

## **Report to the Local Plan Cabinet Committee**



**Report reference:** *LPC-011-2012/13*  
**Date of meeting:** *25 March 2013*

**Epping Forest  
District Council**

**Portfolio:** Planning

**Subject:** The National Planning Policy Framework (NPPF) One Year On

**Responsible Officer:** John Preston (01992 564111).

**Democratic Services Officer:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

- (1) That Members note the experience of other authorities in applying the NPPF one year on, considering if this is similar to their experience, and whether any lessons can be learnt;
- (2) That Members compare existing policies against NPPF using the information in the appendix and agree the list of non-compliant policies for deletion. The remaining list of compliant policies will continue to be used until they are superseded by the adoption of a new Local Plan;
- (3) That the amended policy lists are then published on the EFDC website; and
- (4) That Members note the experience of a number of other authorities at Examination, and seek to avoid any pitfalls they have experienced.

### **Executive Summary:**

The National Planning Policy Framework is a relatively short document which was issued by Government following consultation and revisions to a consultation draft. It replaced a large number of lengthy Policy Statements and Guidance Notes which often duplicated or conflicted with one another, and which had been issued over a long period of time.

This report considers experience over the first year of the NPPF which was a transition period. Members are asked to agree (i) a list of Local Plan policies which are non-compliant with the NPPF which will not be used any longer in development management decisions; and (ii) policies which are compliant and which can be used until they are overtaken by the adoption of a new Local Plan, or until such time as appeal decisions warrant the discontinuation of their use.

The report considers briefly the local and national experience with the NPPF in a changing era, and particularly draws attention to pitfalls that others have experienced in bringing their new Local Plans forward.

### **Reasons for Proposed Decision:**

Paragraphs 214 and 215 of the NPPF state;

*214. For 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.*

*215. In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.)*

In the first 12 months of the NPPF, in practice considerable weight has been given to our Local Plan policies. This includes both the Council's 1998 Local Plan, and the 2006 Alterations.

However, it is now necessary to consider the degree of consistency of the Local Plan policies by considering whether they are compliant or non-compliant with the NPPF and give some prominence to those complying policies which the Council will continue to use. It is sensible to draw on the experience of other authorities during the operation of the NPPF and put that to the use of EFDC.

#### **Other Options for Action:**

Simply rely on the NPPF until such time as a new Local Plan has gone through more of its procedural stages. This would mean that applications will be determined by nationally derived policies only rather than those developed at a district level through the preparation of Local Plans.

#### **Report:**

##### What is the National Planning Policy Framework and what was it trying to achieve?

1. The NPPF is, in effect, a very succinct summary of a large number Planning Policy Guidance Notes and Statements which had been issued over many years. It was intended to make planning advice more readily accessible and understandable to the general public. The Framework promotes positive planning, ie making provision for objectively assessed needs and has at its core a presumption in favour of sustainable development. This includes achieving economic growth and significantly boosting the supply of housing in the country. The Framework is also intended to be a catalyst to encourage authorities to prepare up-to-date Local Plans to a very tight timetable.

2. In the short term this significant change to planning policy guidance may have lessened the number of major planning applications being made whilst developers took stock and operated a cautious approach. The lesser weight to be given to older Plans by the end of March may mean that this period of relatively quiet developer activity will shortly be coming to an end.

3. The NPPF included a one-year transition period, after which unless LP policies are compliant with the Framework, policies within the Framework are likely to be given greater weight. It is up to individual authorities to make a case for retaining policies on the grounds that they are compliant with the NPPF. Appendix A contains a Schedule of Local Plan and Alterations policies with an indication of whether or not they are judged compliant based on consideration by Counsel and planning officers. It is suggested that Members agree that non-compliant policies will no longer be used, but that compliant policies should still be used until a new Local Plan is fully adopted, or until such time as appeal decisions warrant the discontinuation of their use. As the new Local Plan proceeds towards adoption, and reaches

key procedural stages, its policies will gradually be given greater weight, but only where there are no outstanding objections to policy which have not been resolved.

4. Another purpose of the transition period was to encourage authorities to get new Local Plans adopted as quickly as possible. Officers estimate that the earliest this Council can get the new Plan adopted will be the end of 2014. The policies of the emerging Local Plan will only be given full weight once the Plan has achieved a successful Examination, has been found sound by the Inspector and has been adopted by the Council.

