

PLANNING COMMITTEE

19 FEBRUARY 2014

COMPLIANCE WITH THE NATIONAL PLANNING POLICY FRAMEWORK

Portfolio Holder: Councillor Jane Chitty, Strategic Development and Economic Growth

Report from: Robin Cooper, Director of Regeneration, Community & Culture

Author: Catherine Smith, Development Policy & Engagement Manager

Summary

This report considers the implications of the National Planning Policy Framework (NPPF) on the saved policies of the Medway Local Plan, 2003. It outlines the degree of compliance with the NPPF and advises members of issues relating to a limited number of policies that are not fully in accordance with national policy.

1. Budget and Policy Framework

1.1 The Medway Local Plan, 2003 is the adopted development plan for Medway. Following the introduction of the National Planning Policy Framework in 2012, the weight afforded to policies in development decisions is dependent on the degree of consistency with the NPPF.

2. Background

2.1 The National Planning Policy Framework (NPPF) sets out central government's planning policy for both plan-making (policy) and decision-taking (development management). It was published on 27 March 2012 and replaced the previous system of topic-based PPSs (Planning Policy Statements) and PPGs (Planning Policy Guidance Notes). A number of Planning Circulars were also replaced.

2.2 As well as updating the policy to reflect government's current priorities, this was part of a drive to simplify the planning system by significantly reducing the amount of government policy and guidance that authorities and developers had to consider.

- 2.3 The legal position remains that decisions must be made in accordance with the development plan unless material considerations indicate otherwise. In Medway's case, the development plan consists solely of the Medway Local Plan 2003 (the MLP). However, the NPPF is one material consideration that has to be taken into account when decisions are made, and it should be given significant weight. Decisions made by Planning Inspectors, in Medway and elsewhere, are reflecting this approach.
- 2.4 When the NPPF was first published, it included a 12-month grace period, where local policies with "a limited degree of conflict" with the Framework could still be given full weight. However, this only applied to policies adopted since 2004 and therefore did not apply to Medway as the MLP was adopted before this cut-off date.
- 2.5 The position in Medway has therefore been that since publication of the NPPF, the weight that can be given to MLP policies depends on their degree of consistency with the NPPF.
- 2.6 In this context, officers have reviewed all of the 'saved' policies to determine to what extent they are consistent with government policy set out in the NPPF. This report is to advise Members on the findings of the review, to set out to what extent the MLP and its policies can continue to be used in assessing planning applications, and to suggest ways in which any areas of inconsistency can be addressed pending the production of a new up-to-date set of local policies.

3. Advice and Analysis

- 3.1 The publication of the NPPF does not mean that the MLP has to be disregarded in its entirety. There are large sections that are generally in compliance with the NPPF, including most of the strategic policies that set the scene for the rest of the Plan. In other areas where there is partial conformity, weight can still be attached to the MLP policies as long they are read and interpreted in the context of the relevant parts of the NPPF.
- 3.2 Examples of areas where there is no significant conflict between local policy and the NPPF include:
- Protection for community facilities, open spaces etc.
 - Emphasis on high quality design including the ability to set local policies protecting the character of existing residential areas when considering infill or redevelopment proposals
- 3.3 It should also be noted that not all areas of inconsistency between the MLP and the NPPF are a problem. Due to the age of the MLP, there are some policy areas where thinking has moved on considerably, and the local policies do not completely reflect the best practice that the Council would seek to apply. For example, the consideration of

heritage issues in the NPPF is very thorough, and it is also much stronger around environmental sustainability. In cases such as these, the need to rely upon the more up-to-date national policy should not be seen as a concern.

- 3.4 One significant difference between the NPPF and the MLP is the presumption in favour of sustainable development. In effect, it means that any development proposal should generally be approved, unless there is significant harm that outweighs any benefits (including economic benefits) arising from it.
- 3.5 The importance of the presumption in favour should not be underestimated. The relevant sections of the NPPF have been reproduced in full at Appendix A, for information.
- 3.6 In addition to cases where an individual policy is inconsistent with the NPPF, there are three broad areas where the conflict between the MLP and the NPPF has potential implications for decision-making. These three areas are:
- Employment & economic development
 - Retail & town centres
 - Countryside protection
- 3.7 A schedule of all the MLP policies has been provided at Appendix B setting out whether they are consistent with the NPPF, partially consistent or inconsistent. Policy areas that are considered in the NPPF but were not covered at all by the MLP are also listed below. In addition, the three main areas of concern are considered in more detail below, as is the issue of housing development.

