

Cabinet – 24 July 2013

The Black Country Core Strategy and the National Planning Policy Framework

Portfolio: Councillor Adrian Andrew
Deputy Leader
Regeneration and Transport

Related portfolios: None directly, but the decision will affect all Council activities that relate to the use and/or development of land.

Service: Regeneration: Planning & Building Control

Wards: All

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 The Government published the National Planning Policy Framework (NPPF) in March 2012. This replaced much pre-existing national planning policy and also reflected the Government's latest policy positions. It was promoted as marking a major change in the basis for development plans as well as for planning decisions. The NPPF said that after 12 months the weight to be given to development plans adopted under the Planning and Compulsory Purchase Act 2004 would depend on their degree of consistency with the Government's framework, and that plans may need to be revised to bring them into line with it.
- 1.2 The Black Country Core Strategy (BCCS) was adopted by Walsall Council in February 2011 (and by Dudley, Sandwell and Wolverhampton Councils), and it sets out a regeneration strategy for the area. It is in the interest of all four local authorities that the strategy can be maintained and progressed, including through plans that are already underway. The Black Country Local Enterprise Partnership (LEP) has given strong support to the defence and promotion of the BCCS.
- 1.3 The Black Country authorities have undertaken a conformity assessment, using a format provided by the Government's Planning Advisory Service and this has been discussed with the Planning Inspectorate. The results have led the Black Country Authorities to conclude that the BCCS is consistent with the NPPF so that its policies can be applied with full weight in making planning decisions. A copy of the assessment has been placed in each of the Members' Rooms. It has also been placed on the Core Strategy website and on the Council's website. Besides being published, the assessment has been referred to in the making of

planning decisions and it has been supported by an Inspector in a planning appeal in Wolverhampton. It is considered important that each of the authorities should formally resolve that the BCCS is consistent with the NPPF to safeguard the status of the BCCS.

2. Recommendation

- 2.1 That Cabinet endorses the assessment undertaken by officers from the four local authorities and agrees that the Black Country Core Strategy is consistent with the National Planning Policy Framework, so that the Core Strategy policies should be given full weight in planning decisions.

3. Report detail

- 3.1 The NPPF was published on 27 March 2012. As well as replacing most pre-existing Government statements of planning policy, it reduced and simplified the policy and, at least in some respects, altered its emphasis towards a *“presumption in favour of sustainable development”* (NPPF para. 14). This could mean that some local authorities’ development plans adopted before the publication of the NPPF might potentially have been overtaken by the national changes. To try to address this situation the NPPF allowed that for 12 months from its publication decision-takers could give full weight to the policies of development plans adopted under the 2004 Act, even if there was a limited degree of conflict with the NPPF. However, after this 12-month period – and immediately in respect of other, older, plans (such as the saved policies of Walsall’s Unitary Development Plan¹) – *“due weight should be given to relevant policies in existing policies according to their degree of consistency with this framework”* (NPPF para. 215). Thus, there is a need to consider the degree to which Walsall’s development plan policies are consistent with the NPPF.
- 3.2 The development strategy and many of the policies for the area are set out in the BCCS, which covers Dudley, Sandwell and Wolverhampton, as well as Walsall. The Council adopted the BCCS relatively recently, in February 2011. It sets out a regeneration strategy for the Black Country based on encouraging and concentrating investment, into strategic centres (including Walsall town centre), regeneration corridors and existing good quality industrial areas and housing areas. In view of the seriousness of the issues the Black Country faces, the Inspectors who examined the plan (in 2010) concluded *“It is essentially common ground that the only realistic alternative to the overall strategy of regeneration ... would be one of “managed decline”* (BCCS Inspectors’ Report, para. 2).
- 3.3 In the circumstances, Walsall and the other Black Country Councils should want to defend their regeneration strategy and be able to promote it, including through Site Allocation Documents and other plans, and this approach is strongly supported by the Black Country LEP. If the BCCS was not consistent with the NPPF then the plan would have to be reviewed which would mean that many of the issues would have to be re-visited, and the strategy could be brought into question. This would involve considerable expense and take quite some time, during which the NPPF ‘presumption’ could come into effect and the Black

¹ Assessments of the consistency of Walsall’s saved UDP policies have so far been undertaken on a case-by-case basis for individual decisions. It is envisaged that a more comprehensive assessment can be reported to Cabinet when time and resources permit.

