

HORSPATH PARISH COUNCIL

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Alan C. Scott
National Planning Policy Framework
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Eland House
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Dear Mr Scott,

5th October 2011

HORSPATH PARISH COUNCIL'S RESPONSE TO THE CONSULTATION ON THE NATIONAL PLANNING POLICY FRAMEWORK

Introduction

Horspath is a South Oxfordshire village with a population of 1,400 residents located wholly within the Oxford Green Belt and located less than 1 kilometre from Cowley, the industrial suburb of its larger neighbour the City of Oxford. As a Council we have today discussed the likely impact on our village of the changes to the Planning law and procedures which are likely to result from the proposed National Planning Policy Framework (NPPF), and we wish to communicate to you, and to the Minister The Right Honorable Greg Clark MP, some general points and a number of our very specific concerns as a village which is currently and successfully protected from inappropriate development by the Green Belt legislation of Planning Policy Guidance Note 2 (PPG2)

Our general concerns about the likely effect of the NPPF

1. The vagueness of the NPPF will generate many legal challenges for clarification, and will make the Planning process much slower and more expensive.

While the attempt to reduce 1,000 pages of Planning legislation to just 52 pages of policy is courageous, we feel that far too much essential detail is lost in this abbreviation, so that the resulting draft NPPF is no longer a legally definitive statement of Planning policy on which development management decisions can be securely and lawfully based by professional Planners in Local Planning Authorities (LPAs). There is too much ambiguity introduced by the vague language of the document, and this will result in much time-consuming and very costly litigation to determine exactly what the legitimate interpretations of various vague policy statements are in the context of specific development proposals. Developers will seek to obtain clarification of the interpretation to favour them by way of legal challenges, and LPAs will be forced into similarly expensive Appeals procedures. Our Parish Council will not be able to finance such legal challenges to defend our

community from inappropriate development, and this would be a serious reduction in the effective legal rights of residents in such small communities as ours. Contrary to what is claimed in the NPPF, the inevitable litigation will actually slow down the Planning process and will make it very much more expensive for all involved in it.

2. The definition and explanation of “sustainable development” in the NPPF is insufficient as a basis for lawfully determining Planning Applications.

The Ministerial Foreword introduces the main theme of the NPPF that *“Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision.”* In paragraph 9 of the NPPF it states that *“Sustainable development means development that meets the needs of the present without compromising the ability of future generations to meet their own needs”* and refers to the Bruntland Commission (1987) as its source. This is a grossly inadequate definition of sustainable development for implementation in the practical context of English Planning law. A decade of recent experience of managing planning and development under the existing Planning system indicates that the concept of “sustainability” is interpreted and applied in very different ways in the determination of Planning Applications, according to whether it is in the specific context of economic growth, demographic growth, urban development, rural communities’ survival, energy efficiency, ecological biodiversity, transport infrastructure, or agriculture and food production. The inclusion in the NPPF’s Glossary on page 58 of a very precise definition of *“Sustainable drainage systems”*, presumably because this was thought necessary for clarification, is adequate enough proof that similar definitions are required in the NPPF for all the other applications of the concept of sustainability. In the specific context of Horspath, we have seen totally conflicting interpretations of “sustainable development” used and accepted in recent Planning Inquiries and Examinations in Public, such that our larger neighbour Oxford City believes that it is sustainable for this city to expand outwards into the Green Belt, whereas our Parish Council and District Council believes that our small village is only sustainable as a community provided that it is surrounded by the open landscape of the Green Belt to give it the necessary physical separation from its larger city neighbour. The definition of sustainable development in the NPPF is inadequate and is not fit for purpose in this context of Planning law, and from its repeated use throughout the draft NPPF, its meaning appears to be limited to the context of economic growth, whereas our Planning system must also concern itself with the well-being of our communities and the natural environment. The definition of “sustainable development” will vary according to its context in Planning, and the NPPF does not address this problem, nor does it provide a range of illustrative examples to show how this concept is to be applied.

3. The layout of the text of the NPPF is inappropriate for a Planning Policy document and it will be impossible for professional Planning Officers in LPAs to use it as the lawful basis in determining Planning Applications.

