

# **REPORT FOR: Planning Committee**

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**Date of Meeting:** 18 April 2012

**Subject:** **INFORMATION REPORT –  
National Planning Policy and  
Legislation Update**

**Responsible Officer:** Andrew Trehern, Corporate Director  
Place Shaping

**Exempt:** No

**Enclosures:** None

## **Section 1 – Summary**

This briefing paper outlines some key changes to national guidance and legislation as applicable to the planning process in England. These are the:

- Localism Act 2011;
- Neighbourhood Planning Regulations 2012; and the
- National Planning Policy Framework

**FOR INFORMATION**

## **Section 2 – Report**

### **1.0 The Localism Act 2011**

The Localism Act received Royal Assent on 15 November 2011. The objective of the Act is to decentralise power as far as possible to individuals, communities and local councils. The Act includes six key measures that underpin the Government's approach to decentralisation:

- General power of competence;
- Community rights;
- Neighbourhood planning;
- Planning reforms;
- Housing reforms;
- Empowering cities

The last measure has little consequence for Harrow, in that it seeks to enable large cities to have elected mayors and stronger governance like that already in place London.

#### **1.1 General Power of Competence**

The new, general power gives councils the legal capacity to do anything that an individual can do that is not specifically prohibited. It is intended that the general power will enable councils to do things differently (i.e. how they see fit) to deliver their legal duties, which do not change. The change will allow councils to consider a much broader range of service delivery models including the establishment of mutual partnerships, shared services, federated services, joint ventures and social enterprise businesses, overcoming the constraints imposed by the current 'Power of Wellbeing'.

#### **1.2 Community Rights**

This includes the community right to challenge and the community right to bid. With respect to the former, the Act gives local groups, parish councils and local authority employees the right to express an interest in taking over the running of a local authority service. If this right is exercised, the council must consider and respond to the challenge. In respect of the right to bid, local authorities are now required to maintain a list of assets of community value which have been nominated by the local community. If an asset on this list is proposed for closure, sale or change of ownership, the Act then gives these groups time to develop a bid and raise the money to buy the asset.

#### **1.3 Neighbourhood Plans**

The Act introduces the concept of neighbourhood plans, and gives communities the power to develop these to give them more of a say on how their local area is developed. Neighbourhood plans are similar to Council's Local Plans, in that they can establish a vision for the area, as well as introduce planning policies for the development and use of land. However, they should be about local, not strategic issues, such as covering where new

homes or shops should go in a local area, and what open spaces should be preserved.

It is emphasised by the Government that neighbourhood plans should help guide development to areas where communities want it, but should not be used purely to prevent it. A neighbourhood plan must therefore conform to both National, and Local planning policies. If adopted the neighbourhood plan will have the same weight as any LDF DPD, and be used in decisions on planning applications in the area covered by the plan.

Detail on the process for preparing neighbourhood plans and establishing neighbourhood areas and forums is set out in the recently published Neighbourhood Planning Regulations (6 April 2012). Further commentary on these Regulations is provided below in section 2 of this report.

## **1.4 Planning Reforms**

The Act abolishes regional strategies outside of London. However, this does impact on boroughs in London, as the East of England Plan made provision to meet a significant portion of London's housing need outside of London. With its abolition many of the local authorities have resisted progressing with higher housing targets than required to meet their own needs. Without this strategic housing strategy, pressure will be placed on London boroughs, especially outer London boroughs, to meet London's housing needs in London, which is simply unrealistic without wholesale change to the urban character and fabric of all of London.

Other planning reforms include:

- The duty to cooperate, which requires local authorities and other public bodies to work together on planning issues;
- Non-bind planning inspectors reports, which is a return to UDP enquiry process;
- A requirement for proponents of major planning applications to consult the community prior to submitting their planning application, this was a clear omission from the 2004 Act that was widely anticipated but never materialised;
- Greater enforcement powers, which is always a trade-off to any freeing up of the planning system; and
- Further easing of Community Infrastructure Levy requirements, now allowing for levy monies raised to be spent in the local area on things other than infrastructure but that benefit the wider community.

## **1.5 Housing Reforms**

The Act introduces a range of reforms to social housing tenure and council housing finance. This includes enabling local authorities to set their own policy about who should qualify for social housing in their area; the ability to limit the period of tenancy for affordable housing to a minimum of two years; and frees up local authority housing account allowing councils to keep the rent from social housing and to use this to maintain the social housing stock in their area.

