

Response ID ANON-2CN7-MF96-V

Submitted to **National Planning Policy Framework and National Model Design Code: Consultation proposals**

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Introduction

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A bit about you

What is your name?

Name:

Dr Matt Thomson MRTPI AoU

What is your email address?

Email:

mthomson@chilternsaonb.org

What is your organisation?

Organisation:

Chilterns Conservation Board

What type of organisation are you representing?

Other (please specify)

If you answered "other" please provide further details:

AONB Conservation Board

Proposed changes to Chapter 2: Achieving sustainable development

1 Do you agree with the changes proposed in Chapter 2?

No

Please provide comments:

Broadly, most of the changes proposed are welcomed, but do not go far enough in clarifying the government's policy towards sustainable development. We strongly object to the wording of new clause (a) in para 11 (see below).

We strongly support the inclusion of the reference in para 7 to the UN sustainable development goals, and look forward to advice in supporting policy, including the online PPG, to advise on how those goals should be met through regional and local planning policy and decisions, including on major infrastructure.

The tweaks to para 8 are welcome as far as they go. However, the key objective of this section (that planning should deliver all of the three pillars of sustainable development "in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives)") is not supported by the rest of the policies of the NPPF, nor by a lot of planning decisions made in its name. In particular, the laudable and necessary goals of meeting housing need and providing infrastructure are frequently privileged over other, equally important, objectives, resulting in harm (not just to environmental objectives, but also to social and economic ones, such as retaining affordable commercial premises) that could have been avoided simply by considering alternatives.

Planning works best when the difficult issues are resolved at the most strategic level where alternatives are abundant, rather than on a case-by-case basis. Too often we see poor quality speculative development proposals that would cause actual harm to interests that the NPPF seeks to protect justified on the basis simply of a generic need that could be met in different places and/or by different forms of development. The "exceptional circumstances" (or similar test) that are required to be demonstrated by the policies of the NPPF in order to avoid irreversible harm appear to be supported far more frequently than any normal understanding of the word "exceptional".

The test, when it comes to development affecting "areas or assets of particular importance" such as those included in footnote 7 (old footnote 6) should explicitly refer to development that is explicitly needed to support communities in or the character of the relevant area, is designed to be consistent with the purposes of designating that area, *and* cannot reasonably be met elsewhere (including in a different district).

We strongly object to the wording of new clause (a) of para 11 including the phrase "meet the development needs of their area", without qualification. The

requirement of para 11(b) and (d) that development needs should not be met in full where other NPPF policies provide "a strong reason for restricting" development is already overlooked often enough. The direction that para 11(b) and (d) are intended to give to avoid development having an unnecessary impact on protected assets and areas should be strengthened in response to the Building Better, Building Beautiful report (and indeed the Landscapes Review) rather than watered down with the current wording of clause (a). At the very least we recommend the deletion of the offending phrase ("meet the development needs of their area") from this clause as being unnecessary and conflicting with clause (b).

Proposed changes to Chapter 3: Plan-making

2 Do you agree with the changes proposed in Chapter 3?

No

Please provide comments:

The changes proposed to the plan-making chapter are broadly acceptable.

In line with our response to question 1, we consider that key opportunities has been missed in this chapter to underline the approach that councils need to take to planning to meet identified development needs where footnote 7 (former footnote 6) assets apply. In particular:

Para 23 expects plans to bring forward sufficient land "to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development". This is incorrect - sufficient land should be identified to meet the local plan's development requirements, which (should, if para 11(b) has been followed correctly) account for the presence of footnote 7 assets. It would help if the reference to the "presumption" included similar text to that included in para 11(b), for example by adding to the end of that sentence "while demonstrating how assets or areas of importance such as those listed in footnote 7 will be protected and enhanced".

The same consideration needs to be applied to the critical test of soundness in paragraph 35. Here, under "positively prepared" the requirement is again for the plan to meet objectively assessed needs, rather than the local plan's development requirement, which should have been influenced by the presence of footnote 7 assets.

Proposed changes to Chapter 4: Decision making

3 Do you agree with the changes proposed in Chapter 4?

No

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

The Chilterns Conservation Board strongly objects to the changes to para 53.

