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<b>REPORT TO:</b>	<b>Environmental &amp; Development Services Committee</b>	<b>AGENDA ITEM: 7</b>
<b>DATE OF MEETING:</b>	<b>6 October 2011</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>Director of Operations</b>	<b>OPEN</b>
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<b>SUBJECT:</b>	<b>Consultation on draft National Planning Policy Framework</b>	<b>REF: IB</b>
<b>WARD(S) AFFECTED:</b>	<b>All</b>	<b>TERMS OF REFERENCE: EDS17</b>

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## **1.0 Recommendations**

1.1 That:

- (i) members note the draft National Planning Policy Framework;
- (ii) The proposed response at Annex 1 be submitted as the Council's response.

## **2.0 Purpose of Report**

- 2.1 To consider the overall principles of the draft National Planning Policy Framework ("NPPF") and formulate a response.
- 2.2 Members should note that as well as setting the context for the Council's emerging Local Plan, the draft NPPF will, more immediately, also have a profound bearing on the determination of day-to-day planning applications. It is therefore essential that the views of this Council are forwarded to CLG.

## **3.0 Executive Summary**

- 3.1 The Government has published, for consultation, a draft National Planning Policy Framework ("NPPF"). This is intended to replace over 1,000 pages of existing national planning policy guidance and reflects the Government's desire to prioritise growth and make the planning system more streamlined and accessible to communities, in line with localism.
- 3.2 The draft Framework consolidates an enormous amount of existing guidance, but it also introduces new policies. Whilst an exhaustive assessment of all the proposed changes is outside the scope of this Committee report, members' attention is drawn

to four areas in particular concerning a new 'presumption' in favour of development, employment land, transport and housing supply. The report also covers issues relating to the Government's proposed policies on gypsies and travellers.

3.3 A proposed response is set out at Annex 1.

## **4.0 Background**

- 4.1 Members will be aware that the Government is making sweeping reforms to the planning system in England. A key element of this is the publication of a draft National Planning Policy Framework (“NPPF”) which was published for consultation in July 2011.
- 4.2 This seeks to streamline all existing Planning Policy Statements, Planning Policy Guidance Notes and some circulars into a single consolidated document. In reducing over 1,000 pages of guidance to just 52 pages, ministers are aiming to make planning policy less “elaborate and forbidding” to non-specialists.
- 4.3 This also fits with the wider planning reforms to promote growth, in particular the Localism Bill, which will see the abolition of regional building targets and encourage local people to prepare neighbourhood plans.
- 4.4 The draft NPPF, together with an accompanying summary, questionnaire and impact assessment, is available to view on the Communities and Local Government (“CLG”) website at [www.communities.gov.uk/publications/planningandbuilding/draftframework](http://www.communities.gov.uk/publications/planningandbuilding/draftframework)
- 4.5 Comments are required to be returned to CLG by 17<sup>th</sup> October.

## **5.0 Detail**

- 5.1 The draft NPPF covers a very wide range of policy areas and in large part simply condenses existing national planning policies. The Government has invited responses on a detailed list of over 70 questions relating to specific areas of policy.
- 5.2 However, given the breadth of the policy areas that the draft NPPF seeks to consolidate, it is not possible to comprehensively consider the likely effects of the removal of guidance, on a policy-by-policy basis, without an extensive and detailed report. This Committee report does not therefore consider exhaustively the implications but addresses the principle of a single consolidating policy framework. The proposed response is set out in Annex 1.
- 5.3 In addition, the draft NPPF also introduces some important changes in policy direction. Again, whilst these are too numerous to consider individually, the following four key changes are considered to be so significant as to merit a specific response:
1. a new “presumption in favour of sustainable development”;
  2. advice that planning policies should avoid the long-term protection of employment land or floorspace;
  3. advice that development should not be refused on transport grounds unless the residual impacts are “severe”;
  4. a requirement for councils to identify at least an additional 20% of deliverable dwellings over and above the rolling 5 year requirement.

