

**MAIDSTONE BOROUGH COUNCIL**

**REGENERATION AND ECONOMIC DEVELOPMENT OVERVIEW  
AND SCRUTINY COMMITTEE MEETING**

**REPORT OF DIRECTOR OF CHANGE, PLANNING AND THE  
ENVIRONMENT**

**Report prepared by Flo Churchill, Interim Head of Core Strategy  
Development**

**Date Issued: 6 SEPTEMBER 2011**

**PROPOSED CONSULTATION RESPONSE TO THE DRAFT  
NATIONAL PLANNING POLICY FRAMEWORK**

1.1 Issue for Decision

- 1.1.1 To consider the proposed response to the consultation on the Draft National Planning Policy Framework

1.2 Reason for Urgency

- 1.2.1 This report is considered to be an urgent item in order to allow for the Committee to refer the matter to full council if appropriate and for the Council to still meet the deadline for submitting a response.

1.3 Recommendation of Director of Change, Planning and The Environment

- 1.3.1 That Committee considers this report and the attached completed Questionnaire and recommends to the Leader it is submitted as the formal response on behalf of Maidstone Borough Council to the current consultation on the draft National Planning Policy Framework.

1.4 Reasons for Recommendation

Background

- 1.4.1 The Government's stated intention in bringing together all planning policy guidance under a single cover was to simplify the rules and regulations governing planning in England. Extant planning guidance provides a massive amount of information about how development plans should be produced and how decisions on development management should be made and the draft NPPF states:

**“The policies set out in this Framework apply to the preparation of land and neighbourhood plans, and to development management decisions. Planning policies and decisions should be compatible with and where appropriate further the achievement of relevant EU obligations and statutory requirements set out in domestic legislation. The Framework should be read and interpreted as a whole.”<sup>1</sup>**

1.4.2 Current extant guidance comprises:

- PPS1 – Delivering Sustainable Development
- PPG2 – Green Belts
- PPS3 – Housing
- PPS4 – Planning for Sustainable Economic Growth
- PPS5 – Planning for the Historic Environment
- PPS7 – Sustainable Development in Rural Areas
- PPG8 – Telecommunications
- PPS9 – Biodiversity and Geological Conservation
- PPS12 – Local Spatial Planning
- PPG13 – Transport
- PPG14 – Development on Unstable Land
- PPG17 – Open Space, Sport and Recreation
- PPG18 – Enforcing Planning Control
- PPG19 – Outdoor Advertisement Control
- PPG20 – Coastal Planning
- PPS22 – Renewable Energy
- PPS23- Planning and Pollution Control
- PPG24 – Planning and Noise
- PPG25 – Development and Coastal Change
- Minerals Policy Statements 1-3, 5, 7, 10, 13, and 15
- Circular 02/2005 Planning Obligations
- Letters to Chief Planning Officers dated Mar 1999, April 2003, April 2002, May 2008, November 2009, July 2009, May 2009 x 2, December 2009, February 2009, January 2009, June 2010, January 2010, December 2010 and January 2011.

1.4.3 It is important to note that the draft NPPF is a “Radical streamlining of existing Planning Policy Statements, Planning Policy Guidance Notes and **some** circulars to form a single consolidated document.” (My emphasis)<sup>2</sup> There is currently no suggestion to cancel Circular 11/95 – Use of Conditions in Planning Permission, Circular 10/97 – Enforcing Planning Control, and Circular 03/2009 Costs Awards in Appeals and Other Planning Proceedings. The Department for Communities and Local Government has informally indicated that they intend to carry

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<sup>1</sup> Draft National Planning Policy Framework Paragraph 8

<sup>2</sup> Draft National Planning Policy Framework Consultation Paragraph 10

out a similar 'slimming down' exercise on Circulars once the draft National Planning Policy Framework has been adopted.

1.4.4 The Department for Communities and Local Government has indicated that it is intending to produce a Best Practice Guide to accompany the draft NPPF and this is welcomed however it is considered that it would be more appropriate to publish a draft Practice Guide to accompany the draft NPPF

1.4.5 Given that it is the intention of the exercise to reduce the amount of guidance currently in use within the planning system the practice of continuing to issue draft guidance for consultation is somewhat confusing and does not aid clarity of understanding. A question is currently being posed in connection with the recent consultation on guidance for gypsies and travelers by CLG that states:

**“Do you have views on the consistency of the draft Framework with the draft planning policy for traveller sites, or any other comments about the Government's plans to incorporate planning policy on traveller sites into the final National Planning Policy Framework?”**

1.4.6 It is considered that given the government's current stance towards treating Gypsy and Traveller Accommodation as part of the general housing stock planning policy on all planning matters should form part of the National Planning Policy Framework and therefore guidance on gypsy and traveller sites should be fully incorporated within the final National Planning Policy Framework. Maidstone Borough Council would recommend that this occurs without delay.

