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## **The proposed changes to the National Planning Policy Framework and draft National Model Design Code: A response to the MHCLG consultation**

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### **1 About the TCPA**

The Town and Country Planning Association (TCPA) works to challenge, inspire and support people to create and transform communities so that everyone thrives in socially just, healthy, sustainable and resilient environments. To this end we aim to improve the art and science of planning in the UK and abroad and work to secure fresh perspectives on major issues, including planning policy, housing, regeneration and climate change.

### **2 Summary**

The TCPA welcomes the Government's review of national planning policy for England. Many of the issues confronting our communities have changed radically since the National Planning Policy Framework (NPPF) was first introduced in 2012 and the review is an opportunity to direct the focus of the planning system to deal with a post pandemic world in which health, the climate crisis and the delivery of well-designed affordable housing have become key priorities.

The Association recognises that the proposed changes to the NPPF and the model design code guidance significantly restore and emphasis on good design to the planning system. This emphasis, as well as the inclusion of the United Nations sustainable development goals is a welcome step forward. However, given that the consultation document proposes a wide range changes to the NPPF it is vital that the final version tackles other issues critical to the future of our communities. These include delivering on the Government's own commitments to a zero-carbon future, the vital need to update policy on planning for flood risk and the immediate task of securing safe, accessible and inclusive spaces for both women and for other groups with protected characteristics. Addressing all of these issues can be done quickly and efficiently by reference to established legislation and existing design frameworks.

### **3 Response to draft changes to the NPPF**

#### **3.1 The scope of the changes to the NPPF**

The consultation document makes clear that this is a partial review of national planning policy. The proposed changes are in fact wide ranging with a broad set of priorities from promoting beautiful design to the detail of the application of Article 4 directions and preservation of public statues. It is disappointing, therefore, that the consultation does not address, in any detail, vital issues such as the practical delivery of the Government's zero-carbon target. There are also other significant areas like policy on town centres where changes to permitted development rights will make large parts of the existing policy approach in Chapter 7 of the NPPF redundant.

Many of these issues, such as planning for climate change, will remain fundamental priorities for national planning policy whatever the outcome of planning reform. It is vital, therefore, that they are addressed now.

### **3.2 Sustainable development and purpose of the planning system**

The TCPA strongly welcomes the inclusion of the United Nations sustainable development goals (SDGs) in the National Planning Policy Framework. The UN SDGs should form a golden thread running through all policy in the NPPF and should be translated into specific priorities for plan making in paragraph 20. Describing these goals as relevant to planning 'at a very high level'<sup>1</sup> is, however, unhelpful and reduces their relevance to decision-making. The NPPF should directly reference the specific measurable targets that support the SDGs.

There are tangible benefits to this approach in terms of outcomes for communities by, for example, the inclusion of the UN SDG 5<sup>2</sup> on equality for women and girls. Currently the NPPF contains no mention of the wider importance of equality or any mention of the needs of specific groups including ethnic minorities, women or LGBTQI people. There is a real opportunity to get practical changes now by embedding equality into the outcomes of planning decisions. The NPPF should ensure all planning policy and decisions support the SDG on equality by, for example, the rigorous application of the Public Sector Equality duty. This will also ensure that the needs of groups with protected characteristics, including race, age, disability and sexuality, are met. Promoting equality should be key strategic policy priority in paragraph 20 of the NPPF and represented as key design outcome in Chapter 12. Action to secure places which are safe, accessible for those with protected characteristics means planning for the majority of citizens in England in a new and more inclusive way.

### **3.3 The promotion health and wellbeing as key strategic priority for planning**

There is now a powerful evidence base to demonstrate the relationship between people's mental and physical health and the design of homes and the wider built environment<sup>3</sup>. Planning plays a major and positive role in promoting health outcomes and in dealing with health inequalities. The current NPPF identifies the provision of adequate health facilities as a strategic priority but this is a separate issue to the wider objective of ensuring the built environment supports health outcomes and positively seeks to reduce health inequalities.

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<sup>1</sup> Paragraph 7 of the draft NPPF

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/961769/Draft\\_NPPF\\_for\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961769/Draft_NPPF_for_consultation.pdf)

<sup>2</sup> <https://sdgs.un.org/goals/goal5>

<sup>3</sup> For example: <https://www.england.nhs.uk/publication/putting-health-into-place-executive-summary/>

As a minimum the NPPF should acknowledge the statutory duty for the Secretary of State under Section 12 of the Health and Social Care Act 2012. It should then set out health improvement and health inequalities in paragraph 20 as a strategic priority for plan making. The subsequent language of the NPPF, particularly in Chapter 12 on design and Chapter 9 on transport needs to be altered to consistently emphasise the importance of health improvement and reducing health inequalities.