Country authorities might lose the ability to manage aspects of the development of the area.

3.4 However, whether the BCCS is consistent with the NPPF is something that has to be decided as a matter of 'fact and degree', like other decisions on planning policy. To facilitate this, the Government's Planning Advisory Service produced a 'Self-Assessment Checklist'. This has been completed by officers from the four Black Country Councils.

3.5 In brief, the assessment seeks answers to various questions about how the approach of the BCCS fits with that of the NPPF and the results of the assessment can be summarised as follows. The Core Strategy:

1. takes a positive approach to regeneration through growth and it sets out a deliverable and flexible strategy for this;
2. is based on principles that are similar to and consistent with those in the NPPF;
3. places the economy at the heart of the regeneration strategy;
4. encourages investment in and seeks to manage the growth of town centres;
5. is consistent with the NPPF with regard to the countryside as all of the rural areas of the Black Country are subject to Green Belt policy;
6. sets out standards and policies for sustainable transport and was prepared with considerable cooperation and involvement by transport providers;
7. aims to provide for more housing than would be required to meet existing locally generated needs, to promote the regeneration of the area;
8. takes a positive approach to healthy communities, including through the provision and protection of spaces and facilities;
9. contains policies to try to respond to climate change and to promote sustainable development;
10. contains policies to protect and enhance both the natural and historic environments;
11. seeks to safeguard and provide for the appropriate exploitation of mineral resources;
12. is based on an assessment of the needs for accommodation for gypsies and travellers and provides a basis for the allocation of sites by the individual local authorities;
13. takes an approach of providing a framework for more detailed plans by the individual local authorities that was supported by the Inspectors who examined the plan;
14. was based on objective assessments of the development needed for the regeneration of the area; and
15. was supported by substantial evidence on the viability and deliverability of the strategy.

3.6 The results of the assessment were discussed with a senior Planning Inspector in an informal meeting held in October 2012. He advised that:

1. Contrary to what had been proposed in the consultation version of the national framework, there is no legal or formal mechanism to have an adopted plan 'signed off' as being in conformity with the NPPF.

2. The Black Country authorities should be confident there are no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity.
 3. It would be useful to give formal endorsement of the assessment, and the conclusion that the BCCS is consistent with the NPPF, via reports to the council's decision-making bodies [Cabinet in Walsall's case].
- 3.7 The completed self-assessment checklist and a note of the meeting with the Planning Inspector have been published on:
- the Black Country Core Strategy website
<http://blackcountrycorestrategy.dudley.gov.uk/>; and
 - the Council's website
http://cms.walsall.gov.uk/index/environment/planning/planning_policy/local_development_framework/ldf_core_strategy.htm
- Copies of the documents have also been placed in each of the Members' Rooms.
- 3.8 On 27 March 2013 (the 1st anniversary of the NPPF) the Chief Executives' meeting of the Association of Black Country Authorities endorsed the position that the BCCS is in conformity with the NPPF, and it should be defended and promoted as the basis for the regeneration of the area. The Chief Executives resolved that the conformity assessment should be reported to the Local Enterprise Partnership Board and this was done on 23 May 2013.
- 3.9 For Planning Committee meetings since 27 March 2013 where reports introduce the BCCS the wording has been updated to say the following.
- "This was adopted under the current Local Development Framework system, and the NPPF says that for 12 months from the publication of the national framework *"decision-takers may continue to give full weight to relevant policies"* However, it is more than 12 months since the NPPF was published in March 2012. Now (as with the saved policies of Walsall's UDP) the NPPF advises that *"... due weight should be given to relevant policies ... according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."* To consider the conformity of the BCCS with the NPPF the four Black Country councils have completed a 'Compatibility Self-Assessment Checklist' (published by the Planning Advisory Service) and have discussed the results with a Planning Inspector. Whilst there is no formal mechanism to certify that the BCCS is consistent with the NPPF the discussions led officers to the conclusion that the exercise identified no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity. The results of this assessment are to be published on the BCCS and Council websites and it is planned to report to the Council's Cabinet to confirm this view. In the absence of evidence to the contrary it is considered that the BCCS policies should be given full weight in planning decisions."
- 3.10 This council's stance that the BCCS is consistent with the NPPF has not, so far been challenged by anyone, and officers are aware of only one challenge in the Black Country. At a planning appeal in Wolverhampton the agents for the applicant sought to argue that the relevant BCCS policies were inconsistent with the NPPF. However, the Inspector considered:

“The policies of the Black Country Core Strategy (BCCS) have recently been subjected to a Compatibility Self-Assessment Checklist to assess their degree of conformity with the National Planning Policy Framework (the Framework). It was concluded that the BCCS is in conformity with the Framework. The most convincing evidence in this appeal indicates that its Policy ENV2 [at issue in that case] which requires that particular attention is paid to the preservation and enhancement of heritage assets can be given full weight.”

(Appeal Ref: APP/D4635/A/12/2189031 Inspector’s Report para. 5)

4. Council priorities

- 4.1 The BCCS plays an important role in supporting the council’s priorities for communities and neighbourhoods, for the economy and for health and well-being. It sets out a strategy and policies to regenerate the area in a sustainable way with:
- land for new housing to meet identified needs;
 - land and opportunities for economic development; and
 - improved health, education and other facilities in accessible pattern of development and with an environment that is to be protected and enhanced.

5. Risk management

- 5.1 The major risk is that the BCCS should be successfully challenged in terms of its consistency with the NPPF in whole or in part, leading to the loss or partial loss of the major part of the statutory planning framework for the area. The consequences of this would be a lack of certainty for investment in the Black Country and decrease in the council’s ability to manage development except with reference to the NPPF. This would be likely to threaten the ability to concentrate investment in regeneration, the weakening of provision for economic development and an increasingly poor environment. The Government would expect Walsall and the other Black Country authorities to commit resources to a review to ensure that a replacement Core Strategy could be put in place.
- 5.2 Officers, working with the other Black Country authorities, have sought to minimise such risks through:
- the completion of a thorough and well-justified assessment of conformity with the NPPF;
 - discussion with a senior Planning Inspector;
 - careful explanation of the position in reports to Planning Committee; and
 - seeking a formal resolution from each Black Country authority that the BCCS is consistent with the NPPF.
- 5.3 The risks are also mitigated by the Council’s commitment to a positive approach to regeneration and growth through work to deliver the BCCS via the emerging Site Allocation Document and Walsall Town Centre Area Action Plan.
- 5.4 The risk of immediate pressure to review the BCCS will also be mitigated by the fact that at the Examination the local authorities committed themselves to a future review of the document. The Inspectors’ Report stated that such a review should start in 2016.

6. Financial implications

- 6.1 The work done so far has only involved costs of staff time. Advice from the Planning Inspectorate was provided without charge. This work should have the effect of making the best use of previous investment in the Core Strategy.
- 6.2 If the Core Strategy had to be reviewed now the costs would be considerable; possibly into hundreds of thousands of pounds for this council. All four authorities would have to be involved in a review, which would require a new / updated evidence base, large-scale consultations and an examination in public.
- 6.3 Lack of certainty for investment and the impacts of development not in accordance with the strategy for the Black Country could also have adverse financial implications for regeneration schemes and result in financial cost or an inability to access funding.

7. Legal implications

- 7.1 The BCCS is part of the statutory development plan for Walsall Borough, and section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions should be made in accordance with it unless material considerations indicate otherwise.
- 7.2 The Government's position is that the NPPF is an important material consideration that could override the BCCS if the BCCS is not consistent with it. Consistency in this case has been examined using the Planning Advisory Service Self Assessment checklist, which has led to a conclusion that, as a matter of fact and degree, the BCCS is consistent with the NPPF.
- 7.3 A direct challenge to the Council's and other authorities' assessment and conclusions would have to be via the Courts by way of judicial review. However, the fact that a reasoned assessment has been undertaken by several local authorities and had been agreed with a senior Planning Inspector would seem to make such a challenge unlikely to succeed. It is possible that interested parties might try to argue – through planning applications and planning appeals - that the council's (or councils') assessment and conclusions were not justified in respect of particular BCCS policies or in relation to particular circumstances. No such arguments have been presented to this council so far and the quality of the self-assessment work will be important in responding to any arguments in future.

