

**NEIGHBOURHOOD PLANS:  
PROGRESS SO FAR AND WHAT NEXT**

Stephen Morgan

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**SUPPORTING MATERIALS**

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Legal Propositions in the Loxwood NP Challenge.....	2
Extracts from the NPPF.....	7
Extracts from the PPG.....	12
Explanatory Notes to the Housing and Planning Act 2016 (extracts).....	16
Neighbourhood Planning Bill (extracts).....	19
Planning Resource Article 2 September 2016.....	23
“Are examiners setting a higher bar for neighbourhood plan examinations?”	

## LEGAL PROPOSITIONS IN THE LOXWOOD NEIGHBOURHOOD

### PLAN CHALLENGE

1. 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)

2. These consolidated Claims are made pursuant to section 61N(2) of the TCPA 1990 and CPR Part 54.
3. A NP is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan (PCPA 2004, s. 38A(2)).
4. Once made (i.e. brought into force), a NP is part of the development plan for the area (PCPA 2004, s. 38(2)&(3)). However, if to any extent a policy set out in a neighbourhood plan conflicts with any another policy in the development plan the conflict must be resolved in favour of the policy which is contained within the last document to become part of the development plan (s.38(5) PCPA 2004).
5. If to any extent a policy set out in a neighbourhood development plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy (PCPA 2004, s. 38B(3)).

6. Schedule 4B relates to the process for the making of neighbourhood development orders. This is applied with modifications to NPs by PCPA 2004 ss. 38A(3) & 38(C)(5).
7. The Parish Council is a qualifying body for the purpose of making proposals for a NP (TCPA 1990 s.61F(1) and PCPA 2004 ss.38A(1), 38C(2)(a)).
8. A local planning authority (“lpa”) must give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for neighbourhood development orders in relation to neighbourhood areas within their area. (Schedule 4B para. 3 to the TCPA 1990) (although they are not required to give financial assistance).
9. The stages for the making of a NP can be summarized as: (see also PPG at ID 41-080-20150209):
  - (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, para 5, 6) and invitation by the lpa to make representations (regulation 16)
  - (4) Independent Examination. The draft NP would be submitted by the lpa to an independent examiner (Schedule 4B, para 7; regulation 17) – the general rule is that the examination of the issues by the examiner is to take the form of the consideration of written representations (TCPA 1990, Schedule 4B para. 9(1)). The Examiner reports under paragraph 10
  - (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 (i.e. bringing it into force) if supported by the Referendum
10. Unlike for a local plan, the test for a NP is not one of soundness. Instead, the Examiner must consider whether the draft NP meets requirements under TCPA 1990, Schedule 4B para. 8, including the basic conditions (paragraph 8(2), as modified). A NP meets the basic conditions if, in particular:
- “(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,
  - (d) the making of the plan contributes to the achievement of sustainable development
  - (e) the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).”

For relevant cases see *BDW Trading Limited (t/a Barratt Homes) v Cheshire West & Chester BC* [2014] EWHC 1470 (Admin) at [82] – [85]; *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 1173; *R (oao DLA Delivery Limited v Lewes DC* [2015] EWHC 2311 (Admin) at [133] & [134].

11. The examiner’s report must recommend either-
- (a) that the draft order is submitted to a referendum, or
  - (b) that modifications specified in the report are made to the draft order and that the draft order is submitted to a referendum, or
  - (c) that the proposal for the order is refused.

(Schedule 4B, para. 10(2))

The report must give reasons for each of its recommendations and contain a summary of its main findings (Schedule 4, para.10(6)).

