

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: 25 March 2021

Decision Type: Non-Urgent Non-Executive Non-Key

Title: NATIONAL PLANNING POLICY FRAMEWORK AND NATIONAL MODEL DESIGN CODE: CONSULTATION PROPOSALS

Contact Officer: Ben Johnson, Head of Planning Policy and Strategy
E-mail: ben.johnson@bromley.gov.uk

Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: (All Wards);

1. Reason for report

- 1.1. This report provides an update on the Government's consultation proposals to amend the National Planning Policy Framework (NPPF), including proposed changes relating to justifying Article 4 Directions. The report also provides an update on the National Model Design Code, which the Government are also seeking views on. Appendix 1 sets out the draft proposed responses to the consultation questions.
-

2. RECOMMENDATION(S)

- 2.1 That Development Control Committee note this report and endorse the response at Appendix 1 as the Council's response to the consultation proposals.

Impact on Vulnerable Adults and Children

1. Summary of Impact: No impact
-

Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Regeneration
-

Financial

1. Cost of proposal: N/A
 2. Ongoing costs: N/A
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: N/A
 5. Source of funding: N/A
-

Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: The National Planning Policy Framework is not legislation, but it is a material consideration in the determination of planning applications. The Planning and Compulsory Purchase Act 2004 (as amended) states that decisions on planning applications must be made in accordance with the Development Plan unless material considerations indicate otherwise.
 2. Call-in: Not Applicable
-

Procurement

1. Summary of Procurement Implications: N/A
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background

- 3.1. In January 2021, the Government launched a consultation on a series of draft revisions to the NPPF¹. The consultation ends on 27 March 2021. As part of the same consultation exercise, they also sought views on the draft National Model Design Code (NMDC), which provides detailed guidance on the production of design codes, guides and policies to promote successful design.
- 3.2. Sixteen consultation questions were set out. The proposed Bromley Council response to these questions is provided at Appendix 1.
- 3.3. This report provides details on some of the key aspects of the proposals, particularly those which could have specific implications for planning in Bromley.

Proposed amendments to the NPPF

- 3.4. The proposed amendments to the NPPF:
 - Set out new criteria governing the use of Article 4 Directions.
 - Implement policy changes in response to the Building Better Building Beautiful Commission recommendations.
 - Include an update to reflect a recent change made in a Written Ministerial Statement about retaining and explaining statutes.
 - Make a number of changes to strengthen environmental policies.
 - Include minor changes to clarify policy in order to address legal issues.
 - Include changes to remove or amend out of date material.
- 3.5. In terms of the implications for Bromley, the proposed changes to the criteria on the use of Article 4 Directions could have a significant adverse impact – the response to consultation question 3, set out in Appendix 1, details these potential impacts. The proposed amended criteria will undoubtedly affect the ability of Borough's to put Directions in place; in fact, the second option for proposed wording would make justification for Directions all but impossible across most of the country, making it a de facto ban. Without the ability to introduce Directions, there is a real risk that some Local Plan policies, such as those relating to protecting economic uses and maintaining local character, will be undermined by Permitted Development (PD) rights.
- 3.6. The proposed amendments come soon after a consultation on a raft of new and amended PD rights. As noted in the report to Development Control Committee on 28 January 2021², this consultation was unclear about what the impacts on existing Directions would be once the new PD rights are introduced. If there is a requirement for Directions to be re-imposed, then the new criteria would likely apply.
- 3.7. The other changes proposed in the consultation are largely minor, although there is some concern about the implications of the term ‘beautiful’ when used in a planning context. The consultation proposals suggest that the definition of ‘beautiful’ will be a local matter, based on detailed design evidence and assessments, but conversely, they also introduce some potential for misuse and uncertainty, and could invite attempts to use subjective and ad hoc assessments of beauty on individual planning applications.

¹ Available here: <https://www.gov.uk/government/consultations/national-planning-policy-framework-and-national-model-design-code-consultation-proposals>

² PLANNING LEGISLATION UPDATE - SUPPORTING HOUSING DELIVERY AND PUBLIC SERVICE INFRASTRUCTURE, available from:

<http://cdslbb/documents/s50085743/PLANNING%20LEGISLATION%20UPDATE%20-%20SUPPORTING%20HOUSING%20DELIVERY%20AND%20PUBLIC%20SERVICE%20INFRASTRUCTURE.pdf>

National Model Design Code

- 3.8. The NMDC is a key component of the Government's drive to embed good design in the planning process. It sets out clear, logical guidance based on well understood design principles. Combined with the amendments to the NPPF, it gives significant priority to high quality design, but importantly it is for LPAs to determine what constitutes high quality for their own areas.
- 3.9. The NMDC states that local design codes should be visual and numerical rather than relying on detailed policy wording and should be drawn up with measurable community support that is appropriate for the scale and location of new development. The NMDC sets out clear design parameters to help local authorities and communities decide what good quality design looks like in their area, based on local aspirations for how their area will develop, following appropriate local consultation.
- 3.10. The document says that design codes can "*give developers greater 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*".
- 3.11. The NMDC sets out a series of stages local authorities must go through when drawing up design codes, although the document is intended to be applied flexibly according to local circumstances as not all characteristics and design parameters may be relevant for all areas.
- 3.12. The process for putting place design codes includes a 'scoping' stage where councils assess the area that a code is intended to cover. It advises that, in terms of geographical coverage some authorities may wish to create a code that covers their entire area. Codes may cover all existing built-up areas, or just new development sites. This is followed up by a 'design and vision' stage which divides the selected area into "*a set of typical 'area types' and deciding on a vision for each of these area types*". Area types range from 'high rise city' and 'urban neighbourhood' to 'suburbs', 'outer suburbs', 'villages' and 'rural settlements'. There is also scope to include 'locally specific' area types.
- 3.13. Following this, a 'coding plan' is drawn up "*that shows the areas of the authority to which the code will apply along with the distribution of the area types*". The code includes guidance on the "*area type policies that authorities should consider when creating design codes or guides*". These cover ten different areas: context; movement (transport related issues); nature; built form (including density and height); identity (including local character); public space; uses; homes and buildings (including space standards and accessibility); resources (including energy efficiency); and lifespan.

4. POLICY IMPLICATIONS

- 4.1 Policy implications are set out in the report.

5. FINANCIAL IMPLICATIONS

- 5.1 There are no financial implications.

6. LEGAL IMPLICATIONS

- 6.1 The NPPF is a material consideration in the determination of planning applications. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) states that decisions on planning applications must be made in accordance with the Development Plan unless material considerations indicate otherwise.

- 6.2 The NPPF also applies to plan-making. Any future Local Plan review will need to be consistent with national planning policy in order to demonstrate it is 'sound'.
- 6.3 The proposed NPPF amendments have implications for putting in place Article 4 Directions. The Secretary of State (SoS) has the power to modify or cancel Directions. Strengthened criteria may make justifying Directions more difficult in future, and even where the Local Planning Authority considers there is justification, the SoS may not. The strengthened criteria suggest that the SoS considers Article 4 Directions should be used sparingly, and therefore he might be more willing to intervene to modify or cancel in future.

Non-Applicable Sections:	IMPACT ON VULNERABLE ADULTS AND CHILDREN PERSONNEL IMPLICATIONS PROCUREMENT IMPLICATIONS
Background Documents: (Access via Contact Officer)	Bromley Local Plan 2019 - https://www.bromley.gov.uk/download/downloads/id/4768/bromley_local_plan.pdf London Plan (adopted 2 March 2021), available from: https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf National Planning Policy Framework (February 2019) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf