

Elmbridge Borough Council's draft response to Government's proposed changes to the National Planning Policy Framework (NPPF, 2019) and the National Model Design Code (January 2021)

Revisions to the National Planning Policy Framework (NPPF, 2019)

Proposed changes to Chapter 2: Achieving sustainable development

The revised text reflects the Government's response to the Building Better Building Beautiful Commission, and makes a small number of other minor changes:

The wording in paragraph 7 has been amended to incorporate the 17 Global Goals for Sustainable Development which are a widely-recognised statement of sustainable development objectives, to which the UK has subscribed.

Paragraph 8(b) has been amended in response to the Building Better Building Beautiful Commission recommendations to emphasise the importance of well-designed, beautiful and safe places in achieving social objectives of sustainable development.

The wording in paragraph 8(c) has been strengthened to emphasise the role of planning in protecting and enhancing our natural, built and historic environment.

The wording of the presumption in favour of sustainable development (paragraph 11(a)) has been amended to broaden the high-level objective for plans to make express reference to the importance of both infrastructure and climate change.

The final sentence in footnote 8 (referred to in paragraph 11(d)) has been removed as the transitional arrangements for the Housing Delivery Test no longer apply.

Q1. Do you agree with the changes proposed in Chapter 2?

Yes

Please provide comments:

The Council supports the proposed changes to Chapter 2 in particular, the amendments to paragraph 11(a) and the added emphasis and incorporation of some of the environmental objectives in regard to what is meant by the presumption in favour of sustainable development and the plan-making process. It is considered that these additions establish a more integrated approach to considering the overarching objectives of the planning system and the recognition that such elements are equally important contributors.

An integrated approach to sustainable development and the plan-making process is strongly supported by the Council as it prepares its new Local Plan. The vision for our emerging plan is one that seeks to respond positively to our development needs whilst also seeking higher standards of sustainable development including measures to tackle climate change and ensuring that the right infrastructure is provided in the right place at the right time.

In addition, reference to making the effective use of land in urban areas ties into the Government's continued emphasis on the urban focus and the recent increase in housing need figures in the most urban areas of the Country. The importance of an urban focus

reflects the Government's proposals set out in the Planning for the future consultation and is shared by the Council in its continued effort to protect the Green Belt.

Proposed changes to Chapter 3: Plan-making

The revised text reflects the Government's response to the Building Better Building Beautiful Commission, and recent legal cases:

In response to the Building Better Building Beautiful Commission recommendations, paragraph 20 has been amended to require strategic policies to set out an overall strategy for the pattern, scale and design quality of places.

Paragraph 22 has also been amended in response to the Building Better Building Beautiful Commission recommendations to clarify that councils who wish to plan for new settlements and major urban extensions will need to look over a longer time frame, of at least 30 years, to take into account the likely timescale for delivery.

Paragraph 35(d) has been amended to highlight that local plans and spatial development strategies are 'sound' if they are consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in the Framework, and other statements of national planning policy where relevant. This ensures that the most up to date national policies (for example, Written Ministerial Statements) can be taken into account.

Q2. Do you agree with the changes proposed in Chapter 3?

No

Please provide comments:

The Council supports the changes proposed to Chapter 3 with the exception of those set out in Paragraph 35(d).

Updating the NPPF with reference to the Building Better Building Beautiful Commission recommendations; adding emphasis to strategic policies and design quality as well as looking at the design of places and not just individual developments, is supported. This fits with the Council's emerging Local Plan and the focus on 'place-making'.

Given the characteristics of the borough including, land supply, it is unlikely that larger-scale development / new settlements will form part of its emerging or future Local Plans. Nevertheless, the Council agrees that if such development were to take place, this should be set out within a vision that looks further ahead to consider the likely timescales for delivery.

