

PLANNING AND HIGHWAYS REGULATORY

COMMITTEE

Compliance of Local Plan Policy with the National Planning Policy Framework (NPPF) 29th May 2013

Report of Head of Regeneration and Planning Services

PURPOSE OF REPORT

To advise Members on the compliance of local planning policies in relation to the National Planning Policy Framework (NPPF). This includes compliance of Core Strategy policy, Lancaster District Local Plan (Saved Policies) and the emerging policies of the Development Management DPD and Land Allocations DPD.

RECOMMENDATIONS

- (1) To advise members over the compliance of local planning policy contained within the Saved Lancaster District Local Plan, the Lancaster District Core Strategy and the emerging planning policies contained with the Development Management DPD and Land Allocations DPD.**
- 1.0 Introduction**
 - 1.1 The National Planning Policy Framework (NPPF) was published in March 2012 and replaced previous planning guidance provided at a national level.
 - 1.2 Annex 1 of the NPPF relates to the implementation of the guidance contained within it and how it should be applied in relation to local planning policy. Paragraph 214 states that *'For 12 months from the day of publication [of the NPPF], decision takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework'*. Paragraph 215 sets out the position post the 12 month transition period stating *'In other cases and following this 12 month period, due weight should be given to relevant policies according to their degree of consistency with this framework [NPPF] (the closer the policies in the plan to the policies in the Framework [NPPF], the greater weight that may be given).'*
 - 1.3 It is therefore important that local planning authorities review their existing suite of local plan policies to ensure that all relevant planning policies are compliant with the approaches taken in the National Planning Policy Framework. To ensure planning decisions are taken in light with NPPF local planning authorities should only make use of NPPF compliant policies.

- 1.4 A report was discussed at the May 2012 meeting of the Planning Policy Cabinet Liaison Group over the publication of the NPPF and its potential to impact on local planning policy. Appended to that report were a series of checklists which identified that the general approaches to both documents, and the policies which they contained, were compliant with the NPPF.
- 1.5 However, following the conclusion of the 12-month transition period referred to in paragraphs 214 and 215 it has been felt that a more detailed policy review, particularly in relation to the 'saved' policies contained within the existing Lancaster District Local Plan, a further more detailed review was necessary.
- 1.6 This policy review provides only a subjective officer view on NPPF compliance. Due to the flexibility of wording within the NPPF local planning policies can be interpreted in a number of different ways and therefore, depending on an individual's interpretation, conclusions on the compliance of local plan policy may differ.

2.0 Lancaster District Local Plan (Saved Policies) – Compliance with the National Planning Policy Framework

- 2.1 The Lancaster District Local Plan was initially adopted in 2004 and reviewed in 2008, at which point a number of policies contained within it were either deleted or 'saved' for continuing use. The document was clearly prepared prior to the preparation and publication of the National Planning Policy Framework and therefore careful consideration needs to be given toward their compliance with current national guidance.
- 2.2 All local planning policy needs to be in accordance with national guidance to ensure that robust planning decisions are made and that local plan policy is not challenged. Policies which are challenged and consequently shown to be in non-compliance with national guidance would be significantly weakened.
- 2.3 Therefore, the Planning and Housing Policy Team have recently undertaken a review of all the 'saved' policies contained within the existing Lancaster District Local Plan to consider their compliance against national policy.
- 2.4 As suggested to PPCLG in 2012, the review has confirmed that the general approach and majority of 'saved' policies remain in compliance with the NPPF. However, there are a number of policies which are only in partial compliance and two policy areas which are considered to be in non-compliance. In relation to policies which are in partial compliance caution should be exercised in their use, in terms of policies which are in non-compliance these should no longer be used for making planning decisions.
- 2.5 The policies set out in table 1 are considered to be in partial compliance with the NPPF. This means that the general policy approach remains in accordance with national guidance, however there may be some elements of the 'saved' policy which have been either superseded or have been further elaborated on with the NPPF. Whilst it is recommended that these policies are still used within the decision making process, a degree of caution should be given to particular elements of the policy.

Policy Number	Policy Title
Policy H1	Housing on Brownfield Sites
Policy H7	Housing Development in Rural Settlements
Policy H8	Housing in the Open Countryside
Policy H9	Agricultural Workers / Occupancy Conditions
Policy H10	Affordable Housing Requirements
Policy H11	Rural Housing Exceptions
Policy EC11	Glasson Dock Industrial Area
Policy EC14	Luneside, Lancaster
Policy TO5	Caravan Development in the AONB
Policy TO6	Caravan Development outside the AONB
Policy E8	Groundwater Vulnerability
Policy E22	Wind Turbines
Policy E23	Telecommunications
Policy E29	Urban Green Spaces
Policy E32	Demolition of Listed Buildings
Policy E33	Alterations to Listed Buildings
Policy E36	Re-use of Buildings in Conservation Areas
Policy E37	Demolition of Buildings in Conservation Areas
Policy R11	Open Space Provision from Residential Development
Policy R21	Disability Access

Table 1: Policies which have a Partial Compliance with the National Planning Policy Framework

- 2.6 Only two policies within the Saved Lancaster District Local Plan are concluded to be fully non-compliant with the provisions of the National Planning Policy Framework. As a result these policies should no longer be used within the decision making process, these policies along with their reasons for non-compliance are set out below.

Policy H13: Energy Efficiency and Development Density

- 2.7 This policy seeks to ensure that new development is as energy efficient as possible and takes into account waste recycling facilities. The policy also seeks to set a minimum standard for the density of development.
- 2.8 The NPPF only makes limited reference to the application of energy efficiency and does not promote an approach of refusing planning permission purely on the basis of this issue. Therefore a policy approach which seeks to achieve this cannot be considered compliant with National Guidance.
- 2.9 With reference to development densities, there is no mention of such issue with the NPPF and a guide to suitable development densities would not be considered in accordance with NPPF.

