

NPPF & NMDC Consultation

Westminster City Council's final response

March 2021

Thank you for the opportunity to comment on the proposed revisions to the National Planning Policy Framework and the new National Model Design Code (NMDC). Westminster City Council are broadly supportive of both of these; however, we have some suggestions for areas where both could be improved, which are explained in our full response below. There are also a number of areas of confusion, particularly around the NMDC and we have asked government to clarify a number of aspects within our response.

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

While Westminster City Council supports the principle of 'beauty', the term itself is very subjective and provide huge scope for ambiguity and we do not consider the insertion of the word into national policy helps with clarity. [Paragraph 8](#) would be improved by instead referring to high quality design. Alternatively, a definition of beauty or how to assess it should be included.

The change to the presumption in favour of sustainable development in [Paragraph 11](#) is generally supported, however we have some slight concerns that the reference to making effective use of land could lead to conflicts with regards to height vs. conservation and other issues, making it harder for local planning authorities to manage the quality of development through the local plans. This could for example lead to developers increasingly trying to subvert the term 'make effective use of land' to justify height, particularly alongside arguments of high sustainability credentials of a proposal. This risk could be avoided in part a of paragraph 11 is clear that issues must be balanced.

We also question why the effective use of land should only apply to urban areas – surely all land should be used effectively regardless of location. The wording which appears in brackets in part a of paragraph 11 could imply that effective use of land only applies to mitigating climate change – it is unlikely this is the intention and we suggest the clause is re-phrased to avoid this confusion.

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

Yes, in principle. However, the implications of the wording changes to [Paragraph 20](#) which move the requirement for strategic policies to set out an overall strategy for development, to a strategy for *places* could be a significant change for local plans and move focus away from design quality of individual developments. It may be clearer to say 'design quality of places *and* development...'

We have some concerns regarding the insertion of reference to 'other statements' in the tests of soundness in [Paragraph 35](#). The reference is fairly vague and could create some uncertainty about what plans will have to comply with if new statements are released part-way through the plan preparation or examination process. It is noted that Ministerial Statements are not subject to consultation, meaning local planning authorities could be tied to adhere with top-down statements of policy they have had no opportunity to comment on.

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

The insertion of more detail in [Paragraph 53](#) on where and how Article 4 directions can be used is supported in principle to add clarity and avoid abortive work by local authorities preparing directions which are rejected by the Secretary of State.

We question why bullet points one and two are presented as an either/or option for inclusion in the NPPF. The first bullet point relating to Article 4s being used to avoid wholly unacceptable adverse impacts is entirely valid alongside arguments of protecting an interest of national significance. Our preference would be for both options to be included in the revised NPPF, however if only one can be included, we support the first option more as a wholly unacceptable impact could be the need to protect national significance. We would not support this paragraph *only* referring to protecting national significance - this will not always be the core reason an Article 4 is required to manage specific issues faced by a local area.

Nonetheless, we support *some* reference in this paragraph to protecting areas of national significance through Article 4 Directions being included as this is particularly relevant at this moment in time when Westminster City Council are preparing to make an Article 4 in response to recently proposed changes to the GPDO based on evidence of the national significance of Westminster's Central Activities Zone. In relation to this, it is extremely important that suitable transition arrangements are made to enable the on-going protection of office floorspace in the Westminster portion of London's CAZ when the new GPDO comes into effect to avoid the conversion of this floorspace to residential during the required year-long consultation period on a new Article 4 Direction. Without an ability to roll over the existing B1 to C3 Article 4 Direction such conversions will likely have an impact of national significance.

The phrasing of the third bullet point in paragraph 53 implies that residential uses do not impact local amenity of well-being of an area, which is not necessarily true.

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

Yes. We support the clarification provided by insertions of text in [Paragraph 65](#) and [Paragraph 70](#).

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

Yes. We welcome these changes, particularly reference to cyclists as well as pedestrians. However, we have some suggestion for improvements.

Within [Paragraph 92b](#) the word 'attractive' is subjective and it should be made clear that this means well-designed. A cycle route could be clear and look attractive but be poorly designed for users e.g. narrow, interrupted and with cycle parking located in unsafe, dark areas. Requiring routes to be well designed would lead to overall better planning outcomes and contribute to encouraging take up of this form of transport.