Employment & economic development

- 3.8 The imperative for planning to support economic growth is one of the key themes of the NPPF. While the need to plan positively for economic development is not new, the NPPF takes this further than previous policy. The key expectations are set out in paragraph 19: *“The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”*
- 3.9 This strong support for sustainable economic growth means that the more restrictive economic development policies in the MLP cannot be considered consistent with the NPPF; for example, the limitations applied to business development in residential and rural areas as set out in Policy ED3. The implications are that applications for economic development should generally be considered favourably – whether on an allocated site or not – unless there is **significant** harm to weigh against the economic development. This is made explicit at a number

of points in the NPPF. For example, transport impact is a criteria in many of the MLP economic development policies, but the NPPF states that:

“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”

- 3.10 The MLP is also out of step, to a degree, with the NPPF’s economic development policies relating to the safeguarding of sites for employment use. The NPPF is very clear that long-term application of such protections should be avoided *“where there is no reasonable prospect of a site being used for that purpose”*. Applications for alternative uses on safeguarded sites therefore cannot simply be refused on the principle of loss of employment land. Instead there would need to be strong evidence of the need for the safeguarding to be retained, and applications are required to take into account market signals regarding the relative need for different uses.
- 3.11 The NPPF does not consider economic development to be limited to traditional employment uses in classes B1, B2 and B8. Its definition of economic development also includes *“public and community uses and main town centre uses”*. Therefore the strong support identified above would apply equally to applications dealing with these other uses. This is another aspect of economic policy where the MLP is out-of-date, as its employment chapter takes a narrow view of economic development i.e. just the B Class Uses.

Retail & town centres

- 3.12 This policy area is strongly linked to economic development. Many of the areas of inconsistency are related to the drive for economic growth, and as identified, the NPPF does include main town centre uses in its definition of economic development.
- 3.13 Therefore, although the town-centre first policy is still included in the NPPF and the sequential test still applies, the benefits of economic growth would have to be balanced against any harm when considering proposals for out-of-centre sites. The NPPF implies that significant weight would be attached to these benefits. It specifically emphasises the importance of ensuring that the needs for *“main town centre uses are ... not compromised by limited site availability”*.
- 3.14 It should also be noted that the definition of main town centre uses in the NPPF differs from some previous definitions. Office and educational uses are not included, and therefore while the MLP suggests that the sequential test should also apply to these uses this is no longer backed up by national policy. This is particularly the case for educational uses, where *“great importance”* is attached to increasing choice of school places. Any attempt to restrict this on the basis of a town-centre first policy is unlikely to succeed on appeal.

Countryside protection

- 3.15 Many iterations of planning policy at national and local level have included the principle that the countryside should be protected for its own sake. This blanket protection is not repeated in the NPPF, although there is still a preference for development to make effective use of previously developed land.
- 3.16 Instead, the NPPF applies protection to various specific features of the countryside, including:
- “Valued” landscapes
 - Protected wildlife and geological sites, and biodiversity interests more generally
 - Best and most versatile agricultural land
 - Areas of tranquillity
 - Green Belt
- 3.17 However, the weight attached to each of these aspects will vary according to circumstances. For example, protection of a nationally valued landscape such as an Area of Outstanding Natural Beauty would have greater weight than a locally valued landscape. The presumption in favour of sustainable development also continues to apply in these areas (except where a development requires Appropriate Assessment; in Medway this would be if it has a potential impact on the Ramsar/SPA sites at the estuaries).
- 3.18 This means that many of the relevant MLP policies are not consistent with the NPPF. Because they were written under the previous, much more restrictive approach to rural planning, they apply strict limitations to development across the whole of the rural areas rather than considering which features of the countryside they are seeking to protect.
- 3.19 A particular conflict arises in respect of rural economic development. The NPPF gives very strong support to the rural economy, to the extent that this may well override concerns that might otherwise have rendered a development proposal unacceptable. This applies to both new buildings and conversion of existing buildings. However, this should not be interpreted as an encouragement for any economic development in rural areas; it is aimed at supporting the growth and expansion of existing rural businesses.
- 3.20 The NPPF also requires a considered approach to the provision of housing in rural areas. Local Planning Authorities are advised to recognise the benefits that housing in rural communities can bring, not just in terms of provision of rural affordable housing (which may be subsidised by the provision of market housing) but in supporting rural facilities and services. Restrictions on isolated new dwellings in the

countryside are still applied, however, in similar format to the previous advice in PPS7.

Housing

- 3.21 Housing development has attracted significant attention since the publication of the NPPF. There has been much publicity around cases across the country where Local Planning Authorities have refused permission for housing schemes, particularly on greenfield and countryside sites, and this has been overturned at appeal, including some cases determined directly by the Secretary of State.
- 3.22 However, in this case it is not a matter of the policies in the MLP being inconsistent with the NPPF. Almost all of the relevant policies are broadly consistent with the principles set out in the NPPF, although the site allocations are very out of date as most of them have already been consented and/or built.
- 3.23 Instead, the key issue is one of housing land supply. The NPPF states explicitly that relevant housing policies in a local plan cannot be considered up-to-date where a Local Authority does not have a five-year housing supply. Medway currently has a healthy housing land supply position and officers are carrying out further work in updating the assessment of local housing needs.

