

Committee(s):	Date(s):
Hampstead Heath Consultative Committee	6 <sup>th</sup> November 2012
Subject: National Planning Policy Framework and Neighbourhood Planning - implications for the City of London's Open Spaces	Public
Report of: Director of Open Spaces	For Information

### Summary

The National Planning Policy Framework (NPPF) has swept aside much detail in terms of the protection of the Green Belt and Metropolitan Open Land (MOL), including the new presumption in favour of sustainable development. The implications for the City's Open Spaces are considered. The report proposes seeking to work with the Greater London Authority (GLA) to identify means of strengthening strategic planning in the London Plan, to explicitly protect and enhance the portfolio of open spaces across London. The existing local planning policy framework, (still in preparation in many areas,) does not provide a clear enough guide for development proposals affecting our open spaces. A strengthened strategic policy, which explicitly referred to the Corporation's open spaces, would provide greater clarity and make certain that any developments affecting these areas would be resisted. Further protection could be achieved by seeking Statutory Consultee status; however this would take longer to achieve as it would require secondary legislation and is likely to require significantly increased resources.

### **Recommendations**

That Members of Hampstead Heath Consultative Committee receive this report that recently went before the Open Spaces, City Gardens and West Ham Park Management Committee.

## Main Report

### **Background**

1. The Government is committed to reforming the planning system as part of its wider promotion of 'localism'. It considers that the existing system is so elaborate that it discourages local involvement in the planning process and local acceptance of new development arising from it. The much shorter National Planning Policy Framework (NPPF) which came into force on 27<sup>th</sup> March 2012 provides a simpler framework within which local people and their councils can produce their own distinctive local and neighbourhood plans, to reflect the needs and priorities of their communities.

2. The City of London's Open Spaces are used and enjoyed by millions of visitors each year. They are important wildlife habitats but also provide many facilities for visitors. The Corporation has duties under section 28G of the Wildlife and Countryside Act (1981 as amended), the Natural Environment and Rural Communities Act (2006) and EU Habitats Regulations; which require the City of London to take reasonable steps to further the conservation and enhancement of its Open Spaces.
3. Whilst it is important to promote and manage these spaces continuously, the requirement for growth and new housing in London and the South East is placing considerable pressure on our open spaces. A significant number of planning applications are submitted each year, which affect these Open Spaces; this generates a substantial workload. For example, Burnham Beeches is likely to deal with some 50 planning objections this year (has been up to 100 in previous years); whilst Hampstead Heath deals with some 60 applications. Epping Forest handled 127 applications in 2011, with 26 requiring responses (Planning Casework, EF&CC 5March 2012). These applications frequently relate to land immediately adjacent to or, close to, an Open Space and often concern the scale of development.
4. Appendix 1 summarises the wide range of planning authorities and designations impacting on these open spaces. Although the open spaces are generally well protected (through our land ownership and appropriate Open Spaces Acts), it is the effect of adjacent development that can cause considerable harm; this varies with each application but often includes the visual landscape, air pollution, and drainage and water table impacts.
5. The open spaces themselves provide London with a green infrastructure that is important to the health, welfare, quality of life experience and enjoyment for residents, businesses and visitors. Given their strategic importance in terms of the overall functioning of the City it is considered that options for a London-wide strategic policy should be explored with the GLA.
6. This report considers the strategic planning policy options available for managing the Corporation's open spaces and whether more could be done to reduce the planning pressures on these spaces and thus the resources (officer time) required.

### **Current Position**

#### The presumption in favour of sustainable development

7. The NPPF transitional arrangements, for twelve months, allow development plan policies adopted since 2004 to be given full weight, even if there is a limited degree of conflict with the NPPF. In other cases and after 27<sup>th</sup> March 2013, relevant weight must be given to local policies in accordance with their consistency with the NPPF. To date only half of local planning authorities (LPAs) have adopted a core strategy (and others need to review them following the NPPF) this is likely to cause some significant

issues when resisting development based on pre-2004 Development Plan policies.

8. It is assumed that it will not be possible to rely on pre-2004 policies. Given that they were not subject to the test of 'soundness' required under the 2004 legislation. This is important because, where the development plan is silent/ absent / out of date, the NPPF provides there should be a presumption in favour of sustainable development (PFSD). Consequently, LPAs have only a short period in which to update their development plans before all allocations and development control policies have to be considered in the context of the NPPF. In addition, for housing policy, a failure to demonstrate a 5year land supply automatically triggers PFSD.
9. If the development plan is absent, LPAs will find many development proposals more difficult to resist unless the adverse impacts of granting permission would 'significantly and demonstrably outweigh the benefits', a much higher requirement than previous policy. The NPPF also makes clear that "*Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery and should not be used to add unnecessarily to the financial burdens of development*".