In regard to the proposed addition of '*other statement of national planning policy, where relevant*' (paragraph 35(d)), the Council is concerned that this addition could have implications for its Local Plan preparation and the delivery of a 'sound' strategy. Firstly, the amendment would allow changes to national policy without the benefit of consultation; removing the opportunity for Local Authorities and other stakeholders to consider the implications for their areas and express these to the Government, helping to shape national policy. Secondly, this addition would allow weight beyond that of a material consideration to be given immediately to, for example a Written Ministerial Statement (WMS), and remove an Authorities' ability to consider and respond to the changes within a sufficient time period. If a

Local Authority were at the examination stage, this may cause issues in regard to the tests of soundness.

To ensure that Local Authorities are able to prepare a sound plan, it is considered that the Government must, as a minimum, consult on any proposed addition to national Policy and, set out clear transitional arrangements for when they start to apply.

Proposed changes to Chapter 4: Decision making

The revised text aims to clarify the policy intention for Article 4 directions:

In order to ensure Article 4 directions can only be used to remove national permitted development rights allowing changes of use to residential where they are targeted and fully justified, we propose amending Paragraph 53, and ask for views on two different options. We also propose clarifying our policy that Article 4 directions should be restricted to the smallest geographical area possible. Together these amendments would encourage the appropriate and proportionate use of Article 4 directions.

Q3. Do you agree with the changes proposed in Chapter 4?

Which option relating to change of use to residential do you prefer and why?

The Council raises strong concerns to both of the options presented.

In regard to Option 1 and the use of the term '*wholly unacceptable adverse impacts*', it is considered that this sets a bar so high that it unlikely that any Local Authority would be able to justify the use of an Article 4 direction and will undoubtedly end up being the subject of litigation in the Courts which will be a costly and time-consuming process for all parties involved. Furthermore, the terminology implies that a significant level of unacceptability is expected and to be accepted by a Local Authority which, could have significant detrimental impacts to both the immediate and wider area including the long-term planning strategy for the district / borough.

In regard to Option 2 and the use of '*national significance*', this again appears to introduce circumstances whereby it is unlikely that a Local Authority would be able to justify the use of an Article 4 direction. The use of national significance ignores the possibility of local issues being of sufficient weight that they outweigh national permitted development rights and implies that under national policy, there is a 'one-size fits all' scenario. The Council would query what is meant by '*an interest of national significance*' as this would help to understand any circumstance whereby the Government would introduce changes to permitted development rights that would then require an Article 4 direction to protect the existing use in the context of an interest of national significance. This would appear counterintuitive.

The Council believes that the application of Article 4 directions should remain possible whereby the Local Authority considers it necessary taking into account its priorities for the areas and issues of local significance. As such, the Council proposes that no amendment is made to paragraph 53 (of the consultation document) or, the following is inserted:

“where they relate to change of use to residential, be limited to situations where this is necessary for local benefit or in order to protect an interest of local significance”.

Proposed changes to Chapter 5: Delivering a wide choice of high-quality homes

The revised text aims to clarify the existing policy and reflects the Government's response to the Building Better Building Beautiful Commission and recent legal cases:

New paragraph 65 has been amended to clarify that, where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership. This is to address confusion as to whether the 10% requirement applies to all units or the affordable housing contribution.

New paragraph 70 has been amended to remove any suggestion that neighbourhood plans can only allocate small or medium sites. This was not the policy intention, so the wording has therefore been amended to clarify that neighbourhood planning groups should also give particular consideration to the opportunities for allocating small and medium-sized sites (of a size consistent with new paragraph 69a) suitable for housing in their area.

New paragraph 73 has been amended to reflect Chapter 9: "Promoting sustainable transport" in ensuring that larger scale developments are supported by the necessary infrastructure and facilities including a genuine choice of transport modes. New paragraph 73(c) has also been amended in response to the Building Better Building Beautiful Commission's recommendations to clarify that when planning for larger scale development, strategic policy making authorities should set clear expectations for the quality of the places to be created and how this can be maintained (such as by following Garden City principles) and ensure that masterplans and codes are used to secure a variety of well-designed and beautiful homes to meet the needs of different groups in the community.

Footnote 40 (referred to in new paragraph 74(c)) has been updated to reflect that the Housing Delivery Test has now come into effect.

New paragraph 80(d) has been amended in response to legal cases in order to clarify that the curtilage does not fall within the scope of this policy.

New paragraph 80 (e) has been amended in response to the Building Better, Building Beautiful Commission's policy proposition 1 e) that it opens a loophole for designs that are not outstanding, but that are in some way innovative, and that the words 'or innovative' should be removed. This change is not proposed to rule out innovative homes, rather that it will ensure that outstanding quality can always be demanded, even if an innovative approach is taken.

Q4. Do you agree with the changes proposed in Chapter 5?

Yes

Please provide comments:

The Council supports the amendments to Chapter 5 in particular, the amendments to paragraph 73. The Council welcomes the added emphasis on larger scale developments offering a genuine choice of transport modes and their delivery being informed by clear expectations embedded in masterplans and / or design codes. A focus on 'place-making' and not just focusing on an individual development is also reflective of this Council's ambition for its Local Plan and growth of the borough.

Proposed changes to Chapter 8: Promoting healthy and safe communities

The revised text seeks to clarify existing policy:

New paragraph 92(b) includes minor changes to help to clarify Government's expectations for attractive pedestrian and cycle routes. This supports the Building Better Building Beautiful Commission's recommendations on supporting walkable neighbourhoods.

New paragraph 97 has been amended to emphasise that access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and efforts to address climate change.

Q5. Do you agree with the changes proposed in Chapter 8?

Yes

Please provide comments:

The Council strongly supports these amendments.

To ensure consistency between new paragraphs 92(b) and 105(d), the former should be amended as follows:

*"are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of **well-designed**, attractive, clear and legible pedestrian and cycle routes, and high-quality public space, which encourage the active and continual use of public areas; and...*

Proposed changes to Chapter 9: Promoting sustainable transport

The revised text reflects the Government's response to the Building Better Building Beautiful Commission:

New paragraph 105(d) has been amended to support the Building Better, Building Beautiful Commission's recommendations on encouraging walking and cycling.

New paragraph 109(c) and supporting footnote 45 has been amended to prevent continuing reliance by some authorities on outdated highways guidance. Our amended wording states that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that the design of schemes and standards applied reflects current national guidance, including the National Design Guide and National Model Design Code.

Q6. Do you agree with the changes proposed in Chapter 9?

Yes

Please provide comments:

The Council strongly supports these amendments and the increased emphasis on design-quality and expectations incorporated throughout the policies.

Proposed changes to Chapter 11: Making effective use of land

The revised text reflects the Government's response to the Building Better Building Beautiful Commission:

New paragraph 124 has been amended to include an emphasis on the role that area-based character assessments, codes and masterplans can play in helping to ensure that land is used efficiently while also creating beautiful and sustainable places.

Q7. Do you agree with the changes proposed in Chapter 11?

Yes

Please provide comments:

The Council supports these amendments and the increased emphasis on the utilisation of character assessments, codes and masterplans as tools that could help to ensure the efficient use of land whilst also creating beautiful and sustainable places.

Proposed changes to Chapter 12: Achieving well-designed places

The revised text reflects the Government's response to the Building Better Building Beautiful Commission:

New paragraphs 125 and 127 have been amended to include the term "beautiful" in response to the Building Better Building Beautiful Commission's findings. This supports the Building Better Building Beautiful Commission's recommendation for an overt focus on beauty in planning policy to ensure the planning system can both encourage beautiful buildings and places and help to prevent ugliness when preparing local plans and taking decisions on planning applications

New paragraph 126 has been amended to clarify the role that neighbourhood planning groups can have in relation to design policies.

New paragraph 127 has been amended to emphasise that all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code and which reflect local character and design preferences.

A new paragraph 128 has been added in response to the Building Better Building Beautiful Commission's recommendations and our manifesto commitment to give communities greater say in the design standards set for their area. This reflects the Government's proposals for a National Model Design Code, which will include a model community engagement process, and will create a framework for local authorities and communities to develop a more consistent approach which reflects the character of each place and local design preferences. It also clarifies that the National Design Guide and the National Model Design Code should also be used to guide decisions on planning applications in the absence of locally produced guides or codes.