1.4.7 The Consultation on the draft National Planning Policy Framework also contains a Consultation Questionnaire and this has been completed and is attached as Appendix 1 to this report.

#### Main Issues

1.4.8 The main changes introduced by the draft NPPF include:

- Presumption in favour of development
- Removing office development from 'Town Centre First' policy
- Time Horizon for assessing impacts
- Removing the maximum non-residential car parking standards for major developments

- Peat
- Landbanks
- Removing the brownfield target for housing development
- Requiring local councils to allocate an additional 20% of sites against the five year housing requirement
- Removing the national minimum site size threshold for requiring affordable housing to be delivered
- Removing rural exceptions sites policy
- Protecting community facilities
- Green Belt
- Green Infrastructure
- Green Space Designation
- Clarification on which wildlife sites should be given the same protection as European sites.
- Proactive approach to identifying opportunities for renewable and low carbon energy
- Historic Environment

All the main changes are important but not all of them have major implications for Maidstone Borough Council, in particular changes to guidance on Peat Banks. This report is concerned with those major changes that will have the most impact within Maidstone, namely:

- Presumption in favour of development
- Removing Office development from Town Centre First policy
- Removing the maximum non-residential car parking standards for major developments
- Removing the brownfield target for housing development
- Requiring local councils to allocate an additional 20% of sites against the five year housing requirement
- Removing the national minimum site size threshold for requiring affordable housing to be delivered
- Removing rural exceptions sites policy
- Green Space Designation

A general commentary on other aspects of the proposed draft NPPF is also included towards the end of this report.

#### Presumption in favour of development

- 1.4.9 There is no explicit definition of what comprises 'Sustainable Development' despite the Minister's statement on 15 June 2011(Attached as Appendix 1) It would appear that what is actually being suggested is that development will need to accord with the requirements of the National Planning Policy Framework and not any particular definition of what comprises sustainable development. Clarity on the definition should be sought and would be welcome as it would bring a degree of certainty in somewhat uncertain planning

times. It is however acknowledged that the draft NPPF references the Bruntland Commission on 1987 in paragraph 9 stating:

“Sustainable development means development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>3</sup>

1.4.10 It is proposed that the default decision when it comes to development should be a presumption in favour of sustainable development. The Draft Framework states:

“At the heart of the planning system is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking. Local planning authorities should plan positively for new development, and approve all individual proposals wherever possible. Local planning 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.

All of these policies should apply unless the adverse impacts of allowing development would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”<sup>4</sup>

1.4.11 What is not clear from the draft NPPF is whether the primacy of the development plan will continue and compared with the presumption in favour the question as to which will be the dominant policy tool must be posed? Whilst it is recognised that paragraph 62 states that the planning system is plan led clarity on this point would be welcomed.

#### Removing Office Development from Town Centre First policy

1.4.12 This proposed the removal of the requirement to meet the sequential test when considering the location of office development and allows for applications for office development to be judged on their individual merits whilst taking account of local and national policies on the location of new development that generates significant movements of people. The potential impact of this change combined with the changes expected in the GPDO regarding change of use from office to

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<sup>3</sup> Draft National Planning Policy Framework Paragraph 9, Our Common Future 1987

<sup>4</sup> Draft National Planning Policy Framework Paragraph 13

residential could result in impacts on Maidstone Town Centre that would be difficult to resist and that may result in a town centre that is not capable of continuing its role as the County Town of Kent. It is therefore recommended that additional guidance is required to avoid the overconcentration of residential development within town centres without the necessary accompanying social infrastructure.

- 1.4.13 Additionally as a result of taking office development out of Town Centre First policy this could cause damage to the lunch time economy of the town centre and it is therefore recommended that the policy be strengthened to ensure that local authorities retain the ability to direct the broad location of office development.

