

TONBRIDGE & MALLING BOROUGH COUNCIL
HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

21 March 2023

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 IMPLICATIONS OF NPPF CONSULTATION ON LOCAL PLAN

1.1 Background

1.1.1 On 22 December 2022 the government commenced consultation on the 'Levelling-up and Regeneration Bill: reforms to national planning policy'. The council's response to the consultation was taken to Cabinet on 14 February 2023.

1.1.2 This report further considers the proposed changes and their implications for the content, form and timing of the local plan and sets out options for progression of the local plan and design codes.

1.2 Proposed changes to national planning policy

1.2.1 The 'Levelling-up and Regeneration Bill: reforms to national planning policy' consultation ran between 22 December 2022 and 2 March 2023. This sought views on the government's proposed approach to updating to the National Planning Policy Framework (NPPF), preparation of National Development Management Policies (NDMP) and how it might develop policy to support levelling up. The council's full response was taken to Cabinet on 14 February and has been submitted on the department's consultation portal.

1.2.2 The reformed plan-making system as set out within the consultation document is intended to be introduced in late 2024, however some more immediate changes are proposed through the consultation which would take effect from spring 2023.

1.2.3 The detailed potential changes are set out within a [document](#) (at **Annex 4**) showing some tracked changes to the current NPPF (2021). The most significant proposed changes are included within **Annex 1** alongside commentary of the implications for the council's new local plan. These matters are:

- Paragraph 11- that meeting housing need in full should not be at the expense of building at densities which would be significantly out-of-character with the existing area

- Paragraph 35- amendments to the ‘tests of soundness’ against which local plans are assessed at examination¹ including wording that a local plan should seek to meet needs ‘as much as is possible’ and removal of the ‘justified’ test which currently reads as ‘an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence’
- Chapter 5- that the standard method would be an ‘advisory starting-point for establishing a housing requirement for the area’ – this introduces further flexibility in relation to how this is reflected within local plans
- Paragraphs 75- 77- changes to the five-year housing land supply which make it easier for a local planning authority with an out-of-date plan to demonstrate compliance, through removal of the buffers (between 5 and 20% additional requirement), and the presumption in favour of sustainable development will no longer apply where permissions have been granted for 115% of the housing delivery target over the relevant period
- Chapter 13- that local planning authorities would not be required to review and alter Green Belt boundaries if this would be the only way of meeting housing need in full (but could still choose to do so).

1.2.4 If the proposed amendments to the NPPF are taken forward in their current form (subject to the outcome of the NPPF consultation and DLUHC committee scrutiny) the council would be able to consider the extent to which it can meet its Objectively Assessed Need (OAN). This would involve striking a balance between meeting need and whether this would involve building at densities, in locations (i.e. the Green Belt), or in specific settlement patterns to be able to do so. This would be a sizable change in direction to what was set out within the Regulation 18 consultation which took place in the Autumn of 2022, where the council committed to meeting its OAN, or plus 10%; and set out the strategic case for ‘exceptional circumstances’ in relation to the need to review its Green Belt boundaries.

1.2.5 It should be noted that the high-level analysis of the consultation responses which were taken to the 6 December 2022 meeting of the HPSSC highlighted clear support for meeting OAN only, and a majority against a spatial strategy option which involved a review of the Green Belt boundary to meet needs.

1.2.6 The intention behind the measures proposed within the consultation is to incentivise local planning authorities to carry on with plan making under a considerably more favourable policy environment, for example changes to the housing land supply through the removal of buffers, in many cases effectively lowering the target to be assessed against. However, as an authority we would

¹ a) Positively prepared; (b) Justified (c) Effective and (d) Consistent with national policy – see [National Planning Policy Framework - 3. Plan-making - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/national-planning-policy-framework-3-plan-making-guidance)

not benefit from measures allowing demonstration of a four-year (as opposed to five-year) housing land supply as our Regulation 18 local plan did not contain site allocations or a policies map.