To become usable by Planners, a Planning Policy document requires a legally precise statement of policy, together with comprehensive definitions of its meaning, scope, and applicability and an explanation of its aims and intentions, in numbered paragraphs which can be referred to in notices of Planning Decisions. The NPPF is not laid out in this way, and while it has 6 main chapters and some sub-sections incorporating its 191 numbered paragraphs, its format does not follow that of any of the Planning policy documents which it purports to replace. Its interpretation is further confused by the assertion in paragraph 14 that *“At the heart of the planning system is a presumption in favour of sustainable development, which should be seen as a golden thread running through both the plan*

making and decision taking.” and then after specifying three policies that LPAs should follow in making their plans for economic development and granting Planning permission without delay for sustainable development, including when a Local Plan is not clear or is unavailable, it concludes that **“All of these policies should apply unless adverse impacts of allowing development would significantly and demonstrably outweigh the benefits, when assessed against the policies of this Framework taken as a whole.”** It is impossible to consider the policies outlined in the 191 paragraphs of the NPPF as a whole, as seems to be required, and it would be harmful if applied in Green Belt villages like Horspath. The use of the adverbs “significantly” and “demonstrably” in this policy statement will invite legal challenges to determine exactly what is to be judged ‘significant’ and ‘demonstrable’ in every contentious Planning Application, and this will generate an enormous workload for professional Planners in LPAs, and would impose on LPAs and especially on small villages like Horspath an intolerable financial burden if contentious Planning Applications can only be determined in the law courts.

4. The presumption in favour of permitting sustainable development is inapplicable and in conflict with the Green Belt Policy in Chapter.

In paragraph 19 the NPPF states that **“Decision-takers at every level should assume that the default answer to development proposals is “yes”, except where this would compromise the key development principles set out in this Framework.”** This is re-iterated in paragraph 110. If, however, this presumption is to remain as the ‘golden thread’ running through the NPPF, we would like it to state clearly that the presumption in favour of sustainable development does **not** apply to development in Green Belts, because this is not made clear in the consultation draft NPPF. The presumption in Green Belts has until now, according to PPG.2, been that development was inappropriate unless exceptional circumstances could be established. We therefore request that same distinction between Green Belt and non-Green Belt land is made very clearly in the NPPF. In the absence of such clarification, the Green Belt will lose any special protection that the section in the NPPF claims to give it, and the survival of villages such as Horspath which have already proved to be sustainable for more than 1,000 years, will be put at risk.

5. The instruction in the NPPF that permission for sustainable development should be granted without delay by Local Planning Authorities will result in inferior designs and developments, which can no longer be optimized by the existing Planning process which involves consultation, submission, determination with the democratic involvement of the community, and then often referral, further modification, and optimization before final approval.

With enough land for more than 700,000 houses already allocated for building them, but with the UK financial institutions still wishing to replenish their reserves rather than lending to businesses and first-time buyers, we consider that delays in bringing forward development are more likely to be due to the reluctance of the construction companies to release land and to build affordable housing, than any inherent delays in the present Planning system. The referral of planning applications by Local Planning Authorities very often results in the successful re-submission of much higher quality proposals for development, and the presumption in the NPPF that all applications for sustainable development will be approved without delay removes this vital stage from the present planning process, a stage which enables it to deliver the most appropriate development, rather than the merely marginally acceptable development which the NPPF now seems to be encouraging.

6. The presumption that Planning permission will be granted for sustainable development if the Local Plan does not contain relevant policies.

Most Core Strategies were devised on the basis that they would be underpinned by at least one other supporting hierarchical level of Planning documents within a Local Development Framework (LDF), and many LPAs have therefore not included all the detail that would now be necessary in these Core Strategies to regulate development and ensure that every aspect of it is sustainable. About 70% of the LPAs are currently without an adopted Core Strategy, and those that do have one will need to rewrite it to cover the areas of ambiguity left by the omissions and lack of clarity in the NPPF, and to have conformity with the NPPF confirmed. Paragraph 14 states that LPAs should “*grant permission where the plan (Local Plan) is absent, silent, indeterminate or where relevant policies are out of date.*” which totally undermines the principle of continuity in the development of Local Plans, whereby as a new plan gradually emerges over a period of several years through consultation and examination in public, its significance is already taken into account before it is finally adopted formally. Paragraph 14 of the NPPF will provide the window of opportunity to enable inappropriate development to go forward during this period of years, and this would certainly risk irreversible consequences in Green Belt villages such as Horspath if the surrounding green fields should ever be built upon while the South Oxfordshire Local Plan is being updated, as it will need to be, in order to be conformable with the NPPF.

7. In paragraph 23, there is an extraordinary omission from the list of priorities for which LPAs must develop strategic policies in the Local Plan, which is to establish secure sources of high quality local food production. This must be included.

8. In paragraph 153, we request that the following sentence is inserted: “*The planned efficiency of any proposed renewable energy developments is a material consideration for local planning authorities in determining Planning Applications.*” This would then ensure that the investment of public money into renewable energy generation is optimized and the national environmental benefit enhanced.

9. In paragraph 172, the following sentence must be deleted which refers to regimes for pollution control measures relating to proposed developments: “*Planning authorities should assume that these regimes will operate effectively*”. The reason for this recommended deletion is that in the history of pollution control in England, there is also a history of inadequate regulation, which has only been rectified when Local Planning Authorities have required or have undertaken environmental impact assessments which treat any evidence of environmental pollution as material issues for investigation and recording, and have then assessed whether the regime of proposed pollution control measures are adequate in each specific local situation.

Our specific concerns about the inadequacy of the NPPF to replace PPG.2

We regret the intention to replace the planning guidance in the form of PPG.2 with a much shorter and more general section on Green Belts in the NPPF. The policy and guidance explicitly set out in PPG.2 is more specific and less open to question than the more open-ended statements in the NPPF. If the Government really does recognize the fact that Green Belts are different from the rest of the countryside, then it should be stated explicitly in the NPPF that the presumption to permit sustainable development does not apply to them and that PPG.2 should be retained. There are a

number of specific concerns identified by this Council which relate to the inadequacy of the section in the NPPF dealing with Green Belts, and these are explained below by reference to paragraph numbers.

Paragraph 135

The phrase “visual amenity”, not used in the draft produced by the Practitioners Advisory Group (PAG), has been added to this paragraph albeit not in the helpful form of paragraph 3.15 of PPG.2, so we request that the original wording of PPG.2 should be re-used here. However, we regret the omission from the draft NPPF of any reference to the fact that “the quality of the landscape is not relevant to the inclusion of land within a Green Belt or to its continued protection” (paragraph 1.7 of PPG.2). This statement has been invaluable in discouraging landowners from allowing the condition and appearance of their land to deteriorate in the hope of obtaining planning permission. Without it, the quality of the Green Belt’s landscape and environment is at greater risk, and we shall find more potential developers claiming that a particular part of the Green Belt, which they either own or on which they have an option to buy (very common in the Oxford Green Belt), should be developed since it no longer appears to fulfill a Green Belt function. We also believe that, without it, it will be more difficult to carry out the expressed intention of enhancing landscapes in the Green Belt especially at the edges of towns and cities. We therefore request the re-instatement from PPG.2 of the reference to the quality of landscape not being relevant in a designated Green Belt.

Paragraph 141

We anticipate serious practical problems arising as a result of the scope for interpreting this paragraph variously. For example, the new advice could take some existing plans out of conformity, and drawing new village boundaries could lead to delay in producing Local Plans when the advice appears to be encouraging the speedy production of Local Plans. Another problem relates to the ambiguity of what is meant by “open character” and how it will be interpreted. Most Green Belt villages have open areas within them of varying sizes and shapes and densities, but other villages are very compact and are surrounded by the openness of the Green Belt, and all these villages require the protection of Green Belt policies to be sustainable. Paragraph 141, by inference, invites villages to be taken out of the Green Belt if they are reasonably compact, making them “inset” rather than being “washed over” as many of them are at present. If this happens, the number of inset villages is likely to grow considerably and the Green Belt will be punctuated and interrupted by these holes, which would undermine its integrity and purpose. Under PPG.2 the building of affordable housing, as in Horspath, has not been prevented when exceptional circumstances for such development are seen to exist, and the fact that the village is washed over gives the local council greater power to resist development pressures from outside the village, pressures that could operate against local interests and the village’s own requirement for sustainability. We strongly recommend that this whole paragraph should be deleted from the draft NPPF.

Paragraph 142

PPG.2 states categorically in Section 3 that there is a “general presumption against inappropriate development” in Green Belts. This phrase was retained in the draft produced by the PAG, but has been dropped from the NPPF in favour of the much looser statement that inappropriate development is harmful. We conclude that this represents a weakening of the government’s commitment to any protection of the Green Belt, and we urgently request the re-instatement of this phrase from PPG.2, as in the PAG recommended text, if the NPPF is to be adopted.

Paragraph 143

Paragraph 143 of the Draft NPPF advises local authorities to ensure that “substantial weight” is given to any potential harm to the Green Belt. This phrase, “substantial weight” is likely to leave the NPPF open to endless legal dispute over the meaning of words and what is intended by including them. Such ambiguity will be resolved only by costly legal challenges and will slow down the entire planning process, contrary to the aim of the NPPF. We suggest as an alternative that “..... local authorities should work to ensure that the Green Belt is unharmed, and that the phrase “Very special circumstances” be replaced by the stronger phrase “Exceptional circumstances” which emphasizes that any development in the Green Belt breaks with the established Green Belt policy developed over more than 50 years.