Policy E24: Electricity Pylons

- 2.10 This policy seeks to control the development of new or replacement electricity pylons. There is no guidance provided within the NPPF and Policy E24 is now flawed in its approach.
- 2.11 Policy E24 seeks to determine planning applications relating to electricity pylons, however such decisions over nationally important infrastructure are not taken at a local level and will be determined by the National Infrastructure Commission. The position taken by E24 is highly challengeable and not considered to be in accordance with NPPF.

3.0 Lancaster District Core Strategy – Compliance with the National Planning Policy Framework

- 3.1 The Lancaster District Core Strategy was adopted in 2008, prior to the publication of the National Planning Policy Framework (NPPF). But, as suggested in the May 2012 PPCLG report, the majority of the Core Strategy, from the general approaches it contains through to detailed policies, remain compliant with the NPPF.
- 3.2 As discussed within a separate agenda item, it is expected that upon the adoption of the Development Management DPD, Land Allocations DPD and Morecambe AAP that the Core Strategy will be withdrawn. However, until the adoption of all three documents the Core Strategy will retain relevance and should be used within the plan-making and decision-making process.
- 3.3 It is felt that no policy approach contained within the Core Strategy can be considered to be non-compliant with the NPPF, however, as with the 'saved' policies of the Lancaster District Local Plan, there are elements of some policies which should be used with caution in terms of the compliance with the NPPF.
- 3.4 Significantly, Policy SC2 of the Core Strategy sets the framework of 'Urban Concentration'. Whilst an approach to ensuring that due consideration should be given to the re-use of previously developed brownfield sites accords with national guidance in principle this policy cannot be used to prevent sustainable development on greenfield sites. Therefore caution should be given to how this policy is applied against development proposals.
- 3.5 Similar considerations should be afforded to Policy SC3 which relates to rural communities. Again, whilst the general thrust of this policy does still accord with national guidance contained within the NPPF more flexibility is now required in terms of interpretation of the policy. Policy SC3 should not be used to prevent development in settlements outside those which are listed within the Policy, particularly where it can be demonstrated that relevant service provision can be accessed alternative forms of transport other than private car.
- 3.6 Finally, Policy SC4 relates to meeting the future housing needs of the District. As previously discussed within PPCLG these requirements need to be based on objectively assessed needs. The requirements set out in Policy SC4 are based on the Regional Spatial Strategy, which has now been revoked and can no longer be relied upon as a sound basis for policy. Therefore the policy requirements of SC4 can no longer be considered to be based on objectively assessed needs.
- 3.7 The issues set out in paragraphs 4.4 to 4.6 above will be re-addressed through the preparation of both the Development Management DPD and Land Allocations DPD. However, in the meantime caution should be given to the implementation of particular elements of these policies.

5.0 Emerging Planning Policy – Compliance with the National Planning Policy Framework

- 5.1 The policies contained within the Development Management DPD have already been prepared with recognition of the guidance which is contained within the National Planning Policy Framework. Therefore the policies contained within the DPD are considered to be NPPF compliant.
- 5.2 However, as the DPD is still at a relatively early stage of preparation, the document and the policies it contains cannot be afforded significant weight in the decision making process.
- 5.3 Paragraph 216 of the NPPF states that *‘From the day of publication [of the NPPF], decision takers may also give weight to relevant policies in emerging plans according to:*
- *The stage of preparation of the emerging plan (the more advance the preparation, the greater weight that may be given);*
 - *The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater weight that may be given); and*
 - *The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework [NPPF] (the closer the policies in the emerging plan to the policies in the Framework [NPPF], the greater weight that may be given).*
- 5.4 The Development Management DPD, as part of the ‘Draft Preferred Options’ stage, has undergone a robust round of consultation which has allowed stakeholders to comment on the policies it contains, both in terms of registering support or objection. For this reason the DPD can be afforded a degree of weight in determining future planning applications.
- 5.5 The weight applied to the Development Management DPD will increase further upon its submission to the Secretary of State and, upon the formal adoptions of the DPD by the Council for planning purposes it will gain full weight as a material planning consideration.
- 5.6 Between now and the formal adoption of the DPD, the emerging policies contained within the document can be used by the Development Management Team and Planning Committee in terms of determining planning applications. However, careful consideration must be exercised in relation to the weight given to the policies in line with paragraph 216 of the NPPF.
- 5.7 The Planning and Housing Policy Team have prepared an overview of the weight which currently can be applied to the emerging policies contained within the Development Management DPD. Policies which have no major objections raised during the ‘Draft Preferred Options’ stage can be considered to have greater weight than those policies which have received a significant number of objections.

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

There are no significant impacts. The correct interpretation of compliance between national and local planning policy will ensure that the correct planning decisions are made and sustainable development and growth is achieved.

LEGAL IMPLICATIONS

There are no significant legal implications. The conclusions of this report set out an officer opinion over the compliance of local planning policy against the NPPF. Such an assessment would always be a subjective one and via interpretation could be open to challenge via the planning application process. It will be for the Council, via the determination of a planning application, to evaluate on a case-by-case basis whether such interpretations remain correct.

FINANCIAL IMPLICATIONS

There are no significant financial implications. Should policy be challenged through planning appeal there may be associated costs in defending such a position.

OTHER RESOURCE IMPLICATIONS**Human Resources:**

There are no implications for Human Resources

Information Services:

There are no implications for Information Services.

Property:

There are no implications for Property Services.

Open Spaces:

There are no implications for Open Spaces.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

N/A

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