

AGENDA

PLANNING AND TRANSPORTATION POLICY WORKING GROUP MEETING

Date: Monday, 20 February 2023

Time: 7.00 pm

Venue: Virtual Meeting - Via Microsoft Teams*

Membership:

Councillors Mike Baldock (Chair), Monique Bonney, Alastair Gould (Vice-Chair), Mike Henderson, James Hunt, Carole Jackson, Elliott Jayes, Peter Marchington, Richard Palmer, Eddie Thomas and Ghlin Whelan.

Quorum = 3

Pages

Information about this meeting

*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website by 17 February 2023.

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 - (d) Anyone unable to use the stairs should make themselves known during this agenda item.
2. Apologies for Absence
 3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPIs) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this and leave the room while that item is considered.

Members who are in any doubt about interests, bias or predetermination should contact the monitoring officer for advice prior to the meeting.

4. Minutes

To approve the [Minutes](#) of the meeting held on 6 October 2022 (Minute Nos. 364 – 367) as a correct record.

Part A Reports for Recommendation to the Policy & Resources Committee

- | | | |
|----|---|---------|
| 5. | E-Petition: Replace trees felled by developers | 5 - 10 |
| 6. | Levelling Up and Regeneration Bill: Reforms to National Planning Policy Framework (NPPF Consultation) | 11 - 32 |

Issued on Friday, 10 February 2023

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out

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**Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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Policy & Resources Committee Meeting	
Meeting Date	20 February 2023
Report Title	Petition: Replace trees felled by developers
EMT Lead	Emma Wiggins, Director of Regeneration & Neighbourhoods
Head of Service	Flo Churchill, Interim Head of Planning
Lead Officer	Stuart Watson, Principal Planning Officer
Classification	Open
Recommendations	1. Members are asked to note the petition, and that a Tree Strategy should be prepared.

1 Purpose of Report and Executive Summary

- 1.1 The purpose of this report is to bring before the Working Group an e-petition to: *“require the council to ensure that conditions are imposed by Swale Borough Council so that if members are minded to grant consent for planning applications that an equal number of mature trees as those that have to be felled/uprooted for each building development and/or an equal length of hedging as that which has to be removed for each building development are replanted within the footprint of the development i.e. No offsite biodiversity net gain. Ensure that the number of mature trees/length of hedging to be removed is confirmed by the council officers before any planning permissions are granted and that this condition, to replant the same or greater amount of trees/hedges is monitored by Swale Borough Council on an agreed timetable with each developer/builder and published for public scrutiny on the council website. Also to ensure the Planning Dept do not discharge the landscape conditions until the full number of replacement trees/hedging are planted and established.”*
- 1.2 The ePetition ran from 11/03/2022 to 22/04/2022 and has now finished. 279 people signed the ePetition.
- 1.3 Although the blanket approach proposed by the ePetition is understandable, it is not achievable in practice where trees are not covered by Tree Preservation Orders. An alternative approach is suggested whereby the Council will prepare and consult on a Tree Strategy.
- 1.4 A Tree Strategy will enable greater flexibility when considering planning proposals and would provide the opportunity for the Council to align with the Government objectives of having trees at the forefront of plans to achieve net zero emissions by 2050. The scope of the strategy would address the loss of trees and other planting and how all new developments should provide for additional or new trees, groups of trees and hedgerows. It would include detail on site layout and design details, species selection and implementation and management requirements.

2 Background

2.1 According to the petitioners, this ePetition has arisen due to the proposed loss of at least 1,400 trees on the Lady Dane development in Faversham. There is no clear idea how many of the remaining trees lining Love Lane would be felled. This established line of trees (circa 30 years old) is a windbreak and rural historic feature of the eastern boundary between the built up area of Faversham and agricultural land, a visual benefit for the people living in and using the wider area.

2.2 The petitioners have previously sought to make contact with SBC tree warden and KCC Highways to secure the safety of 98 trees but were told nothing could be done. This is because trees are only protected from felling, in law, if they are covered by a Tree Preservation Order (TPO) and even then, applications can be made for their removal.

2.3 The petitioners set out the benefits of trees and express their concern and disappointment regarding the loss of trees in the area and the problems this is creating regarding surface flooding and loss of wildlife habitat.

2.4 The ePetition asks that the Council impose conditions that require felled mature trees and hedgerows to be replaced in equal or greater measure. And that this should be monitored (by SBC) on a timetable agreed with the developer and published on the website. These conditions would then not be discharged until the full number of replacement trees/hedgerows are planted and established.

2.5 With regards to the national policy approach to trees. The NPPF 2021 makes clear the importance of trees and their retention. Paragraph 131 states:

“Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible...”

2.6 In May 2021 the Government published the [England Trees Action Plan \(ETAP\)](#), that sets out the long-term, generational vision for the forestry sector to 2050. In the [Response to Third Report of Session 2021–22 - Environment, Food and Rural Affairs Committee \(parliament.uk\)](#) the Government reconfirmed its position to the importance of trees and stated that *“Trees are at the forefront of Defra’s contribution to the Government’s plans to achieve net zero emissions by 2050”*. The Response goes on to outline that in England by 2025 the ETAP supported by the £760 million Nature for Climate Fund will have:

- Trebled tree planting rates, meeting our target of planting at least 7,500 hectares.

- Established a framework for the future of tree planting that will continue into the Environment Land Management programme and beyond.
- Provided significant funding to build nursery capacity, supporting public and private sector nurseries and seed suppliers to enhance the quantity and quality of domestic tree production.
- Published a policy roadmap identifying key actions for Government, the construction sector, the timber sector, and academia to safely increase timber use in construction.
- Seen the first graduates of our new apprenticeship scheme as well as developed new training routes into the forestry sector.
- Built a new Centre for Forest Protection and developed a Woodland Resilience Implementation Plan to improve the ecological condition of woodlands and increase resilience to climate change, pests, and disease.

