

# NEIGHBOURHOOD PLANS: PROGRESS SO FAR AND WHAT NEXT

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# OVERVIEW



1. The beginning
2. Legislative & policy framework
3. Key points
4. Where we have got to and where we are going?

# 1. THE BEGINNING: Where did NP come from?



- Localism Act is at the heart of the **Big Society**
- **Neighbourhood planning** at the heart of getting people involved with and directing planning (See p .3 of DCLG's The Localism Bill: an Essential Guide)
- NIMBYISM or a good **IDEAH?**



# Neighbourhood Planning as part of the radical reboot of the planning system



## **GOODBYE REGIONS.....HELLO CO-OPERATIVE LOCALS?**

- RSSs – abolition by s.109
- RDAs scrapped
- LEPs

## **GOODBYE TARGETS.....**

### **HELLO INCENTIVES?**

- 5yr HLS remains in PPS3 – see draft NPPF
- New Homes Bonuses now
- Duty to co-operate (s.110 of Act – s.33A of PCPA 2004)

## 2. LEGISLATIVE FRAMEWORK & GUIDANCE



- The relevant legal framework for the preparation and making of Neighbourhood Development Plans (“NPs”) is provided by the Localism Act 2011 which amended existing legislation as follows:
  - Town and Country Planning Act 1990 (“TCPA 1990”): ss. 61F, 61I, 61M-P and Schedule 4B
  - Planning and Compulsory Purchase Act 2004 (“PCPA 2004”): ss. 38A-C
  - The Neighbourhood Planning (General) Regulations 2012 (2012 No.637) (As Amended)

(See SM p.2)
- PPG & NPPF

# Important Features



- ◆ NP - Part of the development plan
- ◆ Neighbourhood Areas – wide discretion
- ◆ Qualifying bodies – PCs and Neighbourhood Forums
- ◆ Lower hurdle for making of NP – basic conditions v soundness

## Main elements in the neighbourhood plan process (SM pp.3-4)



- (1) Preparation of the pre-submission NP by the qualifying body
- (2) Pre-submission publicity and consultation by the qualifying body on the proposals (regulation 14)
- (3) Submission of the Draft NP to a local planning authority (regulation 15), consideration whether it should progress (Schedule 4B, paras. 5, 6) and representations (regulation 16)
- (4) Independent Examination.
- (5) Consideration of the draft NP by the lpa having regard to the Examiner's report
- (6) The Referendum
- (7) The making of the NP if supported by the Referendum

### 3. KEY POINTS

#### (1) No requirement of soundness as for local plans



- For local plan, the test is of soundness. For a NP it is whether the basic conditions are met. A NP can be adopted even where there is no up-to-date Local Plan.
- The less stringent process of examination of a neighbourhood plan compared to a local plan is illustrated by *BDW Trading Ltd (t/a Barratt Homes) v Cheshire West and Chester BC* [2014] EWHC 1470 (Admin) – re. the Tattenhall Neighbourhood Plan:
- The NP has to be in general conformity with the adopted Development Plan as a whole, even if out of kilter with an emerging LP. ([82]) A LP has to be consistent with national policy – a NP can proceed if it is appropriate “having regard to” national policy and guidance ([84])



## Key Point (2): No need for an up-to-date adopted LP



- Important issue with regard to tension between protecting the local environment/infrastructure capacity AND meeting housing needs
- The above cases confirm an adopted up-to-date LP is not required
- Also issue over how far NP should assist in meeting emerging/wider district needs:
  - See: *Crownhall v Chichester DC* [2016] EWHC 73 (Admin)
  - See updated PPG Guidance – tightening of the position? (SM pp.12-15)
- Also, the making of the plan contributes to the achievement of sustainable development e.g. Wantage NP (John Parmiter)

## Conclusions on NP Process Challenges



- Nearly all challenges to the neighbourhood planning process unsuccessful so far
- Criticisms in relation to SEA were popular but have not fared well before the courts (cf. Slaugham NP in which Ann Skippers found that the plan was not compatible with EU requirements as the SEA was “not satisfactory in a number of of respects”).
- Attempts to limit the reach of neighbourhood plans have not found favour – neighbourhood plans “surprisingly effective” & groundbreaking e.g. holiday homes exclusion
- Exceptional successful challenge: *Maynard v Chiltern DC* [2015] EWHC 3817 (Admin)

## *Maynard v Chiltern DC*



- The claimant owned and occupied a property which included a nightclub and wished to develop the site for housing
- The Draft NP listed it as a community facility
- The developer made representations asking for this designation to be removed
- The Examiner agreed .
- The local planning authority chose not to accept that recommendation, taking the view that it was based on a misunderstanding of development plan policy and breached the basic conditions in not being in general conformity with policies in the the local authority's development plan

# The Judgment



- The developer had argued that the nature and availability of the service provided did not represent a valuable facility for the local community, which was the representation which the examiner accepted.
- Therefore, the local authority's decision to reject the examiner's recommendation on the basis that he had misinterpreted the policy in the development plan as excluding privately owned, or privately run facilities was itself a material legal misdirection (paras. 48-50).
- The authority had not considered the developer's argument
- Paragraph 8(2)(e) of Sch.4B only required the local authority to consider whether the draft neighbourhood plan as a whole was in general conformity with the adopted development plan as a whole. It was not concerned with whether there was a tension between one policy of the neighbourhood plan and one element of the local plan

**Key Point (3):  
Policy approach to emerging and made NPs  
in determining planning applications**



(1) The NP plan once made is part of the development plan  
(PCPA 2004 s.38)

(2) Importance given in the NPPF to NPs:  
- Para. 198 of the NPPF

See *Crane v SSCLG* [2015] EWHC 425 (Admin)

## Crane: the facts



- Mr Crane owned a plot of land, for which he applied for permission for, *inter alia*, 111 dwellings
- Mr Crane's site was not allocated for housing in the neighbourhood plan
- Housing land supply for the area: 4.1 years
- Core strategy therefore out of date, as was the neighbourhood plan
- Inspector recommended allowing appeal, on basis of NPPF para 14 presumption in favour of sustainable development
- But...

## Crane: The Judgment



- *74 I do not accept the proposition that, in a case where relevant policies for the supply of housing are out of date, the weighing of “any adverse impacts” against “the benefits” under paragraph 14 should proceed – as Mr Hill put it in paragraph 71 of his skeleton argument – “on the basis that the development plan components have been assessed, put to one side, and the balancing act takes place purely within the text of [the NPPF] as a whole”. Paragraph 14 of the NPPF does not say that where “relevant policies” in the development plan are out of date, the plan must therefore be ignored. It does not prevent a decision-maker from giving as much weight as he judges to be right to a proposal's conflict with the strategy in the plan, or, in the case of a neighbourhood plan, the “vision” (as it is described in paragraph 183). It does not remove the general presumption in paragraph 198 against planning permission being granted for development which is in conflict with a neighbourhood plan that has come into effect. These are all matters for the decision-maker's judgment, within Wednesbury bounds.*

# *Woodcock Holdings Ltd v SSCLG* [2015] EWHC 1153 (Admin)



- Claimant was a landowner, with an application to develop, *inter alia*, 120 dwellings in Sayers Common, West Sussex
- Concerned an emerging neighbourhood plan, so s. 38(6) was not in issue (cf. *Crane*)
- No objectively-assessed analysis of housing need in the district
- But housing land supply for the relevant area agreed to be c. 2 years
- Inspector recommended the grant of permission, having granted “*relatively limited weight*” to the emerging neighbourhood plan, which was at pre-examination stage



# Appeal Dismissed



- SoS dismissed the appeal.
- Sole reason for differing with the inspector was that the proposal conflicted with the emerging neighbourhood plan, and was premature in respect of it
- SoS gave “*considerable weight*” to the emerging neighbourhood plan, and acknowledged that this tipped the balance against the proposal, given the absence of objectively-assessed housing need data

## But decision quashed



*“...the Secretary of State decided to “tip the balance in favour of” the draft proposals in the neighbourhood plan as part of his reasoning for dismissing the appeal, because the District Council had yet to complete an up-to-date objectively assessed analysis of housing needs against which to measure those draft proposals. Although it had been held that a body preparing a neighbourhood plan does not have the function of preparing strategic policies to meet assessed housing needs across a local plan area and need not be concerned with wider issues for the delivery of housing (paragraphs 62 and 63 above), it cannot follow that the absence of any objective assessment of housing needs at the district level could justify increasing the weight to be given to a draft neighbourhood plan. The lack of such an assessment was plainly irrelevant for that purpose.” (para 81)*

## 4. WHERE HAVE WE GOT TO AND WHERE ARE WE GOING?



- The Coalition Government was optimistic with regard to the likely “take up” of the powers.
- It also believed that NPs would assist in increasing delivery of development rather than hinder it, as many feared.
- Since the introduction of the Localism Act, nearly 280 NPs have been examined. Of the handful that have not passed examination, three failures occurred in the last six months, with the NP for Wantage in Oxfordshire being the most recent.

# Legislative Changes



- Notwithstanding the tension between NPs and housing delivery, the Government shows no signs of of doing other than re-enforcing the role of NPs
- Provisions are included in the Housing and Planning Act 2016
- Further provisions are proposed in the Neighbourhood Planning Bill
- The emphasis seems to be on putting further duties/time constraints on LPAs to assist the process and act swiftly

# Housing and Planning Act 2016



- Explanatory Notes:  
*“Neighbourhood planning - simplifies and speeds up the neighbourhood planning process to support communities that seek to meet local housing and other development needs through neighbourhood planning.”*
- SM p.16:
  - Designation of neighbourhood areas (s.139)
  - Timetable (s.140)
  - Intervention powers (s.141)
  - Notifying neighbourhood forums of planning applications (s.142)

# Neighbourhood Planning Bill



- Notwithstanding the title, only 6 of the 36 clauses specifically relate to Neighbourhood planning (the bulk relate to Compulsory Purchase) (SM p.19)
- However, the Bill reflects the increasing status the Government is attributing to NPs and the continued assistance the LPA must give.

# Statutory Material Consideration



- Cl. 1 would add to s.70 of the TCPA 1990 as a material consideration that the LPA must have regard to in determining a planning application:

*“a post-examination draft neighbourhood development plan, so far as material to the examination”*

What is a “post-draft” NP is provided for (SM p.19) -

- where LPA has decided referendum to be held

OR

- the SoS has directed that a referendum is to be held (under the power inserted into Sched. 4B (para. 13A) by the 2016

Act

## Status of approved NP & Assistance



- Cl.2 provides A NP would be considered as part of the development plan for the purposes of section 38 of the PCPA 2004 if it has been approved by referendum but awaits being made by the LPA.
- Cl. 5 provides that section 18 of the PCPA 2004 is amended to insert reference in the Statement of Community Involvement to the advice or assistance given on proposals for the making or modification (which is provided for under Cl.3) of NPs



# The Future



- Clear that there is no backing down from NP
- Importance in status and procedural requirements are indeed being increased
- Increasingly complex legislative provisions
- How does this fit with delivering housing and other development?
- How does this fit with simplification of the planning system?