

<b>Report to Regulatory Committee – Development Control Committee</b>	<b>18 April 2012</b>
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<b>Subject:</b>	<b>The National Planning Policy Framework and the Localism Act 2011 – Implications for Development Management</b>
<b>Status:</b>	<b>Open</b>
<b>Report Ref:</b>	
<b>Ward(s):</b>	<b>All</b>
<b>Key Decision:</b>	<b>No</b>
<b>Key Decision Ref:</b>	<b>-</b>
<b>Report of:</b>	<b>Planning and Development Manager, Giorgio Framallicco / Mike Townsend</b>
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<b>Appendices:</b>	<b>National Planning Policy Framework – Key messages</b>
<b>Papers relied on to produce this report</b>	<b>National Planning Policy Framework March 2012 Localism Act 2011</b>

## **SUMMARY**

### **1 This Report**

1.1 The purpose of this report is to:

- update the Committee on the publication of the National Planning Policy Framework and explain the implications for decision making;
- advise the Committee of a change in the law relating to pre-determination;
- advise members of the need to have due regard to financial consideration as a material consideration when determining planning applications; and,
- advise members on the intended need for developers of large schemes to undertake pre-application consultations prior to the submission of a planning application.

### **2 Recommendation**

It is recommended that the Committee:

- 2.1 note the need to give material weight to the National Planning Policy Framework in decision making and other development management considerations set out in paragraph 3.2 and Appendix 1.
- 2.2 note the changes in relation to pre-determination as set out in the Localism Act and give approval to officers to update Appendix 2 of the Council's

Constitution 'Code of Conduct for Officers and Members dealing with Planning Matters';

2.3 note the need to have due regard to the financial benefits of development as required by the Localism Act; and,

2.4 note (when a development order is in place) the need for developers, where a proposed development is of a significant size, to consult with local residents prior to the submission of a planning application and give due regard to the comments made.

## **PRIORITIES, IMPACTS AND RISKS**

### **Contribution To Council Priorities**

This report accords with the Council's Budget and Policy Framework

<a href="#">Council Plan Ref 2011-14:</a>	EN4; EN7
<a href="#">3-Year Action Plan:</a>	Determination of planning applications
Other References:	None

### **Impacts**

	Type	No significant impacts	Some impacts	Significant impacts
<b>Impacts for BDBC</b>	<a href="#">Financial</a>	✓		
	Personnel	✓		
	Legal	✓		
<b>Impacts on Wellbeing</b>	<a href="#">Equality and Diversity</a>	✓		
	Rural/Urban		✓	
	Crime and Disorder	✓		
	Health	✓		
	<a href="#">Environment and Climate Change</a>		✓	
<b>Involving Others</b>	<a href="#">Communication/Consultation</a>		✓	
	Partners	✓		

### **Risk Assessment**

<b>Number of <a href="#">risks</a> identified:</b>			
<b>Number of risks considered HIGH or Medium:</b>			
<b>Strategic:</b>	Already identified on Corporate Risk Register?	Yes	
		No	✓
<b>Operational:</b>	Already identified in Service Plans?	Yes	
		No	✓

### **3 Background**

#### **National Planning Policy Framework (NPPF).**

- 3.1 Appendix 1 to this report provides a summary of the key messages set out within the National Planning Policy Framework (NPPF). This information has already been sent to all members and town / parish councils by email.
- 3.2 The NPPF raises a number of development management issues which the committee will need to be aware of:
- The policy framework comes into immediate effect and replaces all of the Government guidance set out in Planning Policy Statements (PPS) and Planning Policy Guidance Notes (PPGs) as well as other specified planning guidance.
  - The document is a material consideration for planning matters – this means that the policy approach set out in the document needs to be taken account of in decision making.
  - The document re-emphasises that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise. This is an important issue as while the committee may wish to support proposals which have raised no local objections, the committee’s primary role is to consider the acceptability of the plans against the saved policies of the adopted Local Plan.
  - In relation to neighbourhood plans, the NPPF continues to endorse the value of neighbourhood plans as a tool to be used by local communities to shape their areas. Neighbourhood plans need to be in general conformity with the strategic policies of the Local Plan. Until such plans are created and formally adopted, the Committee will need to continue to apply the test above – that is, does the proposal comply with the saved policies of the adopted Local Plan? If not and there are no material considerations to indicate otherwise, the planning application should be refused.

### **4 Localism Act – Predetermination**

- 4.1 It is a well-established principle of public law that public bodies who make administrative decisions on matters such as planning applications must do so in a quasi-judicial way. Among other things, this means that committee members must approach the decision-making process with an open mind and decide the matter taking account of relevant factors only. If it can be shown on a balance of probabilities that one or more members have already made up his or her mind in advance of the debate, he or she is deemed to have “pre-determined” the application and the decision is challengeable by Judicial Review.
- 4.2 In parallel with the abolition of the Standards Board, the Government has used the Localism Act to clarify the rules on ‘pre-determination’. In practice these rules had been interpreted in such a way as to reduce the quality of local debate and stifle valid discussion. In some cases councillors were warned off doing such things as campaigning, talking with constituents, or

publicly expressing views on local issues, for fear of being accused of bias or facing legal challenge.

4.3 A provision (section 25) was included in the Localism Act 2011 as follows:

“A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—

- (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
- (b) the matter was relevant to the decision.”

4.4 Section 25 came into force in January 2012.

4.5 It is important to note that this provision is not as far-reaching as might appear at first glance. Members will still have to have an open mind when approaching a decision and it is important to emphasise that there remains a duty to decide applications in accordance with the saved policies of the Local Plan and other material considerations remains. The only difference is that pre-determination will not be assumed just because a member has made a public comment about the application.

4.6 The nature of the statement made may still, however, be relevant, and, in some circumstances may demonstrate pre-determination. Common sense will still need to be exercised. Comments such as: “I have reservations about the proposal”, or even “I don’t like the proposal” may well be acceptable. But comments such as: “I will object to this development”, would almost certainly support a claim for pre-determination, section 25 notwithstanding. For any clarification on this area or site specific advice if you are unsure please contact the Monitoring Officer.

## **5 Localism Act – Financial Considerations**

5.1 Section 143 of the Localism Act 2011 amends S70 of the Town and Country Planning Act to include ‘any local finance considerations, so far as material to an application’ as a matter to which the local planning authority shall have regard in dealing with applications for planning permission.

5.2 The Localism Act further defines local financial considerations as:

- (a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or
- (b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy;

5.3 Grants or financial assistance includes New Homes Bonus (NHB) which is now provided to the council on the basis of the number of new homes built within the borough. The borough does not currently have a Community Infrastructure Levy.

5.4 The receipt of NHB will be of benefit for the Borough. However as set out above and confirmed in the NPPF, planning decisions are made in accordance with the development plan unless other material considerations

indicate otherwise. It is unlikely that the financial benefits of a scheme would be such a heavy consideration as to mean that a development which was not acceptable becomes acceptable. Officers can advise members on specific applications should this be required. The main covering report will, as a consequence, will be amended to reflect this issue as an additional material consideration.

## **6 Localism Act - Pre- application consultation**

- 6.1 Section 122 of the Act inserts sections 61W, 61X and 61Y into the Town and Country Planning Act 1990 requiring developers to consult local communities before submitting planning applications for certain developments. The thresholds of development will be specified by secondary legislation.
- 6.2 The Department for Communities has stated that this requirement will initially apply to 'large scale major' planning applications, for example, residential developments of more than 200 units and other developments that provide 10,000 square metres or more of new floorspace.
- 6.3 This is intended to give local people an opportunity to comment on a proposed development at a stage where they will feel they have a chance to influence proposals before they are finalised. Developers will be required to have regard to any responses received during the consultation when deciding whether to make any changes to the proposed development before submitting their planning applications.
- 6.4 The council's own Statement of Community Involvement, which sets out guidance on what form of consultation is appropriate prior to submission, will be amended in due course to reflect the requirement. Officers will continue to encourage developers to engage with the local community and interested parties at the earliest opportunity.
- 6.5 Section 62 of the Town and Country Planning Act 1990 is also amended so that an account of the consultation undertaken in accordance with new requirements must accompany any planning application for development to which the new duty applies, in order to make it a 'valid' planning application. This section does not provide for the refusal of planning permission on the basis of the consultation undertaken.

## **7 Conclusions**

### **7.1 NPPF**

- 7.1.1 The immediate issue for members to note is that the NPPF becomes a material consideration in the determination of planning applications.

### **7.2 Localism Act – Predetermination**

- 7.2.1 The legislation is in its infancy and it remains to be seen how the courts will interpret it in practice. If members are in any doubt as to what they can and cannot say in public or whether they should take part in a meeting in light of their previous dealings with a particular application, they are invited to seek advice from officers.

### 7.3 Localism Act – Financial Considerations

7.3.1 Members need to be aware that due consideration will need to be given to financial considerations as set out above in decision making.

### 7.4 Localism Act – Pre application consultations

7.4.1 Whilst this part of the Localism Act is enforce, this is only so far as the provisions it inserts into the Town and Country Planning Act 1990 require or authorise the making of provision in a 'development order'. Therefore officers are waiting for the publication of a new development order in order to clarify what types of development the new requirements will be applied to. Once in place, officers' delegated and committee reports will explain the extent of pre-application consultations undertaken by the developer and how the scheme has been amended in light of the responses.

## National Planning Framework – Key Messages

The following sets out the key messages in the National Planning Policy Framework (NPPF), that need to be considered. In addition to the issues outlined below, it should be noted that the replacement national guidance has resulted in some policy areas no longer being addressed. It will be necessary to undertake a comprehensive audit of the NPPF in light of this, to consider where any such gaps have arisen. The Planning Development Team are also being asked to highlight any policy areas that are no longer addressed at the national level.