2.7 The Council is in the process of recruiting a Principal Urban Design and Landscape Officer to join the Planning Services team. The new postholder will be best placed to drive forward a Tree Strategy. The scope of the strategy should address the issues raised in the ePetition and support the delivery of wider objectives, including greater on-site biodiversity net gain, better design quality and placemaking. Once the officer role is filled, a project plan would be prepared to set out the full scope and timescales for the strategy.

3 Proposals

3.1 The proposal is that Members note the ePetition and that a Tree Strategy is to be prepared once the post holder of Principal Urban Design and Landscape Officer is in place.

4 Alternative Options

4.1 Members could choose to disregard the development of a Tree Strategy but this would be a missed opportunity to deliver the benefits of more trees and hedgerows and contribute to the wider objectives of building beautiful and better placemaking.

5 Consultation Undertaken or Proposed

5.1 No consultation has been undertaken or is proposed. The report presents the ePetition and a proposal for addressing the concerns in that petition. Consultation is not necessary at this stage but the Tree Strategy itself would be subject to consultation.

6 Implications

Issue	Implications
Corporate Plan	The proposals support the delivery of Objectives 1 and 2 of the Corporate Plan.
Financial, Resource and Property	Tree Strategy would be prepared using existing resources and would include mechanisms for maintenance costs to be addressed through planning conditions/ S106.
Legal, Statutory and Procurement	None identified at this stage.
Crime and Disorder	None identified at this stage.
Environment and Climate/ Ecological Emergency	The proposals would support the Council to address the Environmental and Climate/ Ecological Emergency.
Health and Wellbeing	None identified at this stage.
Safeguarding of Children, Young People and Vulnerable Adults	None identified at this stage.
Risk Management and Health and Safety	None identified at this stage.
Equality and Diversity	None identified at this stage.
Privacy and Data Protection	None identified at this stage.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: E-petition - Replace trees felled by developers

8 Background Papers

None.

We the undersigned petition the council to ensure that conditions are imposed by Swale Borough Council so that if members are minded to grant consent for planning applications that an equal number of mature trees as those that have to be felled/uprooted for each building development and/or an equal length of hedging as that which has to be removed for each building development are replanted within the footprint of the development i.e. No offsite biodiversity net gain. Ensure that the number of mature trees/length of hedging to be removed is confirmed by the council officers before any planning permissions are granted and that this condition, to replant the same or greater amount of trees/hedges is monitored by Swale Borough Council on an agreed timetable with each developer/builder and published for public scrutiny on the council website. Also to ensure the Planning Dept do not discharge the landscape conditions until the full number of replacement trees/hedging are planted and established.

This petition has arisen due to the proposed loss of at least 1400 trees on the Lady Dane development in Faversham. The disposal of half the plot to a different developer 6 years after the original planning permission was gained, resulted in confusion regarding the new spine and commercial service roads into the estate (due to the new applicant not having gained planning permission and proposing to change the position of the commercial road) and no clear idea of how many of the remaining 353 trees, lining Love Lane, would be felled, this was originally an established (30 year old) windbreak and rural historic feature of the eastern boundary between the built area of Faversham and agricultural land, a visual benefit for the people living opposite the hedge along Love Lane.

Despite calls to The Tree Warden at SBC and appeals to KCC Highways there was nothing which could be done to save 98 of those trees, which were cut down by order of the landowner on 12/02/22.

The loss of the remaining trees lining Love Lane and also the windbreak field dividers is now in the balance, with the council yet to decide upon the Fernham Homes and Crest Nicholson Phase 2 applications, with the proposed loss of the majority of those 1300 trees.

The drawings in both applications show replanting, but not sufficient to remedy the loss of these trees, in terms of their maturity, their ability to absorb carbon dioxide and provide oxygen, in terms of the insect population living in them that will be lost, as well as all the web of fauna and flora that depend upon the insects/trees as a food supply or for nesting/hibernation. The trees lining Love Lane help to prevent flooding of the road surface. Where the hedging further down Love Lane opposite the cemetery has been removed there have been puddles covering half of the road. The new crossing point over Love Lane

(opposite the Crest Nicholson show home) gets so muddy and in a deep puddle that it cannot be used as a crossing point.

With climate change, sewerage and the new environment bill all being very real pressures on new developments as well as established residents in Swale, we must lay the foundations now for a realistic sustainable future for the coming generations.

60% of the Fernham Homes development in their current proposal is going to be impermeable surfaces. Impermeable surfaces do not absorb water and the water has to go somewhere.

Trees soak up water, they shade, they enrich the soil, they provide habitats, they enrich our air, they provide great biodiversity opportunities.

We must ensure that all new development now retains as many original trees as possible, plus that the onus is on developers to plant as many new trees as are removed.

It is heartbreaking to hear that the council are buying hundreds of new saplings, or using grant money, when thousands of trees are at the same time being killed for housing estates.

This ePetition ran from 11/03/2022 to 22/04/2022 and has now finished.

279 people signed this ePetition.

Planning & Transportation Policy Working Group	
Meeting Date	20 February 2023
Report Title	Levelling Up and Regeneration Bill: reforms to national planning policy (NPPF consultation)
EMT Lead	Emma Wiggins, Director of Regeneration & Neighbourhoods
Head of Service	Flo Churchill, Interim Head of Planning
Lead Officer	Jill Peet, Planning Policy Manager
Classification	Open
Recommendations	1. Note the content of this report and the proposed consultation response on behalf of the Council.

1 Purpose of Report and Executive Summary

- 1.1 Members will be aware of government plans to reform the planning system. The main vehicle for this is the Levelling Up and Regeneration Bill (LURB) that is progressing through the House of Lords. The Bill had its second reading on 17 January 2023 and the line-by-line examination of the bill is scheduled to begin on 20 February.
- 1.2 On 22 December 2022, the dept for Levelling Up Housing and Communities (DLUHC) published the long-anticipated consultation on the proposed changes to the National Planning Policy Framework (NPPF). The consultation ends on 2 March 2023. The government response to the consultation responses is expected by spring 2023 and plan to publish the framework revisions as part of this “so that policy changes can take effect as soon as possible”. The proposed SBC response to the consultation on planning and the NPPF is contained in **appendix i**.
- 1.3 The purpose of this report is to set out the headlines in the NPPF consultation and to discuss the implications for Swale. This has informed the proposed responses to the set questions.
- 1.4 In summary, the proposed changes to the NPPF focus on how housing needs should be addressed and the resulting figures applied; the changes to the housing delivery test and 5 year land supply test and measures to tackle slow build-out of permissions. Energy efficiency, environmental protection and tackling climate change are also addressed as is proposed changes to plan making and how National Development Management Policies should be developed.

2 Background

- 2.1 The government sought to introduce a complete overhaul of the planning system back in August 2020 with the publication of both the White Paper: Planning for the Future in August 2020 and consultation on various proposed changes to existing policy. The government's subsequent approach was to retain the existing system and focus on amendments to existing policy and guidance that would complement and support 'Levelling Up'. The Levelling Up and Regeneration Bill (LURB) has now had its second reading in the House of Lords.
- 2.2 The [Levelling-up and Regeneration Bill: reforms to national planning policy - GOV.UK \(www.gov.uk\)](#) is not a wide-ranging review of the full NPPF. As well as seeking views on the governments proposed approach to the NPPF, the consultation also canvasses opinion on its proposed approach to preparing National Development Management Policies (NDMPs). The link usefully provides access to a version of the NPPF showing proposed amendments as tracked changes and a separate discussion paper that sets out the scope and objectives of the consultation and a number of technical questions. Respondents are encouraged to respond to the set questions that cover the changes to the NPPF text and proposals for future changes. The NPPF is but one element of national policy. Amendments to this important framework will need to be backed up by changes to other policies, guidance and legislative tools to give genuine weight in the practice of planning. The consultation discussion paper states that if the government is "*to truly remake the planning system, we also need changes to national policy and guidance, regulations and wider support for local authorities, communities and applicants*". The proposed revisions to the NPPF are required to deliver this wider change but how they can be implemented in the absence of more detail is unclear at this stage although future changes are promised for next year. There is also a proposed transitional period which also needs to be carefully considered.
- 2.3 The following is a summary of the key points made in the Levelling-up and Regeneration Bill: reforms to national planning policy, i.e. the proposed changes to the NPPF.

Policy objectives

- 2.4 The stated policy objectives of the proposals are to support the governments wider objectives of making the planning system work better for communities, delivering more homes through sustainable development, building pride in place and supporting levelling up more generally. There are a number of themes identified as follows:
- Building beautiful and refusing ugliness;
 - Securing the infrastructure needed to support development;
 - More democratic engagement with communities on local plans;
 - Better environmental outcomes;
 - Empowering communities to shape their neighbourhoods; and

- Delivering more homes in the right places, supported by sustainable and integrated infrastructure for our communities and our economy.

2.5 These themes are referred to under many of the topics and are intended as a thread running through the document. The consultation makes it clear that it is the government's intention to retain the plan-led system, which is useful to note given previous suggestions of a more generic zone-type approach and reiterated the importance of up-to-date Local Plans and Neighbourhood Plans.

2.6 A key focus of the technical detail in the consultation is around housing development, the assessment of need and how this is delivered. The detail of this is set out below.

How housing need should be assessed, and the resulting figures applied

2.7 The new household projections data based on the 2021 Census is due to be published in 2024 and the government have said it will review the implications for the Standard Method once that data is available. In the meantime, there are no proposals to amend the Standard Method through this consultation and unless "exceptional circumstances" can be justified, the use of the Standard Method should continue. More explicit indications will be given in planning guidance about the types of local characteristics which may justify a departure from the use of the Standard Method. Examples could include areas with a high percentage of elderly residents, or university towns with an above-average proportion of students.

2.8 Local Housing Need (calculated using the Standard Method) is proposed to be an advisory starting point for establishing a housing requirement rather than a minimum which is the case, currently. The governments target of building 300,000 new homes per year remains and the consultation NPPF states that the overall aim should be to meet as much housing need as possible. Paragraph 61 of the consultation retains the clause that any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for. The housing requirement may be higher than the identified housing need, if it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure.

2.9 The requirement to provide a sufficient supply and mix of sites to accommodate housing need in a local plan remains. This includes a requirement for a minimum of 10% of the total housing need to be met on small and medium sites.

2.10 The need to avoid development that would be uncharacteristically dense can outweigh the requirement to meet local housing need. This would need to be based on the principles in local design guides and codes. Authorities would not need to review their Green Belts to meet housing needs even if this would be to the detriment of meeting the local housing needs. Swale, of course, is not a Green Belt authority but our neighbours Medway and Maidstone both have some Green Belt. Authorities to the immediate west of these neighbours are Green Belt authorities and this begs the question of what would happen to their unmet needs

given the remaining requirement to take into account “any needs that cannot be met within neighbouring areas”.

- 2.11 The Duty to Cooperate is to be replaced with as as-yet unformulated “alignment policy”. The Duty will remain in place until those provisions come into effect, and “further consideration on what should constitute the alignment policy will be undertaken”.

Changes to the housing delivery test and 5 year land supply test

- 2.12 Local planning authorities with an up-to-date local plan (i.e. less than 5 years old) will no longer need to continually show a deliverable five-year housing land supply. The proposals also include removing the need for a “buffer” to be applied to housing land supply. This is regardless of the local planning authority’s score in the Housing Delivery Test which currently penalises authorities with a score below 85% by requiring them to apply a 20% buffer to their housing requirement figures for the purposes of calculating housing land supply (rather than 5%). There would be no buffers applied to five-year housing land supply calculations.
- 2.13 Amendments to the NPPF and to national planning practice guidance would allow councils to include historic oversupply in its five-year housing land supply calculations. This will not be an issue for Swale given previous performance. Evidence of sufficient deliverable planning permissions could save local planning authorities from the most severe housing delivery test sanction, i.e. the presumption in favour of sustainable development. The consultation document proposes to add to the HDT an additional permissions-based test. This will ‘switch off’ the application of the presumption in favour of sustainable development’ as a consequence of under-delivery, where a local planning authority can show sufficient permissions for enough deliverable homes to meet their own annual housing requirement or, where lacking an up-to-date local plan, local housing need, plus an additional contingency based on the number of planning permissions that are not likely to be progressed or are revised (which the government proposes defining as 115% of the housing requirement or local housing need).
- 2.14 The government is considering suspension or amendment of the usual consequences of failure of the 2022 Housing Delivery Test. “Given our proposed changes,” the document says, “we would like to receive views on whether the test’s consequences should follow from the publication of the 2022 Test or if they should be amended, suspended until the publication of the 2023 Housing Delivery Test, or frozen to reflect the 2021 Housing Delivery Test results while work continues on our proposals to improve it”.