A new paragraph 130 has been added to reflect the findings of the Building Better Building Beautiful Commission and the Government's ambition to ensure that all new streets are tree-lined, and that existing trees are retained wherever possible.

New paragraph 132 and footnote 50 have been updated to refer to Building for a Healthy Life.

New paragraph 133 responds to the Building Better Building Beautiful Commission's recommendations to make clear that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design. In addition, it clarifies that significant weight should be given to development which reflects local design policies and government guidance on design.

Q8. Do you agree with the changes proposed in Chapter 12?

Yes

Please provide comments:

The Council generally welcomes the new policies that are intended to aid Local Authorities ensure that developments are well designed and are there to positively facilitate development rather than constraining it. The Council particular welcomes the new powers for Local Authorities to refuse schemes if they are not well designed (as opposed to poorly designed).

There is concern however, as to the challenge Local Authorities will have in securing sufficient in-house local authority resources to draw-up design policies or the cost involved in appointing specialist depending on the time-scales under which the Government expects these to be in place. The Council is keen to know of the Government's skills and resourcing strategy that will be available beyond current guidance and the National Model Design Code testing programme. The Government's new design commitment must come with an agreement to properly resource Local Authorities, ensuring that they are equal partners with the private sector in discussing the planning and design of new developments and the drawing up of Local Codes.

In regard to paragraph 130, the council welcomes the proposed increase in the use of trees (subject to other considerations, such as highway safety which is reflected in the document) however, this should not preclude other natural features being utilised which could be more appropriate. In addition, the council would suggest that either the wording of the NPPF or supplementary guidance in the PPG should refer to the importance of selecting the right species. Certain pests and diseases are becoming widespread across parts of the South East (e.g. Oak Processionary Moth, Ash dieback, etc) and where qualified arborists are not employed in-house, it is important that planners are sign-posted to this sort of consideration.

Finally, the council considers that paragraph 133 would benefit from minor re-wording, perhaps as follows to make the intention abundantly clear: *"Conversely, significant weight in favour of granting permission should be given to..."*

Proposed changes to Chapter 13: Protecting the Green Belt

The revised text seeks to clarify existing policy:

New paragraph 149(f) has been amended slightly to set out that development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order, is not inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it.

Q9. Do you agree with the changes proposed in Chapter 13?

Yes

Please provide comments:

N/A

Proposed changes to Chapter 14: Meeting the challenge of climate change, flooding and coastal change

The revised text seeks to strengthen environmental policies, including clarifying some aspects of policy concerning planning and flood risk.

The changes proposed are in part, an initial response to the emergent findings of our joint review with the Department for Environment, Food and Rural Affairs (Defra) of planning policy for flood risk. The government's Policy Statement on flood and coastal erosion risk management sets out a number of actions to maintain and enhance the existing safeguards concerning flood risk in the planning system. Informed by this, we will consider what further measures may be required in the longer term to strengthen planning policy and guidance for proposed development in areas at risk of flooding from all sources when our review concludes.

On planning and flood risk, new paragraphs 160 and 161 have been amended to clarify that the policy applies to all sources of flood risk.

New paragraph 160(c) has been amended to clarify that plans should manage any residual flood risk by using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding (making as much use as possible of natural flood management techniques as part of an integrated approach to flood risk management).

The Flood Risk Vulnerability Classification has been moved from planning guidance into national planning policy (set out in Annex 3 and referred to in paragraph 162). It is considered that this classification is a key tool and should be contained in national policy.

New paragraph 163 has been amended to clarify the criteria that need to be demonstrated to pass the exception test.

New paragraph 166(b) has been expanded to define what is meant by "resilient".

Q10. Do you agree with the changes proposed in Chapter 14?