- A presumption in favour of **sustainable development** is retained, albeit, references to the default answer to sustainable development being yes, have been removed.
  - The inclusion of 12 core land-use principles to underpin plan-making and decision making, including factors such as empowering local people to shape their surroundings, supporting economic development, encouraging the re-use of brownfield land and managing growth to make the best use of public transport.
- **Meet the full, objectively assessed needs for market and affordable housing in the market area and:**
  - Continue to identify five years' worth of specific deliverable housing sites, **but an additional 5% should also be included to ensure choice and competition**, which should be increased to 20% in areas with a record of under-delivery.
  - Set their own approach to housing density to reflect local circumstances
  - Allow for the provision of windfall sites in the five year supply, where there is compelling evidence, and where this does not include residential gardens.
  - Consider housing allocations in the context of sustainable development, particularly where a five year supply cannot be demonstrated
  - Plan for a mix of housing, including the identification of the size, type, tenure and range of housing that is required in particular locations, reflecting local demand
  - Give consideration to large scale development, such as new settlements or extensions to towns and villages as a means of achieving sustainable development.
- **Support the need to meet local housing needs in rural areas**, particularly affordable housing, and giving support to the approach of allowing some market housing to facilitate the provision of this. In addition, to **restricting new isolated new homes in the countryside**, unless there are special circumstances.
- **Preparing a Local Plan**, with additional documents only used where clearly justified, and the use of Supplementary Planning Documents to aid implementation. Such Local Plans should:
  - Be drawn up over an appropriate time scale, preferably 15 years
  - Based on co-operation with neighbouring authorities and partners
  - Allocate sites to promote development and areas where it may be necessary to limit freedom for change

- Prepare Local Plans through the **duty to co-operate** on planning issues that cross administrative boundaries, with the publication of evidence for an examination to highlight how this has been achieved.
- Local Plans to be examined by an Inspector in terms of the duty to co-operate, legal and procedural requirements and soundness, in respect of:
  - **Positively prepared**, to meet objectively assessed development and infrastructure requirements, including un-met requirements from neighbouring authorities
  - **Justified**, such that it is the most appropriate strategy when considered against reasonable alternatives
  - **Effective**, such that is deliverable and based on effective joint-working
  - **Consistent with national policy.**
- **Prepare a Strategic Housing Market Assessment (SHMA) to assess full housing needs** in conjunction with neighbouring authorities to identify the scale and mix of housing and range of tenures to meet needs, **taking account of:**
  - **Household and population projections, including migration and demographic change**
  - Address all types of housing (such as families, older people, those with disabilities, self-build)
- **Prepare a Strategic Housing Land Availability Assessment (SHLAA)** to establish realistic assumptions about the availability, suitability and economic viability of land to meet identified housing needs.
- Have a **clear understanding of business needs** and work with County and neighbouring authorities and the LEP to prepare and maintain a robust evidence base and understand barriers to investment, including a lack of housing, infrastructure or viability.
- A continuation of the **town centre first approach for identified uses**, including retail, and a requirement to extend town centre boundaries where needed to meet identified demand and allocating appropriate edge of centre sites for main town centre uses
- A requirement for the planning system to do 'everything it can to **support sustainable economic growth**, including
  - Avoiding long-term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose, including giving approval for a change of use from commercial to residential, unless there are strong economic reasons to resist.
  - Continued support for business and enterprise in rural areas, including diversification, rural tourism and the retention and development of local services and community facilities
- Planning authorities should prepare **Local Plans which support a pattern of development that facilitates the use of sustainable modes of transport**, including:
  - Balancing land uses to minimise journey lengths

- Identifies the importance of the natural environment, with **highest protection for designated areas such as Areas of Outstanding Natural Beauty and Sites of Special Scientific Interest** and requires a strategic approach to biodiversity is set out in Local Plans.
- Plan positively for high quality and inclusive design, with policies which aim to optimise the potential of sites to accommodate development and respond to local character without preventing or discouraging innovation. Furthermore, planning authorities should not refuse permission for schemes with a high level of sustainability because of incompatibility with townscapes.
- Avoid inappropriate development from areas at highest risk of flooding and apply a sequential approach to development, in line with previous guidance, together with the requirement to prepare a Strategic Flood Risk Assessment.
- Approach **decision-making in a positive way, seeking solutions rather than problems and approving applications for sustainable development where possible**. In addition, the NPPF:
  - Places great emphasis on pre-application discussions / early engagement
  - Sets out a requirement for consultees to take a proactive approach and provide timely advice to planning authorities
- **For the purposes of decision-taking, the policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to publication of the NPPF**. Furthermore:
  - The policies in the NPPF are material considerations from the date of publication and must be taken into account in the preparation of plans
  - Plans should be progressed as quickly as possible to take into account the NPPF
  - For 12 months from the day of publication of the NPPF, decision-takers may continue to give full weight to policies adopted since 2004 (i.e. the saved policies of the Local Plan).
  - In other cases and following this 12 month period, due weight should be given to relevant policies in existing plans according to their consistency with the NPPF.
  - Decision-takers can also be given to relevant policies in emerging plans according to:
    - The stage of preparation of the emerging plan
    - The extent to which there are unresolved objections to relevant policies
    - The degree of consistency of the relevant policies in the emerging plan to the NPPF