

# Public Document Pack



# TONBRIDGE & MALLING BOROUGH COUNCIL

## EXECUTIVE SERVICES

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**Chief Executive**

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**NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.**

Contact: Democratic Services  
[committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk)

22 February 2021

To: **MEMBERS OF THE PLANNING AND TRANSPORTATION ADVISORY BOARD**  
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Planning and Transportation Advisory Board to be held online via Microsoft Teams on Tuesday, 2nd March, 2021 commencing at 7.30 pm. Information on how to observe the meeting will be published on the Council's website.

Yours faithfully

JULIE BEILBY

Chief Executive

## A G E N D A

### **PART 1 - PUBLIC**

- |    |                          |       |
|----|--------------------------|-------|
| 1. | Apologies for absence    | 5 - 6 |
| 2. | Declarations of interest | 7 - 8 |

*Members in any doubt about such declarations are advised to contact Legal or Democratic Services in advance of the meeting*

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|----|--|--------|
| 3. | Minutes  | 9 - 14 |
|    | To confirm as a correct record the Notes of the meeting of the Planning and Transportation Advisory Board held on 11 November 2020 |        |

### **Matters for Recommendation to the Cabinet**

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|----|--|---------|
| 4. | Local Plan Update  | 15 - 28 |
|    | <i>The purpose of this report is to provide Board Members with an update on the Local Plan process since the last update in July 2020 and set out the next steps. Members are requested to endorse the response sent to the Local Plan Inspectors on 29th January 2021. This report also sets out the latest position with regard to the Council's 5 Year Housing Land Supply, the outcome of the latest Housing Delivery Test results and the implications for decision making.</i> |         |
| 5. | Development Management Strategy 2021   | 29 - 36 |
|    | <i>This report outlines the intended strategy for development management related matters for the upcoming year in response to the current local plan position and delays to the adoption of the Plan. The implementation of an effective strategy that responds positively to the current position will ensure that the Council can continue to provide an efficient and high-quality service and robustly defend the Council's position in the event of appeals being lodged.</i>   |         |

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|----|--|---------|
| 6. | Rewards to the National Planning Policy Framework and Introduction of a National Design Code   | 37 - 62 |
|    | <i>This report seeks to update Members about the consultation on the revisions to the National Planning Policy Framework and proposed National Model Design Code and propose the key elements of a response for Member discussion.</i> |         |

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|----|--|---------|
| 7. | Urgent Items   | 63 - 64 |
|    | Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive |         |

### **PART 2 - PRIVATE**

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|----|--|---------|
| 8. | Exclusion of Press and Public  | 65 - 66 |
|    | The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information. |         |
| 9. | Urgent Items   | 67 - 68 |
|    | Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.  |         |

## **MEMBERSHIP**

Cllr R W Dalton (Chairman)  
Cllr J L Botten (Vice-Chairman)

Cllr T Bishop  
Cllr M D Boughton  
Cllr V M C Branson  
Cllr D J Cooper  
Cllr D A S Davis  
Cllr M O Davis  
Cllr S A Hudson

Cllr D Keers  
Cllr D W King  
Cllr Mrs C B Langridge  
Cllr H S Rogers  
Cllr N G Stapleton  
Cllr M Taylor  
Cllr D Thornewell

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# Agenda Item 1

Apologies for absence

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# Agenda Item 2

Declarations of interest

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# Agenda Item 3

## TONBRIDGE AND MALLING BOROUGH COUNCIL

## PLANNING AND TRANSPORTATION ADVISORY BOARD

Wednesday, 11th November, 2020

**Present:** Cllr R W Dalton (Chairman), Cllr J L Botten (Vice-Chairman), Cllr V M C Branson, Cllr D J Cooper, Cllr D A S Davis, Cllr M O Davis, Cllr D Keers, Cllr D W King, Cllr Mrs C B Langridge, Cllr H S Rogers, Cllr N G Stapleton, Cllr M Taylor and Cllr D Thornewell

Councillors Mrs J A Anderson, Mrs S Bell, R P Betts, M A Coffin, N J Heslop, M A J Hood, F A Hoskins, D Lettington, B J Luker, P J Montague, Mrs A S Oakley, W E Palmer, M R Rhodes, R V Roud and T B Shaw were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors T Bishop, M D Boughton and S A Hudson

### **PE 20/20 DECLARATIONS OF INTEREST**

There were no declarations of interest made in accordance with the Code of Conduct.

### **PE 20/21 MINUTES**

**RESOLVED:** That the Notes of the meeting held on 28 July be approved as a correct record and signed by the Chairman, subject to recording that Councillor Mrs Anderson was also in attendance.

### **PE 20/22 MINUTES OF EXTRAORDINARY MEETING**

**RESOLVED:** That the Notes of the extraordinary meeting of the Planning and Transportation Advisory Board held on 29 September be approved as a correct record and signed by the Chairman.

### MATTERS FOR RECOMMENDATION TO THE CABINET

### **PE 20/23 SECTION 106 PROTOCOL AND MONITORING**

The report of the Director of Planning, Housing and Environmental Health recommended the adoption of a Planning Obligations Protocol and associated monitoring fee. This was intended to provide a clear and transparent framework in respect of how planning obligations under section 106 of the Town and Country Planning Act 1990 would be negotiated and secured, in order to mitigate the impacts of development across the Borough.

In addition, the report recommended that a flat fee of £300 per obligation be required to cover the cost of monitoring and reporting on delivery of s106 obligations and outcomes.

Concern was expressed about the level of legal skill and knowledge required to negotiate and understand a legal agreement/planning obligation and that the proposed Protocol could be too prescriptive to the detriment of smaller developers and applicants. Members asked that consideration be given to amending the Protocol to maintain a level of flexibility to assist and support all types of applicant.

Reference was made to the new requirement for Local Planning Authorities to publish an annual Infrastructure Funding Statement which identified infrastructure needs, the total costs of this infrastructure, anticipated funding from developer contributions and the choices made by the authority about how these contributions would be used. Unfortunately, given the timescales involved it was not possible to provide a draft Statement for Member consideration and the Director for Planning, Housing and Environmental Health, in consultation with the Cabinet Member for Strategic Planning and Infrastructure, would develop a final Statement for publication. Officers committed to sharing information with Members as the final Statement was being developed.

**RECOMMENDED:** That

- (1) the principal of a Planning Obligations Protocol be adopted; subject to consideration by the Cabinet of further adjustments to reflect the concerns raised by this Advisory Board and to introduce a level of flexibility for all applicants;
- (2) the associated monitoring fee of £300 per planning obligation (as set out in Annex 1 of the report) be adopted; and
- (3) the production and publication of the Infrastructure Funding Statement by the deadline of 31 December 2020 be delegated to the Director of Planning, Housing and Environmental Health in consultation with the Cabinet Member for Strategic Planning and Infrastructure.

**\*Referred to Cabinet**

**PE 20/24 REVIEW OF PLANNING APPLICATION CHARGING REGIME**

The report of the Director of Planning, Housing and Environmental Health provided a review of the pre-application charging regime and set out proposed new charges for 2021/22. It was necessary to review the protocol annually to ensure that the Borough Council continued to provide a comprehensive, high quality service and that the evidence base remained up to date. The charging schedule was also considered

annually and to ensure that this was applied fairly and cost recovery continued to take place proportionately, an increase in fees was proposed.

Attention was drawn to a drafting error in the pre-application charging schedule 2021/22 (Annex 1) and it was confirmed that the fee for large scale, strategic development should read £1,200.

**RECOMMENDED:** That the updated Pre-application Charging Schedule 2021/22 (as attached at Annex 1 to the report) be adopted; subject to

- (1) the correction of a drafting error (as set out above) and that the fee for large scale, strategic development was £1,200 plus VAT.

\*Referred to Cabinet

**PE 20/25 REVIEW OF PLANNING PERFORMANCE AGREEMENT AND CHARGING SCHEDULE**

The report of the Director of Planning, Housing and Environmental Health provided a review of the planning performance agreement protocol and set out proposed new charges for 2021/22. To ensure that the Borough Council continued to provide a comprehensive, high quality service and that the evidence based remained up to date it was necessary to review the protocol and charging schedule annually.

**RECOMMENDED:** That the updated Planning Performance Agreement Charging Schedule 2021/22 (attached at Annex 1 of the report) be adopted.

\*Referred to Cabinet

**PE 20/26 REVIEW OF BUILDING CONTROL FEES 2021/22**

Members were provided with an update on the working arrangement with Sevenoaks District Council and following internal discussions the Borough Council had been given notice to dissolve this partnership. A full assessment of service requirements was being undertaken and revised arrangements would be presented to Members in due course.

The report also recommended Building Control fees for 2021/22 for the Borough Council only.

**RECOMMENDED:** That a 1% increase to the Building Control Charges from 1 April 2021, as per the list of fees attached at Annex 1 to the report, be approved.

\*Referred to Cabinet

## **PE 20/27 DEVELOPMENT MANAGEMENT UPDATE**

(Decision Notice D200085MEM)

Members were updated on a number of matters related to the Development Management function during the current year.

It was reported that the ongoing work, as set out in the report, would ensure that all functions undertaken by the Development Management team continued to meet all statutory duties and requirements. In addition, all these services were managed within existing budgets.

Members commented on the quality of the technical advice provided by Officers which had resulted in a successful record of defending planning appeals and the Borough Council consistently performing above national targets.

Finally, the development of on-line training for Members was welcomed and it was hoped that sessions could be resumed as soon as possible.

**RECOMMENDED:** That

- (1) the contents of the report be noted; and
- (2) the provision of excellent technical advice, service and expertise on a range of planning issues be recognised and appreciated

## **PE 20/28 KENT RAIL STRATEGY CONSULTATION**

(Decision Notice D200086MEM)

The report provided details of the Kent Rail Strategy consultation and set out a proposed response (attached as Annex 1) to be submitted to Kent County Council by the deadline of 17 November 2020.

The Kent Rail Strategy aimed to influence train services in the county for the next decade and set out requirements for rail infrastructure enhancements to keep pace with increased demand for services. The Borough Council expressed support for the Strategy as it included known rail priorities for Tonbridge and Malling. In addition, a greater role for the Medway Valley Line was promoted by the Borough Council in the proposed response to the consultation.

Members welcomed the proposals for improved rail services and hoped that residents could be encouraged to adopt new ways of travelling which could benefit the Climate Change Strategy.

Particular reference was made to the value of the Medway Valley Line as an important strategic link for the north of the Borough.

Disappointment was expressed that the frequency of train services on this line had reduced, especially the connecting service to Tonbridge. Members recognised the importance of maintaining high speed services at peak times on this route to benefit commuters and residents in Snodland and the surrounding areas.