5. A growing number of authorities have run into significant problems with new Local Plans at Examinations in Public. In a substantial number of cases Inspectors have reached conclusions that have forced submitted plans back to a much earlier procedural stage. The key issues arising are;

- the adequacy of population projections and the suggested housing numbers;
- Green Belt review; and
- failures over the Duty to Co-operate.

6. Further information on these cases is given below and will shortly be published in the Council Bulletin. Government is clearly serious about significantly increased housing development and that, despite frequent statements in the media to the contrary, Green Belt is not sacrosanct if there is not an up-to-date Local Plan, and a demonstrably adequate five-year housing land supply.

7. There have been a number of appeal decisions where the Secretary of State appeared to be keen to take more of a local view, but under challenge, has then reverted to a more permissive approach. Harlow had a recent non-determination appeal allow significant development at a site on Gilden Way.

8. There are currently a number of plans that are being held at examination stage by the Planning Inspectorate using the procedures for main modifications to suspend examination in order to enable the Council to satisfy the requirements of the system post NPPF. These suspensions have happened for a variety of reasons but the most frequent failures are;

- to address objectively assessed development need;
- to review the Green Belt; and
- to meet the duty to co-operate in dealing with assessed needs for housing.

9. Set out below are some further details of how those key requirements are being interpreted by the Planning Inspectorate through the use of examples. For the purposes of this report the Inspectors' letters reviewed are: Bath and North East Somerset Core Strategy Examination; Coventry City Council Core Strategy DPD Examination; Dacorum Core Strategy Examination; East Hampshire District Local Plan Examination; Rushcliffe Borough Council's Core Strategy Examination; Ryedale District Council Examination; and Selby District Core Strategy Examination.

10. The NPPF introduces a presumption in favour of sustainable development (paragraph 14) and for plan making this means:

*"..authorities should positively seek opportunities to meet the development needs of their area: Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change unless:*

- *any adverse impacts of doing so would significantly and*

- demonstrably outweigh the benefits, when assessed against the policies in this framework as a whole; or*
- *specific policies of this Framework indicate development should be restricted” (Paragraph 14 NPPF 2012)*

### Local housing targets

11. In recent examinations the Planning Inspectorate has questioned the local housing targets set in draft plans and found them wanting. In particular Inspectors have questioned the evidence supporting conclusions on housing targets, and found the process has not identified and tested the full objectively assessed need. They have reiterated the view that such assessment should be based on an up-to-date Strategic Housing Market Assessment. This should identify the scale and mix of housing over the plan period that the local population is likely to need to meet the household and population projections, taking into account migration and demographic change (paragraph 159 of the NPPF). The key message from Inspectors is that this full objectively assessed need must be used as the starting point for the analysis of the potential provision in the plan and any plan target below this full objectively assessed need should have extremely strong justification. This view reinforces the requirement of plan making to (i) assess all reasonable alternatives and (ii) provide an outline of the reasons for selecting the alternatives that meet the Strategic Environmental Assessment Directive.

### Green Belt

12. Inspectors’ letters have stated that, in undertaking an assessment of the ability of the area to meet the full objectively assessed need, authorities are not to assume that long standing policy restraint will override the requirement to seek to meet the need in full. A number of authorities appear to have assumed that because they have Green Belt, and some land still available that is not Green Belt, the focus of their search should be on what proportion of need they can meet with land outside the Green Belt, hence focusing search within current policy constraints. This has not proved acceptable to examining Inspectors or, indeed to be, in the spirit of the NPPF.

### Duty to Cooperate

13. The duty to cooperate was introduced by the Localism Act 2011 and is now enshrined in the Planning and Compulsory Purchase Act 2004. In short it requires that authorities engage constructively, actively and on an ongoing basis in any plan making process with neighbouring authorities and other bodies on cross boundary strategic matters. There are two tests in order to meet the duty to cooperate: the legal test and the soundness test. The effect of this is that the Inspector must, at the outset, consider whether or not a Council has complied with the legal process – the preparatory test. Where the Council cannot demonstrate that this has been complied with, the plan will be found unlawful (e.g. decision on the North London Waste Plan). If the legal duty is met, the Inspector will then go on to consider the soundness test as part of the examination hearings as set out in the National Planning Policy Framework (paragraphs 178-182). Paragraph 182 sets out the test including that the plan is positively prepared and meets the needs and requirements from neighbouring authorities. Local authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross boundary impacts when their Local Plans are submitted for examination. Paragraph 181 goes on to say that this could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy. Cooperation should be a continuous process of engagement from initial thinking through to implementation.

