

Updates arising from current and future national guidance changes

Date: 6th July 2021

Report of: Chief Planning Officer

Report to: Development Plan Panel

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- This report sets out how the Council is responding to specific areas of work as a result of wider Government reforms. These are:
 - testing the National Model Design Code (NMDC) on behalf of the Ministry of Housing, Communities and Local Government (MHCLG) which arises from the Government's planning reforms
 - preparing for First Homes which arises from the Government's planning reforms
 - preparing for Biodiversity Net Gain (BNG) which arises from the Environment Bill
- These 3 areas are highly relevant to current and future policies in the Development Plan for Leeds and development decisions that are taken in the City. The report clarifies the status of these issues now and what work is being done to understand their impact on the City for the future.

Recommendations

- a) Members note the work that is being undertaken in testing the National Model Design Code
- b) Members note the Ministerial Statement on First Homes and the implications that this has for the Council
- c) Members note the preparation work that is underway on Biodiversity Net Gain and the current approach to determining planning applications

Why is the proposal being put forward?

1. This report provides clarity for Members of Development Plan Panel (DPP) on recent and forthcoming changes to national policy, which have implications for policy making and decision taking both now and in due course.
2. Members will be aware that the Government has set out ambitions to reform the planning system. Members have previously considered:
 - a) October 2020 - a Planning White Paper response and separate Government consultation, including on First Homes
 - b) January 2021 - changes to permitted development rights and use classes
 - c) March 2021 - changes to the National Planning Policy Framework (NPPF) on design, where it was noted that the Council had bid to test the Government's prospective housing design code
 - d) May 2021 – an update on the Queen's speech (including the Environment Bill¹ currently at Committee Stage in the House of Lords)
3. The Government are implementing different parts of its wider planning agenda in a step by step manner with priority given to permitted development, housing methodology and First Homes. Wider changes to the National Planning Policy Framework and the components of an overall Planning Bill do not currently have a timetable set out. This update therefore only focuses on the areas of current change or where further clarity is considered necessary.

What impact will this proposal have?

Wards affected:

Have ward members been consulted? Yes No

National Model Design Code

4. On 30th January 2021 Government published a draft of the 'National Model Design Code' for consultation. This aims to provide detailed national guidance on the production of design codes, guidance and policies to promote successful design. A design code is a set of simple, concise, numerical and visual design requirements that provide specific, detailed parameters for the physical development of a site or area. Design codes differ from design guides, which have more commonly been used in the past to provide recommendations and principles that are used to inform design but are more open to interpretation.
5. In March 2021 Leeds was successful in becoming one of 14 authorities participating in the six-month programme to test specific elements of the NMDC. Leeds and Newcastle are the largest cities doing the testing. The work being done as part of the testing programme will not, in itself, result in any new design codes / guides for Leeds. It is ascertaining whether and how the NMDC actually works for a city like Leeds and suggest ways in which the code may need to be amended.
6. The draft NMDC proposes that (as well as producing design codes for specific development sites) all parts of an authority area should be classified into 1 of 10 suggested 'area types'. The typologies suggested include 'urban neighbourhoods', 'inner suburbs', 'outer suburb', 'town/city

¹ for natural environment improvement, environmental protection, waste and resource efficiency, air quality, environmental standards, water, nature and biodiversity, conservation covenants, and the regulation of chemicals.

centre' etc. For each area-type, the NMDC suggests that a design code or guide should be prepared, which sets out the expectations or requirements for how new developments within that area-type should be designed.

7. The report to DPP on 2nd March (which considered the draft NMDC) identified some concerns with the area-type approach. It noted that, in a diverse urban authority such as Leeds, rather than being homogenous groupings, these 'area types' would include a wide variety of neighbourhoods that each have their own characters not only in terms of design and the built form, but also in terms of the make-up of their communities. They each have different strengths and challenges, and present different opportunities for new development and require different design responses.
8. Since the end of March 2021 (when we were notified of our successful bid), officers have met regularly with representatives from MHCLG to refine and agree the scope of the Leeds testing project. As one of the few cities participating in the testing programme (and the only one looking at the area-type approach) our work is focussing particularly on the application of the area-type approach of the NMDC in urban and inner city areas. As part of this, we are looking at:
 - a) how would we divide our city up by 'area-type'
 - b) how much consistency is there within an 'area-type' in terms of design and what might be sought from new developments
 - c) how would we engage with others when preparing area-type level design codes
 - d) what additional value does a code bring to existing design guidance e.g. the Council's standards already set out in detail in Neighbourhoods for Living
9. The intention is that the testing work will help us to develop a methodology for preparing any new design codes / guides in Leeds in the future in accordance with the NMDC. It is also hoped that the lessons learned (and any issues encountered) will be taken into account by MHCLG and used to refine the NMDC before it is finalised. The testing programme provides us with an opportunity to explore different ideas and approaches (for example, different ways of using GIS mapping to identify area-types) and will enable us to be on the 'front foot' when the final version of the NMDC is published.
10. The work being done as part of the testing programme will not, in itself, result in any new design codes / guides for Leeds. In accordance with the NMDC, any new design codes would need to be prepared with early and continued engagement and consultation with the community and any other interested stakeholders. It is unlikely that we would seek to do this until there is further clarity on how design codes will fit under any future planning reforms, so that they can be prepared with full understanding of how they will be used to inform the decision making process.
11. The NMDC is very clear that engagement and community involvement is critical in the preparation of design codes. This is in terms of both using the knowledge of residents, elected members and other stakeholders to help develop the understanding of the existing character of the area, and also to develop a vision for the area in design terms, which would then inform what the code says.
12. As part of the testing project the Council are intending to look at how people are engaged in the process. The draft NMDC makes some suggestions about this, and this will be considered in more detail. The Council is at an early stage of this part of the project, but will be focussing on this and thinking about it more over the next month or so. A workshop for DPP members in early September is proposed where work that has been undertaken can be considered in more detail and issues raised can be reflected within the final report that is submitted to MHCLG at