Finally, it was hoped that improvements at Aylesford and New Hythe train stations could be considered as part of development opportunities in the area.

**RECOMMENDED:** That

- (1) the content of the report be noted; and
- (2) the issues raised in response to the Kent Rail Strategy consultation (set out in Annex 1 to the report) be agreed by the Cabinet Member for Strategic Planning and Infrastructure, in consultation with the Leader and Director of Planning, Housing and Environmental Health, and submitted to Kent County Council by the deadline of 17 November 2020; subject to emphasising the value of the Medway Valley Line as an important strategic link for the north of the borough and Tonbridge.

**MATTERS SUBMITTED FOR INFORMATION**

**PE 20/29 A229 BLUE BELL HILL JUNCTION IMPROVEMENT SCHEME - CONSULTATION**

The report of the Director of Planning, Housing and Environmental Health provided an overview to junction improvements on the A229 Blue Bell Hill and set out the Borough Council's response to the consultation which had closed on 19 October.

Due to the timing of this deadline the response had been prepared in consultation with the Cabinet Member for Strategic Planning and Infrastructure and submitted to the County Council.

The Borough Council's formal response was set out in Annex 1 to the report and expressed a preference for option 2 as the enhanced arrangement at the Bridgewood Roundabout could provide the most direct and convenient route for traffic heading eastbound on the M2 and the southbound on the A229.

Local Members expressed significant concern about the impact of future development in the Medway Gap area, particularly on rural roads (A20 – London Road, A227, A228, A229, M2, M20 – junction 4) and the consequential impacts on the M25 and M26. Particular concern was raised about the Lower Thames Crossing and the significant increase in traffic movement through rural villages.

Kent County Council were invited to prepare a comprehensive report on future impacts on local rural roads and highway matters in the Medway Gap area for consideration by the Joint Transportation Board and the Planning and Transportation Advisory Board.

**MATTERS FOR CONSIDERATION IN PRIVATE**

**PE 20/30 EXCLUSION OF PRESS AND PUBLIC**

There were no matters considered in private.

The meeting ended at 9.10 pm

## TONBRIDGE & MALLING BOROUGH COUNCIL

### PLANNING and TRANSPORTATION ADVISORY BOARD

02 March 2021

#### Report of the Director of Planning, Housing and Environmental Health

##### Part 1- Public

##### Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

#### 1 LOCAL PLAN UPDATE

The purpose of this report is to provide Board Members with an update on the Local Plan process since the last update in July 2020 and set out the next steps. Members are requested to endorse the response sent to the Local Plan Inspectors on 29<sup>th</sup> January 2021. This report also sets out the latest position with regard to the Council's 5 Year Housing Land Supply, the outcome of the latest Housing Delivery Test results and the implications for decision making.

##### 1.1 Local Plan Progress Since July 2020

1.1.1 Since the last update to this Board in July last year we have prepared for and held the opening three days of the Examination Hearings in October, using virtual technology for the first time; had the remaining sessions put on hold by our Local Plan Inspectors while they considered some concerns that they had with legal compliance; received a detailed Inspector's letter on 15<sup>th</sup> December setting out those concerns; and prepared a robust response, which was sent on the 29<sup>th</sup> January. Regular updates on the Local Plan have been sent to all Councillors throughout this period by email.

##### The Hearing Sessions – 6<sup>th</sup> to 8<sup>th</sup> October 2020

- 1.1.2 After the Inspectors postponed the Hearing sessions scheduled to start in May 2020 due to the restrictions imposed by the Covid-19 pandemic, there was some uncertainty as to whether the sessions would be able to take place with social distancing or held virtually. New dates were subsequently agreed for October and November and for the Hearing to be held virtually using Microsoft Teams and livestreamed on YouTube.
- 1.1.3 The first three days of the Hearing addressed matters of legal compliance, including the Duty to Cooperate, Sustainability Appraisal and Habitats Regulations Assessment.

- 1.1.4 After the close of proceedings on the third day, statements for the next sessions due to commence on 3<sup>rd</sup> November were finalised and uploaded to the Examination pages of the website. However on the 22<sup>nd</sup> October the Inspectors contacted the Council postponing the remaining sessions.

The Inspector's Letter of 15<sup>th</sup> December 2020

- 1.1.5 The Inspector's letter setting out their concerns with legal compliance was received on the 15th December, 8 weeks after the examination was paused. The letter explained that based on the evidence before them the Inspectors had reached a provisional decision that Local Plan had failed the Duty to Cooperate in respect of meeting unmet housing need in Sevenoaks District and invited the Council to respond before confirming their final decision. No other matters were raised in the letter.
- 1.1.6 The Council response, which challenges the Inspector's initial findings and invites them to reconsider, was prepared during January and sent to the Inspectors on the 29<sup>th</sup>. A copy of the response was circulated to all Councillors at the time for information. Board Members are requested to endorse the response. At the time of writing we are waiting for the Inspectors to respond and either confirm or amend their provisional decision regarding the Duty to Cooperate.
- 1.1.7 All relevant documentation has been uploaded to the Examination pages of the Council's website and regular updates have been provided to all Councillors by email.

## 1.2 Local Plan – Next Steps

- 1.2.1 There are a number of different scenarios going forward:

Local Plan Inspectors Final Decision

- 1.2.2 The Inspectors have advised that they are not able at present to give a timescale for responding to the Council as there is a lot of information, which will need to be carefully considered prior to replying. This could take several weeks.
- 1.2.3 If the Inspectors revise their decision to accept that the Duty to Cooperate was satisfied then there is a reasonable expectation that the hearing sessions postponed in November can resume at the earliest practical opportunity and the process continues. In this scenario and assuming Hearing sessions can resume in the Spring, the main consequence will be a 6 month delay to the timetable.
- 1.2.4 However, if they are minded to maintain their provisional decision that there was a failure to meet the Duty, their recommendation will be that the submitted Local Plan is withdrawn since the Duty to Cooperate cannot be rectified retrospectively. This will present further options, to challenge the Inspector's decision or withdraw the Local Plan and resubmit.

### Challenging the Inspector's Decision

- 1.2.5 There are two routes for challenging the Inspector's final decision, requesting the Secretary of State to intervene and take an independent review of the Inspector's judgement in interpreting the Duty to Cooperate or a Judicial Review of the process undertaken.
- 1.2.6 Section 21(4) of the Planning and Compulsory Purchase Act 2004 allows the Secretary of State to intervene in the plan making process:
 

'Section 21 - Intervention by Secretary of State

(4) At any time before a development plan document is adopted by a local planning authority the Secretary of State may direct that the document (or any part of it) is submitted to him for his approval.'
- 1.2.7 Since the Council's response focuses on the Inspector's judgement in interpreting the Duty to Cooperate in respect of the matter of addressing unmet need in Sevenoaks District, it is felt that this is the more appropriate route of challenge. Intervention would be at the Secretary of State's discretion and there is no timescale set out in the Act for when the Secretary would have to decide whether to intervene, but there are examples where intervention in the Local Plan process has been used with some success (e.g. Maldon and Central Beds).
- 1.2.8 In the event that the Inspectors decide not to amend their provisional decision and in order to minimise further potential delays to adopting the Local Plan, the Leader of the Council wrote to the Secretary of State on the 2<sup>nd</sup> February requesting that he use his powers to intervene should this be the outcome.
- 1.2.9 A joint letter of support for this intervention from Tom Tugendhat MP and Tracey Crouch MP was also sent to the Secretary of State on the same day.
- 1.2.10 The Secretary of State is unlikely to decide whether to intervene until the Inspectors have issued their final decision.
- 1.2.11 Should the Inspector's final decision be unchanged, and the Secretary of State decides not intervene the Council may still consider the Judicial Review route of challenge, which would be more focused on the process that the Inspectors followed to reach their decision rather than their judgement.

### Resubmitting the Local Plan

- 1.2.12 Should all of the options described above nevertheless result in a final recommendation from the Planning Inspectorate or Secretary of State to withdraw the Local Plan, the Council will have to effectively start the process again.
- 1.2.13 This would entail adjusting the base date and plan period (this is currently 2011-2031) and planning for a new housing need based on the Standard Methodology of 843 new homes per year (compared to 696 in the submitted Plan). The

development strategy in the submitted Local Plan will be retained on the basis that this is considered to be a deliverable strategy already agreed by Members and that significant work has been undertaken to progress sites within that strategy. Additional sites will have to be considered in order to address the higher housing need. The evidence base would also have to be refreshed and updated accordingly. Some parts of the Local Plan evidence base are already in the process of being updated, for example, the Infrastructure Delivery Plan or IDP, which will assist with the development management process in advance of the Local Plan being adopted. An updated version of the IDP will be brought back to this Board as part of further Local Plan updates in due course.

- 1.2.14 The process would be largely the same as for the current Local Plan, although the latest version of the National Planning Policy Framework (NPPF) would be used instead of the 2012 version. Members would be fully involved as before including approving the Local Plan for the purposes of public consultation and ultimately agreeing a version for submission to the Secretary of State. Public consultations would have to be held as required by Regulation 18 and 19 of the relevant Regulations and officers would seek to utilise a wide range of consultation methods, including those virtual approaches that have become more prevalent during the COVID-19 pandemic.
- 1.2.15 Members may recall that the extraordinary meeting of the Board in September considered the Government's Planning White Paper and other planning reforms that were subject to consultations prior to a major review of the planning system. The fundamental reforms to the planning system proposed by the White Paper will take some time to be finalised and for primary and secondary legislation to be passed. Some commentators have suggested this could take up to 3 years to be fully implemented. Consequently, preparation of a new Local Plan would be based on the current system despite the fact some elements, such as the Duty to Cooperate, are expected to be replaced in due course.
- 1.2.16 The Government in a recent Written Ministerial Statement made clear that it expects up to date Local Plans to be in place by the end of 2023. This would be a challenging timescale particularly as it is uncertain if and when we may be starting the process again.
- 1.2.17 While the Council have to wait for the decision of the Inspectors and whether the Secretary of State will intervene before we know whether we are starting again, officers have begun the task of assessing the process, timescales, key dates and resources that would be required to adopt a new Local Plan at the earliest opportunity. This is a precautionary measure to minimise any further delay.
- 1.2.18 Withdrawal and starting again would be the least desirable outcome and result in the longest delay before a new Local Plan could be adopted.

### **1.3 Housing Land Supply Position**

- 1.3.1 This part of the report provides an update on the Council's Housing Land Supply (HLS) position. The update reflects the position as at 31 March 2020. This is consistent with previous assessments.
- 1.3.2 The key factors that measure the Council's HLS performance remain the same from last year, namely the Government's standard method for assessing housing need and the Housing Delivery Test results.