1.3 Further potential areas for change

- 1.3.1 The government's consultation material also set out proposed future amendments which will be subject to future technical consultations in 2023 and come into force in late 2024. The council would need to respond to each of the technical consultations. Each consultation will need to be assessed for potential impact on TMBC and a proposal will be made to the Cabinet Member for Strategic Planning & Infrastructure regarding the process. The Director for Planning, Housing & Environmental Health has a general delegation relating to consultations, which may be appropriately used if the impacts are low-medium or the consultation is of a significantly technical nature.
- 1.3.2 Chapter 10 of the consultation document sets out the case for National Development Management Policies (NDMP) and some initial indications of their scope and content. It is proposed that the starting point for creating NDMPs would be existing parts of the NPPF which apply to decision-making whilst filling any 'gaps' where national policy is silent on common decision-making issues (example provided- carbon reduction in new developments). Full public consultation would take place on the draft policies following the passage of the Bill (anticipated spring 2023).
- 1.3.3 Once in place the NDMP would be given the same weight in planning decisions as policies in the development plan. They are not intended to encroach on local policies shaping development nor would they direct the use of land, but their introduction would mean that a local plan would not typically contain development management policies unless they related to a specific local issue (example provided student housing in a university town). The timing of the introduction will also have considerable implications on the local plan under both new and transitional arrangements, whereby under the latter this would most likely include a review of compliance with the incoming NDMP.
- 1.3.4 Chapter 12 of the consultation document sets out other potential further areas of change to the planning system would each have a bearing on the form, content or preparation process of the local plans. **Annex 1** sets out the potential implications of these changes, with key matters highlighted below. These changes would only become relevant for plans progressed under the new arrangements (late 2024 onwards).
- Changes to the plan-making process including a fixed timetable for local plan production, data standards and streamlined evidence base requirements
 - Introduction of a new Environmental Outcome Report to replace the Sustainability Appraisal/Strategic Environmental Assessment (SA/SEA) process

- A new ‘gateway’ approach would introduce additional verification to the local plan preparation process prior to examination
- Replacement of the Duty to Cooperate with a new ‘alignment’ policy providing planning inspectors with the ability to amend plans to improve alignment.

1.3.5 However, the degree of change or extent of impact will only become fully apparent once further details are published within the technical consultations later this year. The absence of timescale or detail means that there may be further changes which could impact upon the local plan preparation or process which remain unknown at this stage, so officers would need to continually review the approach and programme to reflect any changes.

1.4 Key dates and transitional arrangements

1.4.1 Chapter 11 of the consultation sets out the transitional arrangements for the new system which is expected to go live from late 2024. These are set out within Table 1 below.

Table 1- Key dates

| | |
|------------------------------|---|
| New legislation | |
| Spring 2023 | Levelling Up and Regeneration Bill receives Royal Assent (subject to Parliamentary approval) |
| Existing arrangements | |
| 30 June 2025 | Submission cut-off date for old-style plans |
| 31 December 2026 | Latest date for any old-style plans to be adopted |
| 31 December 2031 | Latest date for a local planning authority to commence work on a new style plan (if previous plan adopted on 31 December 2026). |
| New style plan | |
| November 2024 | Expected earliest date to begin plan-making under new arrangements. |
| October 2026 | Earliest date for commencement of new-style examinations |
| April 2027 | First new-style plans adopted. |

1.4.2 Changes put forward within the government’s consultation document also propose that Supplementary Planning Documents (SPDs) would be replaced with Supplementary Plans (SP). These new style documents are intended to be used for design codes, and other site-based policy documents, however information on the process of preparation has yet to be released. This means that a design code can either be included within a local plan itself, or as a SP, but also that it would no longer be possible to prepare topic based SPDs, so if further guidance on a particular matter is required this would need to be included within the plan itself.

Further clarity is also sought on the timing of SP preparation and whether a SP could be prepared in advance of a Local Plan.

1.5 Options for progression of the local plan

- 1.5.1 The council consulted on its Regulation 18 local plan between 22 September and 3 November 2022. The initial outcomes of the consultation were reported to the HPSSC meeting of [December 2022](#). The representations are still being considered and full analysis should be available to be brought back to members from May 2023 onwards. The consultation included submission of more than 50 new sites which also need further analysis and consideration.
- 1.5.2 Given the numbers of new sites which will require some degree of consultation and the likely change in direction of government policy in relation to housing targets and the Green Belt, it is anticipated that a further round of Regulation 18 consultation will be required before Regulation 19 consultation can take place. It should be noted that the recent Regulation 18 consultation set out a commitment to meet Objectively Assessed Needs in full. A new Regulation 18 local plan would build upon the outcomes of the regulation 18 consultation and include draft policy options and site allocations. The extent and location of the allocations would depend on decisions relating to housing numbers and Green Belt release.
- 1.5.3 This means that it is not possible to proceed to the local plan timetable as set out within the current [Local Development Scheme \(LDS\)](#) and decisions therefore need to be made about the timing of further work. A further report on the LDS timetable will be brought back to the committee following the outcomes and consideration of the options set out below.
- 1.5.4 Taking all the above into consideration there are two broad options available to the council: to progress the local plan under the current arrangements; or to defer work on the local plan to the new arrangements. Both options have associated benefits and risks, as set out in **Annex 2**. This sets out how the **proposed changes to the NPPF in relation to housing numbers and the Green Belt (anticipated to be confirmed in Spring 2023) would apply under both options**.
- 1.5.5 **Annex 3** shows a representation of the project plan under both these options. Option 1 shows some flexibility in the milestones, depending on the dates of key member decisions on how to respond to the NPPF changes in relation to housing numbers and the Green Belt. Option 2 follows the key dates for the new arrangements as shown in Table 1, however the detailed milestones under the new arrangements are not yet known.
- 1.5.6 In accordance with the existing NPPF the council is required to prepare design codes consistent with the principles set out in the [National Design Guide](#) and [National Model Design Code \(NMDC\)](#). There are options in how this duty can be satisfied, with differing levels of detail and geographical coverages as well as potential to include within the local plan or as a supplementary planning

document/new supplementary plan. However, given previous member decisions on these matters (HPSSC, December 2022) it is expected that this will also include parking standards and layouts. The 10 characteristics of good design from the NMDC are represented at **Annex 5**.