14. Cross boundary issues cover common matters such as meeting housing requirements

within housing market areas (which frequently cross administrative boundaries), Gypsy Romany and Traveller matters, strategic transport infrastructure and so on. When the Local Plans are examined the Planning Inspector will need to see sufficient evidence to demonstrate that the requirement to fulfil the duty to cooperate has been met. The current interpretation of the fulfilment of this duty is such that authorities need to effectively resolve the strategic cross boundary issues, not just discuss them. Examples of the current interpretation of these issues follow.

15. The Inspector's concerns regarding the soundness of the submitted plan that led to a request for suspension of the East Hampshire and South Downs Joint Core Strategy include:

- This is not a positively prepared plan based on a strategy which seeks to meet objectively assessed need;
- The lack of an up-to-date Strategic Housing Market Assessment (SHMA), and although in general conformity with the South East Plan, the plan will not meet market housing need and would limit the supply of local workers, prejudicing existing businesses and making the district less attractive to new employers;
- The failure to meet undisputed and urgent need for affordable housing weighs heavily in favour of increased levels of housing provision;
- The failure to discuss meeting unmet need with neighbouring authorities;
- That the Councils' assertion of environmental constraint is not supported by assessment of whether the full objectively assessed needs are met:

*"...almost 60% of the District falls within the South Downs National Park. Whilst this and the other landscape and ecological designations may provide the justification for not meeting all the objectively assessed need, I consider that the Authorities still need to know what the full needs are in order that they can identify any unmet need and discuss addressing that unmet need with their neighbours..."* Inspector's Letter 23 November.2012 paragraph 12

- the Inspector goes on to note:

*"I do not make light of the need to consider the international, national and local designations in the district. However, there seems to be an unquestioned acceptance that all designations, including those made at a local level are sacrosanct. I am not directing that local designations such as gaps between settlements should be sacrificed but I have neither seen nor heard anything to indicate that the authorities have balanced meeting the socio-economic needs of the residents of East Hampshire against the impact of meeting those needs on the environment."* Paragraph 13

16. The examination has been suspended from January 2013 to October 2013 for the Councils to produce an up to date SHMA, test the impact of higher growth levels through sustainability appraisal and strategic environmental assessment, and consider making provision for an increased number of dwellings and/or set out the results of discussions with neighbouring authorities in relation to meeting unmet need, together with other matters.

17. The preliminary findings of the Inspector in the examination of Dacorum Core Strategy in Hertfordshire include:

- The Council is meeting a level of need it thinks it can accommodate based on its

- assessment of constraints rather than full objectively assessed need.
- There is insufficient evidence to demonstrate that the provision in the plan meets the full objectively assessed need, nor that future needs can be accommodated without a review of the Green Belt.
- The assessment of sites that has been undertaken against a range of criteria including the impact on Green Belt appears to give little weight to accommodating full objectively assessed need.
- That bearing in mind the tight constraint the Green Belt imposes, and the AONB elsewhere in the Borough, the Inspector is not convinced that the longer term development needs can be satisfied or that the Council has sought to address this by resolution under the duty to cooperate that would establish the unmet need being provided for by neighbouring authorities.
- Whilst the Inspector is clear that Dacorum Borough Council has cooperated with St Albans City & District Council it has not investigated ways in which the area could contribute to the full housing needs of Dacorum. This view is in the context of plans to produce a Joint Area Action Plan for a shared growth area east of St Albans.

18. The consultation on main modifications includes a commitment to an early review of the plan and closed 6 March 2013.

19. Other plans in suspended examinations relating to meeting housing need include Selby District Council, Ryedale District Council, Bath and North East Somerset Council, Rushcliffe Borough Council (which includes the lack of a green belt review) to name a few. Some such as Hull City Council have now withdrawn their submitted plan (Full Council meeting 17 January 2013). Whilst the final outcome of these examinations is yet to be determined, the indications of the interpretation being given to the NPPF provide very important messages for other Councils.