### **3.4 Climate change and zero carbon**

The planning system plays a vital role in delivering the actions to both mitigate and adapt to climate change. On climate mitigation the Association welcomes the inclusion of generalised reference to climate mitigation in the proposed changes to paragraph 11. However, to drive practical action the NPPF needs to set out a comprehensive approach to carbon handling and policy options based specifically on the achievement of the Government's recent commitments to the net zero target. Planning policy should also reflect the Committee on Climate Change's recognition of the key role local government plays in meeting our emission reductions and to the declaration of hundreds of climate emergencies by communities throughout England.

The proposed changes in chapter two of the NPPF need, therefore, to go further if the Government is to make sure the planning system delivers on the objectives of the 2008 Climate Act. The NPPF must ensure that all decisions deliver on the 2050 net zero target providing a clear direction of travel that will drive the transformation in the design, location and energy systems of all new development and the regeneration of existing places.

To this end, the NPPF must make plain that all policies, plans and decisions must deliver on the objectives of the Climate Act. To achieve that the following wording should be inserted into chapter two after the current paragraph eight:

*Climate change is the greatest long-term challenge facing the world today. Addressing climate change is therefore the Government's principal concern for sustainable development. For the avoidance of doubt, achieving sustainable development includes securing the mitigation of, and adaptation to, climate change. All planning strategies, and the decisions taken in support of them, must reflect the Government's ambition to help business and communities build a zero-carbon future and prepare for the impacts of climate change. Accordingly, planning policies and all planning decisions must be in line with the objectives and provisions of Climate Change Act 2008 including the 2050 net zero carbon target.*

NPPF policy should clarify how carbon accounting should be handled in the planning process, create greater encouragement for renewable energy and clearly signal the damaging impact of certain energy minerals. Significant policy change is necessary to show the kind of leadership needed in the run up to the COP 26 United Nations climate conference. The TCPA has made a separate and detailed joint submission with the Centre for Sustainable Energy and other partners<sup>4</sup> which demonstrates the necessary changes to fully align the planning system with the requirements of the 2008 Climate Act<sup>5</sup>.

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<sup>4</sup> <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=81cf6c97-3678-44c9-ba54-48b5d59df331>

<sup>5</sup> <https://www.tcpa.org.uk/blog/last-chance-to-unite-on-climate-action>

### 3.5 Climate change and planning for flood risk

The Planning White Paper states that there has been an internal government review of planning for flood risk [paragraph 3.23 of the ‘web accessible’ version]. However, the revised NPPF shows no attempt to strengthen national policy on climate adaptation in general or particularly on planning for flood risk. The proposed minor clarifications fall far short of preparing the planning system for the rapidly growing impact of severe weather and the need to relocate coastal communities due to the risk of sea level rise. Nor has there been any attempt to provide clear policy support for specific building scale flood resilience measures despite such frameworks being advocated for by the insurance industry.

In the decade since the first publication of the NPPF the planning policy approach to dealing with climate change adaptation has been static despite the findings of a series of authoritative reports<sup>6</sup> advocating, for example, for the adoption of national resilience standards. The TCPA’s own research<sup>7</sup> has highlighted the inconsistent implementation of national policy on flood risk. This is partly because national policy requires clarification and also because the policy itself has not been updated to reflect scientific consensus on the growing scale of climate impacts. NPPF policy now requires urgent and wholesale review to protect communities, to avoid the growing cost to the UK economy and to allow the basic operation of the insurance industry. The NPPF should emphasise eight policy priorities for building national resilience to climate impacts:

1. A strong presumption against any development in category 3 floodplains to be applied before the sequential and exception tests. A related strengthening of the exception test to consider the availability of affordable flood insurance to any proposed new development<sup>8</sup>.
2. A stronger requirement to plan for the future extent of floodplains based on the Environment Agency’s climate change flood risk allowances. Local plans (and any future zonal plans) must clearly express in map form the future extent of floodplains and expected coastal realignment in line with the Government time horizon, set out in the allowances, of 2125. Plans must fully reflect the provisions and principles of the Government’s 2020 Flood and Coastal Erosion Risk Management Strategy<sup>9</sup>.
3. The need for all development, including that under 10 housing units, to demonstrate full compliance with the sequential and exception tests. Recent research by the TCPA<sup>10</sup> demonstrated a worrying failure to apply basic NPPF policies. One likely cause of this is the confusion generated by the wording of paragraph 164 (now para 167) of the NPPF which exempts ‘minor’ development from the sequential and exception tests. As a result, the NPPF should cease to use the term ‘minor’

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<sup>6</sup> Including the [Jenkins Review](#) (SuDS recommendations) and the [EFRA select committee review](#) (cumulative development) and successive reports of the Adaptation Sub Committee.