Other issues

- 3.24 In addition to the issue of whether existing policies are consistent with the NPPF, there are a few areas of policy that are not covered by the MLP. Some of these will be relevant to consideration of development proposals, and in these cases the NPPF will be the main source of guidance on how they should be considered. Others are more related to plan-making and will have to be considered at the next stage of planning policy production. The relevant issues are:
- Consideration of the need for Areas of Special Advertisement Control
 - Flexibility and resilience of town centres
 - Support for and/or promotion of markets
 - Climate change adaptation and mitigation, including much greater consideration of renewable energy and energy supply in general
 - Waste and minerals
 - Community and neighbourhood planning
 - Marine policy include Marine Conservation Zones
 - More explicit consideration of health issues, which should be linked to a local health strategy (when one exists); particularly encouragement of active lifestyles.

Potential response to areas of inconsistency

- 3.25 In the medium to long term, the best possible response is to ensure that the council is able to produce an up-to-date policy framework for Medway through a new local plan. This will also have to conform with government policy as set out in the NPPF, but means that the council will have been able to properly consider its full implications and provide an appropriate local response.
- 3.26 However, as Members will be aware, the timescales for producing planning policy documents are long and are often influenced by circumstances outside the Council's control. Therefore, some consideration needs to be given to how the areas of inconsistency should be dealt with when making development management decisions in the interim.
- 3.27 One of the key themes of the NPPF is the need for both planning policy and development management decisions to be evidence-based. It will therefore be very important to ensure that decisions, particularly those based on policies that are only partially consistent with the NPPF, are supported by robust and up-to-date evidence. Where the LPA seeks to refuse permission, this evidence would need to demonstrate the harm that would result. However, it must be noted that there would still be a requirement to balance such harm against any benefits of the proposal.
- 3.28 In some cases, this evidence already exists, for example, the Landscape Character Assessment covers the whole of rural Medway. This can therefore be relied upon when considering the landscape impact of proposals in the countryside.
- 3.29 In other cases there may be a need to undertake some additional short-term work to provide an evidence base. Some of this would in any case need to be done to support the next stage of planning policy production, so it is simply a case of bringing the timetable forward. In particular, officers are considering the scope for:
- "Health checks" for each of the existing employment areas. This would look at their characteristics, strengths and weaknesses, potentially including engagement with existing occupiers, to help judge whether ongoing protection for these areas continues to be the appropriate response.
 - Ecological network mapping. This would assess the functional links between wildlife habitats including designated and undesignated areas, identifying key corridors and stepping stones, and allowing such areas to benefit from the strong protection that the NPPF gives to sites of ecological interest.

3.30 In the few cases where MLP policies are so inconsistent with the NPPF that they can no longer be used, careful consideration will need to be given to which other policies may be applicable and to the relevant content of the NPPF itself. For example, although some of the countryside protection policies of the MLP are no longer usable, proposals would still have to be considered against the requirement to promote a sustainable pattern of development; and consideration of local character, landscape and similar impacts would still be relevant.

4. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
MLP policies are not given weight planning decisions, and are not supported on appeal.	Policies viewed as out-of-date or non-compliant with the NPPF.	Avoid reliance on non-compliant policies in determining applications, and use other considerations.	C2

5. Financial and legal implications

5.1 Following the introduction of the NPPF, policies in the Medway Local Plan, 2003, that are not consistent with the Framework, are at risk of not being effective in planning decisions. This review considers the degree of compliance with the Framework, and therefore the weight that can be attached to local planning policies.

6. Recommendations

6.1 Members are requested to note the advice on the compliance of the saved Medway Local Plan, 2003 policies with the NPPF, to provide confidence in their use in determining development proposals.

Lead officer contact

Catherine Smith
 Development Policy & Engagement Manager
 Planning Policy & Design
 Gun Wharf
 Telephone: 01634 331358
 Email: catherine.smith@medway.gov.uk

Background papers

Medway Local Plan, 2003
 National Planning Policy Framework, 2012

Extract from NPPF

The presumption in favour of sustainable development

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.¹
12. This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.
13. The National Planning Policy Framework constitutes guidance² for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.
14. At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **plan-making** this means that:

- local planning 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 taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.³

For **decision-taking** this means:⁴

- approving development proposals that accord with the

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

² A list of the documents revoked and replaced by this Framework is at Annex 3. Section 19(2)(a) of the Planning and Compulsory Purchase Act 2004 states, in relation to plan-making, that the local planning authority must have regard to national policies and advice contained in guidance issued by the Secretary of State.

³ For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

⁴ Unless material considerations indicate otherwise

development plan without delay; and

- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.⁹

15. Policies in Local Plans should follow the approach of the presumption in favour of sustainable development so that it is clear that development which is sustainable can be approved without delay. All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.
16. The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:
 - develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development;
 - plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan; and
 - identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with their neighbourhood plan to proceed.