20. The duty to cooperate is proving to be a challenge for many authorities and there are two recent decisions of particular note. Rushcliffe Borough Council Core Strategy has received objections from many of its neighbouring authorities in Greater Nottingham whilst the submitted plan and proposed modifications have been criticised by the Inspector. This includes concern that there is no single overall evidence based set of figures to which the constituent authorities including Rushcliffe agree, which represents a major difficulty. The Inspector accepts there are constraints including Green Belt but:

*"...Rushcliffe has not undertaken a strategic review of the Green Belt in its area to consider whether all parts of it meet national policy aims and purposes..... I have seen scant evidence that the Housing Market Area's projected needs have fallen so much since the Regional Plan was adopted, or that the local constraints are so severe, that Rushcliffe is justified in reducing its housing target from 15,000 to 9,600".... Inspector's letter 13.2.13*

21. Coventry City Council has been found to have failed to meet the duty to cooperate in spite of it not ignoring the duty and indeed actively seeking to discharge the duty. The Inspector has ruled that the duty requires constructive engagement, and the cooperation has not been constructive because it has identified the matters that require cooperation but not solved them, including the provision of an appropriate level of housing. This means that the plan making has to revert to an earlier stage and the Council has to return to engaging with its neighbours on, among other matters, a joint Strategic Housing Market Assessment.

#### Further Review/Simplification of Guidance.

22. The Government has also asked Lord Taylor of Goss Moor to conduct a review of "the

existing suite of planning practice guidance either owned by the Department for Communities and Local Government (DCLG), or owned jointly by DCLG and other government departments or agencies" to see how that can be simplified - a particular suggestion is that all such advice should be held on one web site. The Government has yet to respond and implement its chosen recommendations.

**Resource Implications:**

This Committee has received regular reports about the agreed budgets, and their use on a new Local Plan, which is a key Corporate document for the Council. The report draws attention to pitfalls for a number of other Councils. A simple consequence of those pitfalls is that they require various procedural steps/ consultation and plan resubmission to take place, and which are collectively expensive steps to have to repeat.

**Legal and Governance Implications:**

The report draws attention to the weight to be given by decision takers to a number of policies, and the dynamic. It also draws out that there are pitfalls being experienced by a number of Authorities.

**Safer, Cleaner and Greener Implications:**

In seeking to continue to defend the green characteristics of the District there are tensions with achieving development to provide homes and employment for local families.

**Consultation Undertaken:**

None.

**Background Papers:**

Bath and North East Somerset Core Strategy Examination. Inspector's Preliminary Conclusions on Strategic Matters and Way Forward 21 June 2012

Coventry City Council Core Strategy DPD Examination Letter from the Inspector 27 February 2013 and Annex Examination of the Coventry Local Development Plan – Core Strategy. Preliminary Hearing Session concerning the duty to cooperate.

Examination of the Dacorum Core Strategy Inspector's Preliminary Findings on matters relating to housing provision and the Green Belt. 19 November 2012

Examination of the East Hampshire District Local Plan: Joint Core Strategy Inspector's Letter 23 November 2012

Examination of Rushcliffe Borough Council's Core Strategy Letter from the Inspector 13 February 2013

Ryedale District Council Examination of the Ryedale Plan – Local Plan Strategy Inspector's Interim Conclusions 14 December 2012

Selby District Core Strategy Examination Inspector's Ruling on Request for Suspension of Examination 10. October 2012

## Impact Assessments:

### Risk Management

In part, the purpose of this report is to avoid risks, such as trying to use non-compliant policies upon which to base decisions, and to avoid pitfalls which other planning authorities have already experienced. Many of the steps already being taken by the Authority were already intended to avoid those pitfalls, but they are a salutary reminder.

As the transition period ends one may well expect to see major applications submitted which seek to expose issues, or to persuade a different weighing of factors with economic growth more in mind than defence of particular sites. Achieving a new Local Plan is the best way to avoid these risks, and opinions vary about what will happen in the post transition period of the NPPF. Some examples elsewhere suggest there are vulnerabilities to which it is only proper to draw attention to.

### Equality and Diversity

*Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?* No

*Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?* No

*What equality implications were identified through the Equality Impact Assessment process?*  
The new Local Plan will consider these issues. The Government would have been responsible for EIA on the NPPF.

*How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?*  
N/A.