Yes

Please provide comments:

The Council strongly supports the amendments to Chapter 14 and the increased importance of ensuring that all sources of flood risk are considered and that an integrated approach is taken to flood risk management including through the use of green infrastructure. Whilst acknowledged that 'other infrastructure' is referred to (paragraph 160(c)), it is considered that reference to 'blue infrastructure' would be a beneficial addition.

Proposed changes to Chapter 15: Conserving and enhancing the natural environment

The revised text seeks to clarify existing policy and reflects the Government's response to the Building Better Building Beautiful Commission:

New paragraph 175 has been amended in response to the Glover Review of protected landscapes, to clarify that the scale and extent of development within the settings of National Parks and Areas of Outstanding Natural Beauty should be sensitively located and designed so as to avoid adverse impacts on the designated landscapes.

New paragraph 176 has been separated from the preceding paragraph to clarify that this policy applies at the development management stage only.

New paragraph 179(d) has been amended to clarify that development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around other developments should be pursued as an integral part of their design, especially where this can secure measurable net gains for biodiversity and enhance public access to nature.

Q11. Do you agree with the changes proposed in Chapter 15?

Yes

Please provide comments:

The Council strong welcomes the proposed changes to paragraph 179(d) and the emphasis on improving biodiversity in and around all other developments, securing measurable net gains in biodiversity and enhancing public access to nature.

Proposed changes to Chapter 16: Conserving and enhancing the historic environment

The revised text seeks to reflect a change made to national planning policy by a Written Ministerial Statement on protecting our nation's heritage dated 18 January 2021.

New paragraph 197 has been added to clarify that authorities should have regard to the need to retain historic statues, plaques or memorials, with a focus on explaining their historic and social context rather than removal, where appropriate.

Q12. Do you agree with the changes proposed in Chapter 16?

Yes

Please provide comments:

N/A

Proposed changes to Chapter 17: Facilitating the sustainable use of minerals

Minor changes have been made to clarify existing policy.

New paragraph 209(c) has been amended to refer to Mineral Consultation Areas in order to clarify that this is an important mechanism to safeguard minerals particularly in two tier areas, and to reflect better in policy what is already defined in Planning Practice Guidance.

New paragraph 210(f) has been amended to reflect that some stone extraction sites will be large and serve distant markets.

Q13. Do you agree with the changes proposed in Chapter 17?

Yes

Please provide comments:

N/A

Proposed changes to Annex 1: Implementation

Minor changes have been made to update the position on transitional arrangements, and on the Housing Delivery Test.

Proposed changes to Annex 2: Glossary

The definition of “green infrastructure” has been updated to better reflect practice, as already set out in Planning Practice Guidance, published evidence reviews and the new national framework of green infrastructure standards.

The definition of the “Housing Delivery Test” has been amended to reflect the rulebook. This clarifies that the test measures homes delivered in a local authority area against the homes required, using national statistics and local authority data.

The definition of “minerals resources of local and national importance” has been amended to include coal derived fly ash in single use deposits.

Definitions of “mineral consultation area”, “recycled aggregates” and “secondary aggregates” have been added to reflect the changes in chapter 17.

Q14. Do you have any comments on the changes to the glossary?

Yes

Please provide comments:

‘Green infrastructure’ should be renamed in the glossary to reflect the importance of waterbodies, and the council believes ‘Green and blue infrastructure’ should be used as this is a term increasing in use across the industry and is more frequently observed than alternative phraseology.

National Model Design Code

Q15. We would be grateful for your views on the National Model Design Code, in terms of:

a) the content of the guidance

The content of the guidance is well set out and the seven sections give ideas on how the seven stages of formulating a Design Code should be done, without being over prescriptive.

The Council raises concerns that the mantra behind the NMDC and associated guidance fundamentally conflicts with the thrust of wider planning reforms that continue to be promoted. Most notably, the continued expansion of permitted development rights of increasing degrees of scale and whereby very little to no consideration can be given to the quality of design, environment or living standards.

For example, the section on Built Form, para 53iii seeks to regulate building heights, but Part 20 of the General Permitted Development Order introduced an allowance to build 2 storeys upwards. The section on Use, para 55iii refers to active frontages and ensuring ground floor uses that create interest and activity. The Council is concerned that Local Planning Authorities will have limited control over retaining active frontages if the Government introduces prior approval for change of use from Class E to C3.