12. The examiner may recommend modifications that he/she considered need to be made to secure that the draft NP meets the basic conditions in paragraph 8(2) (Schedule 4B, para. 10(3)(a)). It has been indicated that the reasons given by an examiner should be tested by reference to the parameters set in *South Buckinghamshire District Council v Porter (No.2)* [2004] 1 WLR 1953 (in particular at [36]) – see *Gladman Developments Limited v Aylesbury Vale District Council* [2014] EWHC 4223 (Admin) at [94] – [95].
13. If the examiner’s report recommends that a plan is submitted to a referendum, the report must also make a recommendation as to whether the area for the referendum should extend beyond the neighbourhood area to which the plan relates (Schedule 4B, para. 10(5)).
14. If the authority is satisfied-
  - (a) that the draft plan meets the basic conditions in para. 8(2) of Schedule 4B, is compatible with the Convention rights and complies with the provision made by or under sections 38A and 38B of the PCPA 2004 or
  - (b) that the draft plan would meet those conditions, be compatible with those rights and comply with those sections if modifications were made to the draft NP (whether or not recommended by the examiner),a referendum in accordance with para. 14 of Schedule 4B must be held on the making by the authority of a NP (Schedule 4B, para. 12(4)).
15. A decision statement, containing reasons for the decision, must be produced by the lpa (regulation 18).
16. The local planning authority must make a NP if in the Referendum more than half of those voting have voted in favour of the plan (PCPA 2004 s.38A(4)). (The authority are not subject to that duty if they consider that

the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998 – s.38A(6)).

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**NPPF:**

**REFERENCES TO NEIGHBOURHOOD PLANNING**

(With my emphasis)

**MINISTERIAL FORWARD**

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. This framework sets out clearly what could make a proposed plan or development unsustainable.

In order to fulfil its purpose of helping achieve sustainable development, planning must not simply be about scrutiny. Planning must be a creative exercise in finding ways to enhance and improve the places in which we live our lives.

This should be a collective enterprise. Yet, in recent years, planning has tended to exclude, rather than to include, people and communities. In part, this has been a result of targets being imposed, and decisions taken, by bodies remote from them.

Dismantling the unaccountable regional apparatus and introducing neighbourhood planning addresses this.

16. The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:
  - develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development

- plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan; and
- identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with their neighbourhood plan to proceed.

69. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Local planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see. To support this, local planning authorities should aim to involve all sections of the community in the development of Local Plans and in planning decisions, and should facilitate neighbourhood planning. Planning policies and decisions, in turn, should aim to achieve places which promote:

97 .....

- support community-led initiatives for renewable and low carbon energy, including developments outside such areas being taken forward through neighbourhood planning; and....

### **Local Plan Soundness**

182 The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is “sound” – namely that it is:

- Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework

### **Neighbourhood plans**

183 Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:

- set planning policies through neighbourhood plans to determine decisions on planning applications; and
- grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order.

184 Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.

185 Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.

### **Determining Applications**

196 The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material

considerations indicate otherwise. This Framework is a material consideration in planning decisions.

197 In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

198 Where a Neighbourhood Development Order has been made, a planning application is not required for development that is within the terms of the order. Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

### **Emerging Plans**

216. From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

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## EXTRACTS FROM THE PLANNING PRACTICE GUIDANCE ON NEIGHBOURHOOD PLANNING

*ID 41-082-20160211 Last updated 11 02 2016*

**How should planning applications be decided where there is an emerging neighbourhood plan but the local planning authority cannot demonstrate a five-year supply of deliverable housing sites?**

Where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, decision makers may still give weight to relevant policies in the emerging neighbourhood plan, even though these policies should not be considered up-to-date.

Paragraph 216 of the National Planning Policy Framework sets out the weight that may be given to relevant policies in emerging plans in decision taking.

Further assistance to decision makers in these circumstances can be found in guidance on the relationship between a neighbourhood plan and a local plan.

Documentation produced in support of or in response to emerging neighbourhood plans, such as basic conditions statements, consultation statements, representations made during the pre-examination publicity period and independent examiners' reports, may also be of assistance to decision makers in their deliberations.

Planning Practice Guidance also addresses the question of prematurity in relation to neighbourhood plans.