<sup>7</sup> <https://www.tcpa.org.uk/blog/blog-loss-of-skills-and-power-is-local-government-critically-unprepared-for-the-climate-crisis-jessi>

<sup>8</sup> Development which is not covered by the FloodRe scheme

<sup>9</sup> <https://www.gov.uk/government/publications/national-flood-and-coastal-erosion-risk-management-strategy-for-england--2>

<sup>10</sup> Ibid.

development or should clearly explain in foot note 55 of the draft NPPF that ‘minor’ does not mean housing development of less than 10 units.

4. A direct policy obligation to identify those communities who will be required to relocate from vulnerable coastal areas during the next 50 to 100 years and a clear strategic approach to identifying the necessary new housing growth areas.
5. A new requirement for local plans to identify specific site allocations for the development of strategic natural flood risk measures.
6. The NPPF should place a clear expectation on the use of Ggreen SuDS on all new development, rather than focusing only on major development and development in flood risk areas. SuDS are the best tool for ameliorating the cumulative impacts of small-scale development. There is also evidence that the flood risk benefits of small-scale SuDS are often greatest when deployed in the middle and upper drainage catchments, not at the bottom of drainage catchments where flood risk areas tend to be. NPPF policy should require SuDS on all smaller scale development where they are likely to have real benefits to reducing overall surface water flood risk. The NPPF should clearly prescribe those circumstances where planning applications need to be supported by a sustainable drainage assessment.
7. The introduction of a nationally approved set of building resilience standards such as those advocated by Construction Industry Research and Information Association,<sup>11</sup> which can be applied by local authorities to development likely to be at risk from, for example, surface water flooding. The application of these standards would be in the context of strong national policy to ensure development in flood risk areas is avoided, alongside the requirements for SuD’s.
8. The NPPF must urgently clarify the use of LDO’s in areas of severe flood risk and particularly their application to relax occupancy conditions on static caravans. Current practice illustrates a profound failure to understand how such changes can endanger life and undermine wider long-term plans for building flood resilience

### **3.6 Beauty in design.**

The TCPA supports the inclusion in Chapter 12 of the idea of ‘beautiful homes and places’ as a national policy priority for the planning system. We recognise, however, that unlike equality where legal frameworks provide certainty on definitions, ‘beauty’ in the built environment will always be a deeply contested concept. While there is a greater cultural consensus about beauty in landscapes and the natural environment in the built environment ‘beauty’ is often represented by fundamentally opposed design traditions.

**For the TCPA ‘beauty’ is framed by a fusion of form and function in the context of social justice and democratic decision making.** That is the heart of the Garden City design philosophy and we believe the NPPF should directly reference the Garden City principles as one of the most effective ways of transforming design outcomes. The late Sir Roger

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<sup>11</sup> <https://www.ciria.org/ItemDetail?iProductCode=C790F&Category=FREEPUBS>

Scruton's Building Better Building Beautiful Commission was much taken with John Ruskin's commitment to beauty. But Ruskin's commitment was founded on social justice and on the rejection of monotonous pattern book design. So, while the emphasis on good design must be welcomed the risk is that codifying what 'beauty' means will become a checklist rather than the starting point of creative design. It is significant that this has been the fate of many previous attempts to codify good design from the 1919 Tudor Walters report onwards.

To help provide clarity for communities and practitioners, the NPPF should be amended to make clear whether the Government believes that the full implementation of the design code guidance equates to the achievement of 'beautiful design'. The NPPF should also make clear that while aesthetic beauty in design is an important ideal it also needs to be balanced by basic issues of functionality. This is particularly important in terms of health and well-being and in response to the climate crisis. Good design is about much more than about the acceptability or otherwise of particular housing design types.

### **3.7 Article 4 directions and the future of town centres.**

Paragraph 53 of draft NPPF makes significant changes to the application of Article 4 directions which currently allow local authorities to restrict permitted development where it can undermine locally set planning priorities. The new proposed policy test is draconian because it sets the bar for the application of such orders too high by using language such as 'wholly unacceptable', or where impacts are of 'national significance'. As a result, the policy further strips away effective powers from local government over the control of their own communities. The impact on democracy will be even more severe because when the new Class E permitted development regime is introduced it is our understanding that all existing Article 4 directions will fall and have to be remade under the new guidance.

The wording of paragraph should be amended to reflect legislation for Article 4 directions as outlined in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The order allows a local authority to introduce an Article 4 direction where it considers that the development to which it relates would be prejudicial to the proper planning or amenities of their area. Given the Government's desire for brevity in national policy, and that this legal definition is precise, it is unclear why any policy is necessary in the NPPF.