Option 1- existing process

- 1.5.7 Proceeding under the existing arrangements requires submission of a Regulation 18 plan by 30 June 2025 and conclusion of the examination sessions by 31 December 2026. It is anticipated that the local plan could be submitted between February and April 2025 (i.e. within the deadline of 30 June 2025), subject to decisions in relation to paragraph 1.5.1 above, and confirmation of the approach within a revised NPPF as proposed (see **Annex 4**). This timeline allows for some flexibility to allow for the anticipated changes which arise from the technical consultations this year but would become challenging should any unforeseen changes emerge at the national level, or new issues arising through the second round of regulation 18 consultation.
- 1.5.8 Adopting this approach would mean that a plan would be adopted between January and March 2026. This would be at an earlier date than Option 2, and the 'presumption in favour of sustainable development' would apply for a shorter period, with benefits for sustainable development patterns under a 'plan-led' system. However, given that National Development Management Policies are likely to be introduced in the intervening period, proposed policies would need to be reviewed in this context, which could also mean some abortive work.
- 1.5.9 As work has not yet commenced on design coding, or evidence prepared to support this, the inclusion of design coding within the local plan itself would delay the timetable to such an extent that it would not be possible to processed under the current arrangements. Instead design codes would need to be included within a new 'Supplementary Plan' which would most likely sit alongside the latter stages of the local plan preparation stages. In order to proceed with this option a characterisation study would also need to be progressed. This would identify key features and character typologies across the borough and would support arguments around appropriate densities.
- 1.5.10 This option would require re-appraisal of the local plan budget to account for the additional regulation 18 stage. Separation of design codes within a new document would also incur the additional costs of the 'light touch' examination.

Option 2- New arrangements

- 1.5.11 Proceeding under the new arrangements would involve a considerable delay to when the council will have an adopted plan in place, which would be in April 2027 (at the earliest). Therefore the 'presumption in favour of sustainable development' would apply for a longer period (approximately 1 year longer), with potential implications and associated costs of 'planning by appeal' and ultimately on the sustainability of the development patterns.

- 1.5.12 A local plan prepared under these arrangements would be considerably slimmed down from what would be progressed under current arrangements (i.e. by excluding development management policies) and would be prepared to a strict timetable within 30 months of commencement. This option is not however without risk as the details of the timing and process have not yet been set out in legislation. But it may also mean that the risk associated plan-preparation would be reduced (through the removal of the duty to cooperate). The costs associated with plan-preparation are also likely to be lower as the evidence-base requirements would be reduced. However, this is based on the presumption that the content and the timetable for the reforms are progressed as per the NPPF consultation, which could be amended.
- 1.5.13 This option would mean shifting the focus of the planning policy team in the short-to medium term to other required policy and infrastructure-related projects, but also presents some opportunities in relation to embracing digital planning and putting in place design code/s. It is anticipated that this will require a full review of the local plan budget- see section 1.7 below).
- 1.5.14 The council would also be one of the ‘front-runners’ of the new system and can potentially draw on government resources to assist. There is potential to include a design code within the local plan itself, or as a Supplementary Plan, which, subject to government confirmation could be in place in advance of the local plan. This would bring the design code spend forward in the work programme (see paragraph 1.7.2). However, design code/s prepared under option 2 would most likely be put in place at an earlier date (than option 1) with benefits for the development management process and design outcomes within the borough, including through inclusion of parking standards and layouts within the code/s.
- 1.5.15 Notwithstanding decisions in relation to the above, it is likely that some work will need to be undertaken with the communications team to fully impart the decisions made and the messaging associated with this.
- 1.5.16 The above sets out the implications of proposed planning reform as currently set out by the government. There is always potential for this to change, in relation to the final outcomes of the NPPF consultation, the timing and detail of other future areas of reform, and a general election within two years. However, taking into account all of the above, a steer is sought on whether to progress the local plan under the current legal arrangements (option 1), or to prepare a new LDS working towards the new system (option 2). If members were also minded, there is also a further option to defer a decision until after the NPPF is published in its final form (anticipated late Spring 2023), but this consequential delay could make option 1 more challenging.
- 1.5.17 Once a decision has been made, the next steps will be to agree the approach to housing numbers and the Green Belt; and to approve a new work programme and LDS. These will be brought to a future meeting of this committee in Summer 2023, as advised by members (meetings scheduled June, July and September).

