

Neighbourhood planning

Progress and Prognosis

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Landmark Chambers

Introduction

- Legal and policy framework:
 - PCPA 2004 ss 38A-C and TCPA 1990 ss 61E-Q and Sch. 4B-C (inserted by Localism Act Chapter 3 and Sch. 9)
 - Neighbourhood Planning (General Regulations) 2012
 - Neighbourhood Planning (Referendums) Regulations 2012
 - Environmental Assessment of Plans and Programmes Regulations 2004
 - See too NPPF para.s 15-6 and 183-5, 198; PPG ID41
- Growing movement:
 - As of November 2014, more than 1200 communities had applied for designation of neighbourhood planning area; more than 1100 designated, covering more than 5m people in England; and 29 plans in force

Main instruments

- Neighbourhood Plans – policies part of development plan under s. 38(6)
- Neighbourhood Development Orders and Community Right to Build Orders – grants of permission for specific development which complies with the Order

Players

- Legislation enables 3 types of organisation, “qualifying bodies”, to initiate process:
 - parish or town council;
 - neighbourhood forum;
 - group empowered to lead process where no town or parish council;
 - apply to LPA to be designated if meets conditions in s. 61F(5): 21+ local members; established to improve well-being
 - (in the case of CRBOs) community organisations
- Local authority takes decisions at key stages and must provide assistance and advice

Neighbourhood area

- Area within area of LPA designated pursuant to application by town or parish council or forum: s. 61G
- Consultation on application for at least 6 weeks
- LPA must determine having regard to desirability of covering whole of parish area; and maintaining existing boundaries
- If application refused because specified area is not appropriate, “must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated...”

Neighbourhood plan: content

- Focus on Neighbourhood Plans
- Plans sets out policies “in relation to the development and use of land in the whole or any part of a neighbourhood area”: s. 38A
- May not include provision for “excluded development”: s. 61K (county matters, waste development, Annex 1 EIA development, NSIPs)
- PPG: can allocate sites for development (additional and alternative to Local Plans)

Neighbourhood plan: preparation

- Pre-submission consultation by qualifying body (6 weeks)
- Submit to LPA draft plan and map; consultation statement; and statement explaining how plan meets basic and prescribed conditions:
 - appropriate having regard to national policies and advice in guidance of SoS
 - appropriate having special regard to desirability of preserving listed building/conservation area
 - contributes to sustainable development
 - general conformity with strategic policies in development plan
 - does not breach EU obligations
 - Unlikely to have significant effect on European site or European offshore marine site
 - Where EIA development involved, appropriate that plan is made
- Consultation on draft by LPA (6 weeks)

Neighbourhood plan: examination

- If steps taken then proceed to examination: generally written reps; and consider whether conditions met
- Examiner must recommend either that the plan is submitted to referendum (with modifications to meet basic/prescribed conditions or other statutory requirements); or refused

Neighbourhood plan: referendum

- LPA considers recommendations and if concludes basic/prescribed conditions and statutory requirements met (with or without modifications), must hold referendum
- Referendum is neighbourhood area as a minimum
- 50% threshold
- Unless considers making plan would breach EU law or any Convention rights, must make plan

NB. SEA

- Strategic Environmental Assessment under 2004 Regulations
- Environmental report assessing plans/programmes likely to have significant effects on environment
- Must consider reasonable alternatives

Failed challenges to Plans

- Daws Hill Neighbourhood Forum v. Wycombe DC [2014] EWCA Civ 228
- Barratt Homes v. Cheshire West and Chester BC [2014] EWHC 1470
- R (Larkfleet Homes) v. Rutland CC and Uppingham TC [2014] EWHC 4095
- R (Gladman Developments) v. Aylesbury Vale DC and Wilmslow TC [2014] EWHC 4323

Daws Hill

- Challenge to decision to designate smaller neighbourhood area than applied for: 2 strategic sites excluded
- Section 61G(5): must exercise power to secure that “some or all of the specified area” is designated – apt to cover part of area
- CA rejected suggestion that would eventually have to exercise this power to designate whole of excluded area in response to repeat applications by a neighbourhood forum: could refuse forum designation
- CA also found that LPA entitled to exclude area on grounds that sites would have larger than local impacts and would be overtaken by a planning process already well advanced (one permission granted, another anticipated)

Barratt Homes

- Plan sought to restrict housing within and around village before adoption of Local Plan
- Alleged failure to conduct SEA: held reasonable to consider effect of NP and “do nothing” as alternatives
- Alleged that basic conditions could not be met in advance of Local Plan: rejected:
 - examiner properly “had regard to national policy” (not a test of soundness relating to wider ramifications of housing delivery)
 - no reason why could not assess general conformity of NP as a whole with extant development plan as a whole: not for examiner to determine whether there was tension between one aspect of NP and one aspect of eventual emerging plan

Larkfleet

- Rejected submission that documents allocating sites/containing site allocation policies had to be prepared as local development documents by LPAS under TCP (Local Planning)(England) Regulations 2012
- Regulations aimed at documents to be prepared by LPAs and surprising if could NPs could not allocate
- Also rejected allegation that SEA screening failed to consider positive effects

Gladman

- NP could regulate housing provision through provision of settlement boundary and allocations - even where no strategic housing policy in place in development plan
- Also rejected allegation that examiner failed to have regard to PPG advice on allocating sites (options to be appraised and sites assessed against criteria)
- Further held that Plan complied with SEA requirements: “at a level of detail and using resources sufficient for content and level of plan”

Appeals: emerging NPs “tipping the balance”?

- Sayers Common, West Sussex (APP/D3830/A/12/2189451)(September 2014)
 - Proposals outside settlement boundary in Local Plan; no 5 year housing land supply
 - Emerging NP submitted for examination; policies stated village might accommodate 30-40 new homes and existing infrastructure issues to be resolved
 - SoS: “appropriate to give local people an opportunity to ensure they get the right types of development for their community while also planning positively to support strategic development needs...has therefore given significant weight to the fact that the emerging NP has identified housing allocations elsewhere within the NP area and that the Council has yet to complete an up-to-date objectively assessed housing needs analysis against which to measure the overall NP proposals...appropriate to tip the balance in favour of the emerging NP proposals, whilst accepting that these may need to be revisited in due course”
- Malmesbury, Wiltshire (APP/Y3940/A/13/2200503)(September 2014): same approach
- Hurstpierpoint, West Sussex (APP/D3830/A/13/2203080)(September 2014): compare:
 - “The SoS has therefore given significant weight to the fact that the emerging NP has identified these sites for housing and, as the Council has yet to complete an up-to-date objectively assessed housing needs analysis against which to measure the overall NP proposals, he considers it appropriate, as things currently stand, to tip the planning balance in favour of the emerging NP proposals” [emphasis added]

Appeals: significant weight to adopted NPs?

- Verney Road, Winslow (APP/J0405/A/13/2205858)(November 2014)
 - Winslow NP made in September 2014
 - Proposal could be contrary to policies restricting development outside settlement boundaries
 - Appeal refused, even though no 5 year housing land supply and NP policies regarded as out of date
 - “Very substantial negative weight on conflict between the appeal proposal and the Neighbourhood Plan even though its policies relevant to housing supply are out of date in terms of Framework paragraph 49”
- Land at Crowfoot Way, Broughton Astley, Leicestershire (APP/F2415/A/12/2183653)(April 2014): same approach

Future: Tories?

- Continuing status as a favourite child of Tory-led coalition
- Ongoing scrutiny of appeals affecting neighbourhood plans (see Ministerial Statement 10th July 2014):
 - keen that appeal decisions should reflect Government’s policy intention to provide “powerful set of tools for local people to ensure they get the right types of development”
 - criteria for possible recovery amended to include: proposals for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority; or where a neighbourhood plan has been made
- Tweaks: Government Response to consultation on neighbourhood planning (December 2014):
 - Time limits (8, 13 or 20 weeks depending on circumstances) for LPAs to process applications for designation as neighbourhood areas; specific requirements on qualifying bodies preparing reports on SEA; continued funding support to community groups and LPAs

Future: Labour?

- One Nation Society:
 - “ensure larger share of windfall gains from planning permission goes to local community”
- Labour and Localism: perspectives on a new English Deal:
 - neighbourhood planning must be incorporated into plan-making process at an earlier stage
- Compulsory NPs? Replacement of CIL with community investment fund?

Future: Lib Dems and UKIP? (!)

- Lib Dems: Reform of Planning: greater resources for preparation and updating of NPs
- UKIP: Policies for People: planning permission for large-scale developments can be overturned by a referendum triggered by the signatures of 5% of the District or Borough electors collected within three months

Future: other influences?

- House of Commons Communities and Local Government Committee: “Operation of the NPPF”
 - “strongly encourage” councils and forums to request share of section 106 proceeds where CIL not in place (where chargeable development is in area with NP, 25% of relevant CIL receipts are passed to parish council for that area).
 - recommends targeted funding to deprived areas to ensure system not “preserve of middle class”
 - recommends consultation on resolving uneasy relationship between local plans and NPs – including option that NPs not adopted until adopted Local Plan in place

Future: other themes?

- Courts:
 - continued reluctance to interfere in discretionary judgments
 - confirmation of distinction from local plan process
- Decision-making:
 - emerging NPs: the new prematurity?
 - adopted NPs: the answer to absence of 5yhls?

Conclusions

- Neighbourhood planning here to stay
- Continuing tension between localism and delivery?
- Tension between players and plans at different level of hierarchy?