5.4 The background to these is explained below and a proposed response to each is set out at Annex 1.

5.5 In addition, CLG have requested views on the consistency of the draft Framework with the draft Planning Policy Statement on 'Planning for Traveller Sites', upon which consultation has recently closed and which is intended to be incorporated into the final NPPF. A proposed response on this aspect is similarly included at Annex 1.

## **Description of the key changes listed above:**

### 1. A new "Presumption in favour of Sustainable Development"

5.6 At the heart of the draft NPPF is a "presumption in favour of sustainable development". This sets the tone of the Government's policy and works with and through other policies in the document. Local planning authorities are advised they should :

- Prepare local plans on the basis that objectively assessed development needs should be met, and with sufficient flexibility to respond to rapid shifts in demand or other economic changes;
- Approve development proposals that accord with statutory plans without delay; and
- Grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date.

5.7 Ministers have characterised the "presumption" by stating that decision-makers at all levels should assume the default answer to development proposals is "yes", except where this would compromise the key sustainable development principles set out in the NPPF. As such there is a clear expectation that development will be approved unless its adverse impacts would "significantly and demonstrably outweigh the benefits, when assessed against the policies [in the Framework] as a whole".

### 2. Advice that planning policies should avoid the long-term protection of employment land or floorspace

5.8 Whilst promoting economic growth is a clear priority, with local authorities being advised to assess the sufficiency and suitability of future land supply for economic development, the draft NPPF appears to effectively remove the ability to allocate and retain land for business purposes. In this regard, paragraph 75 advises that planning policies should "avoid the long-term protection of employment land or floorspace".

### 3. Advice that development should not be refused on transport grounds unless the residual impacts are "severe"

5.9 The draft NPPF advises, in paragraph 86, that all developments that generate significant amounts of movement should be supported by a transport assessment

and that opportunities to improve the transport network should be undertaken that cost effectively limit the significant impacts of development.

- 5.10 However, the document further advises that development should not be refused on transport grounds unless the residual impacts of development “are severe”. In this regard, the need to encourage increased delivery of homes and economic development is reiterated.

#### 4. The requirement for councils to identify at least an additional 20% of deliverable dwellings against the 5 year requirement

- 5.11 The Government has made clear that a key housing objective is to increase significantly the delivery of new homes. Accordingly, Paragraph 109 of the draft NPPF re-affirms the current policy which requires local authorities to “identify and maintain a rolling supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements”. Crucially, however, the draft NPPF adds that “the supply should include an additional allowance of at least 20 per cent”.
- 5.12 The reasons given for seeking to add an additional 20% is to “ensure choice and competition in the market for land”.

### **6.0 Conclusions**

- 6.1 The draft NPPF risks introducing much ambiguity into the planning system by reducing all current guidance into such a short document. Some of the proposed policy changes are also a cause for concern and would be likely to increase complexity and costs and reduce the role of local elected members in planning for growth. A response to CLG is recommended and is attached at Annex 1.

### **7.0 Financial Implications**

- 7.1 None arising directly from this report.

### **8.0 Corporate Implications**

- 8.1 National Planning policies are key in determining local plan and development management decisions in South Derbyshire which are important in achieving the key corporate objectives under the theme Sustainable Growth & Opportunity.

### **9.0 Community Implications**

- 9.1 The ability for elected members to determine the Local Plan and decisions on development will continue to be important in achieving healthier, safer, vibrant and sustainable communities in South Derbyshire.

### **10.0 Background Papers**

None.

## General Comments

### Level of detail contained in the draft NPPF:

South Derbyshire District Council welcomes efforts to streamline national planning policies and enable them to be understood by all. In this regard, there is undoubtedly a need to rationalise and reduce the current volume of policy guidance.

However, the Council strongly objects to the replacement of practically all existing policies into a single short statement. The proposed draft NPPF grossly over-simplifies planning policies and serves only to introduce significant ambiguity in many areas rather than providing the clarity which is promised. As such, a vacuum will exist which will only be filled by either (a) the piecemeal re-introduction of supporting guidance or (b) policy being clarified through countless expensive appeal decisions and court challenges.

Under the NPPF as proposed, planning for growth is likely to very quickly get bogged down in protracted legal argument and challenge. This would directly contradict ministers' stated objectives of removing the need for legal representation in planning and speeding the system up. Similarly, it would clearly also lead to a needless waste of time and resources and introduce much uncertainty for local authorities, developers and residents.

## Q 1a and 1b – Delivering Sustainable Development

### The “Presumption in Favour” of Sustainable Development:

This Council welcomes economic and housing growth and has an excellent track record in its delivery. Moreover, we are already working very hard to set out our strategy for accommodating the strong growth our area will need in the future. In this regard, we are co-operating with our neighbouring councils, with whom we share a Housing Market Area, by preparing aligned local plans.

However, the concept of a “general presumption in favour of sustainable development” (paragraph 14) is flawed and likely to lead to unintended consequences for the following reasons:

Firstly, the pendulum would swing too far in favour of an uncritical approval of development. Secondly, it also, unrealistically, assumes that development proposals are capable of being objectively judged to be “sustainable”. Sustainable development is defined in economic, social and environmental terms. In practice, judgements about sustainability in any given case are very sensitive to the relative weightings given to each of the three strands.

Thirdly, in this regard, a “general presumption” will undermine the role of locally elected members in decision-making which runs counter to the principles of localism. Elected members and communities will no doubt feel that decision-making is being taken out of their hands and made contrary to their wishes.

Fourthly, it is noted that no changes to legislation are proposed which is currently unambiguous in requiring all decisions to be made in accordance with the Development

Plan, having regard to all “other material considerations”. A “presumption in favour”, in circumstances where a plan is simply “out of date” (i.e. time-expired rather than superseded) would appear to be unlawful in attempting to override the Development Plan.

Finally, a policy approach whereby a “general presumption” applies where a Local Plan is “silent or indeterminate” will tend to force local planning authorities to attempt to cover every conceivable eventuality in drawing up their local plans. This clearly has the highly undesirable potential to significantly slow down plan preparation and greatly add to the cost. Moreover, many local authorities - including South Derbyshire – already find themselves in an invidious position in progressing new style “local plans” by virtue of the ongoing statutory obligation to comply with Regional Spatial Strategies. It is simply unreasonable to expect local authorities to face a “general presumption in favour” in the absence of a local plan, at the same time as being prevented from publishing draft local plans which conform to anything other than the very regional plans which Ministers are intending to scrap.

### **Q5 a, b and c – Supporting economic development**

The draft NPPF appears to effectively remove the ability to allocate and retain land for business purposes.

This Council considers that a key ingredient of sustainable development is the maintenance of a balance between housing and employment. This is particularly so in areas such as South Derbyshire which have seen significant amount of in-migration in the recent past accompanied by increasing pressure for the redevelopment of good quality employment sites for housing. It is crucial in these circumstances that the Local Plan is able to allocate new employment land and safeguard existing and proposed sites to retain employment opportunities locally and avoiding patterns of increased out-commuting, particularly by car.

In this regard, rather than advising that planning policies should “avoid the long-term protection of employment land or floorspace “, paragraph 75 should be amended to require the allocation of new employment sites, based on evidence of need and suitability, and require their retention for such purposes.

### **Q7a and b – Transport**

This Council is deeply concerned by the new advice, in paragraph 86, that development should not be refused on transport grounds (or, presumably omitted from local plans) unless the residual impacts of development “are severe”.

In high growth areas such as South Derbyshire, it is essential that transport (and other environmental) effects of development are properly mitigated in order to ensure the safety and amenity of residents as well as ensuring our transport networks are able to operate efficiently.

As worded, the guidance appears to suggest that all but the most severe transport impacts of development should be tolerated to allow the delivery of homes and economic development. This would be manifestly wrong and not lead to sustainable development.

## **Q 10a and 10b - Significantly increasing the supply of housing**

This Council strongly objects to the proposal, in paragraph 109, to require an “additional allowance of at least 20 per cent” in addition to a rolling five-year supply of housing land.