The changes to [Paragraph 97](#) do not make grammatical sense. We suggest re-phrasing as follows:

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 contribute to addressing climate change.

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

We support the amendments to [Paragraph 105](#).

We support the amendments to [Paragraph 109](#), however new clause (c) should be caveated to say 'where applicable'. The NMDC contains guidance on the design of streets, parking areas etc. which are not applicable everywhere (e.g. in Westminster where guidance on parking layouts is largely irrelevant owing to a car-free policy).

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

Yes.

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

As mentioned earlier in this consultation response, the use of the term 'beautiful' in [Paragraph 25](#) is problematic as it is subjective and we do not support the principle of its inclusion in national policy. However, we support efforts to hold developers to account to incorporate design features and materials that deliver the high quality developments they are granted permission for. This could help to avoid situations where developers make amendments to their schemes post-permission to downgrade the quality of materials.

We strongly support the changes proposed to [Paragraph 126](#) as it will encourage neighbourhood forums to be more pro-active in design for their local area through their own plans and foster better engagement between forums and the local planning authority. It helps to re-frame the purpose of neighbourhood forums as a more collaborative body rather siloed working on policy which can sometimes cause conflicts. However, resident groups will require significant support in order to develop their own design codes as they generally do not have the professional expertise or resources to do so without assistance. This has been an issue with the development of Neighbourhood Plans which are often led by a small number of volunteers within a resident group, taking up significant time on a voluntary basis and relying heavily on the local authority resources for support and advice. We therefore ask government to set out plans to provide funding to facilitate this extra responsibility to ensure there is appetite to take it up.

The requirements for local planning authorities to produce design codes in [Paragraph 127](#) raises a number of questions. It is unclear how much time local authorities would have to produce a local design code before the national one becomes default – this should be clarified. It is also not clear how design codes are to be used by local authorities – is it the intention that non-compliance with the code would mean that a proposal is unacceptable? If so, we would not support this approach as it is unlikely that developments will be able to comply with all of the requirements of a local code as issues are far too wide-ranging and a code-system would therefore be incredibly rigid. This should be clarified in national policy. The council would support the use of design codes similar to how SPDs are used i.e. as a material consideration to guide good design, which rely on professional judgement and balancing of issues, but without every criterion having to be met. It is also not clear to what type of development a code should apply to e.g. is it only major development, or also small scale development such as extensions and alterations? This should be clarified.

We support the sentence in paragraph 127 *"...Their [codes or guides] level of detail and degree of prescription should be tailored to the circumstances and scale of change in each place and should allow a suitable degree of variety where this would be justified."* This provides helpful flexibility for

the development of codes. In a place like Westminster, with its dense urban character and very high heritage context means design solutions will often be bespoke to individual sites and development proposals rather than area-wide. Our reading of this is that a design code could be high level where appropriate.

We support the insertion of new Paragraph 128 and expect this to lead to more engagement from neighbourhood forums on the development of codes/SPDs. However, it is unclear if the whole authority area is expected to be covered by a local design codes in a patchwork if a whole-city approach is not taken. Preparing local design codes to sufficiently cover the city would be a costly and resource intensive activity given the level of complexity and detail that will be required for them to be robust and of value. Local planning authorities should be sufficiently resourced to undertake this task. We estimate it would result in around at least £75k cost to the council initially to develop design codes for parts (not all) of Westminster.

The emphasis on trees specifically in Paragraph 130 is unclear. Whilst we support the principle of tree-lined streets wherever possible, trees may not always be the right type of green infrastructure for a densely built urban city (e.g. Soho has a tight knit urban grain with narrow streets where trees would be inappropriate) and this paragraph should be broadened out to acknowledge this. Other types of green infrastructure such as green walls may be more appropriate in some circumstances. Nonetheless the caveat provided in footnote 49 is helpful.

We strongly support new Paragraph 133, particularly the requirement to give significant weight to designs which promote high levels of sustainability. However, we have some suggestions for improvements to the paragraph. We question why visual tools are only referenced in relation to supplementary planning documents, which can be usefully used for a range of planning documents and note that it could be read that visual tools are given more weight than written content.

Clause (a) is repetitive of the paragraph preceding it and therefore does not add value.