Measures to tackle the slow build-out of permissions

- 2.15 Past “irresponsible planning behaviour” by applicants could in future be taken into account when applications are being determined. As examples of such applicant behaviour, the document cites “persistently breaching planning controls or failing

to deliver their legal commitments to the community”. Primary legislation would be needed to enact such measures, on which the government is seeking views.

- 2.16 Government data will be published on developers of sites over a certain size who fail to build out according to their commitments. Developers will be required to explain how they propose to increase the diversity of housing tenures to maximise a development scheme’s absorption rate (which is the rate at which homes are sold or occupied). Delivery will become a material consideration in planning applications. “This could mean that applications with trajectories that propose a slow delivery rate may be refused in certain circumstances,” the document says. A financial penalty for developers that are building out too slowly will be consulted on separately.

Energy efficiency

- 2.17 Replacing old wind turbines with more powerful and efficient models will be made easier. Changes to paragraphs 155 and 158 of the existing NPPF will enable the repowering of renewable and low carbon energy schemes where planning permission is needed, and providing that the impacts of any development proposal are or can be made acceptable in planning terms, the NPPF will be amended with a new paragraph 161 to give “significant weight” to the importance of energy efficiency through adaptation of buildings. But the document says that this will be done in a way that ensures that local amenity and heritage continues to be protected.

Environmental protection and tackling climate change

- 2.18 Steps will be taken to prevent developers from gaining biodiversity net gain rules by clearing habitats before submitting planning applications. This will involve closer working with Defra to review current degradation provisions for Biodiversity Net Gain to reduce the risk of habitat clearances prior to the submission of planning applications, and before the creation of off-site biodiversity enhancements.
- 2.19 Proposals to clamp down on the use of artificial grass in new developments (by developers) is also mooted as a way for the government to consider how to halt the threat to wildlife created using this.
- 2.20 The possibility of embedding a broad form of carbon assessment in planning policy will also be explored. This will look at whether effective and proportionate ways of deploying a broad carbon assessment exist, what they should measure, what evidence could underpin them and how they could be used in a plan-making context or tool for assessing individual developments.
- 2.21 Policy and guidance in relation to the production of Strategic Flood Risk Assessments will be reviewed to encourage maximum coverage and more frequent updates.

Plan making

- 2.22 The proposals confirm the governments commitment to a plan-led system and the delivery of development needs, placing greater emphasis on beauty and placemaking. The principle of duty to cooperate remains but is no longer one of the tests against which a local plan is examined. The expectation remains that a local planning authority will consider unmet housing needs in neighbouring areas and will follow a development strategy that seeks to meet the area's objectively assessed needs so far as possible, taking into account the policies in the Framework.
- 2.23 The 'justified' test of soundness for a local plan is proposed to be removed. This test relates to the need for local plans to be 'justified', i.e. that the development strategy would be "appropriate", taking into account the reasonable alternatives, and based on proportionate evidence. On the surface, this might suggest that local planning authorities are no longer required to consider reasonable alternatives for a development strategy and for them to be assessed through the Sustainability Appraisal process. However, the legal requirement of sustainability appraisal still applies (Section 12 of The Environmental Assessment of Plans and Programmes Regulations 2004). Since local plan at examination stage must demonstrate they are legally compliant, in the absence of more detail, the requirement to satisfy the inspector that the council has considered reasonable alternatives remains.
- 2.24 Steps are being taken to maximise the amount of authorities who can make use of policy changes around plan-making intended to be introduced by NPPF revisions in the Spring, before the revised plan-making system set out in the Levelling Up Bill is introduced in late 2024. Plan-makers will have until 30 June 2025 to submit their local plans, neighbourhood plans, minerals and waste plans, and spatial development strategies for independent examination under the existing legal framework. The government is also proposing that, to be examined under existing legislation, all independent examinations of local plans, minerals and waste plans and spatial development strategies must be concluded, with plans adopted by 31 December 2026. This means that the Local Plan Review currently in progress will need to be submitted to the Secretary of State for Examination by 30 June 2025. The independent examinations of local plans must be concluded (and plans adopted) by 31 December 2026. These plans will be examined under the current legislation and will need to demonstrate the Duty to Co-operate has been met. If the deadline of 30 June 2025 for submission is missed, LPAs will not be able to continue under the transitional arrangements and will need to begin preparing a new style local plan straight away.
- 2.25 The new system will require LPAs to start work on new plans (under the new system), at the latest, 5 years after adoption of their previous plan and to adopt that plan within 30 months of starting.
- 2.26 For Swale, this means the current Local Plan Review will continue to be prepared under the current system (but under the transitional arrangements) and the *next* local plan after that will be prepared under the new system.

2.27 It will not be possible to prepare supplementary planning documents (SPDs) under the new system. Instead, these will be replaced by Supplementary Plans that will be afforded the same weight as local plans (or minerals and waste plans). Existing SPDs will remain in force for a time limited period; until the local planning authority is required to adopt a new-style plan at which point current SPDs will expire.

National Development Management Policies

2.28 There is intended to be a consultation next year on how National Development Management Policies (NDMPs) are implemented. They will cover planning considerations that apply regularly in decision-making across England or significant parts of it, the document says, such as general policies for conserving heritage assets, and preventing inappropriate development in the Green Belt and areas of high flood risk. Before any NDMP was designated by the secretary of state, there would be a public consultation.