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

- 1.4.14 The proposal to remove the maximum non-residential car parking standards for major developments is welcomed as it allows Maidstone Borough Council the freedom to determine standards that are appropriate for local circumstances.

- 1.4.15 It is also noticed that there will be a key requirement to have a travel plan. Paragraph 90 specifically states:

“A key tool to facilitate this will be a Travel Plan. All developments which generate significant amounts of movement, as determined by local criteria, should be required to provide a Travel Plan.”<sup>5</sup>

- 1.4.16 Again the freedom to determine locally what constitutes significant amounts of movement is welcomed as this will allow in particular the concerns of members about the impact of development on the rural road network to be given full and proper consideration. The requirement for development applications to incorporate Travel Plans will need to be included in the Development Delivery Document following on from the Core Strategy.

#### Removing the brownfield target for housing development

- 1.4.17 Whilst removing the target for brownfield housing development is to be welcomed in so far as this allows greater flexibility to determine the most appropriate locations for housing according to local circumstances it is still considered appropriate to look to previously developed land as a sustainable source of sites for housing. Maidstone Borough Council has traditionally been successful at locating a very high percentage of housing development on previously developed land but recognises that such land is a finite and dwindling resource.

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<sup>5</sup> Draft National Planning Policy Framework, Paragraph 90.

Requiring local councils to allocate an additional 20% of sites against the five year annual requirement.

1.4.18 The requirement for allocate an additional 20% of sites against each year of the first five years of the annual housing requirement to allow for flexibility and choice is not considered to be appropriate and should be reconsidered. Maidstone Borough Council in determining an appropriate level of housing for the council's area have taken into account the environmental capacity of the borough and consider that the level of housing provision in the Draft Core Strategy represents the maximum level that can be accommodated without causing serious impacts that cannot be sufficiently mitigated against.

1.4.19 In determining the amount of housing the following factors were taken into consideration:

- The need for affordable housing;
- Synergy with the Kent Growth areas;
- The achievement of sustainable development;
- The focus of new development on at the existing urban area;
- Supporting transport infrastructure;
- Impact of development on the environment; and
- The impact on water supply and flooding.

1.4.20 If the Council is now required to provide additional allocations during the first five years of the annual requirement this would mean that the Core Strategy would have to be delayed until such time as additional research had been carried out to investigate where the additional allocations could be located. Maidstone Borough Council has already investigated the impact of an additional 1,000 dwellings on top of the proposed level of 10,080 and has come to the conclusion that this level of provision is not sustainable.

1.4.21 It is considered that the level of provision of housing included in the Core Strategy already includes a level of provision above that needed strictly to deal with demand to allow for choice and flexibility. There is a danger in making an additional allowance that the market, already moribund due to national economic circumstances, will become flooded with inappropriate additional provision.

1.4.22 It is therefore considered that the requirement to provide an additional 20% above the first five years supply should be removed from the draft framework due to the reasons stated above.

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

1.4.23 The removal of the national minimum site size threshold for requiring affordable housing to be delivered is to be welcomed as this allows Maidstone Borough Council the flexibility to determine the most appropriate local thresholds. In the absence of the practice guide to accompany the framework it is not possible to determine if it will be allowable to have a range of thresholds across the Borough to reflect local circumstances.

1.4.24 Maidstone Borough Council welcomes the removal of the minimum site size threshold as it believes that this will help to avoid the situation whereby developers deliberately seek to divide sites to avoid this requirement.

Removing the Rural Exceptions Sites Policy

1.4.25 If the intention of this is to allow for the provision of more affordable housing then it is welcomed. However it is considered that the burden of the requirement (To prove that the provision of market housing will allow for the provision of additional levels of affordable housing on such exception sites) should fall on those proposing to develop the housing in the first place.

Local Green Space Designation

1.4.26 The ability to locally designate green spaces that are valued on a local basis is to be welcomed as this will allow the community to protect those areas and parts of the Borough that are important to them. It is noted that development on areas designated as Local Green Space will be subject to the same policy treatment as potential development within Green Belts.

1.4.27 Whilst this level of protection for the new designation is welcomed it is noted that elsewhere in the draft NPPF it is proposed to extend the definition of Major Developed Sites in areas of Green Belt to any such sites whether or not they have been previously identified. It is considered that the proposed extension of building rights in the Green Belt is inappropriate and should be removed. Clarity on what will comprise 'exceptional circumstances' for the purposes of development within Local Green Spaces would be welcomed as it is considered that given the changes to Green Belt policy more generically there is now some confusion as to what such circumstances might be.