#### The Standard Methodology

- 1.3.3 According to the Government's standard method, the assessment of housing need for Tonbridge & Malling is 843 dwellings per annum (dpa). This is based upon the household projections published by the Office for National Statistics (ONS) and takes account of factors such as the median housing affordability ratio for the borough. The figure of 843 dpa is capped at 40% above the annual average growth in households for the 10-year period 2020-2030.

#### Applying a 'Buffer' to the HLS

- 1.3.5 In the calculation of the five-year HLS position, the Council is required to apply a 5% buffer to the housing need generated by the standard method. This is to 'ensure choice and competition in the market for land', as made clear in the 'Maintaining supply and delivery' section of the Government's NPPF.

#### Housing Delivery Test (HDT)

- 1.3.6 The HDT is an annual measurement of housing delivery. The latest HDT period covers the previous three financial years: 2017/18, 2018/19 and 2019/20. Given that the Council's adopted Local Development Framework is more than five years old, the measure of performance is a combination of the annual average household growth generated by the projections (for 2017/18) and the housing need generated by the standard method (for 2018/19 and 2019/20).
- 1.3.7 The HDT results for 2020 were published on 19 January 2021. The result for Tonbridge & Malling was 91%. This means that the supply of housing in Tonbridge & Malling across the three-year period of 2017-2020 fell only marginally short of the Government's expectations. It should be noted that the Government did take account of the impact of COVID-19 on the sector at the end of 2019/20 by discounting the housing need figure by one month to reflect the impact of the national lockdown in March last year.
- 1.3.8 As a consequence of achieving a HDT result that falls below the 95% threshold set by Government the Council needs to prepare a HDT Action Plan. According to the Government's planning practice guidance, the Action Plan needs to identify the reasons for under-delivery, explore ways to reduce the risk of further under-delivery and set out measures the authority intends to take to improve levels of

delivery. This is something that officers are already discussing and researching, and an update will be reported to this Board at the meeting in June.

### Deliverability – A Planning Judgement

- 1.3.9 Since the Council published the last HLS position, the Secretary of State (SoS) made an important concession in respect of what can be defined as deliverable housing, i.e., housing that is likely to be developed within the next five years. The concession was made in respect of High Court case known as 'The Willows'. The concession states (my emphasis in **bold**):
- 1.3.10 He (the SoS) concedes that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. It is not. The proper interpretation of the definition is that any site which can be shown to be '**available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years' will meet the definition**'; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. **Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available.**
- 1.3.11 This is helpful because prior to this concession a mechanistic approach was taken, as highlighted by recent planning appeals. The mechanistic approach simply looked at whether or not sites enjoyed detail permissions, including full permissions or outline permission with reserved matters. There was no scope to apply a judgement on whether there was a reasonable prospect of housing coming forward in the next five years. The concession has changed this.
- 1.3.12 The Council is now able to apply planning judgement on what is deliverable. This has provided scope to consider and include housing numbers that were previously excluded. For example, officers are confident that the remainder of Kings Hill phase 3 will be delivered within the next five years. This is based upon the existing reserved matters that are being implemented, reserved matters that have been submitted and house builder's intentions for the submission of further reserved matters to cover the remainder on the outline permission. Previously, those parts of the site not covered by reserved matters permissions were excluded from the calculation.
- 1.3.13 In light of the SoS concession, it is considered that some of the allocations in the Council's submitted Local Plan can form part of the five-year HLS position. In particular, those sites outside of the Green Belt. These sites have been assessed, sustainability appraised and considered in the context of other evidence as part of the preparation of the Local Plan. The Council has supported these allocations and is confident about the supply during the plan-period. Many of these are expected to deliver some if not all the homes allocated for the site in the Plan within the next five years. Given this available evidence, it is a

reasonable judgement that these sites are deliverable because they are available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the sites within five years.

- 1.3.14 The Winterfield Lane public inquiry held in December 2020 was the first opportunity to introduce these sites into the five-year housing land supply calculation. At the time of writing this report the Inspector's decision and report is still awaited. As the inclusion of these sites is a matter of planning judgement, the Inspector's conclusions as to whether some or all of the sites can reasonably be included in the HLS will be an important factor before finalising the update to the HLS.

#### The Latest Five-Year HLS Position

- 1.3.15 The five-year HLS position for the year ending 31.3.20 without including any of the unconstrained sites contained in the Local Plan is 2.93 years, which is slightly higher than the 2.6 years supply in the previous version for the year to 31.3.19. **Annex 1** sets out the calculation in more detail.
- 1.3.16 The final position will not be confirmed until the Winterfield Lane Inspector's decision is received. If the Inspector's report accepts the planning judgement for the inclusion of unconstrained sites from the Local Plan, this could result in a higher level of supply in the published version.
- 1.3.17 In applying the five-year HLS position for decision making purposes, the starting point is the NPPF (2019), in particular para.11. For local planning authorities that are unable to demonstrate a five-year supply of deliverable housing sites – as is the case for Tonbridge & Malling – the presumption in favour of sustainable development applies when taking decisions on planning applications (para.11 d in the NPPF).
- 1.3.18 This means granting permission unless i) the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. A footnote is provided for i) highlighting the relevant policies in the Framework, e.g. Areas of Outstanding Natural Beauty.
- 1.3.19 The application of the presumption has the effect of limiting the weight that can be given in decision-taking to policies in the Council's adopted Local Development Framework that have a bearing on the supply of land for development, in particular those policies that constrain where and how much development can take place. Examples include the policies relating to the settlements in the borough and development in the countryside, i.e., Policies CP11 – 14 in the Council's adopted Core Strategy.

- 1.3.20 The application of the presumption does not limit the weight that can be given to other policies in the Council's Local Development Framework, although the weight that should be afforded to them in decision-taking is determined by their currency and degree of conformity with the Government's NPPF.
- 1.3.21 It is important to bear in mind that the NPPF, which is a key material consideration in decision-taking, does include a suite of policies including those that protect areas of assets of particular importance, as highlighted above. Furthermore, a recent Court of Appeal judgement involving land promoter Gladman made it clear that when making a complete assessment under paragraph 11d) ii of the NPPF, in which "adverse impacts" and "benefits" are fully weighed and considered, relevant policies in the development plan should be taken into account. This section, as observed by the judge, should be read in the broad context of the NPPF's commitment to the "plan-led" system and its support for "sustainable development".

#### **1.4 Local Plan Progress in Neighbouring Authorities**

- 1.4.1 Further to previous Local Plan Update reports to this Board, the following sections provide a review of neighbouring Local Authorities progress with their Local Plans.

##### Sevenoaks

- 1.4.2 In July 2020 this Board was advised that Sevenoaks District Council had challenged their Inspector's final decision that the Local Plan should be withdrawn on the grounds that it failed the Duty to Cooperate and that the High Court had ruled on 2<sup>nd</sup> June that there were sufficient grounds for the Judicial Review to be heard. The Judicial Review was subsequently heard by Mr Justice Dove at the High Court on 2 and 3 September 2020. The Court published its decision on Friday 13 November 2020, which found that "there is no substance in any of the grounds upon which this claim is advanced" and therefore SDC's case was dismissed.
- 1.4.3 In early December 2020, SDC lodged an application to appeal against the Judicial Review ruling. The District Council is currently waiting for the High Court to consider their application. The Local Plan is effectively on hold while these enquiries are ongoing.

##### Tunbridge Wells

- 1.4.4 The Tunbridge Wells Local Plan was approved for the purposes of Regulation 19 consultation and submission to the Secretary of State at an extraordinary meeting of the Full Council on the 3<sup>rd</sup> February 2021.
- 1.4.5 The consultation is expected to take place for 8 weeks between 26<sup>th</sup> March and 25<sup>th</sup> May. As this consultation will take place between meetings of this Board the intention is to prepare an officer level response by the deadline under delegation to the Director of Planning, Housing and Environmental Services in consultation

with the Portfolio Holder. It is anticipated that the Local Plan will then be submitted to the Secretary of State during July 2021.

- 1.4.6 As required by the latest version of the NPPF, Tunbridge Wells Borough Council will be seeking a Statement of Common Ground to accompany their Local Plan when it is submitted to the Secretary of State.
- 1.4.7 The latest Local Development Scheme (LDS) or timetable updated in June 2020 suggests the Local Plan will be at Examination in November 2021 and Adoption in June 2022.

#### Maidstone

- 1.4.8 The Maidstone Local Plan was subject to a second Regulation 18 consultation between 1<sup>st</sup> December 2020 and 8<sup>th</sup> January 2021. Regulation 19 consultations are expected to take place in June. Maidstone Borough Council, like Tunbridge Wells, will also be seeking a Statement of Common Ground to accompany their Local Plan when submitted.
- 1.4.9 The latest LDS updated in September 2020 anticipates submission of the Local Plan to the Secretary of State in December 2021; Examination during May/June 2022; and adoption in October 2022.

#### The London Plan

- 1.4.10 The Secretary of State wrote to the Mayor confirming that he is content for the Mayor's new London Plan to be formally published, with no further changes on 29<sup>th</sup> January 2021.
- 1.4.11 The Mayor will now progress to formally publish the new London Plan. This will take a few weeks, in order to allow for statutory notifications to be issued alongside other administrative tasks.

#### Gravesham

- 1.4.12 Gravesham is preparing a partial review of its Local Plan Core Strategy, Site Allocations and a Development Management Policies Document. A Regulation 18 Stage 2 ran for six weeks from 23 October until 31 December 2020. This followed on from the Stage 1 consultation, which closed on 11 July 2018. Once adopted, these documents will form part of the Development Plan and replace some of the policies in the adopted Local Plan Core Strategy and the remaining saved policies in the Gravesham Local Plan First Review.
- 1.4.13 The latest version of the LDS for the Gravesham Local Plan published in October 2019 suggests submission to the Secretary of State took place in February; Examination in July 2021 and Adoption in December 2021, but this may in the process of being updated.

#### Medway

- 1.4.14 The latest version of the Medway Local Plan LDS (August 2020) suggests Regulation 19 consultation will take place this Spring; submission to the Secretary of State in December 2021; and Adoption December 2022.

#### Kent Minerals and Waste Local Plan

- 1.4.15 The early partial review of the Kent Minerals and Waste Local Plan was adopted by KCC in September 2020.

### **1.5 Summary and Conclusions**

- 1.5.1 This information report provides an update on progress with the Local Plan and sets out the various pathways to adoption.
- 1.5.2 The report also provides an update in terms of the Council's Housing Land Supply position as of 31<sup>st</sup> March 2020, the recent results of the Housing Delivery Test and the implications for decision making. The updated HLS for the year ending 31.3.20 can be found at **Annex 1** to this report. This is not the final version, which will be published following receipt of the Winterfield Lane Inspector's report in due course.
- 1.5.3 The last section of the report provides a brief review of neighbouring authorities Local Plan progress.