#### Green Belts, Metropolitan Open Land and Open Space

10. Metropolitan Open Land (MOL) is a designation only used within London and provides the same level of protection as Green Belt; to protect areas of landscape, recreation, nature conservation and scientific interest, which are strategically important. Strategic applications are referred to the GLA and cannot be determined locally, although smaller applications are not always monitored in the same way.
11. The NPPF provides guidance to facilitate the restriction of inappropriate development within open spaces. Paragraph 74 states that:

*“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*

  - *an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
  - *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
  - *the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss”*.
12. Whilst the NPPF is silent on explicitly mentioning MOL, the general thrust of green belt policy has changed relatively little from PPG2, although much detail has been swept aside.

Paragraphs 87 and 88 of the NPPF sets out the key approach to development proposals within the green belt, which states:

*“As with previous Green Belt policy, inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances.*

*When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”*

13. The main change is in the context within which green belts operate. Since the early 1990s, green belts have operated within a framework of regional planning, with structure plans or regional strategies setting the broad extent and providing the context for review. With the general absence of regional planning it is not yet known how the overall framework for developments within them will be monitored or regulated. They were designed to prevent the coalescence of urban areas and maintain the openness of the countryside, yet despite the NPPF and ministerial statements, there is uncertainty over the future strength of green belt protection in the absence of the overarching regional framework,

#### Neighbourhood Plans

14. The Localism Act, which received Royal Assent on 15<sup>th</sup> November 2011, introduced new rights and powers to allow local communities to shape new development by coming together to prepare neighbourhood plans.
15. Neighbourhood planning can be taken forward by two types of body – town and parish councils or ‘neighbourhood forums’. Neighbourhood forums are community groups that are designated to take forward neighbourhood planning in areas without parishes. It is the role of the local planning authority to agree who should be the neighbourhood forum for the neighbourhood area.
16. The criteria for establishing neighbourhood forums are being kept as simple as possible to encourage new and existing residents’ organisations, voluntary and community groups to put themselves forward. The current criteria for a Neighbourhood Forum is it should have a minimum of 21 people who live or work or are Councillors in the neighbourhood, is open to all including those wanting to live in the area – and has a constitution.
17. Neighbourhood forums and parish councils can use new neighbourhood planning powers to establish general planning policies for the development and use of land in a neighbourhood. These are described legally as ‘neighbourhood development plans.’
18. In an important change to the planning system communities can use neighbourhood planning to permit the development they want to see – in full or in outline – without the need for planning applications. These are called ‘neighbourhood development orders.’

19. Local councils will continue to produce development plans that will set the strategic context within which neighbourhood development plans will sit. Neighbourhood development plans or orders do not take effect unless there is a majority of support in a referendum of the neighbourhood. They also have to meet a number of conditions before they can be put to a community referendum and legally come into force. These conditions are to ensure plans are legally compliant and take account of wider policy considerations (e.g. national policy).

Conditions are:

- they must have regard to national planning policy;
- they must be in general conformity with strategic policies in the development plan for the local area (i.e. such as in a core strategy); and
- they must be compatible with EU obligations and human rights requirements.

20. One of the basic conditions is that the neighbourhood plan is in general conformity with the strategic policies contained in the development plan. S.38 of the Planning and Compulsory Purchase Act 2004 defines “development plan” as the development plan documents (DPDs) adopted for the area and Schedule 8 extends this to include saved local plans. Where there are no DPDs in an area the examiner must consider whether the draft plan/ order is in general conformity with the strategic policies in the saved development plan. In London, the development plan for the local area includes the London Plan and any development plan documents prepared by borough councils applicable to that local area.

21. An independent qualified person then checks that a neighbourhood development plan or order appropriately meets the conditions before it can be voted on in a local referendum. This is to make sure that referendums only take place when proposals are workable and of a decent quality.

22. Proposed neighbourhood development plans or orders need to gain the approval of a majority of voters of the neighbourhood to come into force. If proposals pass the referendum, the local planning authority is under a legal duty to bring them into force.

23. The NPPF makes explicit reference to the opportunity for neighbourhood plans to promote more development than is set out in the local plan. Neighbourhood planning is about shaping the development of a local area in a positive manner. It is not a tool to stop new development proposals from happening and should reflect local and national policies. Neighbourhood plans and orders should not promote less development than set out in the local plan or undermine its strategic policies.

24. Although Neighbourhood plans cannot permit development on our open spaces (due to our land ownership); by supporting increased development locally, they have the potential to cause harm to the open spaces.

### All London Green Grid (ALGG)

25. The ALGG was published as Supplementary Planning Guidance (SPG) in March 2012. This provides a framework for the creation, enhancement and management of green and open spaces across Greater London. The objectives include, but are not limited to, promoting urban greening, enhancing biodiversity, healthy living, heritage and landscape features and improving air quality. The way in which this work will be further implemented is not yet clear and there may be opportunities for greater recognition of the Corporation's open spaces. By linking strategic spaces, the ALGG may afford these areas more protection, but it is too early to know.

### **Options**

26. With the significant changes in planning policy affecting our open spaces and the constraints on resources to monitor planning applications, the Committee needs to determine whether there is more that can or should be done to support and protect these open spaces.

### Statutory Consultee

27. Statutory Consultees are organisations and bodies, defined by statute, which must be consulted on relevant planning applications. Key organisations (in terms of impact and volume of consultations) include the Environment Agency, Natural England, English Heritage and the Highways Agency. Other bodies include local highway and local planning authorities (in relation to some forms of development in adjoining areas) and organisations with very specific interests, such as the Theatres Trust.

28. Non-statutory consultees are organisations and bodies, identified in national planning policy, which should be consulted on relevant planning applications. These include some bodies who are also statutory consultees (for example English Heritage and English Nature) and others that are not, such as the Police Architectural Liaison Officers.

29. Each local planning authority is required to prepare a Statement of Community Involvement which sets out which organisations will be consulted on planning applications, including both statutory and non-statutory consultees. However, to ensure that the Corporation is included as a key consultee in each of the SCIs affecting our open spaces, or to request changes to existing SCIs, would be a resource intensive process. Local planning authorities are also required to keep SCIs under regular review, so this will be a continuing call on resources.

30. In terms of implementing the Corporation's objectives to manage development proposals that affect its portfolio of open spaces, an option could be to explore ways in which the Corporation becomes a Statutory Consultee for all proposals affecting its land. This would require secondary legislation and would not necessarily address the Corporation's concerns on

how to resource and respond to the on-going supply of planning applications in question.

31. The Town and Country Planning Order 1995, sets out a timeframe of 21 days for statutory consultees to provide advice on applications, although for complex cases different time periods can be agreed. This requirement would result in further budgetary and resource constraints, if we were to seek Statutory Consultee status. Furthermore, a formal position may, at times, reduce the flexibility in the way we currently operate. Generally, officers are of the opinion that the disadvantages of this approach outweigh the advantages.

### Strategic Policy

32. In the context of an overall weakening or watering down of open space policies at the national level and within the NPPF it will be important to ensure that greater clarity is provided through policies in order to present the gradual erosion of the Corporation's open spaces. The existing local planning policy framework affecting the Corporations' open spaces is as diverse as the spaces themselves. This presents a management issues for the Corporation given the variety local policies that are applicable to each site. Attempts to prepare separate planning policy documents or SPDs for each site would be hugely challenging and resource intensive process and not necessarily supported by guidance in paragraph 153 of the NPPF, which discourages the use of too many SPDs. One alternative would be to explore ways in which a Strategic Policy, via the London Plan, could be strengthened to explicitly protect and manage the Corporation's portfolio of open spaces.
33. It should be recognised that this approach would not directly benefit sites located considerably beyond the Greater London area e.g. Burnham Beeches; although there is a possibility of indirect benefit. In these locations, there may be no alternative to continued liaison with the local planning authority on policy development, although officers will continue to investigate any possible opportunity for additional protection.
34. The current planning framework largely relies on policies being implemented at a local level, which has placed greater emphasis on the need for the Corporation's Superintendents to become involved at the planning application stages for individual development proposals and to decipher the local policies in the context of each planning application, to ensure that the Corporation's objectives are met. The growing trend for extensions and basement proposals in particular means that many applications affecting the Corporation's open spaces that are designated areas of MOL; do not meet with the criteria outlined in the Mayor of London Order for referral (i.e. proposals less than 1,000 sq.m). This is inadvertently resulting in a gradual erosion of the Corporation's spaces as there is no overall strategy for monitoring the many smaller applications that escape a referral. The recent Government announcement proposing

further relaxation of planning controls on extensions may result in greater pressure.