8. Property implications

- 8.1 The continuing application of BCCS policies with full weight will maintain the greatest degree of certainty for decisions about council property. It also provides the basis for the preparation of the Site Allocation Document and the Walsall Town Centre Area Action Plan, which are the most appropriate mechanisms to decide the future uses of land and premises.

9. Health and wellbeing implications

- 9.1 The BCCS includes a range of policies that should have positive impacts: maximising accessibility, regenerating the economy, promoting social inclusion,

improving the environment, protecting open space, minimising exposure to pollution, providing health and other facilities, and encouraging sustainable development. The loss of these policies would hamper efforts to promote health and well-being.

10. Staffing implications

10. The ability to maintain and build upon the BCCS means that available staff can plan positively for the future, through the Site Allocation Document and the Walsall Town Centre Area Action Plan. If the BCCS was not in conformity with the NPPF then these staff resources would have to be deployed to review it.

11. Equality implications

- 11.1 The BCCS was the subject of a sustainability appraisal, which included an assessment of equality impacts. Among other things it found that the BCCS would be beneficial in terms of:
- Focus on social inclusion and community cohesion;
 - Promotion of health and wellbeing;
 - Improved provision of services, facilities and amenities;
 - Enhancements to the public realm and perception of security; and
 - Improvements to accessibility.

12. Consultation

- 12.1 The self-assessment of the BCCS' consistency with the NPPF was prepared by officers from Dudley, Sandwell, Walsall and Wolverhampton Councils, and it was discussed with a senior Planning Inspector. The Chief Executives of all four of the Black Country Authorities and the Black Country LEP Board have all been consulted and have recognised the importance of the BCCS to the regeneration strategy for the area.
- 12.2 The self-assessment has been discussed with the Planning Solicitor in Legal Services.
- 12.3 This council's and the other Black Country councils' view that the BCCS is consistent with the NPPF have been publicised through publication of the self-assessment on the BCCS and Council websites and by means of references in reports to Planning Committee.

Background papers

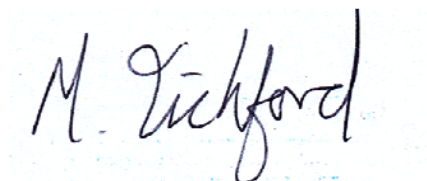
All published, except where indicated (*):

1. National Planning Policy Framework (NPPF)
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>
2. Black Country Core Strategy (BCCS)
<http://blackcountrycorestrategy.dudley.gov.uk/>; and/or
http://cms.walsall.gov.uk/index/environment/planning/planning_policy/local_development_framework/ldf_core_strategy.htm
3. Black Country Core Strategy Inspectors' Report
<http://blackcountrycorestrategy.dudley.gov.uk/>

4. Local Plans and National Planning Policy Framework Compatibility Self Assessment Checklist (Planning Advisory Service), completed by Dudley, Sandwell, Walsall and Wolverhampton Councils
<http://blackcountrycorestrategy.dudley.gov.uk/>; and/or
http://cms.walsall.gov.uk/index/environment/planning/planning_policy/local_development_framework/ldf_core_strategy.htm
5. Black Country Core Strategy and National Planning Policy Framework Self Assessment: Note of Meeting with Planning Inspector (Geoff Salter)
<http://blackcountrycorestrategy.dudley.gov.uk/>; and/or
http://cms.walsall.gov.uk/index/environment/planning/planning_policy/local_development_framework/ldf_core_strategy.htm
6. Black Country Local Enterprise Partnership Board, 23 May 2013
<http://www.blackcountrylep.co.uk/about-us/our-board/lep-board-meetings>
(* minutes not yet published)
7. Planning Appeal Decision: Lidl food store and No 42 Finchfield Hill, Wolverhampton, West Midlands WV3 9EN. Appeal Ref: APP/D4635/A/12/2189031
8. Black Country Core Strategy Sustainability Appraisal, Publication Version (UE Associates)
<http://blackcountrycorestrategy.dudley.gov.uk/evidencesa/>

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