

## Neighbourhood Plans: Where are we now?

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25<sup>th</sup> September 2014  
LBLA



### Overview

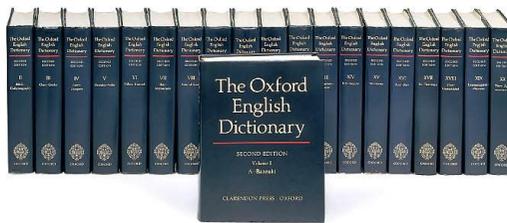
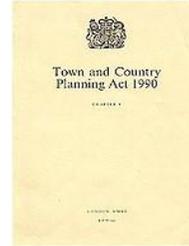


- **Legal Framework and Procedure**
  - Town and Country Planning Act 1990
  - Planning and Compulsory Purchase Act 2004
  - Neighbourhood Planning (General) Regulations 2012
  - Neighbourhood Planning (Referendums) Regulations 2012
  - SEA Directive / Regs
- **Two (failed) Challenges**
  - *Daws Hill Neighbourhood Forum v Wycombe DC* [2014] EWCA Civ 228
  - *Barratt Homes v Cheshire West and Chester BC* [2014] EWHC 1470 (Admin)
- **“Tipping the Balance” in recent SoS Recovered Appeals**
- **Floor discussion & questions**

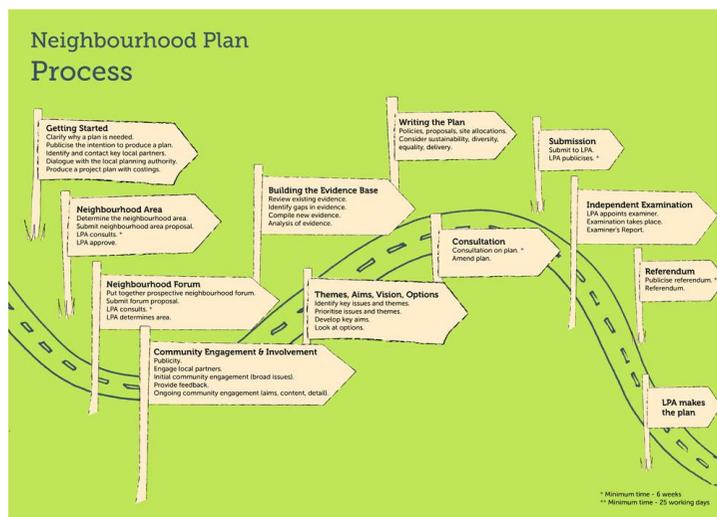
# (1) Definitions



- Neighbourhood Plan defined at s.38A PCPA 2004
  - “Initiated” by qualifying bodies, “made” by the LPA
  - Cannot cover “excluded matters”
- What is a:
  - “Qualifying body”: s.61E TCPA 1990
  - “Neighbourhood forum”: s.61F TCPA 1990
  - “Neighbourhood area”: s.61G TCPA 1990



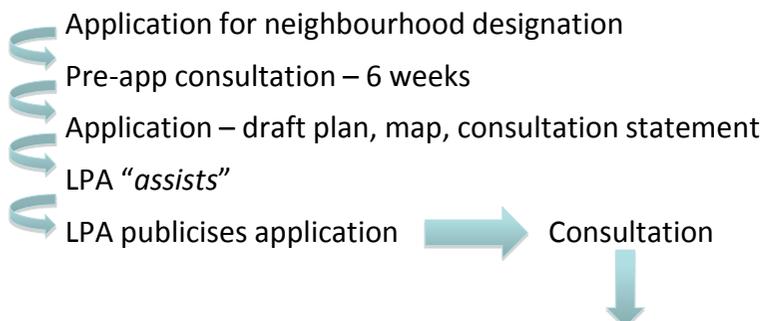
# (2) Process



## Pre-examination



- Cf. (a) *Schedule 4B of the TCPA 1990* & (b) *Part 5 of the Neighbourhood Planning (General) Regulations 2012*



## Examination



- Generally written reps, but can be hearing.
- Examiner’s considerations: cf. § 8, Schedule 4B TCPA 1990
  - National policy compliance
  - Compliance with legislation on listed buildings, heritage features and conservation areas
  - Contribution to achievement of sustainable development
  - General conformity with “strategic policy” – see PPG
  - Compatible with EU obligations



**NOT SOUNDNESS**



Planning  
Inspectorate

## Referendum

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- LPA considers Examiner's Report.
- If LPA agrees, and satisfied that compliant with EC law, then it *must* hold a referendum:
  - § 14, Schedule 4B TCPA 1990
  - Neighbourhood Planning (Referendums) Regulations 2012
- 50% threshold.
- Then, unless LPA considers breach of EU law, it *must* "make" the plan.



## n.b. SEA

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- EU Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment
- Environmental Assessment of Plans and Programmes Regulations 2004
  - Plans / programmes likely to have significant effects on environment
  - Environmental report
  - Must include assessment of reasonable alternatives



### (3) Two (failed) Challenges

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- *Daws Hill Neighbourhood Forum v Wycombe DC* [2014] EWCA Civ 228
- *Barratt Homes v Cheshire West and Chester BC* [2014] EWHC 1470 (Admin)



### *Daws Hill*

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- LPA designates only part of neighbourhood area applied for.
- S.61G(5) TCPA:

“the authority 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 (or to be designated) as neighbourhood areas.”
- Sullivan J, within LPA power to:
  - Refuse forum designation, and so refuse to consider neighbourhood area application; or
  - If forum designated, may designate only part of area applied for.



## **Barratt Homes**

- Tattenhall NP restricted housing within and around village before adoption of Cheshire LP.
- SEA Directive compliance?
  - Consideration of alternatives
  - “Hierarchy of plans”
- Proper role of the Examiner?
  - Should (s)he consider “wider ramifications upon the delivery of housing”?
  - Soundness?



## **(4) “Tipping the Balance”**



## September 2014 SoS Decisions



- Hurstpierpoint, West Sussex (APP/D3830/A/13/2203080)
- Sayers Common, West Sussex (APP/D3830/A/12/2189451)
- Malmesbury, Wiltshire (APP/Y3940/A/13/2200503)  
*"he considers it appropriate, as things currently stand, to tip the planning balance in favour of the emerging NP proposals"*

**However**, watch this space for forthcoming challenges re:

- Broughton Astley, Leicestershire (APP/F2415/A/12/2183653)
- Larkfleet Homes and Uppingham Neighbourhood Plan



## (5) Conclusions



- Early indications = Courts taking a (i) generous view of LPA discretion in NP process, and (ii) narrow view of Examiner's function.
- Still, it is a complex and developing regime legal regime.
- Further challenges already commenced. Likely areas include:
  - interrelation between emerging CS/LPs and NP, e.g. site allocation
  - NPs' impact on 5 year supply
  - SEA
- At present, SoS tipping scales in favour of emerging NPs. But will forthcoming challenges effect a reversal?



## (6) Discussion / questions

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