The Act also passes greater powers to the Mayor of London over housing activities currently carried out by the Homes and Communities Agency, and the economic and regeneration work undertaken by the London Development Agency.

## **1.6 Further changes set out in the Act of relevance to planning**

The Act clarifies the rules on 'predetermination', making it clear that it is proper for councillors to play an active part in local discussions without being liable to legal challenge.

The Act also gives councils more freedom to offer business rate discounts - to help attract firms, investment and jobs to support the local economy. Whilst councils would need to meet the cost of any discount from local resources, they may decide that the immediate cost of the discount is outweighed by the long-term benefit of attracting growth and jobs to their area.

## **2.0 Neighbourhood Planning Regulations**

### **2.1 Making a Neighbourhood Plan**

A Neighbourhood plan can be drawn up anywhere in the Borough. A plan could also cross the Borough boundary, but should not overlap with adjoining neighbourhoods who also wish to develop a plan.

Any plan is required to be in general conformity with the Council's adopted Local Plan strategic direction, and as such cannot include policies that would restrict growth and development that has been allocated to the area through the Council's plan. However, when adopted the Neighbourhood Plan can take precedence in determining applications in that area if there is a conflict with the Local Plan, for example the Neighbourhood Plan allowed development of housing on green space, which would be contrary to Council policy, but as it has primacy, this development would be allowed.

The plan should be prepared by the local community (which can include businesses and local Councillors) as part of a neighbourhood forum. These forums must consist of at least 21 people, have a written constitution and be inclusive. The neighbourhood plan needs to be supported through a majority vote in a referendum of people living or working in the area. They will also be subject to checks for legal compliance by the Council, and be subject to an Independent examination.

In addition to checks for legal compliance, the Council will have a significant role to play in Neighbourhood Planning as is it has a duty to provide technical advice and support to those producing the plan. In addition the Council will play an arbitrating role as it must agree the boundary of the plan area, agree the composition of and then formally confirm the status of the neighbourhood forum, organise the examination of the plan and adopt the plan to give it effect.

## **2.2 Neighbourhood Development Orders**

The Neighbourhood Planning regulations also allow designated neighbourhood forums to introduce a Neighbourhood Development Order. This allows communities to specify certain types of development that they would like to see built without requiring planning permission. These are subject to a similar process for adoption as Neighbourhood Plans.

There is also the power for neighbourhood forums to designate 'Local Green Spaces'. These must be areas that are intrinsically local and demonstrably special, and so is not appropriate for most large open spaces or green areas. Once designated, these will be afforded similar protection as the Green Belt.

## **3.0 The National Planning Policy Framework**

The National Planning Policy Framework (NPPF) was published on 28 March 2012 and came into effect immediately. This document replaces all previous national planning policy statements and guidance, and is now the sole national planning policy document. The document will be a material consideration in planning applications, and all Local planning policy will have to in general conformity with the NPPF.

### **3.1 Transitional Arrangements**

There is a 12 month transitional period in relation to the preparation of local plans which should set how where growth and development should go in the local area. During this time, local plans adopted since 2004 will continue to be given full effect, even where some conflict exists with the NPPF. For Harrow, this means the Core Strategy and Saved UDP policies will continue to form the development plan for Harrow alongside the London Plan.

After 12 months, any Local plan documents not adopted since the publication of the NPPF (or with a certificate of conformity) will still have effect as a material consideration, with more weight attached where no conflicts exist.

### **3.2 Key Principles**

The NPPF reaffirms that planning is plan led, and that applications should be determined in accordance with the development plan. The NPPF commits to a presumption in favour of sustainable development. The definition given of sustainable development is taken from the UK Sustainable Development Strategy - Securing the Future, which set out five 'guiding principles' of sustainable development:

- living within the planet's environmental limits;
- ensuring a strong, healthy and just society;
- achieving a sustainable economy;
- promoting good governance; and
- using sound science responsibly.

The NPPF expands on this to highlight that local plans, and associated planning decisions should be supportive of development, and pro-active in enabling schemes to go ahead where it is sustainable or the benefits of the scheme clearly outweigh any negative implications.

There is also a return the principle of brownfield land first, whereby previously developed sites should be the first choice for new development on growth, before Greenfield sites are identified.

The NPPF sets out guidance on different planning issues on a thematic basis, the significant issues are set out below.