2.29 The starting point for creating NDMPs would be existing parts of the NPPF that apply to decision-making. "However, we welcome views on whether there are other topics that should be added," the document says. Two other categories for NDMPs, in the government's "initial view", are firstly, "selective new additions to reflect new national priorities, for example net zero policies that it would be difficult to develop evidence to support at a district level, but which are nationally important", and secondly "selective new additions to close 'gaps' where existing national policy is silent on planning considerations that regularly affect decision-making across the country (or significant parts of it)". Indicative examples of 'gaps' where national policy is silent on common decision-making issues, which NDMPs would address, are: carbon reduction in new developments; allotments and housing in town centres and built-up areas.

2.30 NDMPs will cover "only matters that have a direct bearing on the determination of planning applications. Other key principles, according to the consultation, are that they would be "limited to key, nationally important issues commonly encountered in making decisions on planning applications across the country; and that they would solely address planning issues, "in other words that concern the development and use of land".

Other issues and ideas covered

2.31 As well as the main key point summarised above, there is also a number of individual issues and ideas that have been raised. These are summarised as follows:

- Local planning authorities must ensure they meet the need for retirement housing, housing-with-care and care homes;
- Greater use of planning conditions to require clear details of a scheme's design and materials;
- Encouragement of mansard roofs as an appropriate form of upwards extension (where appropriate)
- Giving higher priority in the NPPF to the provision of social rent homes

- Greater reference to the importance of ensuring outcomes support *beauty* and placemaking.

Impacts of the proposals for Swale

- 2.32 The proposed changes to the NPPF are not a significant change of direction when compared with the current version. There is some softening of the language around the use of the Standard Method in local authority areas that are constrained but is not materially different. Swale has already undertaken evidence and research over the years to look at whether there are “exceptional circumstances” to the demographics of the borough to justify a departure from the Standard Method approach to calculating housing needs. Unless the guidance is revised to explicitly identify “exceptional circumstances” it is unclear what the impact of these revisions will be and indeed whether the “exceptional circumstances” relate to the approach used to identify housing numbers or the capacity of an area to delivering housing numbers.
- 2.33 The proposals state that authorities are not required to revise their green belt boundaries to meet housing needs but under the current and transitional arrangements, the Duty to Cooperate remains and there are already failed plans in west Kent where the issue of unmet need has been the root cause. Swale, of course, is not a green belt authority but neighbouring Medway and Maidstone do have small amounts of green belt and their immediate neighbours to the west, more so. Is it unclear how unmet need would be resolved. Other constraints such as those in Swale (AONB, international and national landscape and ecological designations to name a few) are potentially more limiting to development delivery than green belt but this is not addressed in the proposals.
- 2.34 Additionally, much of what is proposed could be considered good practice and this has already been embraced by the Council. This includes a renewed vigour for beauty and raising design and placemaking standards across Swale and ensuring planning conditions regarding design and material are clear. Setting this out in the NPPF will further strengthen the Council’s ability to deliver this when negotiating proposals through the development management process and local plan policies.
- 2.35 Proposals to remove the requirement for a ‘buffer’ in calculating housing delivery is welcomed. The Housing Delivery Test was introduced as a mechanism to measure performance against delivery target. Where local plans in preparation have achieved certain formal stages, local planning authorities could be required to demonstrate a four year housing land supply (rather than five years). This is a welcome approach that recognises plan preparation progress.

3 Proposals

- 3.1 This report seeks to provide a summary of the key proposals in the consultation version of this NPPF and what the implications of these are for Swale. Draft responses to the set questions to the consultation are contained in **appendix i** of

this report. The proposal is that Members note the content of this report and the responses contained in the appendix for submission to the Department for Levelling Up, Housing and Communities by the deadline of 11:45 pm on 2 March 2023.

4 Alternative Options

4.1 This report is for noting and therefore there are no reasonable alternatives.

5 Consultation Undertaken or Proposed

5.1 Local planning authorities are being asked specifically to respond to this open consultation from their point of view and therefore no consultation has been undertaken or is proposed.

6 Implications

Issue	Implications
Corporate Plan	The proposals ensure the Council is providing views on how national policy can support the delivery of Objectives 1 and 2 of the Corporate Plan.
Financial, Resource and Property	None of the proposed changes will incur additional expense at this stage as they are proposals and lack the level of detail required to adequately consider future implications.
Legal, Statutory and Procurement	None identified at this stage as this is a consultation but the lack of detail and reliance on future iterations of the National Planning Policy Framework could have implications for the Council.
Crime and Disorder	None identified at this stage.
Environment and Climate/Ecological Emergency	The proposals ensure the Council is providing views on how national policy can support our own policies to address the Environmental and Climate/ Ecological Emergency.
Health and Wellbeing	None identified at this stage.
Safeguarding of Children, Young People and Vulnerable Adults	None identified at this stage.
Risk Management and Health and Safety	None identified at this stage although there is uncertainty around how some of the proposed changes could be implemented in the

	absence of detail in this consultation and reliance on future iterations of the National Planning Policy Framework.
Equality and Diversity	None identified at this stage.
Privacy and Data Protection	None identified at this stage.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix i: Proposed SBC response to Levelling-up and Regeneration Bill: reforms to national planning policy

8 Background Papers

None

Proposed SBC response to Levelling-up and Regeneration Bill: reforms to national planning policy