### **3.8 Strategic growth**

The proposed changes to paragraph 22 provide some welcome but brief clarifications on the longer time scales which need to be applied to the planning of large-scale development. However, an important opportunity has been lost to clarify the application of viability testing to the very long-time scales necessary when strategically planning new communities. This uncertainty has undermined the ambitions of several local authorities who were proposing strategic growth options. The TCPA has set out the detailed changes to national planning policy to support a more effective delivery of long-term large-scale development in our recent report 'Unlocking Large Scale Growth'<sup>12</sup>.

## **4 Response to draft model design code guidance**

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<sup>12</sup> <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=55fd711c-e9fb-4aed-b753-817bb8f9b3ce>

The TCPA welcomes the Government's commitment to good design set out in the National Model Design Code guidance document. A great deal of the content provides a useful basis for improving design quality in the creation of homes and places. However, there are risks that guidance, when read alongside the policy which empowers it in the NPPF, will prioritise aesthetics over functionality. This may not be the intention, but it is vital that the way the built environment operates to deliver inclusive and zero carbon outcomes is given equal weight to the visual impact of new homes. The TCPA has two specific reservations which surround both the content and the implementation of the design code guidance.

#### 4.1 Content

The design guidance should be strengthened on issues such as zero carbon, on flood resilience standards and on health inequalities. For example, it is important to establish precisely how the application of the design code principles will deliver on the wider ambition for a net zero carbon target or in precisely what circumstances building scale resilience measures should be required.

The greatest weakness of the design guidance is that it assumes, as Figure 2 of the guidance demonstrates, that a basket of issues on standards in homes and on resource use are outside of the scope of the design code process because these standards are assumed to be dealt with elsewhere. That is not a safe assumption since these other Government endorsed frameworks of standards are very often voluntary or simply absent as in case with building scale resilience. The exclusion of these elements from the design process could significantly skew the final outcomes undermining critical aspects of functionality such as zero carbon or light and space standards.

This could lead to extremely poor design outcomes. For example, a design code could be developed with no reference to the voluntary national space standards or without reference to basic light standards. Conversely the incorporation of these standards has a profound impact on the design and density of new housing development. If form and functionality are the components of good design then both need to be fully considered in a holistic design approach. There should be no sense, as paragraph 203 appears to imply, of trading off aesthetic designs from requirements for energy efficiency or relegating vital issues such as zero carbon or flood risk to 'contextual' matters. Given the scale of the climate and ecological emergencies national design guidance should set out **requirements** for buildings and places. Overall, the guidance is still too provisional so that passive energy design and local low energy networks are elements which local codes '*might include*'. In fact, they are essential design requirements if we are to meet the Government's zero carbon commitments.

The TCPA has produced a minimum set of housing standards in the Healthy Homes Principles<sup>13</sup>. We strongly urge that these are included as an integral part of the guidance. As we set out in section 3.6 of our response, we also strongly recommend that the design code guidance references and integrates the ambitions of the Garden City Principles.

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<sup>13</sup><https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=3ecf26b8-a418-4bae-83d2-3ec1b624d3e6>

### 4.3 Implementation of the design code guidance

The status of the national design code document as planning guidance gives its content real power in plan making and in decisions. This is a welcome step forward and provides strong support for local authorities and communities to demand higher standards in design.

How the local design codes will be produced based upon this national guidance is much less clear. For example, where local design codes are adopted and have a significant weight in decision making there must be legally defined opportunities for public participation and for the policy to be independently tested. Currently, where codes are adopted as part of a local or neighbourhood plan there is a process for participation and dispute resolution. Where they have a lesser status or, as the guidance suggests, are even prepared by developers the position has the potential to undermine public trust.

While developers are free to set out their design aspirations in a code such documents can have no particular weight in decision making unless they were adopted by a planning authority through a formal process. Consensus may be possible in some places but design codes are likely to be battlegrounds between a community's desire for affordable homes and zero carbon on the one side and viability and development profits on the other. **To have weight and legitimacy they must have a formal local status and mechanisms to ensure everyone's voice is heard.**

While we welcome the Government's commitment to improving the quality of new development, we are aware that the new obligations in national policy on beauty and design do not apply to the majority of permitted development decisions. Applying these policies to such development how they would have the most positive impact on people's basic living conditions. The fact that the majority of permitted development schemes can bypass the design guidance discredits any ambition the Government may have to increase design quality in the built environment. However, when design is mentioned as a prior approval consideration then logically any national government guidance on design must be relevant. The guidance should make clear that local planning authorities should apply the full provisions of the design code advice whenever design is prior approval matter.