### **3.3 Housing**

Local authorities with a proven track record of housing delivery (such as Harrow) will be required to identify a five year supply of deliverable housing with an additional 5% buffer. However, authorities who consistently fail to meet delivery targets will be required to provide an additional 20% identified buffer. A windfall sites allowance may be used in the five year supply line if there is compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. There is also support for the creation of new 'garden cities' and urban extensions to meet housing supply. This may be needed in some areas as the document requires local planning authorities to meet the full requirements in the housing market area – they have to identify sufficient land to address all 'objectively assessed' housing needs in their SHMA

### **3.4 Viability and Delivery**

There is a strong emphasis on deliverability of plans, and on ensuring policies do not make development unviable through onerous policy burdens or CIL / S106 requirements. To ensure deliverability of plans there is a new test that they will have to pass to be found 'sound' at examination. This is that they have been 'Positively Prepared'. This means that, the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development.

### **3.5 Town Centres, Retail and Offices**

The NPPF is pro town centre, and the document retains the approach of previous guidance in directing town centre uses to existing centres, then edge of centre, and finally out of centre (including office). The Impact test is also retained for large out of centre retail developments. The requirement for the identification of primary shopping areas and other designations is also unchanged from previous guidance.

The document requires that local planning authorities allocate sufficient sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. If there are insufficient sites, the authority will need to look at extending town centre boundaries to ensure there are sufficient sites.

The NPPF does introduce a presumption that local planning authorities should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use

classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.

### **3.6 Green Belt, Open Space and Flooding**

Protection for the Green Belt remains intact, and there is also strong protection for other designated open spaces, including playing fields. The NPPF introduces the option for local planning authorities to protect gardens from inappropriate development. National policies on flooding remain similar to previous policy, and direct development to areas of low flood risk. The sequential and exception test remain, and more detailed guidance is provided in a separate document.

### **3.7 Heritage and Conservation**

There is quite strong protection in this area, with many policies being carried forward from previous guidance with little change, and the document encouraging local planning authorities to adopt a positive strategy to conserve the historic environment. There is still the requirement to make a distinction between designated and non designated heritage assets when assessing development proposals, to allow for balanced judgments to be made between the potential harm to heritage assets of varying levels of significance, and the benefits that a proposed scheme could deliver. The NPPF does however require Council's to identify and assess the significance of a heritage asset that could be affected by a proposal.

### **3.8 Transport**

The NPPF supports sustainable transport measures as a priority, but recognises the approaches and opportunities to deliver this will vary from area to area. Overall the transport section reflects previous guidance, in that it promotes sustainable transport ensuring the right location and mix of development to minimise travel needs; and giving priority to pedestrians and cyclists. Supporting this, developments that generate 'significant amounts of movement' will need to be supported, as before, by Transport Assessments or Statements, and Travel Plans. Of note however is that the NPPF states that development should only be refused on transport grounds where residual cumulative impacts are 'severe'. The document also encourages Council's to ensure that town centre parking charges do not undermine town centre vitality.

### **3.9 Sustainability and the Environment**

The key tenant running throughout the NPPF is support for 'sustainable development.' This is explained to be seeking net gains in social, environmental and economic factors in the local area. With regards to the environment there is the promotion of renewable and low carbon energy supplies, and the Government's zero carbon policy must be reflected in 'any local requirement for a building's sustainability' – meaning Local Plans building sustainability requirements should match current national targets.

### 3.10 Design Standards

The NPPF commits to securing high quality design through the planning process, and states that good design should be indivisible from good planning and contributes to sustainable development. The NPPF does introduce the opportunity for outstanding or innovative designs to overcome other planning objections by stating 'great weight' should be given to such designs in determining applications.

## Section 4 – Further Information

For further information, please contact the planning policy team.

## Section 5 – Financial Implications

The changes to planning legislation and national policy will require additional work from the planning team to ensure local policy is compliant. This will be met from existing budgets.

## Section 6 - Equalities implications

Not Applicable – this is a report summarising Government policy.

## Section 7 – Corporate Priorities

This report contributes to the Corporate priority of 'United and involved communities: A Council that listens and leads' by ensuring the Council keeps abreast of Government changes and reflects these in Local Plans.

Name: Kanta Hirani	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 3 April 2012		

## Section 8 - Contact Details and Background Papers

**Contact:** Matthew Paterson, Head of Planning Policy, x6082

### Background Papers:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2115939.pdf> (National Planning Policy Framework 2012)

<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted> (Localism Act 2011)

<http://www.legislation.gov.uk/uksi/2012/637/contents/made> (Neighbourhood Planning (General) Regulations 2012)