1.6 Legal Implications

- 1.6.1 Local Planning Authorities are required to prepare and keep up to date development plan for their area. The Planning and Compulsory Purchase 2004 (as amended) and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) set out the requirements and the statutory process for the preparation of a Local Plan.

1.7 Financial and Value for Money Considerations

- 1.7.1 There will be direct financial and value for money considerations associated with the local plan preparation and the options as described in this report. It is considered likely that any option will result in some increased level of cost, as there has been a need to pause production of some evidence base needed for achievement of the current LDS pending discussions with Members in the context of the NPPF consultation, which therefore means that the existing LDS may well result in some additional cost due to increased levels of fee from consultants. There is also the cost of an additional Regulation 18 consultation under either option. At present it is anticipated that there is an estimated reserve balance of around £660k, some of which would be utilised to cover the additional spend. A more detailed report on the budget implications will be presented to members alongside a new LDS.
- 1.7.2 If the Council progresses with a 'new style' Local Plan, it is considered that some of the evidence base currently produced will remain useable, however other key pieces of evidence may require revisiting (see **Annex 1**). The inclusion of design coding within or alongside a 'new style' Plan will have an increased cost in the medium-term, which needs to be firmly estimated should Members decide to pursue an option in this regard. Part of this cost increase will be as a result of the previous Member decision to include a TMBC specific set of parking standards into the Local Plan. However, it is also considered that production of a design code as part of the Plan will increase its robustness and the ability of the Plan to demonstrate it has met the requirements of the revised NPPF.
- 1.7.3 Although it is not possible to fully cost the implications of options 1 and 2 at present, the proposed changes will re-focus the cost profile incurred through plan-preparation. As set out within **Annex 1** there are additional costs associated with each option. Option 1 will involve some re-visiting of existing evidence base documents (estimated between £30 and £60k) if changes to housing targets are progressed. Option 2 will most likely involve a lower evidence base cost overall, however some pieces of evidence may need re-running as the time periods are altered (estimated around £50k).
- 1.7.4 However both options will most likely involve commissioning of new evidence to support decisions on housing targets, and detailed work in relation to design coding. On balance, it is considered that option 2 (by means of having a shorter timetable and lower evidence base requirements) may be more cost-effective.

This would be because the costs of plan-production would be spread over a longer period, with the ability to use annual contributions to the reserve for the financial year 26/27.

- 1.7.5 However, a year's delay to adoption under option 2 could incur additional costs on the development management side. Additional appeal costs may be incurred in association with the extended use of the 'presumption in favour of sustainable development' and potential for appeal for non-determination.
- 1.7.6 Dependant on the direction of travel option Members support, a detailed analysis of likely budget requirements over the coming financial years will be presented to Members in summer 2023. There is a local plan reserve which can be drawn down to cover some of these costs.

1.8 Risk Assessment

- 1.8.1 The preparation of the new local plan will provide the council with an up-to-date Local Plan on adoption. This will alleviate the current risks associated with not having an up-to-date development plan in place, however government proposals would mean that the penalties of not having a plan in place would be weakened. There are reputational risks should the local plan programme not be delivered on time.
- 1.8.2 The relevant corporate risk was updated in December 2022, however, will be amended to reflect the potential implications of the NPPF consultation. The service level risk register is maintained and continually updated to reflect the latest position and relevant mitigations. A KCC-led audit is also underway which aims to reduce the risks associated with plan-making.

1.9 Equality Impact Assessment

- 1.9.1 The decisions recommended through this report have relevance to the substance of the Equality Act 2010. The stages in plan preparation will be undertaken in accordance with the new Statement of Community Involvement (subject to Cabinet approval) which ensures that planning policy consultations are accessible to all, irrespective of protected characteristics. An Equalities Impact Assessment will be undertaken alongside the preparation of the next stages of the Local Plan.

1.10 Recommendations

HPSSC is asked to recommend to Cabinet:

- 1.10.1 NOTE the implications of the proposed 'Levelling-up and Regeneration Bill: Reforms to National Planning Policy' as set out in **Annex 1**.
- 1.10.2 RECOMMEND an approach to future timetable and next steps, as set out in Section 1.5 and **Annex 2**.
- 1.10.3 APPROVAL to bring a new Local Development Scheme with more detailed financial implications to a future meeting in Summer 2023.

Background papers:

- Annex 1- Implications of the NPPF consultation
- Annex 2- Options for local plan preparation
- Annex 3- Project management timetable options
- Annex 4- NPPF tracked changes document
- Annex 5- 10 principles of good design

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