This requirement seems to amount to a need to maintain at least a six year supply of housing. The requirement for a five-year supply is a well established and tested principle. An additional 20% on the basis of “choice and competition in the market for land” is arbitrary and unjustified. Rather than leading to increased housing completions, this is simply likely to lead to greater numbers of unimplemented permissions being granted in areas such as South Derbyshire. In many cases, this runs the risk of saturating local housing markets with excessive consents and undermining the certainty required by developers about the future development strategy. Equally, it would be contrary to the wishes of local communities and the principles of localism.

## **Q18 - Gypsies and Travellers**

CLG have requested views on the consistency of the draft Framework with the draft planning policy statement on traveller sites. South Derbyshire District Council has the following observations:

Firstly, there is a fundamental difference in style between the draft NPPF and the draft planning policy statement for traveller sites. The traveller policy essentially contains eight policies, some of them criteria based, setting out specific guidance for providing and determining planning applications for new pitches on new or existing sites. The draft Framework does not provide anywhere near the same level of policy guidance on other matters. This supports our view that the introduction of a 52 page NPPF would be to grossly over-simplify planning policies and would not provide clearly articulated and soundly based national planning policies.

Secondly, the draft policy for traveller sites seeks to bring provision of sites in line with mainstream housing through the introduction of a five-year supply of specific deliverable sites. This is clearly at odds with the proposed NPPF which would require a five-year supply of conventional housing plus “at least 20%” as outlined above. Given the Government’s objective to align policies for travellers with other national planning policies, and this Council’s concerns over the “extra 20%” policy, the latter should be removed from the NPPF.

More importantly however, and leaving aside consistency problems, this Council is deeply concerned that the new draft guidance on travellers is not providing clear or helpful guidance. It has been illustrated very clearly in a recent decision in South Derbyshire that Planning Inspectors will not be persuaded that the policy as currently drafted will materially alter existing guidance. Para 7 of decision ref APP/F1040/A/11/2147331 (7 September 2011) states (inter alia):

*“... the draft policy in the NPPF makes little material change to that within existing national policy documents (in particular Circular 1/06) ...”*



In particular, fundamental ambiguities arise around the interpretation of the Government's draft policy on "need". In the same recent appeal decision as above regarding the issue of need for gypsy sites, the Inspector opines (paragraph 30):

*"The provision of pitches over and above the identified levels [in the GTAA] would not be unacceptable in principle having regard to RSS Policy 16. There are other indicators of need which is not being met in the district; the occupation of this site by these gypsy families is evidence in itself of their need for a site... "*  
*[SDDC emphasis]*

Conversely, an appeal decision relating to another site in the district for just three pitches last October (APP/F1040/A/10/2132318) at paragraph 11 states:

*"As far as the wider picture relating to the need for gypsy sites is concerned a Gypsy and Traveller Accommodation Assessment (GTAA) was carried out to feed into the Regional Plan. Information provided by the Council indicates that the GTAA and Regional Plan figure of 19 additional pitches for the District has now largely been met by the provision of 18 new pitches. Whilst, technically, there remains an outstanding need for one further pitch this does not constitute a significant additional need on a scale that would justify the three caravans sought by the appellant. The appellant has brought no evidence, apart from reference to the GTAA, to counter that of the Council and support an argument that there is currently a demonstrable need for three additional gypsy pitches, and that this proposal would serve to meet that need."*

These two appeal decisions demonstrate that Inspectors have reached contradictory conclusions on how Government policies on "need" should be interpreted.

Whilst the Council accepts that there is probably an overwhelming need for sites across the country, gypsies and travellers should have the opportunity to set up sites in other areas through a more robust policy of fairer supply targets. The current system penalises councils who have already made significant provision and even those such as South Derbyshire who have achieved the acknowledged target.

Government should therefore clarify that where local targets have been met, further sites in that Council area should only be granted in exceptional circumstances to encourage a wider, fairer distribution of sites across the region and the country. This should be clearly and unambiguously written into national policy when the draft PPS is combined into the NPPF.