It is already incredibly difficult to make Article 4 directions. They are expensive, complicated and resource intensive to produce, and few local authorities have the resources to do them. They are, however, vital tools that communities can use to prevent harmful impacts (social and economic as well as environmental) to a local area not foreseen by central government when a permitted development right is imposed on the community from Westminster. It is worth noting that previous Ministers have rebutted objections to the central imposition of permitted development rights with by asserting that communities can use Article 4 directions. This proposal overturns even that.

The proposed draconian restriction on Article 4 directions is deeply anti-localist and will be harmful to local democracy and the social and economic well-being of communities.

The proposed change is clearly couched in terms only of environmental impacts, which is understandable given the current proposed changes to the NPPF being largely influenced by the outcome of the Building Better, Building Beautiful report. However, many of the most harmful impacts of centrally-imposed permitted development rights for conversion of various premises to residential use is on social and economic objectives, in particular the management of the availability of affordable premises for small business to use, and the proactive management of vital and viable high streets and town and village centres.

If forced to choose between the options presented, we would choose "where they relate to change of use to residential, be limited to situations where this is necessary in order to protect an interest of national significance" as the lesser of two evils. However, this needs to

- make specific reference to footnote 7 assets as one example of such a national interest;
- explicitly recognise the importance of protecting the setting of such assets; and
- refer to the protection and enhancement of local economies as another element that is "an interest of national significance", including managing the availability of commercial premises and the vitality and viability of town and village centres.

The criterion concerning application "to the smallest area possible" is meaningless and should be changed to "to the smallest area appropriate to addressing the potential for harm" or similar. It may be worth noting that a single Article 4 direction covering a significant area (such as the rural part of a district council area, or an AONB) would be more efficient to produce, even if it was aimed at protecting only one type of interest (e.g. village centres).

It is also worth noting that Article 4 directions do not in themselves prevent development, but merely re-instate the requirement to apply for planning permission. They are a safety net, not a blanket ban.

The Chilterns Conservation Board has previously responded to consultations relating to permitted development rights being imposed by central government on local communities contrary to the principles of localism and the strategic and local plan-making process enabling communities to manage development

sustainably in their areas. Permitted development rights should be restricted to those developments where the impacts are insignificant, including minor alterations and changes of use between similar uses. Development rights that enable the creation of new homes from other types of use should be a matter for communities to decide on through local and neighbourhood development orders, perhaps supported by nationally defined model development orders that can be fast-tracked through the system.

We also draw attention to our response to question 15 in which we note that the use of design guidance and codes as part of decision-making is not specifically referred to in this chapter.

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

4 Do you agree with the changes proposed in Chapter 5?

Yes

Please provide comments:

CCB has no objection to the changes proposed here, and in particular supports the removal of "or innovative" from para 80(e). As noted in the consultation documentation, innovation may already be considered to be a part of what makes a building outstanding, but the "or" encourages innovative designs that are not contextually appropriate, which can be problematic in a protected landscape.

We also note that the consultation documentation appears to suggest that this chapter may be re-titled as "Delivering a wide choice of high quality homes", but this is not reflected in the tracked-changes NPPF. Delivering choice and quality of homes as well as mere numbers is a key recommendation of both the Building Better, Building Beautiful report and the Letwin review of housing delivery.

Proposed changes to Chapter 12: Achieving well-designed places

8 Do you agree with the changes proposed in Chapter 12?

No

Please provide comments:

The CCB broadly welcomes the enhanced approach to promoting "beauty" in new development, although we have concerns about how "beauty" may be subjectively defined in some circumstances. Please also note our objection to the changes to paras 130 and 133.

More attention may need to be paid to defining what the NPPF means by beauty to avoid the term either being abused or leading to endless debate in local plan or appeal examinations and court proceedings.

In particular, the NPPF needs explicitly to recognise that "beauty" is not just about the aesthetic appearance of a building or place (or even other aspects of its physical design), but also its fitness for purpose, whether it meets a need, and whether it is in the right place. The overall emphasis of this section is on buildings and places meeting a design "bar", and the concern is that proposals that are defined as "beautiful" will be expected to be approved, even if they are the wrong development or in the wrong place.

There are two important aspects of policy that we consider are implicit in the government's approach to "beauty" and particularly the application of design guides/codes, but which are missing from this chapter. These should be reflected in or around para 128.