### **1.6 Legal Implications**

- 1.6.1 There are no legal implications arising directly from this information report, however the contents summarise the Inspector's concerns regarding the preparation of the Local Plan, specifically in respect of legal compliance with the Duty to Cooperate, which the Council is challenging.

### **1.7 Financial and Value for Money Considerations**

- 1.7.1 The delay in adopting the Local Plan will have financial implications both in terms of the extension to the plan making process and also as a result of the Council not having an up-to-date development plan for the purposes of determining planning applications. This increases the risk of appeals and the associated costs.
- 1.7.2 Recent Government proposals to amend the New Homes Bonus process could potentially have financial implications for the Council in the event of further delays to adopting an up-to-date Plan.

### **1.8 Risk Assessment**

- 1.8.1 Any delay in the Local Plan process carries the risk of the Council's adopted policies becoming more out of date and extends the period of time before the Council can re-establish a 5-year housing land supply.

## 1.9 Recommendation

- 1.9.1 That the contents of the report be **NOTED** and that the response to the Local Plan Inspectors sent on 29<sup>th</sup> January 2021, previously circulated to all Council Members and available on the Council's website at [\(tmbc.gov.uk\)](https://www.tonbridgeandmalling.gov.uk/Examination%20Documents%20-%20Tonbridge%20and%20Malling%20Borough%20Council%20(tmbc.gov.uk)) (ED69) be **ENDORSED**.

The Director of Planning, Housing and Environmental Services confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Nil

contact: Ian Bailey  
Planning Policy Manager

Eleanor Hoyle  
Director of Planning, Housing and Environmental Services

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## Annex 1

**ANNEX 1 Standard method housing requirement of 843 dwellings per annum (dpa) -  
Projected housing land supply for the 5 year period from 1 April 2020 to 31 March 2025**

Year	Sites with Permission <sup>(1)</sup>	Sites With Permission Demolitions <sup>(1)</sup>	Small Sites Estimate <sup>(2)</sup>	Large Sites Windfalls	Kings Hill Phase 3	Kings Hill - Complete	Holborough Quarry	Leybourne Grange complete	Peters Pit (aka Peters Village)	Tonbridge Central Area Completions and Permissions	Tonbridge Central Area Demolitions	Liberty Kings Hill Appeal Decision: Appeal A	Liberty Kings Hill Appeal Decision: Appeal B	Liberty Kings Hill Appeal Decision: Appeal D	Land East of King Hill	C2 sites conversion to C3	Completions from Planning Permissions (Net)	Total Completions	5 Year Totals	5 Year Supply 2020/21-2024/25	
2011/12	119					90	100	22		113							444	444	2,845	2,845	
2012/13	151					84	59	70		30							394	394			
2013/14	257					108	12	82		149							608	608			
2014/15	267					91	43	26		60							487	487			
2015/16	441					74	64	14		319							912	912			
2016/17	436					41	60	138	13	142							830	830			
2017/18	616					31	101	231	139	48							1,166	1,166			
2018/19	135					29	27	61	71	60	39					33	455	455	3,449	3,449	
2019/20	118	-30				95	78		202	10	-2						6	477	477		
2020/21	227	-17	44			25	50		109	45	-1					20	19	477	521		
2021/22	169	-9	44			110			241	105	0					80	19	715	759	2,197	2,594
2022/23	160	-11	44			242			160	16	-2					20	42	627	671		
2023/24	0		44			114			122	9	0	40	50	40			375	419			
2024/25	7		44			20			13			30	80	30			180	224			
2025/26			44										80				80	124			
2026/27			44														0	44	220	220	
2027/28			44														0	44			
2028/29			44														0	44			
2029/30			44														0	44			
2030/31			44														0	44			
<b>Totals</b>	3,103	-67	484	0	635	546	628	654	1,059	1,085	-5	70	210	70	120	119	8,227	8,711	8,711	2,594	
																			5 yr Housing Requirement <sup>(3)</sup>	4,426	
																			Difference	-1,832	
																			<b>5-Year Supply <sup>(4)</sup></b>	<b>59%</b>	
																			<b>No. of years of HLS <sup>(5)</sup></b>	<b>2.93</b>	

Note (1) Excluding listed large sites & Tonbridge Town Centre

Note (2) Windfall projection from small sites (fewer than five units in capacity). Based on previous supply discounted by 50%

Note (3) Housing requirement generated by the standard method (843 dpa) + a 5% buffer

Note (4) Supply of housing sites as a % of the 5-year housing requirement (see footnote (3))

Note (5) Number of years of Housing Land Supply (HLS) measured against annualised housing requirement (843) + 5% buffer (see footnote (3))

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# Agenda Item 5

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

02 March 2021

## Report of the Director of Planning Housing and Environmental Health

### Part 1- Public

#### Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

## 1 DEVELOPMENT MANAGEMENT STRATEGY 2021

**Summary:** This report outlines the intended strategy for development management related matters for the upcoming year in response to the current local plan position and delays to the adoption of the Plan. The implementation of an effective strategy that responds positively to the current position will ensure that the Council can continue to provide an efficient and high-quality service and robustly defend the Council's position in the event of appeals being lodged.

### 1.1 Introduction

- 1.1.1 Members will appreciate that the current delay to the examination and adoption of a new local plan has immediate implications for day-to-day Development Management and associated decision making. Officers have been carefully considering what our strategy should be for determining applications until a successful resolution is reached on the Local Plan, with a particular (albeit not limited) focus on schemes proposing new housing across the Borough.
- 1.1.2 For decision making purposes, Members will be aware of the requirements of the National Planning Policy Framework (the "NPPF") in respect of the weight to be afforded to draft plans. This is set out as follows:
  - 1.1.3 Paragraph 48 of the NPPF states that a local planning authority can give weight to relevant policies in an emerging plan according to
    - (1) the stage of preparation of the plan,
    - (2) whether there are unresolved objections to the relevant policies and
    - (3) the degree of consistency of the relevant policies with the NPPF.
- 1.1.4 Paragraph 49 then advises that this, when taken in the context of the NPPF and "in particular the presumption in favour of sustainable development - arguments

that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
- b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.”

- 1.1.5 As Members know, a significant period of time has elapsed since the Plan was originally submitted for examination. It is accepted that, whatever the outcomes of the Inspector’s latest letter, there will be a further delay to formal adoption. However, the requirements of the NPPF are clear and are not predicated on the length of time the draft plan has been with the Secretary of State/his appointed inspectors, but rather how far it has advanced successfully through the examination process.
- 1.1.6 It is clear at this time, based on our current position and the relevant NPPF paragraphs, that the draft local plan is not at an advanced stage (notwithstanding the timeframes involved) and therefore continues to carry only limited weight for decision making purposes, certainly until it has progressed further through the examination process. As such, any allocations or associated policies contained within the draft plan cannot be determinative at this time and recommendations made by officers and associated advice provided in this respect will be reflective of this position until that moves forward in a meaningful way. Until such a time, officers will not seek to resist development proposals on grounds of prematurity and will continue to advise Members of this accordingly at Area Planning Committees.
- 1.1.7 Members are well versed in the fact that the Council as Local Planning Authority is under a statutory duty to determine planning applications in accordance with the adopted Development Plan unless material considerations indicate otherwise. The Development Plan currently in force comprises the TMBCS (September 2007), the DLA DPD (April 2008), the MDE DPD (April 2010), the Tonbridge Central Area Action Plan (April 2008), the saved policies of the TMBLP and the Kent Minerals and Waste Local Plan (July 2016). The NPPF and guidance contained within the associated NPPG are material considerations. It is on the basis of the requirements of these policies and those contained within the NPPF (including those relevant to the presumption in favour of sustainable development) that all assessments will continue to take place and recommendations to planning committees will be made.
- 1.1.8 It should be noted that the adopted Core Strategy becomes time expired in September of this year. For the avoidance of any doubt, this does not automatically render all the policies contained within it immediately out of date.

Rather, we will be required to undertake an exercise of weight to be afforded to the relevant policies for the purposes of decision making, which will be attributed relative to their overall conformity with the requirements of the NPPF. This is an exercise that officers and Members are already well-versed in undertaking given the application of the presumption in favour of sustainable development (paragraph 11(d)(ii) of the NPPF). At this point, all officer reports will ensure that this position is carefully explained to protect against any possible challenges.

## **1.2 Housing land supply**

- 1.2.1 The Council's published housing land supply position stands at 2.6 years as at 31 March 2019. In appeal scenarios where new housing is proposed, it is commonplace for the parties to submit evidence as to the current housing land supply position as at the time of the inquiry itself. That is essentially because the benefits to be derived through the provision of new housing in the absence of an up-to-date five-year housing land supply is a matter that must be attributed weight in the planning balance when making decisions and in the most straightforward of terms, the lower the number the greater the amount of weight to be afforded to provision.
- 1.2.2 Furthermore, Members understandably wish to gauge what contribution to supply individual schemes would make in undertaking the same balancing exercise at Area Planning Committees.
- 1.2.3 With those matters in mind, officers are working on developing a database to allow us to efficiently capture our housing land supply position on a more regular basis. This would allow us to capture new permissions granted on a rolling basis and account for any lapsed permissions to give a more up to date position which would assist in our advising Members and in representing the Council's case at appeal. Such a system would assist in ensuring high quality decision making and build in wider efficiencies amongst the teams whereas presently there is a need to undertake reactive exercises on a case-by-case basis which is time consuming and resource heavy. It is also hoped that this system could be developed in a manner that would assist in monitoring other aspects of delivery such as the provision of infrastructure.

## **1.3 Objective evidence and additional decision-making tools**

- 1.3.1 Given the sensitivity of a number of sites that we understand will likely be coming forward by way of formal application in the coming months ahead of the local plan progression, it is considered prudent to put in place a strategy which allows for the Council to instruct external consultants to provide expert technical advice at pre-application and application stage (and on to appeal if necessary). Primarily the likely need for this will be centred around landscape and visual impacts particularly where housing schemes would involve the development of open fields of sensitive or local landscape value. Clearly there would be a cost to the Council in procuring such advice, but it is considered an important tool in assessing

speculative applications especially and, where necessary to do so, defending any refusals at public inquiry.

1.3.2 Additionally, Members will be aware that an up-to-date evidence base for decision making purposes at this current time is crucial for effective and informed decisions to be made. As such, officers are considering what parts of the local plan evidence base can usefully and properly be adopted in the short term for decision making purposes (such as the Infrastructure Delivery Plan). Officers will also undertake a review of whether any additional or updated work is required to bolster our evidence base, either to inform decision making on an application specific matter or more broadly. Whilst this will inevitably take some time, officers will seek to prioritise any identified key evidence and report back to this Board in June/July with a further update and recommended actions for adoption as necessary.

#### **1.4 Planning appeals**

1.4.1 In all likelihood, over the course of 2021 and beyond the above will culminate in a number of additional appeals being lodged with the Planning Inspectorate for determination. It is our experience that in circumstances where housing is proposed, in the absence of a five-year housing land supply, appellants will seek to be heard by Public Inquiry. This process has consistently proven to be costly to the Council in financial and resourcing terms and our experience is that there has been little assistance to the appointed inspectors in reaching their decisions in real terms.

1.4.2 Going forward, it is our intention to firmly counter any such requests where the criteria provided by the Planning Inspectorate is not met and where there is no clearly evidenced case made. In particular, Members should note that the criteria set out that inquiries should be reserved for:

- the most complex of cases;
- where there are matters which give risk to “substantial public interest”; or
- where the appellant provides a clear explanation as to why evidence needs to be tested by cross-examination or why it is necessary to make legal submissions orally to the inspector.

1.4.3 Within this context, it is accepted that the Council cannot demonstrate a five-year housing land supply and there has been a delay in the progression of the draft local plan. However, this does not automatically mean that a case should be viewed as particularly complex in nature and this alone is not sufficient to trigger the need for a public inquiry to take place. Indeed, as Members are aware, this Authority has been involved in a number of inquiries since this position came to the fore and on no occasion has it been necessary for the housing land supply position to be tested in evidence. Instead, the matter has always been addressed

either by a Statement of Common Ground, roundtable discussion between the parties or a combination thereof.

- 1.4.4 Similarly, it is completely understood that housing developments across the Borough are locally very sensitive and often generate a large volume of representations to be made. Whilst this might equate to significant public interest, within the context of the PINS criteria, whether this alone justifies an inquiry should be tempered by the fact that public involvement (and the ability to follow proceedings) is, currently at least, facilitated through electronic means so people are not having to travel to a venue to see or participate in what is going on.
- 1.4.5 As such, any requests by appellants for public inquiries will be resisted in writing on an individual basis unless the specific circumstances of the case make it clear to us that this is the correct forum for decision making purposes. Ultimately, the final decision on the nature of the appeal rests with the Planning Inspectorate but every effort will be made to ensure public inquiries are undertaken on a proportionate basis.
- 1.4.6 When appeals are brought forward by developers, officers will continue to robustly defend the decisions of the Council, making use of external consultants where deemed necessary and appropriate to do so which will be established on a case-by-case basis. In addition, it is considered crucial that we adequately invest in our own officers across the service by obtaining suitable training to provide them with the skills needed to give evidence in appeal scenarios, particularly public inquiries. To date, this has happened via a variety of means of undertaking courses to ensure continued professional development within the context of limited time and budget constraints. At this point, a focused piece of training delivered by external means to all officers within the service is considered to be the most appropriate training tool.
- 1.4.7 Another cost to the Council in defending appeal decisions at inquiry is centred in the need for suitable legal representation as part of the wider inquiry team on any given case. Officers have commenced discussions around the importance of having an embedded legal team who can act for the Council on inquiries as they come forward. This team will include external planning counsel at various levels of experience, external legal support on planning obligation agreements (as is already the case) and the Council's own internal legal team. This will ensure they fully understand the Borough and are able to provide consistent advice which will be key to ensuring we can robustly defend our decisions.

## **1.5 Legal Implications**

- 1.5.1 Not having a comprehensive and consistent strategy in place could increase the risk of Council decisions being challenged both through appeal and judicial review.

## **1.6 Financial and Value for Money Considerations**

- 1.6.1 Having a comprehensive strategy in place will ensure appropriate skills and expertise are utilised in an efficient and cost-effective manner and limit exposure to costs awards being made against the Council in appeal scenarios.

## **1.7 Risk Assessment**

- 1.7.1 Not having the strategy in place could delay effective decision making, increase the likelihood of challenges and limit the Council's ability to effectively resource key development management operations.

## **1.8 Recommendation**

- 1.8.1 That Members **AGREE** the proposed Development Management strategy for 2021 as set out in this report, namely:

- 1) Officers will not seek to refuse applications for planning permission on grounds of prematurity until such time that the local plan is at a sufficiently advanced stage to accord with the requirements of the National Planning Policy Framework 2019 and will advise the Area Planning Committees of the risks of doing so should any proposals be made to that effect
- 2) Development of an electronic system to regularly monitor the five-year housing land supply position to inform decision making and in defending housing related planning appeals
- 3) External consultants will be instructed to advise the Council on technical matters that require specific expert input to inform decision making and in defending relevant appeals where considered necessary to do so
- 4) Officers will explore all opportunities to adopt individual technical studies used as part of the local plan evidence base for development management purposes and seek to commission further studies for adoption on an individual or cumulative basis as required
- 5) External training will be provided to all officers across the service on giving evidence at hearings and public inquiries to ensure they have the necessary skills to advance and defend the Council's case in appeal scenarios in conjunction with any external specialist consultants that may be necessary to employ
- 6) Officers will assemble a legal team of suitable experience to thereafter be engaged where necessary as part of ongoing public inquiry work

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and policy Framework.

Background papers:  
Nil

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Development Manager

Eleanor Hoyle  
Director of Planning Housing and Environmental Health

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# Agenda Item 6

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

02 March 2021

## Report of the Director of Planning Housing and Environmental Health

### Part 1- Public

#### Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

##### **1 REVISIONS TO THE NATIONAL PLANNING POLICY FRAMEWORK AND INTRODUCTION OF A NATIONAL MODEL DESIGN CODE**

**Summary:** This report seeks to update Members about the consultation on the revisions to the National Planning Policy Framework and proposed National Model Design Code and propose the key elements of a response for Member discussion.

###### **1.1 Introduction**

- 1.1.1 Proposed changes to the National Planning Policy Framework (the “NPPF”) have been published with an intention on placing greater emphasis on beauty and place-making. The proposed revisions have helpfully been published as a “track changed” document so they can be easily referenced alongside the current text. Other notable changes include the role of community engagement at every step and more funding to help communities nominate local historic buildings for listing.
- 1.1.2 Along with the proposed changes to the content of the NPPF itself, MHCLG has published a draft national model design code and guidance notes accompanying the code. It seeks to provide a checklist of design principles to consider for new developments, such as street character, building type, façade, and the requirements that address wellbeing and environmental impact, which local planning authorities can use as a foundation for their own local design codes.
- 1.1.3 An ‘Office for Place’ is also to be created with the intention of supporting local communities.
- 1.1.4 It is also proposed to open a new Community Housing Fund to support community-based organisations to bring forward local housebuilding projects for the £11.5 billion Affordable Homes Programme, backed by £4 million of support for local plans. Alongside this, it is proposed to double available funding for areas under the “local heritage listing – monuments men” campaign, with up to £1.5 million now available for communities to nominate local heritage sites including historical buildings or modern architecture, art and memorials for inclusion in their Council’s local heritage list.

- 1.1.5 The consultation on the proposed revisions to the NPPF and the National Model Design Code concludes on 27 March 2021. The consultation scope and questions posed are set out at **Annex 1** of this report. The consultation documents can be found via the following link. These have also been uploaded onto the Member library for ease of reference.

<https://www.gov.uk/government/consultations/national-planning-policy-framework-and-national-model-design-code-consultation-proposals>

**Background context**

- 1.1.6 Members will be aware that there has been a suite of design related guidance and intention to reform published over the last two years leading to the publication of the latest consultation documents which are subject of this report. The preceding publications are summarised as follows:
- 1) National Design Guide (NDG) (published 01 October 2019), effectively setting the scene for the latest consultation. The 66-page document illustrated how well-designed places that are beautiful, enduring and successful can be achieved in practice, introducing a wheel comprised of 10 characteristics under “the 3 Cs” - Character, Community and Climate. The 10 characteristics consisted of Context, Identity, Built Form, Movement, Nature, Public Spaces, Uses, Homes and Buildings, Resources and Lifespan.
  - 2) Living with Beauty Report (30 January 2020) published by the Building Better Building Beautiful Commission (BBBBC) appointed to advise the Government on promoting better design, greater community consent in new developments and making the planning system work in support of better design and style. The report proposed 8 themes - Planning, Communities, Stewardship, Regeneration, Neighbourhoods, Nature, Education/skills and Management. It provided a checklist comprising of 44 detailed policy propositions under each of the 8 themes and concluded with the 45<sup>th</sup> proposition, asking the Government to create an independent commission to monitor and report back publicly on the implementation of this report on a regular basis.
  - 3) Government Response to the BBBBC report (30 January 2021), proposing to implement most of the policy propositions. Recommendations that government will be taking forward as announced recently include:
    - Making beauty and placemaking a strategic policy
    - Putting an emphasis on approving good design as well as refusing poor quality schemes
    - Asking local planning authorities to produce their own design codes
    - Asking for new streets to be tree-lined
    - Improving biodiversity and access to nature through design
  - 4) Draft Planning for the Future White Paper (August 2020) was significantly influenced by the BBBBC report and included a package of proposals for

reform of the planning system in England. This document included a new focus and emphasis on design and sustainability. There was a commitment to making design expectations more visual and predictable, emphasised on local codes prepared with community involvement and codes to be binding on decisions about development. It also suggested that if locally produced guides and codes were not in place, it is to be made clear in policy that the National Design Guide, National Model Design Code and Manual for Streets would guide decisions on the form of development.

- 5) Government's 10 Point Plan for a green industrial revolution to pave the way forward for creating, supporting and sustaining green jobs and moving forward the Government's pledge towards Net Zero by 2050.

## **1.2 National Model Design Code (NMDC)**

- 1.2.1 The NPPF makes clear that local planning authorities should ensure that visual tools such as design codes and guides are used to inform development proposals to provide maximum clarity about design expectations at an early stage and reflect local character and preferences. They should provide a framework for creating high-quality places, with a consistent and high-quality standard of design to inform development proposals.
- 1.2.2 Paragraph 132 of the NPPF states that development that is not well designed should be refused permission, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design codes and guides. Conversely, it states that significant weight will be given to development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design guides and codes.
- 1.2.3 It also makes clear that the level of detail and degree of prescription within design codes and guides should be tailored to the circumstances and scale of change in each place and should allow a suitable degree of variety where this would be justified.
- 1.2.4 Design coding is one tool available to local planning authorities, communities and developers to define and deliver design quality, in addition to design guides, planning briefs, heritage characterisation studies, standards and masterplans as set out in the NPPF and PPG.
- 1.2.5 A design code is a set of simple, concise, illustrated design requirements that are visual and numerical where possible to provide specific, detailed parameters for the physical development of a site or area. The NMDC is a toolkit to guide local planning authorities on the design parameters and issues that need to be considered and tailored to their own context when producing design codes and

guides, as well as methods to capture and reflect the views of the local community from the outset, and at each stage in the process.