*ID 41-083-20160211 Last updated 11 02 2016*

**How should planning applications be decided where there is a made neighbourhood plan but the local planning authority cannot demonstrate a five-year supply of deliverable housing sites?**

Neighbourhood plans are an important part of the plan-led system. The Government's policy intention when introducing neighbourhood planning was to provide a powerful set of tools for local people to ensure they get the right types of development for their community, while also planning positively to support strategic development needs.

Decision makers may find themselves considering applications in an area with a neighbourhood plan that has passed referendum and been "made", and thus forms part of the development plan, but where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

In such instances paragraph 49 of the Framework is clear that "relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites." Paragraph 49 applies to policies in the statutory development plan documents which have been adopted or approved in relation to a local planning authority area. It also applies to policies in made neighbourhood plans.

Where the development plan is absent, silent or the relevant policies are out of date, paragraph 14 of the Framework states that the presumption in favour of sustainable development requires the granting of planning permission, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

In this situation, when assessing the adverse impacts of the proposal against the policies in the Framework as a whole, decision makers should include within

their assessment those policies in the Framework that deal with neighbourhood planning.

This includes paragraphs 183–185 of the Framework; and paragraph 198 which states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

*ID: 41-009-20160211 Last updated 11 02 2016*

### **Can a Neighbourhood Plan come forward before an up-to-date Local Plan is in place?**

Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan.

A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development.

Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- the emerging neighbourhood plan
- the emerging Local Plan

the adopted development plan  
with appropriate regard to national policy and guidance.

The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination.

The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan. Neighbourhood plans should consider providing indicative delivery timetables, and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new Local Plan.

## HOUSING AND PLANNING ACT 2016

### EXTRACTS FROM EXPLANATORY NOTES TO THE ACT

Part 6: Planning in England

Neighbourhood Planning

#### **Section 139: Designation of neighbourhood areas**

376 This section amends section 61G of the 1990 Act (meaning of “neighbourhood area”). That section provides for local planning authorities in England to designate neighbourhood areas within which neighbourhood planning activities may take place. A local planning authority may only designate a neighbourhood area where a relevant body (a parish council, where there is one, or an organisation or body which is, or is capable of being, designated as a neighbourhood forum) has applied to the authority for an area specified in the application to be designated. The authority must designate at least some of the area applied for (unless all of the area applied for is already designated).

377 The amendment enables the Secretary of State to make regulations requiring a local planning authority to designate all of the area applied for if the application meets prescribed criteria or has not been determined within a prescribed period (subject to prescribed exceptions).

#### **Section 140: Timetable in relation to neighbourhood development orders and plans**

378 This section amends the 1990 Act and the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to prescribe time periods within which local planning authorities must undertake key neighbourhood planning functions.

379 Paragraph 12 of Schedule 4B to the 1990 Act sets out what a local planning authority must do on receipt of a report by an independent examiner of a proposal for a neighbourhood development order or plan. The key decision is whether a referendum should be held on the proposal. If the authority propose to make a decision which differs from that recommended by the examiner, paragraph 13 of Schedule 4B requires prescribed persons to be consulted. The authority may also refer the issue to independent examination. New paragraph 13A of Schedule 4B, inserted by subsection (1) of this section, enables the Secretary of State to prescribe in regulations time limits for authorities to decide whether to hold a referendum and for other actions under paragraphs 12 or 13.

380 Section 140 also amends section 61E of the 1990 Act and section 38A of the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to prescribe a date by which a local planning authority must make a neighbourhood development order or plan that has been approved in each applicable referendum (unless the authority considers that making the order or plan would not be compatible with any EU obligation or Convention right).

**Section 141: Making neighbourhood development orders and plans: intervention powers**

381 Section 141 inserts new paragraphs 13B and 13C into Schedule 4B to the 1990 Act.

382 New paragraph 13B enables the Secretary of State, at the request of a parish council or neighbourhood forum responsible for neighbourhood planning in an area, to intervene in a local planning authority's decision whether to hold a referendum on a neighbourhood development order or plan proposal.