Paragraph 144

Difficulties arise in the case of this paragraph over the distinction between dwellings and other buildings. It provides yet another example of how the brevity of NPPF’s advice will confuse more than it clarifies, and will lead to protracted argument and the sort of delays that the Government says it wishes to avoid.

In the second bullet point we request that the words “*provision of appropriate basic essential facilities for outdoor sport*” are used to clarify that the Green Belt is an inappropriate location for major sports stadia and complexes involving more than the basic essential support facilities for players and spectators.

The word “dwelling”, used by the PAG, has been changed in the third and fourth bullet points to “building”. We believe that the distinction between the two is an important one and that “dwelling”, not “building” should be used in the context of what degree of alteration or replacement is acceptable, as is the case in paragraph 3.6 of PPG.2. Otherwise paragraph 144 gives ‘carte blanche’ for all kinds of new or replacement buildings and is likely to result in endless legal debate over the nature, purpose and design of the building concerned, as well as over the amount of the proposed extension that is permissible.

We anticipate that similar legal debate will arise over the interpretation of “previously developed sites” as used in the sixth bullet point. Use of this term greatly widens development potential beyond the “major developed sites” (Annex C of PPG.2) which have been delimited up to now by local authorities. It may be the Government’s wish to do this, but we believe it will be harmful to the Green Belt by encouraging development of a kind and in a place that warrants more sympathetic redevelopment. We therefore request that the existing distinction in PPG.2 based on major developed sites should be retained.

Paragraph 145

We believe that the specific forms of development identified as acceptable in this paragraph should be made much clearer. What, for example, is meant by “engineering operations”? The definition of “engineering operations” is already debated at length in Planning Inquiries into renewal energy developments and should be made clear in the NPPF. As the text of this paragraph stands, it appears, for example, that all kinds of electricity pylons or wind turbines are all permissible in Green Belts.

Likewise, “local transport infrastructure” needs more explanation and definition of precisely what is covered by the term. PPG.2 had helpful notes on Park and Ride car parks and we feel that the scope for these and other developments such as bus termini needs to be defined and delimited in the NPPF.

The fourth bullet point about re-use of buildings corresponds with paragraph 3.8(c) in PPG.2 but without the reference to major reconstruction, dropped from the PAG draft. But there it ends, and we have none of the useful guidance in PPG.2 (3.8(b)) about the avoidance of extensive external storage, hard standing, car parking and fencing. These are important issues in determining the sustainability of our village, and we anticipate continuing debate and differences of opinion over them in the future if guidance in the NPPF omits reference to these actual examples of what so often conflicts with openness.

The inclusion of “development brought under a Community Right to Build Order” (bullet point five) is, in our view, the most open-ended of all the forms of development considered not inappropriate. We do not yet know how widely these Orders will be taken up and how extensive their proposals will be, so would urge caution against granting this kind of blank cheque without any further clarification or conditions. We have noted that the NPPF’s Impact Assessment considers that these Community Right to Build schemes could lead to greater development in the Green Belt. This would seem to contradict the Government’s stated intention of protecting the Green Belt.

Paragraph 146

The inclusion of this paragraph is generally supportive of renewable energy projects in the Green Belt, and in our village we support and encourage residents to take every opportunity to become energy-efficient in their homes, and to use sustainable forms of transport. However, by the sheer physical scale of some renewable energy projects in relation to rural communities such as Horspath, they will inevitably conflict with the openness and purposes of the Green Belt and should be classed as inappropriate development. We request that the phrase ‘very special circumstances’ is replaced in this paragraph by ‘exceptional circumstances’. We also request that in the determination of Planning Applications for renewable energy developments, due weight should be given to their planned efficiency in generating energy, as a material consideration, rather than merely noting their designed capacity. It would also be helpful to have some suggestions in this paragraph of what might count as being more important than these ‘wider environmental benefits’ of renewable energy, for example, visual amenity.

We therefore ask you to consider our conclusions based upon on our detailed reading of the draft National Planning Policy Framework, and either to incorporate our suggestions for improving the document so that it becomes usable in practice, or to abandon it.

Yours sincerely,

Mrs Hayley Kogel
Parish Clerk for Horspath Parish Council