In the section on Homes and Buildings, the drawing indicates privacy distance 15-20m rear to rear and 10m rear to side elevation. There are nationally recognised guidelines such as the BRE Guidance on Daylight and Sunlight. The Council requests the government to provide guidance on whether best practice on separation distances should be applicable across the country or guidance on how it might be set locally.

b) the application and use of the guidance

The Council strongly supports the aim to promote good design and design codes will assist in achieving that. However, as set out in the Council's response to changes to Chapter 12 of the NPPF, there is concern that Local Authorities have insufficient resources or skills to draw-up design codes and implement them effectively from the start. Alternatively, there would be significant cost involved in appointing specialists.

The Council is keen to know of the Government's skills and resourcing strategy that will be available beyond current guidance and the National Model Design Code testing programme.

The Government's new design commitment must come with an agreement to properly resource Local Authorities.

A key reason for introducing design codes is to provide certainty for developers by identifying what is acceptable to the local authority, but issues of deliverability need to be considered. There is no reference to viability in the application of design codes.

A key issue will be ensuring that developers engage positively with the development of design codes particularly with a view to ensuring matters of viability are not cited at a later stage of the process to either promote a development of substandard quality or as a way to reduce the level of affordable housing provision or other contributions required by adopted policy.

The scope for the most significant change could be the way volume housing could be delivered. Despite the significant step change in recent years surrounding the "building beautiful" agenda, there are still many residential housing schemes which come forward which have no real sense of place, provide designs from a standard template of house types often replicated, lacking any local distinctiveness, and providing no meaningful attempt to make positive contributions.

The National Model Design Code utilises a “tick-box approach” to a large degree and this raises a question as to whether this ultimately be at odds with the altogether creative approach that must be enshrined within the building beautiful agenda. Creating high quality places that people want to live, work and visit must be about creating variety that is responsive to context over time and excessive regulation can be detrimental to that process.

One of the challenges for design codes will be to ensure a variety of architecture in an area. The design codes need to be specific in some areas, particularly in terms of the layout, but allow an organic process in some design features. Flexibility needs to be built into the codes.

It should be highlighted that even developments that on plan appear to be high quality and could be deemed to fully accord with a local code may appear altogether different on the ground if poorly constructed. There is no mechanism to ensure quality of build with the aim of achieving good design, only what exists within the Building Regulations regime.

c) the approach to community engagement

The national code refers to a requirement for local codes to have "measurable community support." The Council requests that guidance on how this should be measured is provided. In many areas, Local Planning Authorities will need to seek to increase the density of development to achieve housebuilding targets. Obtaining community support for significant changes to density will be challenging and is unlikely to receive measurable community support.

The Council raises concerns that codes can be quite extensive and technical documents which require intense engagement on a long-term basis and will require a large amount of resources in officer time and expertise to carry this out effectively.

If the proposal in the Planning White Paper to introduce a fast-track decision making route for well designed schemes is implemented, it would mean Council planning committees would no longer need to consider outline planning applications in large parts of the borough if a scheme conforms with a local design code. Therefore, it will be important that preparation of the design code has maximum community involvement.

The preparation of Design Codes provides an opportunity for positive and constructive collaboration with developers, land promoters and community groups alike to establish what aspirations and expectations are prevalent in bringing about new development in an area. This is considered to be particularly important given that presently the Council is often faced with developers having engaged in their own design work ahead of any meaningful engagement with the Council and local communities.

Community involvement in design code production could be integrated with the neighbourhood planning process, though civic groups would need to be properly resourced to take on this wider role.

In areas of two-tier authorities such as Surrey, there will need to be full and active endorsement at an early stage and subsequent implementation by Surrey County Council colleagues given the emphasis around street patterns and tree-lined streets. Ultimately, this could create conflict between delivering on achieving high quality design identified with the local design codes and technical highway engineering requirements.