the end of September.

Biodiversity Net Gain

13. Biodiversity Net Gain (BNG) is a forthcoming new statutory responsibility for Local Planning Authorities arising from the Environment Bill which has been confirmed in the Queens Speech May 2021. It will have considerable implications and opportunities for LPAs and guidance is needed to prepare for it.
14. BNG allows Local Planning Authorities to secure on and off-site biodiversity credits from developers and use these to deliver projects. It is a new approach, which requires setting up a new guidance, systems and processes. Leeds is the lead authority on behalf of the 5 West Yorkshire authorities in tendering for consultants to advise on this.
15. In sum consultants will:
 - a) Review the Environment Bill to identify obligations on LPAs for BNG
 - b) Critical analysis of options available to deliver BNG
 - c) Good practice from elsewhere in England
 - d) Understanding of the role of Habitat Banks (off-site areas that can be joined to existing reserves or used to link different habitats and areas together)
 - e) Components required to set up a self-financing BNG system led by an LPA and potential for cross-authority savings
 - f) Viability assessment through auditing real-life applications
 - g) Help identify number of Biodiversity Units likely to be required through off-site delivery – to help inform Habitat Banking
 - h) Advise on governance models
 - i) Assessment of how on-site Biodiversity Units will be delivered in a reportable/enforceable way
16. The Council currently delivers BNG in the context of the forthcoming Act, through adopted Core Strategy Policy G9 which states:

POLICY G9: BIODIVERSITY IMPROVEMENTS

Development will be required to demonstrate:

(i) That there will be an overall net gain for biodiversity commensurate with the scale of the development, including a positive contribution to the habitat network through habitat protection, creation and enhancement, and

(ii) The design of new development, including landscape, enhances existing wildlife habitats and provides new areas and opportunities for wildlife, and

(iii) That there is no significant adverse impact on the integrity and connectivity of the Leeds Habitat Network.

17. Whilst the Act proposes setting a minimum of 10% net gain our current statutory policy requires overall net gain but does not set a % figure.
18. The LPA has guidance² on our web-site on BNG which helps clarify the implementation of

² <https://www.leeds.gov.uk/planning/conservation-protection-and-heritage/achieving-net-gain-in-biodiversity-guidance-for-developers>

Policy G9 and encourages 10% net gain and opportunities on individual sites are taken through negotiation on individual planning applications. A net gain figure will be set, within a policy through the Local Plan Update 2021 and Members will be updated on the outcome of the consultancy project at its November meeting.