First, the NPPF must be clear that it is not intended that if a development proposal meets the criteria of a design code or guide applicable in an area, but is not on a site specifically allocated or zoned for development, or which meets a criteria-based policy in a local plan, it should be approved. Meeting mere design criteria is not a reason to set aside other policies designed to achieve sustainable development. Our view is that, particularly in AONBs and other article 2(3) land, design codes must only be prepared for specific sites where the principle of development has been agreed in advance through the development plan.

Second, it is likely that attempts to produce design codes for areas, such as AONBs, where the character of development is particularly important, may result in very restrictive or (small-c) conservative criteria, and even then, in some cases, local circumstances may dictate that a proposal that meets a design code is not appropriate in design terms. The element of negotiation inherent in a discretionary planning system can often work in favour of a proposal that would be ruled out by a rigid rules-based approach.

Other comments:

Para 130: Street trees. While CCB strongly agrees with the principle of including more trees and vegetation in general in new developments, we consider that the requirement for street trees may result in unintended consequences (for example a reduction in development densities, leading to greater land-take than necessary, or a reduction in the size of private gardens to compensate, to say nothing of the expense of maintaining them, which will inevitably fall on highways authorities and parish councils). Street trees are not always part of the character of an area, including in village centres, and can interfere with other objectives with regard to safety, accessibility, etc. The wording of the exception criterion in footnote 49 is almost laughably draconian - "clear, justifiable and compelling" - and stronger than, for example, the protection of National Parks and AONBs, where the exceptional circumstances are merely justified by being in the public interest.

Para 133: We strongly welcome the re-emphasis of the justification for refusing proposals such that development must now be "well designed" rather than not being "poor design". This should help councils to reject the merely mediocre designs that sap the life out of the vitality of communities. We note, however, that while local planning authorities remain under the cosh of the 5-year supply and housing delivery tests, they may not feel empowered to reject proposals on design

grounds for fear of missing development targets. This loophole urgently needs addressing if the nation is to actually achieve beautiful and sustainable development, rather than just the delivery of housing numbers.

We object to clause (b) of para 133 including "outstanding or innovative designs" as part of the criterion. This should be amended to simply "outstanding designs" to be consistent with the wording of amended para 80(e) and for the same reasons.

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

11 Do you agree with the changes proposed in Chapter 15?

No

Please provide comments:

The CCB supports the principles behind the amendment to para 172 (new paras 175 and 176) as set out in the consultation documentation, i.e. that the setting of protected landscapes should be recognised in policy, and that development management and plan-making considerations should be separated. The changes do improve the clarity of the policy, but we have some concerns.

First, this change is justified in the consultation documentation as being in response to the Glover review. As such it appears to be unique in this consultation, and is made in advance of a comprehensive response to that review. While the change itself is welcome in principle, we consider that further changes to the NPPF will be necessary in response to the Glover review, and look forward to the opportunity of engaging with MHCLG officials on that.

We consider that the clarity of the NPPF would be enhanced by the insertion of a section heading before para 175, which could be either "National landscapes" (in line with the Glover review's terminology) or "Protected landscapes", preferably the former. With this in mind, it might be worth defining "National Landscapes" (to include National Parks, the Broads, AONBs and Heritage Coasts) in the NPPF glossary, and then only needing to use the term "National Landscape" in this part of the text and elsewhere, rather than always having to list them in full. The broad effect of all of the policies in paras 175 to 177 is actually the same for all of these landscape types (including Heritage Coasts, most of which are within other designations anyway), and the NPPF would be far clearer (and a bit shorter) for consolidating them into one short suite of policies.

New para 175 appears to give greater guidance to development in the setting of national landscapes than within the landscapes themselves. We recommend the following alternative wording, which also draws attention to the role of development plans in this regard:

"Local and neighbourhood plans should ensure that the scale and extent of development proposed within National Landscapes is limited to that necessary to meet the needs of communities inside the area and appropriate to the location, and is sensitively located and designed to avoid any adverse impacts. The same considerations should be applied in their settings, but developments here should only be restricted in scale or location where they would otherwise have a demonstrable harmful impact on the designated area."