## Conclusions and Summary

1.4.28 In general the clarity that the draft National Planning Policy Framework brings is to be welcomed however the following comments should be noted:

- The draft does little to encourage a balanced approach between the provision of employment land and the provision of housing. Maidstone Borough Council has been at pains to ensure that the Core Strategy represents a balance between jobs and housing and the potential requirement to provide additional housing upsets this balance.
- The need for additional infrastructure required to service additional housing appears not to have been mentioned and it is important that infrastructure provision keeps pace with housing provision.
- The emphasis on the need for affordable housing is welcomed
- The need for an additional 20% on top of the first five years annual housing requirement is considered to be inappropriate and should be deleted.
- Clarity is required on several points:
  - The ongoing production of draft guidance not included within the draft National Planning Policy Framework is confusing and should be stopped.
  - Is the government intending to carry on using the Bruntland definition of sustainable development? Some thought should be given to updating this definition to make clear where government priorities lie
  - The relative positions of the presumption in favour of development as opposed to the plan led system requires clarification
  - Will the same 'exceptional circumstances' apply to development with Local Green Spaces as currently applied to Green Belt development or is this definition to be updated?
  - Clarity on what comprises 'Conformity with the National Framework' means in practice should be given
- Consideration should be given to introducing some transitional arrangements that will allow local authorities some time to come into conformity with the Framework. A transitional period of at least 18 months is recommended.
- Whilst the intention to produce a practice guide is noted Maidstone Borough Council considers that this practice guidance should be produced as soon as possible.
- It is considered that there are some changes to primary legislation required by the changes introduced by the draft

National Planning Policy Framework and an indication of whether these changes are incorporated within the Localism Bill would be welcomed.

- Consistency on terms used throughout the document would be welcomed as the terms 'development' and 'sustainable development' appear to be used interchangeably.
- If Planning Circulars are to be subject to a similar 'slimming down' exercise this should be carried out as soon as is possible.

## 1.5 Alternative Action and why not Recommended

1.5.1 The alternative action of not completing the Consultation Questionnaire and responding formally to the consultation exercise on the draft National Planning Policy Framework would mean that MBC did not take the opportunity to influence how the NPPF develops and to put forward concerns about the apparent contradictions and need for clarity.

## 1.6 Impact on Corporate Objectives

1.6.1 The new Strategic Plan 2011 – 2015 sets out a priority for Maidstone to 'Have a growing economy' and 'to be a decent place to live.' The draft National Planning Policy Framework will have an undeniable impact on the Core Strategy and other Local Development Framework Documents that are a priority for the Council in achieving the Corporate Objectives

## 1.7 Risk Management

1.7.1 Risks related to the draft National Planning Policy Framework centre around the Framework including within it clauses that would create great difficulty in progressing the Core Strategy towards adoption. These risks are being managed by producing a full response in conjunction with the Head of Development Management to the current consultation exercise including the completion of the consultation questionnaire that accompanies the consultation response and is attached as Appendix 1 to this report.

## 1.8 Other Implications

### 1.8.1

1. Financial
1. Staffing
2. Legal

X

- 3. Equality Impact Needs Assessment
- 4. Environmental/Sustainable Development
- 5. Community Safety
- 6. Human Rights Act
- 7. Procurement
- 8. Asset Management

X

1.8.2 The draft National Planning Policy Framework will require changes to primary legislation. Such changes are widely anticipated to be incorporated within the Localism Bill. Legal advice previously sought from Counsel resulted in a report to Cabinet on 10<sup>th</sup> August when it was resolved to accord little weight to the draft Framework at this stage in its consultation

1.8.3 The incorporated Presumption in Favour of Sustainable Development will have significant implications for how decisions are made on what comprises sustainable development through the Development Management decision making process.

1.9 Relevant Documents

1.9.1 Appendices

1.9.2 Appendix 1 Consultation Questionnaire

1.9.3 Background Documents

1.9.4 Draft National Planning Policy Framework July 2011

**IS THIS A KEY DECISION REPORT?**

Yes

No

If yes, when did it first appear in the Forward Plan?

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This is a Key Decision because: .....

.....

Wards/Parishes affected: .....

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**How to Comment**

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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