extend this to a wide range of local transport infrastructure;
- Community Right to Build schemes will be permissible if backed by the local community; and
- The alteration or replacement of dwellings is already permissible and it is proposed to extend this to include all buildings

1.4.32 The tests to preserve the openness and purposes of including land in the Green Belt will be maintained. Green Belt boundaries should be established in Local Plan and these plans will also be expected to set the framework for the Green Belt and settlement policy therein. Green Belt boundaries should only be altered in exceptional circumstances. The appropriateness of such boundaries should only be considered when the Local Plan is prepared or reviewed. Authorities should pay attention to the intended permanence of boundaries to ensure that they endure beyond the plan period.

Green Infrastructure

1.4.33 More and greater coherence of networks of green infrastructure (GI) are to be supported by planning positively for their creation, protection, enhancement and management. Local Authorities are expected to take a more strategic approach to GI and to develop a better understanding of existing provision and functions of GI in their areas.

Green Space designation

1.4.34 The NPPF intends to introduce a new protection for locally important green space not currently protected by any national designation. This aims to reflect the importance that some land is particularly valued by communities and therefore requires additional protection. The new designation (referred to in the NPPF as Local Green Space) would aim

to fill the gap where land was locally important but where a national designation would not apply.

Clarification on which wildlife sites should be given the same protection as European sites.

1.4.35 The government has in the past chosen to apply the provisions that apply to European site to Ramsar sites and potential Special Protection Areas despite these sites not being European sites as a matter of law. The government is therefore proposing that provisions which apply to European sites should also as a matter of policy also apply to:

- Possible Special Areas of Conservation;
- Proposed Ramsar sites; and
- Site identified or required as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites

1.4.36 The effect of this proposal should be to reduce the risk of the Council having to pay compensation for planning permissions that may be revoked as a result of a site becoming classified as a European site.

Decentralised energy targets

1.4.37 The Council will be expected to continue to support decentralised energy but will no longer be expected to set a council wide decentralised energy target. It is felt by government that increasing emphasis on the reduction of carbon emissions will reduce the need for council wide target. MBC can continue to have a decentralised energy target as long as it does not make development unviable.

Proactive approach to identifying opportunities for renewable and low carbon energy

1.4.38 The draft NPPF expects local authorities to consider indentifying suitable areas for renewable and low carbon energy and supporting infrastructure where this would help secure the development of such sources. If developers bring forward proposals outside areas identified they will be asked to demonstrate that the proposed location meets the criteria used in plan making.

Historic Environment

1.4.39 No new policies are proposed within the draft NPPF relating to the historic environment but existing policies are streamlined and incorporated within the guidance. Some policy has been placed in other appropriate sections of the framework

1.5 Alternative Action and why not Recommended

1.5.1 If the Council were so minded it could not make a decision on the weight to be attached at this stage to the draft NPPF. This would have the effect of opening up all decisions made on development applications, and development plan documents produced to be at risk of legal challenge. It is recommended that the Cabinet adopt the recommendation to ensure that this risk of challenge is minimised.

1.6 Impact on Corporate Objectives

1.6.1 The draft NPPF has a range of potential impacts on corporate objectives particularly those relating to economic development and prosperity. The extent of these impacts will be explored further in future reports to Cabinet

1.7 Risk Management

1.7.1 The main risk associated with the draft NPPF relates to the presumption in favour of sustainable development. Not only is there not an accepted definition of what comprises sustainable development but the framework itself is only at a draft stage, and is likely to be subject to change as it progresses towards adoption.

1.8 Other Implications

1.8.1

1.	Financial	
2.	Staffing	
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	X
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

Legal

- 1.8.2 There are a number of legal implications given the guidance that has been issued by the Planning Inspectorate to Planning Inspectors. The implication that it is for the planning decision maker to determine what weight to attach as a material consideration and the recommendation to Cabinet seeks to clarify the situation.

Environmental/Sustainable Development

- 1.8.3 The draft NPPF places a lot of emphasis on sustainable development but fails to offer a definition of what this term might comprise and how it should be interpreted. It is expected that a definition will be forthcoming in the future.

1.9 Conclusions

- 1.9.1 The draft NPPF as currently drafted is a blunt instrument with no provision made for any transitional arrangements. Development plan documents (DPDs) should be in conformity with the NPPF and in the absence of any transitional arrangements there is the possibility that DPDs will be found unsound and development decisions opened up to challenge.
- 1.9.2 It is not proposed that work on development plan documents such as the Core Strategy should cease until such time as the NPPF is adopted as this would be a high risk strategy given the statement about plans being absent leading to a presumption in favour of development. There is no sound reason to stop work and progress on the Regulation 25 consultation about to be embarked upon. It may be appropriate to consider a pause in the production of the Core Strategy when it reaches Regulation 27 stage but that is dependent on what progress has been made with the adoption of the NPPF.
- 1.9.3 The draft NPPF is currently out to consultation and it is intended that MBC submits a full and robust response to the exercise. This draft response will be formulated in conjunction with members and will come back to Cabinet for endorsement in due course. It is however of vital importance that Cabinet makes a decision on the weight to be attached to the draft Framework to allow for the proper consideration of applications for development and to allow plan making to continue.
- 1.9.4 The Head of Development Management has been consulted and concurs with the recommendation. A place has been booked on the consultation workshop due to be held in Bristol on 15th September.

1.10 Relevant Documents

1.10.1 Appendices

- Appendix 1 Maidstone Borough Council response to consultation on the Draft Gypsy and Traveller Planning Policy Statement
- Appendix 2 Advice produced by the Planning Inspectorate for use by its Inspectors

1.10.2 Background Documents

- Draft National Planning Policy Framework

<u>IS THIS A KEY DECISION REPORT?</u>			
Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If yes, when did it first appear in the Forward Plan?			
.....			
This is a Key Decision because:			
.....			
Wards/Parishes affected:			
.....			