We support clause (b) with caution. It reads as somewhat contradictory in that it appears to disregard the design code if a development is going above and beyond the code (i.e. by being outstanding) but then reins the design in by requiring it to fit in with overall form and layout of its surroundings, which could stifle innovation. We suggest that the second half of clause (b) is removed entirely (“so long as they fit in with the overall form and layout of their surroundings.”) to resolve this issue. If it is to remain, we consider ‘form and layout’ to be too narrow categories for consideration. ‘Character’ (which we note has been struck through in old paragraph 30) is a much broader phrase than ‘form and layout’ – the use of the latter phrase implies that only these issues are relevant, whereas other issues such as heritage and conservation considerations are also important when assessing an outstanding or innovative design.

In any case, what constitutes ‘outstanding’ could be subjective and further guidance would be helpful.

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

No comment.

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

Yes. We welcome the changes in particular to Paragraphs 160 and 161 – the new wording in clause c is helpful, as is the insertion of a new Annex 3. The new wording in Paragraph 166 provides helpful references to resilience and ties into requirements for high quality design of developments from the outset.

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

Yes.

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

It is unclear what is meant by a 'historic statue, plaque or memorial' – whether this refers to the structure itself being historic, or the person/event it represents being historic, or both. This should be clarified either within paragraph 197 or in the glossary, and supporting guidance provided on implementation including criteria for identification. As drafted, it could imply that all statues, plaques or memorials are historic even if they were recently erected.

We agree with the changes, however, we have some concerns regarding the implications for applying the new policy in Paragraph 197 in practice. To be able to effectively enforce it, it would require local planning authorities to maintain an up to date list of plaques on unlisted buildings, which they are not currently required to do. This will have significant resource implications, particularly in Westminster given the volume of such assets (we have a designated monument saturation zone because of the high number of statues and memorials in the south of the borough). If this is the expectation/requirement then funding should be made available to facilitate this.

It is also noted that it is not necessarily development to remove an unlisted plaque from an unlisted building – so the local planning authority would not be able to intervene in this activity in every instance.

The NPPF should clarify Historic England's role in this issue i.e. it cannot be up to the local authority to explain the historic and social context of every statue, plaque and memorial.

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

No comment

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

We suggest the definition of the term 'Green infrastructure' could be improved. The sentence could end at the word 'benefits' – it is not necessary to specify the benefits should only apply to nature, climate, local and wider communities and prosperity as this makes it more exclusive than it needs to

be. Alternatively, to be clear that these are not the only benefits that green infrastructure can bring, it could say:

'...benefits including for nature, climate and local and wider communities and prosperity.'

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

Overall, we welcome the NMDC as a comprehensive guide to good urban design, which will assist LPAs in ensuring new development is delivered to more consistent and higher standards of design. We are satisfied that the majority of the content of the guidance represents good practice and we are therefore supportive of the general approach taken. However, in answer to questions (a) and (b) we wish to highlight the following areas where we believe the NMDC could be enhanced to improve the clarity of its content and its usability as a basis for developing what is likely to be a widely varying variety of design codes and guidance across different LPA areas that have vastly different and unique characteristics and challenges.

Paragraph 17 makes clear that the NMDC and the methodologies within it are intended to be applied flexibly according to local circumstances as not all characteristics and design parameters may be relevant. We support the recognition that not all areas have the same characteristics and welcome the general presumption that the NMDC is to be interpreted flexibly when developing design codes and guidance.

Notwithstanding the welcome commentary in paragraph 17, there are contradictions in the wording of paragraphs 4 and 5, which continue throughout the NMDC, that lead to confusion as to whether the design coding process is applicable to design codes only, or whether this approach is being promoted for the development of design codes and other forms of design guidance covering wider areas. These highlighted paragraphs and others would benefit from review to ensure clarity over the scope of the guidance in the NMDC and ensure consistency of its use and application. This confusion might be resolved by including a definition for 'design guidance' in the Glossary so that it is clear how design codes (which are defined) and design guidance are considered to differ.

As an example of the continuing confusion later in the document over the applicability of the design coding approach in design guidance, paragraph 27 sets out minimum topic requirements for design codes, but these topics include issues such as access and numbers of homes to be delivered, which would be incapable of being accurately or meaningfully provided as part of a design code or guidance that covers a whole local authority area, as suggested in paragraph 23.