Para 176 continues to use the problematic "major development" terminology, which is confusing given the glossary definition, and adds unnecessary complexity to the NPPF. This could be avoided by reframing para 176 as follows:

"When considering applications for development within a National Landscape, planning permission should be refused for proposals that, taking into account their nature, scale and setting, could have a significant adverse impact on the purposes for which the area has been designated or defined. Such proposals should only be approved in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of: ... (etc)".

We believe that the criteria attached to para 176 should be revised to favour more strongly the consideration of alternatives that do not cause harm to the designated areas.

It continues to be mildly problematic that national landscapes are covered within the "Natural environment" section of the NPPF, which emphasises their role in protecting biodiversity and geological formations, but plays down their role in protecting cultural heritage (although that is referred to in para 172/new para 175), despite human influences on the landscapes often being a significant part of what defines their "natural beauty" (as recognised in the criteria for designation). More could be done to draw out the cultural heritage element in this section (or in the online PPG) and/or by greater reference to national landscapes in the subsequent chapter on the historic environment.

National Model Design Code

15 We would be grateful for your views on the National Model Design Code, in terms of a) the content of the guidance b) the application and use of the guidance c) the approach to community engagement

Please provide comments:

There is a lot in the NMDC to absorb and understand, and the focus of the advice is on what should be covered by a Design Code and how to go about preparing one. Our expectation is that, because design coding is very much new to planning practice in England, especially on a strategic scale, the merits of the guidance will not fully be understood until the process has been engaged with.

What is not clear at the moment is how Design Codes will be applied in practice, especially ahead of the full implementation of proposals in the Planning White Paper.

The direction of travel indicated in the Planning White Paper seemed to be that, in "Growth" and "Renewal" areas, Design Codes would be expected to replace individual planning applications and approvals: a development proposal would automatically have consent if it conformed to the Code, and planning applications would only be required if the developer wishes to depart from the Code. In "Protected" areas, an application for planning permission would always be required, unless a site or area was identified for development through a local plan and a Code applied to that site.

The current situation is in effect a hybrid, and the proposed changes to the NPPF, do not definitively specify how Design Codes should be taken into account. In particular Codes are not mentioned in NPPF chapter 4 on "Decision-making".

The only guidance in the NPPF is to be found in Chapter 12, which includes two statements that are of particular concern to the CCB. Para 128 states that the National Design Guide and National Model Design Code "should be used to guide decisions on applications in the absence of locally-produced guides or codes". Para 133(a) implies that "significant weight" should be applied in favour of development that "reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design guides and codes".

In the absence of any other guidance on how to apply Design Codes in the decision-making process, this suggests that, where local design guidance or codes have not been prepared (which will currently apply almost everywhere), a development proposal that accords with the national Guide or Code should be favourably considered, and no guidance is given here as to how that consideration should be balanced with either the development plan, or (potentially) other policies of the NPPF, including those that are intended to restrict development in areas or assets of particular importance (i.e. footnote 7 assets).

As noted in our response to question 8, the NPPF must be clear that it is not intended that a development proposal should be approved just because it meets the criteria of a design code or guide applicable in an area, but is not on a site specifically allocated or zoned for development, or which meets a criteria-based policy in a local plan. Meeting mere design criteria is not a reason to set aside other policies designed to achieve sustainable development. Our view is that, particularly in AONBs and other article 2(3) land, design codes must only be prepared for specific sites where the principle of development has been agreed in advance through the development plan. In particular, the NPPF must be clear that the national Guide and Codes do not apply in article 2(3) land, even where local Guides and Codes have not been prepared.

We also reiterate the point that a negotiated or discretionary approach to the design of development in "Protected" areas can often result in solutions that allow for development to happen in such places which could never be foreseen through even a very sophisticated Guide or Code, and that discretion must be retained (not just in protected areas, but elsewhere too).

With the above in mind, we consider that it is essential that NPPF chapter 4 ("Decision-making") is modified to account for the application of Design Guides and Codes (including the National Guide/Code) in determining planning applications, and clarifying the necessary relationships between Guides/Codes, sites allocated or otherwise considered suitable for development, and article 2(3) or footnote 7 land.

We also consider that there is scope for legislation relating to permitted development rights to be amended to ensure that conforming with appropriately prepared Design Guides or Codes should be a prerequisite for PD rights to apply.

Public Sector Equality Duty

16 We would be grateful for your comments on any potential impacts under the Public Sector Equality Duty.

Please provide comments: