

**To:** Scrutiny Committee

**Date:** 7<sup>th</sup> September 2017

**Report of:** Head of Planning, Sustainable Development and Regulatory Services

**Title of Report:** How the Council fulfils its duty to assess the impacts on disabled people of new developments and changes of use, including for businesses and private and social sector housing

## Summary and Recommendations

**Purpose of report:** This is a report from the Head of Service on how the Planning and Building Control Services use the regulatory framework to improve accessibility to the built environment for the disabled.

**Key decision:** No

**Executive lead member:** Cllr Alex Hollingsworth

**Policy Framework:** Meeting Housing Needs and Strong and Active Communities

**Recommendations:** Members are recommended to note the contents of the report.

## Introduction

1. In 2011 the Census found that around 11.5 million people in the UK (18 per cent of the population) had a long-term health problem or disability that limited their day-to-day activities either a lot or a little. In England and Wales four per cent of people aged 0 to 15, nine per cent of people aged 16 to 49, 24 per cent of people aged 50 to 64 and 54 per cent of people aged 65 or over had a long-term health problem or disability that limited their day-to-day activities either a lot or a little.
2. Healthy life expectancy is not keeping pace with life expectancy; this means that more of us will need to manage long term conditions as we age, as well as care for others. Age UK have produced figures estimating that, without intervention in age-related disease, there will be over 6.25 million older people with a long-term limiting illness or disability by 2030.

3. The Government has put in place a framework of legislative levers to achieve a more accessible and inclusive built environment.

### **The legislative framework**

4. Broadly speaking, accessibility of the built environment is governed by three main areas of law.
5. Firstly, national planning policy and guidance, set out in the National Planning Policy Framework (NPPF), is clear that planning should promote access and inclusion and that good design can help to create buildings and places that are for everyone. The NPPF states that Local Plan policies developed by local planning authorities should “take into account the need to design inclusive developments”, including what a local authority needs to do if it wishes to apply the ‘optional’ housing standards in the Building Regulations, for example to require a proportion of new homes to be built to one of those standards. Local planning authorities are then expected to take decisions on individual planning applications in line with these policies.
6. Secondly, Part M of the Building Regulations provides that “reasonable provision” should be made for people to gain access to and use a building and its facilities. For dwellings, the Regulations also set out two ‘optional’ standards: the first of which (M4(2) or ‘category 2’) adds a requirement for provision to meet the needs of “some older or disabled people” and be adaptable to meet future needs; and a second (M4(3) or ‘category 3’), that, if applied, requires a dwelling to be able to be used by, or be adapted for use by, wheelchair users. The Regulations apply to new buildings and some, but not all, changes of use, although the optional housing standards only apply where a local authority takes the necessary steps to introduce planning policy requirements as per Planning Practice Guidance.
7. Finally, the Equality Act 2010 imposes a range of duties relevant not only to the planning and building control processes, but also to those who use the buildings as employers and service providers. These include duties on public authorities, individual employers, and service providers not to discriminate—including by making reasonable adjustments so that disabled people are not placed at a substantial disadvantage.

### **Designing inclusive developments**

8. The NPPF was introduced in 2012 as a key part of the Government’s reforms to make the planning system less complex and easier to understand. The NPPF sets out the Government’s planning policies for England, and how these are expected to be applied.

9. The NPPF defines 'inclusive design' as "designing the built environment, including buildings and their surrounding spaces, to ensure that they can be accessed and used by everyone." The principle of inclusive design applies to all forms of housing regardless of tenure. There are Planning Practice Guidance documents which sit under the NPPF that set this out in more detail.
10. The most effective way to maximise accessibility for everyone is to consider inclusive design from the outset of the process. This is particularly important when considering historic buildings and conservation, and highways. Inclusive design should not only be specific to the building, but also include the setting of the building in the wider built environment, for example, the location of the building on the plot; the gradient of the plot; the relationship of adjoining buildings; and the transport infrastructure. Issues that are taken into account by Planning Officers when considering all applications include:
  - proximity and links to public transport;
  - parking spaces and setting down points in proximity to entrances;
  - the positioning and visual contrast of street furniture and the design of approach routes to meet the needs of wheelchair users and people with visual impairments; and
  - whether entrances to buildings are clearly identified, can be reached by a level or gently sloping approach and are well lit.
11. A Design and Access Statement is required for major developments and listed building consent applications and in certain cases in conservation areas. The statement is used to ensure applicants can demonstrate an integrated approach that delivers inclusive design and addresses the full range of access requirements throughout the design process.
12. A good example of an inclusive development is Barton Park. As an NHS Healthy New Town, Barton Park aims to ensure that all residents will have an equal opportunity to good physical and mental health and good health outcomes.

### **Local Plan policies**

13. The Sites and Housing Plan 2011-2026 (SHP), which was adopted in February 2013 includes Policy HP2 which sets out the Council's approach to Accessible and Adaptable Homes. Policy HP2 defines two requirements that have to be met by all new homes. Firstly, all new homes should be built to the Lifetime Homes standard, which was considered to be the national benchmark for accessibility when the plan was adopted. Secondly, on sites of 4 or more dwellings (gross), at least 5% of all new dwellings (or at least 1 dwelling for sites below 20 units) are either fully wheelchair accessible, or

easily adapted for full wheelchair use. In addition, 50% of these must be provided as open market dwellings.

14. The policy to build all new homes to the Lifetime Homes Standard went well beyond the Building Regulations in 2013, which only required that new developments have a minimum standard of accessibility into the entrance level of a building. The Building Regulations only provided an opportunity for disabled people to visit new homes and provided limited benefits for independent domestic living.
15. Whilst the Lifetime Homes Standard goes some way to assisting wheelchair users' day-to-day needs, it does not provide the opportunity to adapt homes to include all the features needed by a wheelchair user. The second part of the HP2 policy requirement to provide a percentage of new homes designed for easy adaptation to full wheelchair housing standards set the bar even higher. The policy seeks to ensure that 5% of all new dwellings should be designed as wheelchair accessible, or easily adaptable to wheelchair use. Future occupants should be able to adapt their home to full wheelchair accessible standard without enlarging or structurally modifying their home. The Council has calculated that 5% of all new homes will need to be wheelchair accessible to meet both the existing backlog of need, and newly arising need. Sites of 3 or less homes were exempted for practicality reasons because they are generally infill development or the conversion of houses into flats.
16. Policy HP2 provides the framework for planning conditions to be attached to permissions to ensure that all new homes are built so that they are accessible to disabled people. It is clear that Oxford has set a higher standard than most other local authorities. In 2012/13 DCLG reported that only 42% of local authorities had a policy requiring compliance of all or some of new housing development with the Lifetime Homes Standards. Not all of these policies had a 100% target such as that which applies in Oxford. Since the policy was adopted in 2013 a total of 930 new homes have been built and the development of nearly 800 homes at Barton Park will be built to Lifetime Homes standards.
17. The Local Plan is currently being renewed which provides an opportunity to review and renew the policies relating to accessibility. The Planning Inspectorate will not approve Local Plans without evidence that they address access for disabled people in terms of housing, public spaces and the wider built environment.

### **Part M of the Building Regulations**

18. Part M of the Building Regulations deals with access for disabled people in the built environment and Approved Document M sets out ways in which builders and developers can comply with the Regulations. The 1999 version

of Approved Document M was entitled “Access and facilities for disabled people”, but in 2004 this was changed to “Access to and use of buildings”. They apply to new buildings and, since 2004, can apply to some material alterations of and extensions to non-domestic buildings and to some material changes of use. They do not require work to be undertaken to upgrade existing buildings.

19. The Building Regulations were amended in October 2015 as a result of a review into how technical housing standards are applied on new dwellings by the planning system with a view to simplifying them and incorporating them within the building regulations. The new Approved Document M now includes two new optional technical standards which build upon the existing standard for visitable dwellings:

Category M4(1)	‘Visitable dwellings’ standard, the basic minimum requirement that all newly built dwellings must meet
Category M4(2)	Accessible and adaptable dwellings standard, broadly equivalent to Lifetime Homes
Category M4(3)	Wheelchair user dwellings standard (which can be applied either to make a dwelling fully wheelchair accessible, or alternatively to make it easily adaptable for wheelchair use)

20. The intention is for local planning authorities to choose whether to impose the optional requirements on developments as a planning condition in line with their planning policies. Where there is no optional requirement imposed by the local planning authority, dwellings need only meet the requirements of M4(1).
21. These amendments to Part M Building Regulations have not yet been transposed into the new local plan. The Development Management service is applying an appropriate condition to impose the higher optional standards on permissions granted. The wording of the condition is currently being refined so it complies with the test of a reasonable condition. This means that every relevant application for Building Regulation approval is assessed against the Part M4(1) requirements by the Building Control Service or an Approved Inspector.
22. The accessibility of buildings other than dwellings, including commercial buildings and workplaces, is also governed by Part M of the Building Regulations. These provide that reasonable provision must be made for people to access and use the building and its facilities and applies to new-buildings and some, but not all, material changes of use. Approved Document M sets out, for example, requirements for accessible entrances, doors, reception areas, corridors and passageways, for passenger lifts, wheelchair

spaces and the provision of toilets and other sanitary facilities. All Building Control applications for buildings other than dwellings are therefore assessed for compliance with Part M by the Building Control Service or an Approved Inspector.

## **Equality Act 2010**

23. The Equality Act 2010 imposes a duty on service providers and employers to make reasonable adjustment to any physical feature which might put a disabled person at a substantial disadvantage compared to a non-disabled person. Failure to comply with this duty is a form of discrimination and the enforcement mechanism for the Equality Act 2010 relies on a disabled person pursuing an individual claim for discrimination.
24. Although the guidance in Approved Document M demonstrates compliance with Part M of the Building Regulations, this does not necessarily equate to compliance with the obligations and duties set out in the Equality Act. This is because in some instances this will include designing features and making reasonable adjustments to features which are outside the scope of Approved Document M. It remains for the persons undertaking building works to consider if further provision, beyond that described in Approved Document M, is appropriate.
25. The Equality Act 2010 contains an exemption whereby if a particular feature of a building complies with the standards laid down in Part M, then—for the next ten years—it is exempt from the requirement under the reasonable adjustment duties to remove or alter that physical feature. This means that physical features constructed today in compliance with the current building regulations are likely to remain at the same standard until 2027.
26. Building Control officers and Approved Inspectors, when assessing compliance with Part M of the Building Regulations, should ideally be going further and looking at new designs and new buildings from the point of view of compliance with the Equality Act. Previously local authority Building Control inspectors were assisted by expert access officers, but this is a resource that has now been mainstreamed.

## **Conclusion**

27. The Council has planning policies that have set higher standards for accessibility in new build properties than many other local authorities. With the development of the Local Plan 2036 underway there is an opportunity to further embed accessibility and inclusion into the planning process.

28. The Building Control Service are checking all relevant applications against Part M of the Building Regulations which will ensure all new build dwellings and buildings are compliant with accessibility requirements.

### **Recommendations**

29. Members are recommended to note the report.

#### **Name and contact details of author:**

Name: Ian Wright

Job title: Environmental Health Service Manager

Service Area: Planning , Sustainable Development & Regulatory Services

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