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	NPPF consultation question	Proposed Council response
1.	Do you agree that local planning authorities should not have to continually demonstrate a deliverable five- year housing land supply (5YHLS) as long as the housing requirement set out in its strategic policies is less than five years old?	Agree. Housing delivery is complex and subject to a number of factors, many of which are beyond the control of the Council. The requirement to demonstrate a continual 5 year supply undermines a plan-led system, especially where plans are not ou-of-date. The proposed approach allows local plans to be delivered without the distraction of speculative development pressures, particularly in areas with difficult market conditions or where significant and early infrastructure delivery is needed. Local plans should not be undermined where there is a change in circumstances because this is beyond the control of the council.
2.	Do you agree that buffers should not be required as part of 5YHLS calculations (this includes the 20% buffer as applied by the Housing Delivery Test)?	Agree. The inclusion of a buffer further exacerbates a problem that is beyond the LPAs control. Councils should be better supported to deliver housing rather than penalised when unforeseen circumstances result in delivery below expected levels. Root cause and analysis of under- delivery should be explored before penalties are put in place.
3.	Should an oversupply of homes early in a plan period be taken into consideration when calculating a 5YHLS later on or is there an alternative approach that is preferable?	Yes, any approach for calculating 5YHLS should be able to take oversupply into account. Similarly, undersupply should also be considered over the plan period as there can be complex reasons for this. It would need to be set out clearly in local plan examination documents, explaining and justifying the housing trajectory with some flexibility to protect against changes in circumstances.
4.	What should any planning guidance dealing with oversupply and undersupply say?	Any guidance should ask LPAs to set out their vision for delivery of homes and the infrastructure required and ensure enough flexibility and/ or evidence to give confidence this can be achieved. It should be clear where oversupply or undersupply will be taken into account and how and why. Where no up-to-date plan is in place, penalties related to housing delivery can exacerbate delays to plan making because it dilutes the (political) incentive and diverts resources into other areas of work.
5.	Do you have any views about the potential changes to paragraph 14 of the existing Framework and increasing the protection given to neighbourhood plans?	Support consistency between neighbourhood plans and local plans. NP bodies should not have their plans undermined when they are up-to-date. Explore possibilities of extending the 5 year period given how long NPs take to deliver (from start to finish). This would avoid NPs being trumped by new LPs within a short timeframe.

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	NPPF consultation question	Proposed Council response
6.	Do you agree that the opening chapters of the Framework should be revised to be clearer about the importance of planning for the homes and other development our communities need?	<p>Agree, but use of “sufficient” is too open to interpretation. Guidance on how to determine “sufficient” should be provided to ensure lengthy and expensive debates between LPAs and developers does not take place at the expense of housing delivery.</p> <p>Delete “can” and replace with “to provide”. “can” and “sufficient” waters down the last sentence.</p> <p>However, given the chronic shortage of housing supply nationally, the Framework should introduce policies to support a national plan and a strategic regional layer of planning.</p> <p>More details about how the government would support local planning authorities would also be welcomed.</p>
7.	What are your views on the implications these changes may have on plan-making and housing supply?	<p>Aligns the weight of a neighbourhood plan with a local plan, this is appropriate and proportionate and gives neighbourhood plans a chance to take control of delivering their own housing without being penalised if there is an out-of-date local plan for the wider area. This could encourage more local areas to prepare neighbourhood plans. Will not speed up or streamline. Not enough detail, too many unanswered questions. The removal of a buffer is supported as market absorption rates and viability issues determine delivery, not number of dwellings with planning permission.</p>
8.	Do you agree that policy and guidance should be clearer on what may constitute an exceptional circumstance for the use of an alternative approach for assessing local housing needs? Are there other issues we should consider alongside those set out above?	<p>Yes.</p> <p>Set out the criteria, e.g. % of borough constrained (high-level constraints), settlement pattern and infrastructure constraints are critical factors to the character of an area and are under threat where housing delivery would result in these being further compromised.</p>
9.	Do you agree that national policy should make clear that Green Belt does not need to be reviewed or altered when making plans, that building at densities significantly out of character with an existing area may be considered in assessing whether housing need can be met, and that past over-supply may be taken into account?	<p>No, national Green Belt policy needs a full root and branch review. Where development is constrained in GB authorities, the development pressure usually filters out towards other areas that are then compromised, usually with just as much constraint. Much of the GB is in sustainable locations, particularly at the edges of London. Ideally, a national plan and strategic level regional planning would be introduced to address the housing shortage whilst delivering sustainable communities with the right range and quantum of supporting infrastructure and facilities.</p>

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	NPPF consultation question	Proposed Council response
		Past over-supply should only be taken into account where it falls within the current plan period.
10.	Do you have views on what evidence local planning authorities should be expected to provide when making the case that need could only be met by building at densities significantly out of character with the existing area?	<p>LPAs would need to provide character and density assessment and should also provide information on natural and open space because intensification should not be allowed at the expense of open space. This is because the demand for open space will increase as a result of higher density development. There should also be evidence that the land available can accommodate infrastructure requirements. Higher density should not be at the expense of good place making.</p> <p>A national plan and strategic planning at the regional level would be a better way to deliver the homes needed. These would provide a strategic response to the housing crisis with settlements large enough to deliver all of the infrastructure needed and genuine placemaking and beauty.</p>
11.	Do you agree with removing the explicit requirement for plans to be ‘justified’, on the basis of delivering a more proportionate approach to examination?	<p>Local plan strategies SHOULD be justified and if this test is to be replaced. The need to justify is part of wider place making and explaining the ‘story’ for the development strategy and the proposed allocations for all uses.</p> <p>To remove the requirement is contradictory for good place making and is unfair on local communities who will want and need to understand that development strategies are justified.</p> <p>Anomaly to remove the requirement for adequate and proportional evidence.</p>
12.	Do you agree with our proposal to not apply revised tests of soundness to plans at more advanced stages of preparation? If no, which if any, plans should the revised tests apply to?	Yes, they have been prepared with the current version of the NPPF in mind.
13.	Do you agree that we should make a change to the Framework on the application of the urban uplift?	<p>Different approach is needed as 30% uplift is arbitrary. Creates significant concern around what happens to any unmet need, particularly in light of NO review of GB.</p> <p>Unrealistic targets undermine and can result in poor urban environments because it supports speculative development and turns planning into a ‘numbers game’. Such significant uplifts require time to develop and undermines a plan-led system.</p>

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	NPPF consultation question	Proposed Council response
14.	What, if any, additional policy or guidance could the department provide which could help support authorities plan for more homes in urban areas where the uplift applies?	Uplift does not apply to Swale or neighbours but does apply to London fringe authorities such as Bexley and Bromley. There needs to be a full review of national Green Belt policy and a national plan and strategic planning at regional level for addressing unmet needs.
15.	How, if at all, should neighbouring authorities consider the urban uplift applying, where part of those neighbouring authorities also functions as part of the wider economic, transport or housing market for the core town/city?	Does not apply to Swale or immediate neighbours. See response to q.14
16.	Do you agree with the proposed four-year rolling land supply requirement for emerging plans, where work is needed to revise the plan to take account of revised national policy on addressing constraints and reflecting any past over-supply? If no, what approach should be taken, if any?	Yes. Over-supply should be taken into account but clear guidelines should be provided around the timescales local planning authorities can use to take this into consideration.
17.	Do you consider that the additional guidance on constraints should apply to plans continuing to be prepared under the transitional arrangements set out in the existing Framework paragraph 220?	Yes because it reflects the realities of the situation and LPAs should have the tools needed to deal with this asap. It means emerging local plans once adopted, will be consistent with the new NPPF and therefore more robust.
18.	Do you support adding an additional permissions-based test that will 'switch off' the application of the presumption in favour of sustainable development where an authority can demonstrate sufficient permissions to meet its housing requirement?	Protection from speculative development supports a plan-led system and should be supported.
19.	Do you consider that the 115% 'switch-off' figure (required to turn off the presumption in favour of sustainable development Housing Delivery Test consequence) is appropriate?	No, it should be 100% - obligations are obligations! 100% figure is better aligned with proposals to remove buffers for the same purposes.
20.	Do you have views on a robust method for counting deliverable homes permissioned for these purposes?	A robust method will ensure consistent approach and negate the need for arguments between LPAs and developers. This should include ensuring no double counting. For the purposes of determining the % switch off figure, there should be no requirement to determine how 'deliverable' these permissioned homes are. This is against the spirit of

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	NPPF consultation question	Proposed Council response
		this proposal and will be resource intensive for LPAs and developers seeking to secure speculative development proposals. A more straightforward approach would be to remove duplicate applications and to apply a % reduction for lapsed permissions.
21.	What are your views on the right approach to applying Housing Delivery Test consequences pending the 2022 results?	HDT scores should use the figures in the adopted local plan, even if a plan is over 5 years old. Plans are made in good faith and the agreements at the time of adoption are that there are enough sites to meet the housing need figure in the local plan. Focus needs to be on root causes of under-delivery.
22.	Do you agree that the government should revise national planning policy to attach more weight to Social Rent in planning policies and decisions? If yes, do you have any specific suggestions on the best mechanisms for doing this?	<p>Agree. The needs for this tenure is most acute and as a housing product, needs to be fully integrated with wider development to ensure delivery of good placemaking.</p> <p>First Homes as an ‘affordable housing’ product should be reviewed because delivery issues in Swale are demonstrating that the national requirement of 25% of all “affordable housing” is to be First Homes is unviable and impacts negatively on the delivery of other affordable housing products.</p> <p>Robust and well evidenced policies that are based on full assessed need and placemaking/ design policies to ensure developments are ‘tenure blind’ are needed.</p>
23.	Do you agree that we should amend existing paragraph 62 of the Framework to support the supply of specialist older people’s housing?	Agree, but guidance should also be given in relation to how this can be delivered, i.e. in what circumstances allocations not suitable for open market housing could be suitable for specialist older people’s housing. Guidance needs to be provided to justify location and related to level of care. There are differentials between the needs of older people’s housing that impact their locational/ sustainability needs. Many of the specific housing needs of older people could be met if building standards to ‘lifetime homes’ was in place.
24.	Do you have views on the effectiveness of the existing small sites policy in the National Planning Policy Framework (set out in paragraph 69 of the existing Framework)?	<p>Need to find a way to give SME the flexibility they need without having to engage in the LP process – this does not work for their business model.</p> <p>Definition of SME would provide clarity in monitoring the effectiveness of delivery of small sites by this sector.</p>
25.	How, if at all, do you think the policy could be strengthened to encourage greater use of small sites,	The policy does not need to be strengthened to encourage greater use of small sites. Challenges associates with small site delivery relates to access, land contamination and viability in Swale.

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	NPPF consultation question	Proposed Council response
	especially those that will deliver high levels of affordable housing?	
26.	Should the definition of “affordable housing for rent” in the Framework glossary be amended to make it easier for organisations that are not Registered Providers – in particular, community-led developers and almshouses – to develop new affordable homes?	Affordable housing for rent from organisations that are not Registered Providers should be a separate class because of the need for regulation in this sector.
27.	Are there any changes that could be made to exception site policy that would make it easier for community groups to bring forward affordable housing?	Difficulties in bringing sites forward is related to site costs/ viability and not policy.
28.	Is there anything else that you think would help community groups in delivering affordable housing on exception sites?	Government funds should be made available to support community groups to purchase land and develop sites.
29.	Is there anything else national planning policy could do to support community-led developments?	Great policy support for identification and allocations of these sites but funding to purchase and deliver sites is the main issue
30.	Do you agree in principle that an applicant’s past behaviour should be taken into account into decision making?	No.
31.	Of the two options above, what would be the most effective mechanism? Are there any alternative mechanisms?	No, there are other ways to address slow build out rates e.g. expiry dates for planning permission.
32.	Do you agree that the three build out policy measures that we propose to introduce through policy will help incentivise developers to build out more quickly? Do you have any comments on the design of these policy measures?	Proposed measures take away flexibility that is usually needed. Use of Statements of Common Ground would support greater collaboration and are more likely to support delivery going forward. Proposals are unworkable and unhelpful, and have the potentially to disproportionately penalise SMEs.
33.	Do you agree with making changes to emphasise the role of beauty and placemaking in strategic policies and to further encourage well-designed and beautiful development?	Agree and additional resources should be made available to support local planning authorities to achieve this.

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	NPPF consultation question	Proposed Council response
34.	Do you agree to the proposed changes to the title of Chapter 12, existing paragraphs 84a and 124c to include the word 'beautiful' when referring to 'well-designed places', to further encourage well-designed and beautiful development?	Agree.
35.	Do you agree greater visual clarity on design requirements set out in planning conditions should be encouraged to support effective enforcement action?	Unlikely to deliver greater compliance of conditions and is an issue of good practice. Design details set out in a planning permission are important but unlikely to be pertinent to the acceptability of the proposal. Enforcement action would seek to regularise what was there rather than insist on compliance with original drawings. Time consuming, resource intensive and could require lpas to take disproportionate action. The starting point of action is whether lpas can work with developers to regularise the issues and as such any action needs to be proportionate to the extent of the breach.
36.	Do you agree that a specific reference to mansard roofs in relation to upward extensions in Chapter 11, paragraph 122e of the existing framework is helpful in encouraging LPAs to consider these as a means of increasing densification/creation of new homes? If no, how else might we achieve this objective?	Unnecessary as any airspace proposals would already need to take into consideration surrounding character and be of good design.
37.	How do you think national policy on small scale nature interventions could be strengthened? For example, in relation to the use of artificial grass by developers in new development?	BNG will be challenging to deliver and could be cover as part of the design code for an area.
38.	Do you agree that this is the right approach making sure that the food production value of high value farm land is adequately weighted in the planning process, in addition to current references in the Framework on best most versatile agricultural land?	Food security often raised as an issue in consultations that would see the loss of agricultural land. Nation policy should simply to commit to preserving BMV agricultural land, giving it the same status as other high level constraints and designations in the NPPF.
39.	What method or measure could provide a proportionate and effective means of undertaking a carbon impact assessment that would incorporate all measurable	Benchmark assessment needed in the first instance and then aim is for betterment through the proposals put forwards.

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	NPPF consultation question	Proposed Council response
	carbon demand created from plan-making and planning decisions?	
40.	Do you have any views on how planning policy could support climate change adaptation further, specifically through the use of nature-based solutions that provide multi-functional benefits?	A national plan and strategic planning at a regional level would support a pattern of growth in fewer locations but of a more significant scale so that this is identified and agreed at the outset and delivered accordingly.
41.	Do you agree with the changes proposed to Paragraph 155 of the existing National Planning Policy Framework?	Unsure as this is likely to be difficult to enforce through planning mechanisms
42.	Do you agree with the changes proposed to Paragraph 158 of the existing National Planning Policy Framework?	This is what happens in practice already and the proposals are supported.
43.	Do you agree with the changes proposed to footnote 54 of the existing National Planning Policy Framework? Do you have any views on specific wording for new footnote 62?	Not clear what the changes proposed are to footnote 54 as looks the same in tracked version of NPPF. Para 62 raises a considerable number of questions including how this would be done and by whom.
44.	Do you agree with our proposed Paragraph 161 in the National Planning Policy Framework to give significant weight to proposals which allow the adaptation of existing buildings to improve their energy performance?	Yes, but would obviously need to be weight up against harm, as already set out in the framework.
45.	Do you agree with the proposed timeline for finalising local plans, minerals and waste plans and spatial development strategies being prepared under the current system? If no, what alternative timeline would you propose?	Timeline should be extended by 6 months to allow some flex in the system for teething problems and address NDMPs and ensure no overlap, also taking into account LURB
46.	Do you agree with the proposed transitional arrangements for plans under the future system? If no, what alternative arrangements would you propose?	Yes, but it is likely more resources will be needed to deliver this. More detail should be provided.
47.	Do you agree with the proposed timeline for preparing neighbourhood plans under the future system? If no, what alternative timeline would you propose?	Yes, but more support needs to be made available for neighbourhood planning groups.

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	NPPF consultation question	Proposed Council response
48.	Do you agree with the proposed transitional arrangements for supplementary planning documents? If no, what alternative arrangements would you propose?	There should be enough flex in the system for LPAs to prepare and adopt supplementary plans and guidance as they see fit and meet the needs of their own areas, addressing local planning issues.
49.	Do you agree with the suggested scope and principles for guiding National Development Management Policies?	Topics quite broad. There needs to be consistency and the list SHOULD be exhaustive to provide the certainty needed. These NDMPs need to be robust yet flexible.
50.	What other principles, if any, do you believe should inform the scope of National Development Management Policies?	Residential space standards, air quality, heritage, ecology (including BNG but without reducing the ability of an area to increase the % minimum amount in response to local circumstances) and flood risk.
51.	Do you agree that selective additions should be considered for proposals to complement existing national policies for guiding decisions?	No, consistency is needed. This goes too far as there is a need to be able to prepare local guidance where issues are a local concern
52.	Are there other issues which apply across all or most of England that you think should be considered as possible options for National Development Management Policies?	See response to Q.50
53.	What, if any, planning policies do you think could be included in a new framework to help achieve the twelve levelling up missions in the Levelling Up White Paper?	A national plan and strategic planning at a regional level is essential to support the delivery of new homes and provide the jobs and infrastructure needed to support genuinely sustainable settlements.
54.	How do you think that the framework could better support development that will drive economic growth and productivity in every part of the country, in support of the Levelling Up agenda?	A national plan strategy with medium and long term growth so that growth is contained within the environmental capacity along the lines of the donut theory of economics.
55.	Do you think that the government could go further in national policy, to increase development on brownfield land within city and town centres, with a view to facilitating gentle densification of our urban cores?	Not a policy issue – all the policies are already in place. It is a matter of viability and finance. Often grant-related funding relies on sites of significant size when smaller, more complex sites would deliver just as much betterment. Lower density suburban areas could possibly benefit more from “gentle densification” where it would result in the provision of additional services, facilities and infrastructure.
56.	Do you think that the government should bring forward proposals to update the framework as part of next year’s wider review to place more emphasis on making sure that women, girls and other vulnerable groups in society feel safe in our public spaces, including for example policies on lighting/street lighting?	Safety for all is needed and this should be addressed through good design standards. Police forces should be adequately resourced with the skill and expertise needed to work collaboratively with planning departments to ensure design delivers safe and inclusive environments.

