

## **Report to the Cabinet**

**Report reference:** C-003-2013/14

**Date of meeting:** 10 June 2013



**Epping Forest  
District Council**

**Portfolio:** Planning

**Subject:** National Planning Policy Framework - One Year On

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

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

---

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

- (1) That the experience of other authorities in applying the National Planning Policy Framework over the last year, including any lessons learnt, be noted; and**
- (2) That, following comparison of the Council's existing policies against the National Planning Policy Framework, the policies rated as compliant, generally compliant or partially compliant be continued to be used until the adoption of the new Local Plan supersedes them; and**
- (3) That any policy found to be outdated be given little or no weight hereafter; and**
- (4) That the experience of other Councils when their Local Plans were Examined in Public be noted and measures taken to ensure this Council avoids the problems others have encountered to date.**

### **Executive Summary:**

The National Planning Policy Framework (NPPF) 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 Planning 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. Adopted development plan policies that are non-compliant with the NPPF remain part of the statutory development plan but should be given very limited weight. Effectively, relevant parts of the NPPF will supersede such non-compliant policies. Members are asked to agree (i) a list of Local Plan policies which are non-compliant with the NPPF which will be given very limited weight in development management decisions; and (ii) policies which are compliant and which can be given weight until they are overtaken by the adoption of a new Local Plan, or until such time as appeal decisions warrant them to be given very limited weight in decision making.

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

## **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.

## **Other Options for Action:**

Rely solely 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. This option would conflict with the statutory decision making test contained within section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires planning decisions to be taken in accordance with the development plan unless material considerations indicate otherwise.

## **Report:**

1. A report on this subject was considered by the Local Plan Cabinet Committee at its meeting on 25 March 2013, and the published minutes of the meeting contained the following decisions:

*(1) That the experience of other authorities in applying the National Planning Policy Framework over the last year, including any lessons learnt, be noted;*

*(2) That, following comparison of the Council's existing policies against the National Planning Policy Framework, the policies rated as compliant, generally compliant or partially compliant be continued to be used until the adoption of the new Local Plan superseded them;*

*(3) That those existing policies rated as non-compliant be subject to a further report to the meeting of the Cabinet scheduled for 10 June 2013; and*

*(4) That the experience of other Councils when their Local Plans were Examined in Public be noted and measures taken to ensure this Council avoided the problems those others have encountered to date."*

2. In addition, the minutes stated the following:

*“Members expressed serious concerns about deleting planning policies which had been relied upon when making planning decisions. The Green Belt was the single, most important planning issue to residents, as borne out by the Issues & Options consultation and the recent Member workshops. It was felt that the Council should recognise the non-compliant policies but not delete them. The Leader of the Council agreed that the Council should not delete policies that had been used for many years with support from residents. The Leader proposed that the compliant, generally compliant and partially compliant policies should be agreed for continued use, whilst Officers should provide more information regarding the non-compliant policies and the decision on whether to delete them or not should be deferred to the meeting of the Cabinet scheduled for 10 June 2013. The Director of Planning & Economic Development undertook to review the conformity rating again for policy GB9a, Residential Conversions (in the Green Belt), before it was considered by the Cabinet, to provide more information about use of the policies at appeal during the last year and to provide more information in a table about the Plans submitted to Planning Inspectors in the last year which had been overturned; in particular were they Core Strategies, Development Plan Documents or Local Plans.”*

3. This report is therefore the result of minute (3) but also addresses the actions in paragraph 1 above.

4. Appendix 1 sets out which policies were judged to be non-compliant with the NPPF and amplifies why that judgement has been reached. At the Portfolio Holder’s request, it also sets out matters which Members may wish to consider to when determining applications.

5. Further advice has been taken from Counsel and the barrister will be present at Cabinet to give further advice and assistance to Members. Whilst there is no legal requirement to actually delete policies that are non compliant until a new Local Plan formally supersedes them, some appeal decisions have described policies as “out of date.” The decision taker in those cases has gone on to give out of date policies little or no weight in reaching their decision. One could therefore keep a list of these policies and provide that to Members to inform their decision making. In practice quite how much difference there would be between deleting policies or giving them little or no weight is debatable.

6. An approach that does not actually delete out of date policies but gives Members some warning that policies are likely to be regarded as out of date can be used. Policies confirmed as out of date by appeal decisions could also be placed on such a list.

7. An analysis of 55 Local plans or similar that have been to an examination in public in the first year of the NPPF has been conducted by Nathaniel Lichfield and Partners. The full report can be found at:

<http://nlppanning.com/objectively-speaking>.

8. As these are public documents attention has been drawn to this analysis, rather than repeat it here. The report contains a table giving details of the fate of those plans, and includes reference to what type of plan they were. Important lessons can be drawn from the number of rejected plans with housing numbers below both previous Regional Spatial Strategy (RSS) numbers and objectively assessed housing need. The importance placed by the Planning Inspectorate on the duty to co-operate is also noteworthy.

9. Table from Nathaniel Lichfield and Partners report:

<i>The Review in Figures:</i>
<i>55 Local Plans examined or submitted for examination</i>
<i>55% of LPAs submitted a plan proposing a reduction in the housing target</i>
<i>18 Local Plans found sound</i>
<i>44% of LPAs had to increase their submitted housing target in order to be found sound</i>
<i>5 Local Plans found sound are subject to immediate/early review of their housing target</i>
<i>2 Local Plans withdrawn on the basis of soundness concerns</i>
<i>Only 2 Local Plans found sound with a target lower than both the Regional Strategy and household projections. Both are subject to early review.</i>

10. The clear message is to objectively assess need and to make adequate provision for that need. Attempting to make a case for significantly less housing is likely to find the plan sent back for revision either during its normal procedural steps, or by an immediate review being required. Either of those scenarios is costly and will increase the time taken to adopt a sound long term plan.

#### Recent Appeal Decisions

11. Officers have also undertaken an analysis of the appeals taken within this District within the last year whilst the NPPF has been in operation. These appeals have already been reported to the respective Area Committees, but a summary is attached at Appendix 2. The approaches taken by the individual Inspectors vary from:

- (i) quoting Local Plan policies, but not mentioning the NPPF at all;
- (ii) quoting Local Plan policies and NPPF, judging them to be consistent with one another; or
- (iii) referring to both Local Plan and NPPF policies, giving weight to them both.

12. The appeals cover a whole variety of development types and include both appeals which have been allowed, and appeals which have been dismissed. There is limited experience yet of appeals being determined in the second year of the NPPF; one very recent decision takes a more positive view on infilling within a settlement. There have been few appeals dealing with larger housing schemes upon which local conclusions can be drawn.

#### **Resource Implications:**

The Cabinet 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

Nathaniel Lichfield and Partners Objectively speaking, which itself draws on published material in the public domain.

EFDC Appeal decisions from the last year as already reported to Area Plans Committees.

### **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?*  
N/A.

*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.