First Homes

19. The government's proposed approach to affordable home ownership is called First Homes (FH). These were noted in the Government's election manifesto and consulted on in 2019 and a Ministerial Statement delivered in parliament 24th May 2021. The Planning Practice Guidance has been updated to reflect this but no changes have been made to the National Planning Policy Framework.
20. **Definition of FH:** FHs meet the definition of 'affordable housing' for planning purposes and are to be sold with a 30% discount on market value. The discount set will be retained in perpetuity through a legal restriction on the title. A price cap of £250,000 after discount will be set though this will only be applied to the initial sale. The FH will only be for first time buyers and household income should be less than £80k. There is local discretion to set different caps and market discounts (of either 40% or 50%) through plan-making if there is evidence of a local need to do so.
21. **Delivery:** FH will be delivered mainly via developer contributions required by s.106 obligations and will be secured by the agreement. The overall Affordable Housing contribution must be the same value as would have previously been required under current policy i.e. FH are replacing a type of current AH tenure provision not adding more. There is a requirement that a minimum of 25% of s.106 affordable units will be FH, whether on site, off site, a commuted sum or a mixture of these. For the remaining 75%, the tenure should be in line with Local Plan policy and should prioritise social rent. In Leeds the current policy³ is for 40% intermediate⁴ rent and 60% social rent⁵. Under FH this would likely look like 25% FH and 15% other intermediate products (to make up the existing 40% requirement) and 60% social rented. Government is to produce a model S106 agreement which LPAs are encouraged to use and adapt to local circumstances as well as other standard documentation.
22. **Exceptions Sites:** Councils will be required to support the development of exception sites, not allocated in the local plan, that provide for "First Home-led development". This would amend current national policy on the development of "entry-level exception sites" in the NPPF. If the current NPPF policy remains these will not be in the Green Belt but could be on other sites not allocated for housing or allocated for other uses.
23. **Transitional arrangements:** The requirements must be taken in to account in a plan-making context from 28th June and the Council does not fall under any of the transitional arrangements that allow local authorities with advanced plans to not reflect FH. FH will not apply to sites with full or outline planning permission, those applications that will be determined before 28th December 2021 or where there's been significant pre-application engagement and an application will be determined before 28th March 2022. The Government note that LPAs should allow developers to add FH to the tenure mix if they wish and be flexible and should clearly state how FH requirements are going to be applied before any formal policy review "*through the most appropriate tool.*"
24. **Matters Arising for Leeds:** FH is a fresh approach and the Council will need to take the new

³ Core Strategy (as amended by the Selective Review) 2019 Policy H5

⁴ Affordable to households with lower quartile incomes (i.e. lowest 25% in local area)

⁵ Affordable to households with lower decile incomes (i.e. lowest 10% in local area)

requirement into account and understand how it impacts upon its existing policy framework for Affordable Housing needs. There are also administration and resource implications to be taken into account as well as concerns as to what types of sites may come forward as exception sites.

25. In the Council's response to Government on the FH consultation we noted that only 36% of households in Leeds can afford £100k and only 15% can afford £160k. In the inner city areas only 17% can afford £100k and only 1% can afford £160k. It is therefore possible that Leeds will have the local evidence to require the need to invoke higher % discounts. This would need to be updated through a formal statutory plan-making process and the necessary evidence base work to underpin any change to policies. Policy H5 of the Core Strategy Selective Review was updated in 2019 and prior to the change in Government policy would have been reviewed to see if it needed to be updated by 2024. Agenda item 2: The Local Development Scheme (LDS) clarifies that having very recently adopted a housing requirement and affordable housing policy in 2019⁶, the Council would have would have reviewed Policy H5 to see if it needed to be updated by 2024. Members will be aware that the Council is prioritising a Local Plan Update to focus on the climate emergency and how that fits with the 3 Pillars of the Council for climate emergency, health and well-being and inclusive growth. The LDS clarifies that the implications of First Homes will need to be subject to further consideration and that DPP will consider the matters that may be considered through future Local Plan Updates.
26. **Next Steps:** As part of helping to shape the Council's thinking on this an Affordable Housing Delivery Plan (prepared through the officer Housing Growth Board) will be brought to DPP in September. This sets out how the council and other stakeholders engaged in housing delivery can refresh the tools, funding and collaborations needed to increase and maximise AH delivery.

What consultation and engagement has taken place?

27. These are currently operational matters and wider consultation will be required through future plan making in line with the Council's Statement of Community Involvement and pursuant to legal requirements.

What are the resource implications?

28. There are significant resource implications for the NMDC, BNG and First Homes matters as these require significantly more up front work. Government has recognised this and noted that New Burdens Funding will be made available to account for the resource pressures. However, no further clarity is available on that at present.

What are the legal implications?

29. There are no legal implications arising from the recommendations in this report.

What are the key risks and how are they being managed?

30. This paper considers new and potential emerging guidance in relation to changes to the planning system and until further detail of this is known, it is difficult to assess the impacts.

Does this proposal support the council's three Key Pillars?

Inclusive Growth Health and Wellbeing Climate Emergency

31. Planning is relevant to the delivery of all the priorities in the Best Council Plan. The emerging

⁶ Core Strategy (as amended 2019)

and proposed changes to the planning process will be considered through plan-making and in that process the 'Best City Priorities' will be considered in detail as part of the planning process.

Options, timescales and measuring success

What other options were considered?

32. None.

How will success be measured?

33. These are emerging plan areas which will be implemented in detail through plan-making and guidance. This will ensure that objectives are measurable.

What is the timetable for implementation?

34. The NMDC testing process will run until the end of September 2021. After that it is expected that the Government will roll out a revised NMDC in due course. No timetable has been set.

35. The First Homes proposals are applicable through transitional arrangements as set out in paragraph 20.

36. Biodiversity Net Gain is subject to provision in the Environment Bill which is at a late stage but is yet to receive Royal Assent. Work on behalf of the West Yorkshire authorities is due to report in the Autumn.

Appendices

37. None

Background papers

38. None