

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 45th 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 pursuing 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 1st bullet point, not the 2nd 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

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