The scope of topics for inclusion in design codes in Table 2 (page 7) should be reviewed and consideration given to omission of some topics from inclusion, particularly where design codes or guidance cover large areas of existing townscape or whole local authority areas. This is because many of these topics will be covered in sufficient detail in these circumstances in other supplementary planning documents (SPDs) and their inclusion in design codes risk significant duplication. Consideration could be given to splitting Table 2 in to two versions, one for design codes or guidance covering large areas of existing townscape and one for more targeted or site-specific design codes.

Paragraph 5 says that a design code is a set of simple, concise, illustrated design requirements that are visual and numerical wherever possible to provide specific, detailed parameters for the physical development of a site or area. Notwithstanding the further advice provided from paragraph 34

onwards, we are concerned though that the approach will in practice will be too simple to be successfully applied in areas of rich and varied historic urban townscape, such as Westminster. If design codes are produced on an area wide or city-wide basis (to ensure city wide coverage), it will be extremely difficult to accurately reflect the different character areas that exist, which often vary appreciably on a street by street basis in parts of Westminster. As per our answer to Question 8, we would welcome further clarity on whether it is expected that LPAs will achieve full coverage of their areas with design codes or guidance or whether the intention is for only key sites and/ or areas to be covered with other areas being covered by the principles set out within the NMDC.

Figures 9 and 10 provide an example coding plan/ area types, but we are concerned that this reinforces the difficulties that a coding approach will encounter when applied to a varied and established townscape. Taking local centres as an example, in Figure 9 these are included together as a single area type; however, in practice in Westminster this is likely to be too high level an approach, as all of our local centres couldn't be grouped together as they typically exhibit very different characteristics and would therefore need to be individually coded or a series of sub-codes developed.

Another section of the NMDC which raises concern regarding how the coding approach would be applied in Westminster is the guidance on identifying identity on page 22. The approach set out here is relatively simplistic. Whilst we can appreciate how this would be effective in a design code applicable to a specific site or covering an area of less rich and diverse heritage, we are concerned that this section again highlights the difficulty that will be faced in Westminster where character is so varied. There is a risk that developing design codes that respond to the many, varied townscapes of a place like Westminster will just add another layer of policy – creating more, not less complexity to the planning system.

Whilst the importance of use to the overall sense of place and as a driver for the detailed design of buildings is appreciated, we are concerned that the guidance on uses in paragraph 55 could potentially leads LPAs to include policy in what will be an SPD. It is also often difficult to know the precise impacts of particular land uses on existing areas in advance of detailed assessment at planning application stage We would therefore welcome additional text here to make clear that care should be taken to ensure the guidance included in design codes is consistent with the local development plan and that lesser detail on land uses may be appropriate within design codes or guidance applicable to areas of existing townscape.

c) the approach to community engagement

We strongly welcome the support the NMDC offers for development of design policies and guidance at a local level with input from local communities (paragraph 19) and welcome the ability for neighbourhood planning groups to consider producing their own guides as part of the neighbourhood planning process so that their role becomes more proactive in enabling development in their areas (paragraph 20). Support is likely to be required from Government for neighbourhood planning groups if there is to be significant take up of this new opportunity for them, given that the production of design guides and codes is resource intensive.

Paragraph 14 outlines the need to involve communities at each stage of the process of developing design codes. The commitment to community involvement is welcomed, but reference to the need to *'...gain measurable community support that is appropriate to the scale and location of the development'* lacks clarity and will lead to inconsistency in how community support is demonstrated (for both local authority and resident group produced codes). There also seems to be some inconsistency with the advice provided in paragraph 20, which suggests that design codes and guides

should normally be prepared as SPDs, which would entail a prescribed consultation and adoption process. We would therefore welcome further clarity around the meaning of 'measurable community support' (either through inclusion of a definition in the glossary or through additional explanation in the Guidance Notes) and whether this differs from the consultation processes involved in the adoption of an SPD.

Whilst welcomed as a principle, the high level of community involvement and consultation required to produce a design code or guidance in accordance with the NMDC also raises significant concerns in terms of the resources required. It is unclear from the NMDC whether Government intends to support LPAs in the preparation of some or all of their design codes and guidance and further clarity on the extent to which extra resources will be made available to LPAs is sought. The absence of any additional resources would significantly impact on the extent of design code coverage that LPAs will be capable of delivering.

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

No comments.