- 1.2.6 It is intended to form part of the government's planning practice guidance and should be read as part of the National Design Guide, and alongside the planning practice guidance notes referenced in Part 3 of the National Design Guide, Manual for Streets, and other likely forthcoming guidance relating to the natural and environmental characteristics of development. This guidance is not a statement of national policy; however, the government recommends that the advice in this guidance on how to prepare design codes and guides is to be followed.
- 1.2.7 The Code establishes a baseline standard of quality and practice which local authorities are expected to take into account in the following areas:
  - The layout of new development, including street pattern.
  - Landscaping, including the importance of streets being tree lined.
  - The factors to be considered when determining whether the facades of buildings are sufficiently high quality.
  - The environmental performance of place and buildings, ensuring that they contribute to net zero targets.
  - Developments should clearly take account of local vernacular and heritage, architecture and materials.
- 1.2.8 In the absence of local design guidance, local planning authorities will be expected to defer to the National Design Guide, National Model Design Code and Manual for Streets which can be used as material considerations in planning decisions. This supports an aspiration to establish a default for local design principles and settings as part of forthcoming planning reforms.

#### Benefits of the design code approach

- 1.2.9 Seeking to improve design can only be seen as a positive in place-making and shaping our environment. For TMBC presently, there a number of key positives that should be highlighted:
- 1.2.10 The Council has a strong record of defending refusals of planning permission where it is considered that the design of development proposals is not of sufficiently high quality even absent an up to date five-year housing land supply and given the need to apply the presumption in favour of sustainable development (paragraph 11(d) of the NPPF). We will continue to resist development where it is considered to conflict with the requirements of adopted policy in securing high quality development and the use of design codes could assist in ensuring we can maintain this stance. Within this context, it is important to note that the rationale

of a design code is not to require new development to replicate existing built development but rather to ensure it responds positively to the prevailing context of a place.

- 1.2.11 Linked to the above, Members will be aware that once the existing LDF is replaced with a new local plan the Character Area Appraisals currently published and associated with the application of policy SQ1 of the MDE DPD will fall away too. Whilst these documents provide a useful and informative identification and appraisal of locally distinctive features that define the character of existing areas, design codes would have the potential to assess the characteristics of smaller areas at a more granular level and further influence how new development coming forward in the future would positively respond to that identified character.
- 1.2.12 This would also create opportunities for positive and constructive collaboration with developers, land promoters and community groups alike to establish what aspirations and expectations are prevalent in bringing about new development in an area. This is considered to be particularly important given that presently we are often faced with developers having engaged in their own design work ahead of any meaningful engagement with the Council and local communities.
- 1.2.13 Equally, the presence of local design codes provides developers with a greater degree of certainty about what may be acceptable when seeking planning permission and can help lead to faster decisions based on whether a proposal complies with a code, which can help to speed up the delivery of development.
- 1.2.14 For larger schemes, design codes can help to maintain consistency in the delivery of development over a longer period of time particularly where individual housebuilders acquire land parcels after outline planning permission has been obtained. Codes also set out a necessary level of detail in sensitive locations, for example, with heritage considerations, and they can set out specific ways to maintain local character.
- 1.2.15 Design codes and guides can also be helpful in facilitating custom-build, self-build and the use of modern methods of construction.

#### *Limitations of the design code approach*

- 1.2.16 At this stage, there remains some scepticism as to whether the intentions of developing the design code as proposed can bring about any meaningful change on the ground given wider issues at play. The key issues for TMBC in this respect being as follows:
- 1.2.17 The scope for the most significant change could be the way volume housing could be delivered. Despite the significant step change in recent years surrounding the “building beautiful” agenda summarised earlier in this report, there are still many residential housing schemes which come forward in this borough which have no real sense of place, provide designs from a standard template of house types often replicated, lacking any local distinctiveness, and providing no meaningful

attempt to make positive contributions. Members will appreciate that there are many reasons for this, the pressure to significantly increase the delivery of housing has overridden matters of design quality. A key issue will be ensuring that such developers engage positively with the development of design codes particularly with a view to ensuring matters of viability are not cited at a later stage of the process to either promote a development of substandard quality or as a way to reduce the level of affordable housing provision or other contributions required by adopted policy.

- 1.2.18 There will need to be full and active endorsement at an early stage and subsequent implementation by our County colleagues given the emphasis around street patterns and tree-lined streets. Ultimately, this could create conflict between delivering on achieving high quality design identified with the local design codes and technical highway engineering requirements. There will need to be careful and early engagement with the County Council in the development of local codes in a manner that ensures flexibility but does not ultimately result in a dilution in the quality of the environment; either when it is completed or further into the future accounting for any maintenance or management pressures that might arise. Such potential issues highlight the importance for early collaboration and joint working at all levels.
- 1.2.19 It is also important to highlight that the NMDC does utilise a “tick-box approach” to a large degree and this raises a question as to whether this ultimately be at odds with the altogether creative approach that must be enshrined within the building beautiful agenda. Creating high quality places that people want to live, work and visit must be about creating variety that is responsive to context over time and excessive regulation can be detrimental to that process.
- 1.2.20 Furthermore, it should be highlighted that even developments that on plan appear to be high quality and could be deemed to fully accord with a local code may appear altogether different on the ground if poorly constructed. There is no mechanism to ensure quality of build with the aim of achieving good design, only what exists within the Building Regulations regime.
- 1.2.21 There is a concern nationally that local planning authorities need more government investment to ensure we have the necessary skills and resources to ensure these aspirations can be met on the ground. At TMBC, there is an absolute willingness amongst officers to ensure we get the very best out of development across the borough and design codes will assist in achieving that but only if we have the resource and capacity to develop and implement them effectively from the start.
- 1.2.22 Lastly, it should be noted that the mantra behind the NMDC and associated guidance fundamentally conflicts with the thrust of wider planning reforms that continue to be promoted. Most notably, the continued expansion of permitted development rights of increasing degrees of scale and whereby very little to no consideration can be given to the quality of design, environment or living standards. This, I would suggest, is a central shortcoming and one that should be emphasised in our consultation response.

### Community engagement in developing design codes

- 1.2.23 The stages outlined in the coding process of the NMDC puts communities at the heart, should they wish to positively engage. It sets out that consultation will play an intricate role for each phase and local groups who want to engage will be able to shape their local area code or guide. It also sets out methods to capture and reflect the views of the local community at each stage of the development process.
- 1.2.24 This is clearly an important aspect of shaping our environments for the future; the key to the success of this will be ensuring opportunities have been provided to all elements of local communities, from the more informed and engaged groups to the remainder who are often less engaged to ensure that they can collectively shape place in a positive manner. It is likely that this will be a key focus of the pilot schemes.

### The Pilot

- 1.2.25 The interim Office for Place which is to be established will be piloting the NMDC with 20 communities with the overall aim of empowering local authorities to demand beauty, design quality and place-making, through training on the principles outlined in the code. Expressions of interest are now open for the first 10 councils to sign up, with these to receive a share of an initial £500,000. The funding is to be made available to help them test aspects of the process and content of the document, to inform its further development, how it might be applied to different contexts, and the use of design codes in the planning system. Expressions of interest must be made by 22 February. Officers have carefully considered whether an expression of interest could be made but at this time it is not considered that we have the capacity or scope to be involved in such detail. We will monitor the progress of the pilot schemes and consider again when the next opportunity arises that might better align with workstreams once we have a firmer understanding of the local plan trajectory.

## **1.3 Article 4 Directions**

- 1.3.1 In order to ensure Article 4 directions can only be used to remove national permitted development rights allowing changes of use to residential where they are targeted and fully justified, paragraph 53 of the NPPF is proposed to be amended. It is also proposed that there be clarification on the fact that Article 4 directions should be restricted to the smallest geographical area possible. The government believes that the amendments in totality would encourage the appropriate and proportionate use of Article 4 directions.
- 1.3.2 The consultation therefore asks for views on two different options in pursing this aim, and in particular what the preferred option might be, as follows:

*The use of Article 4 directions to remove national permitted development rights should*

- *where they relate to change of use to residential, be limited to situations where this is essential to avoid wholly unacceptable adverse impacts*
- *[or as an alternative to the above – where they relate to change of use to residential, be limited to situations where this is necessary in order to protect an interest of national significance]*
- *where they do not relate to change of use to residential, be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)*
- *in all cases apply to the smallest geographical area possible.*

1.3.3 I consider that the consultation response indicates a preference for the 1<sup>st</sup> bullet point, not the 2<sup>nd</sup> alternative option pertaining to the portion of interests of national significance. In addition, the consultation response should be used as an opportunity to highlight broader concerns around permitted development rights and the clear conflict with the national building beautiful agenda.

#### **1.4 The Consultation**

1.4.1 More broadly, the consultation asks for views on whether there is agreement on the proposed revisions to the NPPF itself. Additionally, in respect of the national model design code, views are sought on the following:

- The content of the guidance;
- The application and use of the guidance; and
- The approach to community engagement,

1.4.2 The full scope of the consultation is produced at **Annex 1**. Responses to the consultation must be submitted by 27 March 2021 and given the timescales involved it has not been possible to draft the response in full at the time of publication of this report. Instead, it is intended to develop the consultation response in line with the contents of this report alongside and specific, detailed comments Members may wish to make, with the final response to be delegated to the DPHEH in liaison with the Cabinet Member for Strategic Planning and Infrastructure.

#### **1.5 Legal Implications**

1.5.1 If the proposed revisions to the NPPF come forward as anticipated and absent any local design codes coming forward, the NMDC will be a material planning consideration for decision making purposes.

## **1.6 Financial and Value for Money Considerations**

- 1.6.1 There will be a need to ensure the service is appropriately resourced and provided with the necessary skills to facilitate the preparation of local design codes.

## **1.7 Risk Assessment**

- 1.7.1 Formulation of evidenced and thorough local design codes will assist in shaping development in a positive manner and will be an important tool in appeal scenarios should they arise. There is a greater risk at not being able to secure high quality development absent local design codes but the NMDC would still be a material planning consideration.

## **1.8 Recommendations**

- 1.8.1 That the content of this report be **NOTED** and the formal consultation response be formulated in line with its contents, with the final response delegated to the Director of Planning Housing and Environmental Health in liaison with the Cabinet Member for Strategic Planning and Infrastructure.

The Director of Planning Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Annex 1: National Planning Policy Framework &  
National Model Design Code: Consultation Proposals

contact: Emma Keefe  
Development Manager

Eleanor Hoyle  
Director of Planning Housing and Environmental Health

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5. National Planning Policy Framework and National Model Design Code: consultation proposals (<https://www.gov.uk/government/consultations/national-planning-policy-framework-and-national-model-design-code-consultation-proposals>)
  - Ministry of Housing, Communities & Local Government (<https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government>)

Open consultation

# National Planning Policy Framework and National Model Design Code: consultation proposals

Updated 8 February 2021

## Contents

Scope of the consultation

Introduction

Summary of proposed amendments to the National Planning Policy Framework

Chapter 2: Achieving sustainable development

Chapter 3: Plan-making

Chapter 4: Decision making

Chapter 5: Delivering a wide choice of high quality homes

Chapter 8: Promoting healthy and safe communities

Chapter 9: Promoting sustainable transport

Chapter 11: Making effective use of land

Chapter 12: Achieving well-designed places

Chapter 13: Protecting the Green Belt

Chapter 14: Meeting the challenge of climate change, flooding and coastal change

Chapter 15: Conserving and enhancing the natural environment

Chapter 16: Conserving and enhancing the historic environment

Chapter 17: Facilitating the sustainable use of minerals

Annex 1: Implementation

Annex 2: Glossary

National Model Design Code

[Public Sector Equality Duty](#)

[Going further](#)

[About this consultation](#)

[Personal data](#)

[Print this page](#)



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## **Scope of the consultation**

**Topic of this consultation:** This consultation seeks views on draft revisions to the National Planning Policy Framework (“the Framework”). The text has been revised to implement policy changes in response to the Building Better Building Beautiful Commission “Living with Beauty” report (<https://www.gov.uk/government/publications/living-with-beauty-report-of-the-building-better-building-beautiful-commission>).

A number of other changes to the text of the Framework are also set out and explained in this consultation document, but we are not proposing a review of the National Planning Policy Framework in its entirety at this stage. A fuller review of the Framework is likely to be required in due course, depending on the implementation of the government’s proposals for wider reform of the planning system.

This consultation is also seeking views on the draft National Model Design Code, which provides detailed guidance on the production of design codes, guides and policies to promote successful design. We made a commitment to seek views on the National Model Design Code as we expect it to be used to inform the production of local design guides, codes and policies and want to ensure it is as effective as possible.

**Scope of this consultation:** The Ministry of Housing, Communities and Local Government is consulting on the draft text of the revised National Planning Policy Framework and seeking views on the draft National Model Design Code. In responding to this consultation, we would appreciate comments on any potential impacts under the Public Sector Equality Duty.

**Geographical scope:** These proposals relate to England only.

## **Basic Information**

**Body/bodies responsible for the consultation:** Ministry of Housing, Communities and Local Government.

**Duration:** This consultation will begin on 30 January 2021 and will close at 11.45pm on 27 March 2021.

**Enquiries:** For any enquiries about the consultation please contact:  
[PlanningPolicyConsultation@communities.gov.uk](mailto:PlanningPolicyConsultation@communities.gov.uk)

## **How to respond**

Please respond online (<https://consult.communities.gov.uk/planning-policy-and-reform/national-planning-policy-framework-and-national-mo/>).

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name
- your position (if applicable)
- the name of organisation (if applicable)

If you cannot respond online, you may send your response by email to:  
[PlanningPolicyConsultation@communities.gov.uk](mailto:PlanningPolicyConsultation@communities.gov.uk).

Please make it clear which question or paragraph number each comment relates to, and also ensure that the text of your response is in a format that allows copying of individual sentences or paragraphs, to help us when considering your view on particular issues.

## Introduction

The government is proposing to make a number of changes to the National Planning Policy Framework and we would like to hear views on the amendments set out in this consultation. Most of the changes relate to policy on the quality of design of new development, and which respond to the recommendations of the Building Better, Building Beautiful Commission.

We have also taken this opportunity to make a number of environment-related changes, including amendments on flood risk and climate change. The amendments also include a small number of very minor changes arising from legal cases, primarily to clarify the policy. A few minor factual changes have also been made to remove out-of-date text (for example, the early thresholds for the Housing Delivery Test), to reflect a recent change made by Written Ministerial Statement about retaining and explaining statues, and an update on the use of Article 4 directions.

This is not a wholesale revision of the National Planning Policy Framework, nor does it reflect proposals for wider planning reform set out in the Planning for the Future consultation document. A fuller review of the Framework is likely to be required in due course to reflect those wider reforms, subject to decisions on how they are to be taken forward.

## Building Better Building Beautiful Commission

The government convened the Building Better, Building Beautiful Commission with the aim of championing beauty in the built environment, as an integral part of the drive to build the homes that our communities need.

The government asked the Commission to develop a range of practical measures that will help ensure new housing developments meet the needs and expectations of communities, making them more likely to be welcomed, rather than resisted. The Commission had three primary aims:

- to promote better design and style of homes, villages, towns and high streets, to reflect what communities want, building on the knowledge and tradition of what they know works for their area
- to explore how new settlements can be developed with greater community consent
- to make the planning system work in support of better design and style, not against it

The Commission's report proposed three overall aims. These were: ask for beauty, refuse ugliness and promote stewardship, and made 45 detailed policy propositions. In our response to the Commission, we have accepted their recommendation for a stronger focus on beauty in national planning policy, to ensure the system helps to foster more attractive buildings and places, while also helping to prevent ugliness.

This consultation takes forward our commitment to making beauty and place making a strategic theme in the National Planning Policy Framework. We state clearly that poor quality schemes should be refused and, where appropriate, we have replaced references to 'good design' with 'good design and beautiful places'. Several other aspects of the Framework have been updated to reflect the Commission's recommendations.

## National Model Design Code

The purpose of the National Model Design Code is to provide detailed guidance on the production of design codes, guides and policies to promote successful design. It expands on the ten characteristics of good design set out in the National Design Guide, which reflects the government's priorities and provides a common overarching framework for design. The National Model Design Code is intended to form part of the government's planning practice guidance. It is not a statement of national policy. However, once finalised, the government recommends that the advice on how to prepare design codes and guides is followed.

A design code is a set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area. The draft National Model Design Code is intended to be used as a toolkit to guide local planning authorities on the design parameters and issues that need to be considered and tailored to their own context when producing design codes and guides, as well as methods to capture and reflect the views of the local community from the outset, and at each stage in the process.

The government believes that design codes are important because they provide a framework for creating healthy, environmentally responsive, sustainable and distinctive places, with a consistent and high-quality standard of design. This can provide greater certainty for communities about the design of development and bring conversations about design to the start of the planning process, rather than the end.

We would welcome views on the application of the draft National Model Design Code in practice and the model processes it sets out. We would be pleased to hear from local planning authorities, neighbourhood planning groups, developers, members of the public and anyone with an interest in the design of new development.

We would be grateful for your views on the National Model Design Code, in terms of

- a) the content of the guidance
- b) the application and use of the guidance
- c) the approach to community engagement

## **Summary of proposed amendments to the National Planning Policy Framework**

This revised Framework:

- Implements policy changes in response to the Building Better Building Beautiful Commission recommendations
- Makes a number of changes to strengthen environmental policies – including those arising from our review of flood risk with Defra
- Includes minor changes to clarify policy in order to address legal issues
- Includes changes to remove or amend out of date material
- Includes an update to reflect a recent change made in a Written Ministerial Statement about retaining and explaining statutes.
- Clarification on the use of Article 4 directions

The sections below outline the main changes proposed to the Framework. A number of chapters remain unaltered, other than consequential changes to page, paragraph and footnote numbers (these are 1, 6, 7 and 10).

## **The revised text reflects the government's response to the Building Better Building Beautiful Commission, and makes a small number of other minor changes:**

The wording in paragraph 7 has been amended to incorporate the 17 Global Goals for Sustainable Development which are a widely-recognised statement of sustainable development objectives, to which the UK has subscribed.

Paragraph 8(b) has been amended in response to the Building Better Building Beautiful Commission recommendations to emphasise the importance of well-designed, beautiful and safe places in achieving social objectives of sustainable development.

The wording in paragraph 8(c) has been strengthened to emphasise the role of planning in protecting and enhancing our natural, built and historic environment.

The wording of the presumption in favour of sustainable development (paragraph 11(a)) has been amended to broaden the high-level objective for plans to make express reference to the importance of both infrastructure and climate change.

The final sentence in footnote 8 (referred to in paragraph 11(d)) has been removed as the transitional arrangements for the Housing Delivery Test no longer apply.

Q1. Do you agree with the changes proposed in Chapter 2?

## **Chapter 3: Plan-making**

### **The revised text reflects the government's response to the Building Better Building Beautiful Commission, and recent legal cases:**

In response to the Building Better Building Beautiful Commission recommendations, paragraph 20 has been amended to require strategic policies to set out an overall strategy for the pattern, scale and design quality of places.

Paragraph 22 has also been amended in response to the Building Better Building Beautiful Commission recommendations to clarify that councils who wish to plan for new settlements and major urban extensions will need to look over a longer time frame, of at least 30 years, to take into account the likely timescale for delivery.

Paragraph 35(d) has been amended to highlight that local plans and spatial development strategies are 'sound' if they are consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in the Framework, and other statements of national planning policy where relevant. This ensures that the most up to date national policies (for example, Written Ministerial Statements) can be taken into account.

Q2. Do you agree with the changes proposed in Chapter 3?

## **Chapter 4: Decision making**

### **The revised text aims to clarify the policy intention for Article 4 directions:**

In order to ensure Article 4 directions can only be used to remove national permitted development rights allowing changes of use to residential where they are targeted and fully justified, we propose amending Paragraph 53, and ask for views on two different options.

We also propose clarifying our policy that Article 4 directions should be restricted to the smallest geographical area possible. Together these amendments would encourage the appropriate and proportionate use of Article 4 directions.

Q3. Do you agree with the changes proposed in Chapter 4? Which option relating to change of use to residential do you prefer and why?

## **Chapter 5: Delivering a wide choice of high quality homes**

**The revised text aims to clarify the existing policy and reflects the government's response to the Building Better Building Beautiful Commission and recent legal cases:**

Paragraph 65 has been amended to clarify that, where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership. This is to address confusion as to whether the 10% requirement applies to all units or the affordable housing contribution.

Paragraph 70 has been amended to remove any suggestion that neighbourhood plans can only allocate small or medium sites. This was not the policy intention, so the wording has therefore been amended to clarify that neighbourhood planning groups should also give particular consideration to the opportunities for allocating small and medium-sized sites (of a size consistent with new paragraph 69a) suitable for housing in their area.