383 This power is exercisable in three circumstances: where a local planning authority has failed, by the date prescribed under the new paragraph 13A

(inserted by section 139) to decide whether to hold a referendum; where the authority do not follow the recommendations of the independent examiner of the proposal; or where the authority make a modification to the proposal that was not recommended by the examiner (other than to secure compliance with EU obligations or Convention rights, or to correct an error).

384 Where the power is exercised, the Secretary of State may direct the authority to make arrangements for a referendum or to refuse the proposal. The Secretary of State may also direct the authority to extend the area in which the referendum is (or referendums are) to take place and to publish a map of that area. New paragraph 13B also makes provision for notification and consultation of prescribed persons, and possible further examination, where the Secretary of State proposes to direct the authority not to act in accordance with the examiner's recommendations. Where the Secretary of State directs an authority to arrange a referendum, the authority may only modify the proposal to secure compliance with EU obligations or Convention rights, or to correct errors.

385 New paragraph 13C enables the Secretary of State to make regulations for the procedure to be followed by those requesting intervention, and by the Secretary of State in considering and responding to any such request, and when intervening in response to a request.

#### **Section 142: Local planning authority to notify neighbourhood forum of applications**

386 Section 142 inserts a new paragraph 8A into Schedule 1 to the 1990 Act. The new provision requires a local planning authority, at the request of a neighbourhood forum in their area, to notify the forum of planning applications in the neighbourhood area for which the forum is designated. This would extend to neighbourhood forums a right afforded to parish councils by paragraph 8 of Schedule 1 to the 1990 Act.

# Neighbourhood Planning Bill (2016-17)

## CONTENTS

### PART 1

#### PLANNING

##### Neighbourhood planning

- 1 Duty to have regard to post-examination neighbourhood development plan
- 2 Status of approved neighbourhood development plan
- 3 Modification of neighbourhood development order or plan
- 4 Changes to neighbourhood areas etc
- 5 Assistance in connection with neighbourhood planning
- 6 Further provision about statement of community involvement

### A

# BILL

### TO

Make provision about planning and compulsory purchase; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### PLANNING

##### Neighbourhood planning

- 1 Duty to have regard to post-examination neighbourhood development plan**
- (1) Section 70 of the Town and Country Planning Act 1990 (determination of applications for planning permission: general considerations) is amended as follows.
  - (2) In subsection (2) (matters to which local planning authority must have regard in dealing with applications) after paragraph (a) insert—  
“(aza) a post-examination draft neighbourhood development plan, so far as material to the application.”.
  - (3) Before subsection (4) insert—  
“(3B) For the purposes of subsection (2)(aza) a draft neighbourhood development plan is a “post-examination draft neighbourhood development plan” if—  
(a) a local planning authority have made a decision under paragraph 12(4) of Schedule 4B with the effect that a referendum or referendums are to be held on the draft plan under that Schedule, or (b) the Secretary of State has directed under paragraph 13B(2)(a) of that Schedule that a referendum or referendums are to be held on the draft plan under that Schedule.
  - (3C) The references in subsection (3B) to Schedule 4B are to that Schedule as applied to neighbourhood development plans by section 38A(3) of the Planning and

Compulsory Purchase Act 2004.”

**2 Status of approved neighbourhood development plan**

In section 38 of the Planning and Compulsory Purchase Act 2004 (development plan) after subsection (3) insert—

- “(3A) For the purposes of any area in England (but subject to subsection (3B)) a neighbourhood development plan which relates to that area also forms part of the development plan for that area if—
- (a) section 38A(4)(a) (approval by referendum) applies in relation to the neighbourhood development plan, but
  - (b) the local planning authority to whom the proposal for the making of the plan has been made have not made the plan.
- (3B) The neighbourhood development plan ceases to form part of the development plan if the local planning authority decide under section 38A(6) not to make the plan.”

**3 Modification of neighbourhood development order or plan**

- (1) Section 61M of the Town and Country Planning Act 1990 (revocation or modification of neighbourhood development orders) is amended in accordance with subsections (2) and (3).
- (2) After subsection (4) insert—
 

“(4A) A local planning authority may at any time by order modify a neighbourhood development order they have made if they consider that the modification does not materially affect any planning permission granted by the order.”
- (3) In subsection (5)—
  - (a) for “that order” substitute “the neighbourhood development order mentioned in subsection (4) or (4A)”, and
  - (b) after “(4)” insert “or (4A)”.
- (4) The Planning and Compulsory Purchase Act 2004 is amended in accordance with subsections (5) to (10).
- (5) In section 38A (meaning of “neighbourhood development plan”) after subsection (11) insert—
 

“(11A) Subsection (11) is subject to Schedule A2, which makes provision for the modification of a neighbourhood development plan.”
- (6) Section 38C (neighbourhood development plans: supplementary provisions) is amended in accordance with subsections (7) to (9).
- (7) After subsection (2) insert—
 

“(2A) Section 61F of the principal Act is to apply in accordance with subsection (2) of this section as if—

  - (a) subsections (8)(a) and (8B) also referred to a proposal for the modification of a neighbourhood development plan,
  - (b) subsection (13)(b) also referred to a proposal for the modification of a neighbourhood development plan made by a neighbourhood forum, and
  - (c) subsection (13)(c) also referred to any duty of a local planning authority under paragraph 7, 8 or 9 of Schedule A2 to this Act.”
  - (8) In subsection (3)—
    - (a) the words from “the words” to the end of the subsection become paragraph (a), and
    - (b) at the end of that paragraph insert “, and
    - (b) the reference in subsection (4A) to a modification materially affecting any planning permission granted by the order were to a modification materially affecting the policies in the

- plan.”
- (9) In subsection (6)—
- (a) the words from “on proposals” to the end of the subsection become paragraph (a), and
  - (b) at the end of that paragraph insert “, or
  - (b) on proposals for the modification of neighbourhood development plans, or on modifications of neighbourhood development plans, that have already been made.”
- (10) After Schedule A1 insert the Schedule A2 set out in Schedule 1 to this Act.

#### **4 Changes to neighbourhood areas etc**

- (1) The Town and Country Planning Act 1990 is amended in accordance with subsections (2) to (4).
- (2) In section 61F (authorisation to act in relation to neighbourhood areas) after subsection (8) insert—
- “(8A) A designation ceases to have effect if—
- (a) a new parish council is created or there is a change in the area of a parish council, and
  - (b) as a result, the neighbourhood area for which the neighbourhood forum is designated consists of or includes the whole or any part of the area of the parish council.
- (8B) The operation of subsection (8A) does not affect the validity of any proposal for a neighbourhood development order made before the event mentioned in paragraph (a) of that subsection took place.”
- (3) In section 61G (meaning of “neighbourhood area”) after subsection (6) insert—
- “(6A) The power in subsection (6) to modify designations already made includes power—
- (a) to change the boundary of an existing neighbourhood area,
  - (b) to replace an existing neighbourhood area with two or more separate neighbourhood areas, and
  - (c) to replace two or more existing neighbourhood areas with a single neighbourhood area.
- (6B) A neighbourhood area created by virtue of subsection (6A)(b) may have the boundary created by splitting it from the existing area or a different boundary.
- (6C) A neighbourhood area created by virtue of subsection (6A)(c) may have the boundary created by combining the existing areas or a different boundary.
- (6D) A modification under subsection (6) of a designation already made does not affect the continuation in force of a neighbourhood development order even though as a result of the modification—
- (a) it no longer relates to a neighbourhood area, or
  - (b) it relates to more than one neighbourhood area.”
- (4) In section 61J (provision that may be made by neighbourhood development order) after subsection (5) insert—
- “(5A) Subsection (5) is subject to section 61G(6D) (effect of modification of existing neighbourhood area).”
- (5) The Planning and Compulsory Purchase Act 2004 is amended in accordance with subsections (6) to (8).
- (6) In section 38A (meaning of “neighbourhood development plan”) after subsection (11A) (as inserted by section 3) insert—
- “(11B) Subsection (11C) applies if, as a result of a modification of a neighbourhood area under section 61G(6) of the principal Act, a neighbourhood development plan relates to more than one neighbourhood area.

- (11C) The replacement of the plan by a new plan in relation to one or some of those areas does not affect the continuation in force of the plan in relation to the other area or areas.”
- (7) In section 38B (provision that may be made by neighbourhood development plans) after subsection (2) insert—  
“(2A) Subsections (1)(c) and (2) are subject to section 61G(6D) of the principal Act (as applied by section 38C(5A) of this Act).”
- (8) In section 38C (supplementary provisions) after subsection (5) insert—  
“(5A) Section 61G(6D) of the principal Act is to apply in relation to neighbourhood development plans as if it also provided that a modification under section 61G(6) of that Act of a designation of a neighbourhood area does not affect the continuation in force of a neighbourhood development plan even though, as a result of the modification, more than one plan has effect for the same area.”

## **5 Assistance in connection with neighbourhood planning**

- (1) Section 18 of the Planning and Compulsory Purchase Act 2004 (statement of community involvement) is amended as follows.
- (2) At the beginning of subsection (2A) insert “Subject to subsection (2B),”.
- (3) After subsection (2A) insert—  
“(2B) A statement of community involvement must set out the local planning authority’s policies for giving advice or assistance under—  
(a) paragraph 3 of Schedule 4B to the principal Act (advice or assistance on proposals for making of neighbourhood development orders), and  
(b) paragraph 3 of Schedule A2 to this Act (advice or assistance on proposals for modification of neighbourhood development plans).
- (2C) The reference in subsection (2B)(a) to Schedule 4B to the principal Act includes that Schedule as applied by section 38A(3) of this Act (process for making neighbourhood development plans).
- (2D) Subsection (2B) applies regardless of whether, at any given time—  
(a) an area within the area of the authority has been designated as a neighbourhood area, or  
(b) there is a qualifying body which is entitled to submit proposals to the authority for the making by the authority of a neighbourhood development order or a neighbourhood development plan.”

## **6 Further provision about statement of community involvement**

- (1) Section 18 of the Planning and Compulsory Purchase Act 2004 (statement of community involvement) is amended as follows.
- (2) In subsection (2) after “sections” insert “13, 15,”.
- (3) After subsection (3A) insert—  
“(3B) The Secretary of State may by regulations make provision requiring a local planning authority to review their statement of community involvement at such times as may be prescribed.
- (3C) If regulations under subsection (3B) require a local planning authority to review their statement of community involvement—  
(a) they must consider whether to revise their statement following each review, and (b) if they decide not to do so, they must publish their reasons for considering that no revisions are necessary.”

## PlanningResource

# Are examiners setting a higher bar for neighbourhood plan examinations?

2 September 2016 by Winnie Agbonlahor , [1 comment](#)

**Three neighbourhood plans have failed examination in the last six months, but observers say that an increase in the number of failures is inevitable as the number of plans coming forward grows.**

Since the introduction of the Localism Act under the previous coalition government, nearly 280 neighbourhood plans have been examined, according to data compiled for Planning's Neighbourhood Watch bulletin. Of the handful that have not passed examination, three failures occurred in the last six months, with the neighbourhood plan for Wantage in Oxfordshire being the most recent (see below).

Are examiners setting a higher bar for neighbourhood plans? John Parmiter, the examiner who failed the Wantage neighbourhood plan last month over concerns about its "extensive protectionist policies and proposals", does not believe this is the case. Parmiter, who also failed a plan for Berinsfield, South Oxfordshire in May, said he has "no evidence that the bar has been set higher".