35. Whilst there is Strategic Policy support within the London Plan for the protection of the MOL and London's strategic open spaces, it is the Corporation's experience that this protection is not necessarily being applied consistently or robustly at the local level, where officers spend much time and resources fighting development planning application proposals. This, together with the NPPF and the loss of detailed Green Belt guidance leads the Corporation to conclude that it would be appropriate at this time to investigate with the GLA the potential to strengthen its planning powers and specifically in relation to the Corporation's portfolio of open spaces which are of strategic importance to London as a whole.
36. The benefits of a strengthened strategic planning policy led approach would provide explicit guidance at the outset and may help to save time and resources in terms of the need for the Corporation to respond to each planning application proposal on a piecemeal basis. This would also ensure that local policies, including any area based policies, or Neighbourhood Plans, are also prepared in general conformity with those outlined in the London Plan.
37. These benefits would provide greater clarity in terms of the requirements for local development plan policies to be in general conformity with explicit policies to protect the Corporation's portfolio of open spaces. Whilst there would still be a need to work with local planning authorities in the development of their Local Plans and potential Neighbourhood Plans, this should reduce the amount of work required to ensure that the Corporation's open space interests are reflected.
38. Additionally a strengthened policy based approach would allow all of the Corporation's open spaces to be afforded protection at a strategic level to ensure that planning applications are managed consistently, the standards and criteria to which they should be considered are uniform and that there is greater accountability in terms of managing development proposals that affect these important open spaces.
39. Such a policy would establish clear links between the management of the open spaces and other London-wide issues such as planning, transport, tourism, the environment and leisure. In addition a strategic policy would need to be carefully structured to recognise the individual character and importance for each of the open spaces.

#### Neighbourhood Forums and plans

40. Several Neighbourhood Forums are already in existence or will be shortly, for the reasons described above, it is not feasible given the current and reducing levels of staff resource to support or be directly involved in their work. However, in the short term, where specific issues are considered directly to impact on our open spaces, Superintendent's will determine



whether it is appropriate to engage with a Forum. In the longer term, if further strategic policy could be achieved then it should reduce some of the requirement to engage in Neighbourhood Forums.

## **Proposals**

41. A strategic planning policy with explicit reference to the Corporation's sites, with a stronger presumption in favour of protection of the open spaces and developments permitted only in exceptional circumstances, would allow staff to focus on the day to day management of the open spaces. Such a policy approach would play an important role in shaping the future of development around these spaces in a coherent and planned manner. This considered approach would be in contrast to the existing situation where the Corporation plays much more of a reactive role in responding to a multitude of development pressures.
42. It is important that a planning policy approach is decided upon which best reflects the needs of the Corporation, those who live in or adjacent to the open spaces and those who visit; by shaping development in a manner that improves the open spaces, has due regard to the protection of landscape features and habitats, conserves and enhances the natural beauty, wildlife and cultural heritage of each area.
43. To progress a strategic planning approach, it is proposed that officers meet with planning officers for the Greater London Authority to both review this report and consider the most appropriate way of amending existing policies in order to address the concerns raised in the report.
44. It is proposed that officers engage with All London Green Grid (ALGG) initiatives to identify ways in which greater recognition can be achieved for the Corporation's Open Spaces.
45. Further protection could be achieved by seeking Statutory Consultee status; this would take longer to achieve as it would require secondary legislation. Due to the potential resources required, it is suggested that this option is not progressed further at this time.

## **Corporate & Strategic Implications**

46. Protecting the future of our Open Spaces supports the City Together Strategy theme 'the Heart of a World Class City which protects, promotes and enhances our environment'. Likewise, the departmental Business Plan's first strategic aim is to 'provide safe, secure and accessible Open Spaces and services for the benefit of London and the nation' and the second aim is to involve communities and partners in developing a sense of place through the care and management of our sites'.

## **Implications**

47. The only financial implications are likely to be the need to retain the use of planning consultants to support this work, which will have to continue to be resourced from existing local risk budgets.

## **Conclusion**

48. If it is possible to achieve a strengthened strategic policy, which explicitly refers to the Corporation's open spaces, this could provide greater clarity and help ensure that any developments affecting these areas would be resisted.

## **Background Papers**

Open Space Planning Strategy – Renaissance Planning August 2012

## **Appendices**

Appendix 1 - Planning authorities and designations impacting on City of London Open Spaces.

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