Paragraph 73 has been amended to reflect Chapter 9: "Promoting sustainable transport" in ensuring that larger scale developments are supported by the necessary infrastructure and facilities including a genuine choice of transport modes. Paragraph 73(c) has also been amended in response to the Building Better Building Beautiful Commission's recommendations to clarify that when planning for larger scale development, strategic policy making authorities should set clear expectations for the quality of the places to be created and how this can be maintained (such as by following Garden City principles) and ensure that masterplans and codes are used to secure a variety of well-designed and beautiful homes to meet the needs of different groups in the community.

Footnote 40 (referred to in new paragraph 74(c)) has been updated to reflect that the Housing Delivery Test has now come into effect.

New paragraph 80 (d) has been amended in response to legal cases in order to clarify that the curtilage does not fall within the scope of this policy.

New paragraph 80 (e) has been amended in response to the Building Better, Building Beautiful Commission's policy proposition 1 e) that it opens a loophole for designs that are not outstanding, but that are in some way innovative, and that the words 'or innovative' should be removed. This change is not proposed to rule out innovative homes, rather that it will ensure that outstanding quality can always be demanded, even if an innovative approach is taken.

Q4. Do you agree with the changes proposed in Chapter 5?

## **Chapter 8: Promoting healthy and safe communities**

**The revised text seeks to clarify existing policy:**

New paragraph 92 (b) includes minor changes to help to clarify Government's expectations for attractive pedestrian and cycle routes. This supports the Building Better Building Beautiful Commission's recommendations on supporting walkable neighbourhoods.

New paragraph 97 has been amended to emphasise that access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and efforts to address climate change.

Q5. Do you agree with the changes proposed in Chapter 8?

## **Chapter 9: Promoting sustainable transport**

**The revised text reflects the government's response to the Building Better Building Beautiful Commission:**

New paragraph 105 (d) has been amended to support the Building Better, Building Beautiful Commission's recommendations on encouraging walking and cycling.

New paragraph 109 (c) and supporting footnote 45 has been amended to prevent continuing reliance by some authorities on outdated highways guidance. Our amended wording states that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that the design of schemes and standards applied reflects current national guidance, including the National Design Guide and National Model Design Code.

Q6. Do you agree with the changes proposed in Chapter 9?

## **Chapter 11: Making effective use of land**

**The revised text reflects the government's response to the Building Better Building Beautiful Commission:**

New paragraph 124 has been amended to include an emphasis on the role that area-based character assessments, codes and masterplans can play in helping to ensure that land is used efficiently while also creating beautiful and sustainable places.

Q7. Do you agree with the changes proposed in Chapter 11?

## **Chapter 12: Achieving well-designed places**

## **The revised text reflects the government's response to the Building Better Building Beautiful Commission:**

New paragraphs 125 and 127 have been amended to include the term “beautiful” in response to the Building Better Building Beautiful Commission’s findings. This supports the Building Better Building Beautiful Commission’s recommendation for an overt focus on beauty in planning policy to ensure the planning system can both encourage beautiful buildings and places and help to prevent ugliness when preparing local plans and taking decisions on planning applications

Paragraph 126 has been amended to clarify the role that neighbourhood planning groups can have in relation to design policies.

Paragraph 127 has been amended to emphasise that all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code and which reflect local character and design preferences.

A new paragraph 128 has been added in response to the Building Better Building Beautiful Commission’s recommendations and our manifesto commitment to give communities greater say in the design standards set for their area. This reflects the Government’s proposals for a National Model Design Code, which will include a model community engagement process, and will create a framework for local authorities and communities to develop a more consistent approach which reflects the character of each place and local design preferences. It also clarifies that the National Design Guide and the National Model Design Code should also be used to guide decisions on planning applications in the absence of locally produced guides or codes.

A new paragraph 130 has been added to reflect the findings of the Building Better Building Beautiful Commission and the Government’s ambition to ensure that all new streets are tree-lined, and that existing trees are retained wherever possible.

New paragraph 132 and footnote 50 have been updated to refer to Building for a Healthy Life.

New paragraph 133 responds to the Building Better Building Beautiful Commission’s recommendations to make clear that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design. In addition, it clarifies that significant weight should be given to development which reflects local design policies and government guidance on design.

Q8. Do you agree with the changes proposed in Chapter 12?

## **Chapter 13: Protecting the Green Belt**

### **The revised text seeks to clarify existing policy:**

New paragraph 149(f) has been amended slightly to set out that development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order, is not inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it.

Q9. Do you agree with the changes proposed in Chapter 13?

## **Chapter 14: Meeting the challenge of climate change, flooding and coastal change**

**The revised text seeks to strengthen environmental policies, including clarifying some aspects of policy concerning planning and flood risk:**

The changes proposed are in part, an initial response to the emergent findings of our joint review with the Department for Environment, Food and Rural Affairs (Defra) of planning policy for flood risk. The government's Policy Statement on flood and coastal erosion risk management (<https://www.gov.uk/government/publications/flood-and-coastal-erosion-risk-management-policy-statement>) sets out a number of actions to maintain and enhance the existing safeguards concerning flood risk in the planning system. Informed by this, we will consider what further measures may be required in the longer term to strengthen planning policy and guidance for proposed development in areas at risk of flooding from all sources when our review concludes.

On planning and flood risk, new paragraphs 160 and 161 have been amended to clarify that the policy applies to all sources of flood risk.

New paragraph 160(c) has been amended to clarify that plans should manage any residual flood risk by using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding (making as much use as possible of natural flood management techniques as part of an integrated approach to flood risk management).

The Flood Risk Vulnerability Classification has been moved from planning guidance into national planning policy (set out in Annex 3 and referred to in paragraph 162). It is considered that this classification is a key tool and should be contained in national policy.

New paragraph 163 has been amended to clarify the criteria that need to be demonstrated to pass the exception test.

New paragraph 166(b) has been expanded to define what is meant by “resilient”.

Q10. Do you agree with the changes proposed in Chapter 14?

## **Chapter 15: Conserving and enhancing the natural environment**

**The revised text seeks to clarify existing policy and reflects the government's response to the Building Better Building Beautiful Commission:**

New paragraph 175 has been amended in response to the Glover Review of protected landscapes (<https://www.gov.uk/government/publications/designated-landscapes-national-parks-and-aonbs-2018-review>), to clarify that the scale and extent of development within the settings of National Parks and Areas of Outstanding Natural Beauty should be sensitively located and designed so as to avoid adverse impacts on the designated landscapes.

New paragraph 176 has been separated from the preceding paragraph to clarify that this policy applies at the development management stage only.

New paragraph 179(d) has been amended to clarify that development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around other developments should be pursued as an integral part of their design, especially where this can secure measurable net gains for biodiversity and enhance public access to nature.

Q11. Do you agree with the changes proposed in Chapter 15?

## **Chapter 16: Conserving and enhancing the historic environment**

**The revised text seeks to reflect a change made to national planning policy by a Written Ministerial Statement on protecting our nation's heritage dated 18 January 2021:**

New paragraph 197 has been added to clarify that authorities should have regard to the need to retain historic statues, plaques or memorials, with a focus on explaining their historic and social context rather than removal, where appropriate.

Q12. Do you agree with the changes proposed in Chapter 16?

## **Chapter 17: Facilitating the sustainable use of minerals**

**Minor changes have been made to clarify existing policy:**

New paragraph 209(c) has been amended to refer to Mineral Consultation Areas in order to clarify that this is an important mechanism to safeguard minerals particularly in two tier areas, and to reflect better in policy what is already defined in Planning Practice Guidance.

New paragraph 210(f) has been amended to reflect that some stone extraction sites will be large and serve distant markets.

Q13. Do you agree with the changes proposed in Chapter 17?

## **Annex 1: Implementation**

Minor changes have been made to update the position on transitional arrangements, and on the Housing Delivery Test.

## **Annex 2: Glossary**

The definition of “green infrastructure” has been updated to better reflect practice, as already set out in Planning Practice Guidance, published evidence reviews and the new national framework of green infrastructure standards.

The definition of the “Housing Delivery Test” has been amended to reflect the rulebook. This clarifies that the test measures homes delivered in a local authority area against the homes required, using national statistics and local authority data.

The definition of “minerals resources of local and national importance” has been amended to include coal derived fly ash in single use deposits.

Definitions of “mineral consultation area”, “recycled aggregates” and “secondary aggregates” have been added to reflect the changes in chapter 17.

Q14. Do you have any comments on the changes to the glossary?

## National Model Design Code

Q15. We would be grateful for your views on the National Model Design Code, in terms of

- a) the content of the guidance
- b) the application and use of the guidance
- c) the approach to community engagement

## Public Sector Equality Duty

Q16. We would be grateful for your comments on any potential impacts under the Public Sector Equality Duty.

## Going further

The government is clear that wider planning reform is needed to secure better outcomes for our modern society and economy. The COVID-19 outbreak has put this into sharp perspective. With so many people spending more time at home than ever before it is crucial that the places we call home are comfortable, affordable and within access of local amenities.

Action for a better future is needed and the planning reform proposals published last summer will help us improve our precious countryside and environment alongside increasing the supply of land for new, beautiful homes and sustainable places. Planning for the Future (published for consultation on 6 August) proposed significant changes to the focus and processes of planning.

The proposals for a reformed planning system will make it simpler, quicker and more accessible for local people to engage with and more certain for developers.

The consultation on Planning for the Future ended on 29 October. The government is now in the process of considering the responses received and will publish a summary of responses in due course. The government will also consider what further revisions to the National Planning Policy Framework are necessary to reflect those wider planning reforms.

## About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included below.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the complaints procedure (<https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government/about/complaints-procedure>).

## **Personal data**

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

### **1. The identity of the data controller and contact details of our Data Protection Officer**

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at [dataprotection@communities.gov.uk](mailto:dataprotection@communities.gov.uk)

### **2. Why we are collecting your personal data**

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

### **3. Our legal basis for processing your personal data**

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

#### **4. With whom we will be sharing your personal data**

MHCLG may share your personal data with the Design Body Steering Group and the Transition Board and external organisations, for purposes relating to this consultation, including analysis of responses. Any data shared with organisations outside of MHCLG will be anonymised where possible.

#### **5. For how long we will keep your personal data, or criteria used to determine the retention period.**

Your personal data will be held for two years from the closure of the consultation.

#### **6. Your rights, e.g. access, rectification, erasure**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/> (<https://ico.org.uk/>), or telephone 0303 123 1113

#### **7. Your personal data will not be sent overseas.**

#### **8. Your personal data will not be used for any automated decision making.**

#### **9. We use a third-party system, Citizen Space, to collect consultation responses. In the first instance your personal data will be stored on their secure UK-based server. Your personal data will remain on the Citizen Space server and/or be transferred to our secure government IT system for two years of retention before it is deleted.**

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# Agenda Item 7

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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# Agenda Item 8

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT INFORMATION**

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# Agenda Item 9

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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