However, Gary Kirk, neighbourhood plan examiner and managing director of neighbourhood plan consultancy YourLocale, said that he

believes more plans are failing examination due to the sheer number being produced. "There are more going through examination now, so you would expect more to fail," he said. His view was echoed by examiner Nigel McGurk, who told Planning: "Two years ago there were only a handful of plans. Now there are hundreds. It is perhaps inevitable that one or two will fail as communities try to push the envelope, or lack sufficient understanding of what a neighbourhood plan can achieve."

When a plan does fail at examination, it is most likely "devastating for groups", Kirk said. Parmiter added that volunteers "will have put several hundreds of hours of work into producing the plan". So how should they respond to having their plan failed? Teams should "pick themselves up, have another look at the issues highlighted in the report and work through them thoroughly", said Stephen Tapper, the Planning Officers Society's spokesman on neighbourhood plans. Kirk advises groups to "take a deep breath, set the disappointment aside and use what the examiner has proposed as free consultancy". The key, he added, is to "work with the local authority. They won't want a second failure, and can help keep the community involved".

Tapper adds that the onus should be on councils to support groups. For a plan to fail at the examination stage, he said, it has to get fundamental points wrong - points that should have been picked up by the local council. The relevant local planning authority "should make sure these mistakes are not made", he added.

Tapper said that the plan for Coton Park in Rugby, which failed examination in January 2015, included a policy that required a lot of highway works, "but these fell into the county council and highway

authority's remit, making the realisation of the policy dependent on third parties". This, Tapper said, "is basic stuff that local authorities working more closely with neighbourhood plan teams should be expected to have put right".

The council, which agreed modifications to the Coton Park plan to enable it to proceed to referendum, points out that it does support neighbourhood plan teams. Rob Back, Rugby Borough Council's head of growth and investment, said: "We take a proactive approach to neighbourhood plan applications and work closely with applicants throughout the process. We offer advice on how national and local planning policies impact on proposed neighbourhood plans, support applicants through the consultation stage and offer feedback on the final proposed plan before it goes before an independent examiner."

McGurk said that, where plans have failed examination, "the ultimate reason for failure is [always] the same - the plan has not met the basic conditions. If it plan meets them then it will progress to referendum".

So what does this mean in practice? "The plan needs to have regard to national policies and advice; be in general conformity with local strategic policies; contribute to the achievement of sustainable development; and be compatible with European obligations," McGurk said. He added that all of the basic conditions and their wording "are clearly presented in planning practice guidance."

Kirk, who has worked with over 50 neighbourhood plan groups, said that misunderstanding the scope of the document - by assuming that it can require third parties to complete certain projects, for example - is a common pitfall for teams. He said that another aspect many

groups grapple with is the evidence base: "Sometimes people who've lived around a particular green space and would like to see it protected don't step back and actually provide the evidence an examiner will need to confirm the designation. They don't ask themselves: is it beautiful, bounded, close to the village, tranquil, used by the community, of historical significance? The National Planning Policy Framework outlines what you need to demonstrate."

#### FIVE PLANS THAT FAILED EXAMINATION

- Wantage, Vale of White Horse, August 2016. Examiner John Parmiter found that the plan was "overly focused on protecting the locality's many features, too often without sufficiently robust evidence to do so".
- Berinsfield, South Oxfordshire, May 2016. The plan did not have regard to national policies, particularly in relation to policies for the green belt, Parmiter found.
- Storrington, Sullington and Washington, Horsham, March 2016. Examiner Paul McCreery highlighted site allocations that did not qualify as locations for sustainable development.
- Coton Park, Rugby, January 2015. Examiner Christopher Lockhart-Mummery QC found that two plan policies did not meet statutory requirements. In August 2015, Rugby Borough Council agreed modifications, and the plan proceeded to referendum.
- Slaugham, Mid Sussex, January 2014. Examiner Ann Skippers found that the plan was not compatible with EU requirements as the submitted Strategic Environment Assessment was "not satisfactory in a number of respects"

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