

Interaction with Neighbourhood Development Plans

**Kate Olley
&
Stephen Morgan**

Introduction



- Neighbourhood planning was introduced in England by the Localism Act 2011. Neighbourhood Development Plans (NDPs) are a key element of this new regime
 - It was seen as part of the move away from “top down” planning
 - As stated in the introduction to the NPPF (March 2012):
.....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.....we are allowing people and communities back into planning.
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Introduction (2)



- The pervasive effects of NDPs were not anticipated by many and their often far-reaching implications require full consideration
- The key basis of this significance is the fact that NDPs are a part of the development plan – s.38 of PCAP 2004 (and see NPPF[198] - *Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.*)
- However, what was anticipated by many, and has been evident in practice and will continue, is the tension between giving a much more significant role in plan-making to the local community and the urgent need for housing in particular.



PART 1: THE NEIGHBOURHOOD PLAN PROCESS

Key Features



- ◆ **Source for exercising NDP powers:**
Neighbourhood Areas – the original wide discretion of the Ipa with regard to designating these has been narrowed
- ◆ **Promoter of NDP:**
Qualifying bodies – PCs and Neighbourhood Forums
- ◆ **Key test for making of NDP:**
Basic conditions cf. soundness for Local Plans

The Basic Conditions: Schedule 4B of the TCPA 1990, para. 8(2)



- (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),
- (f) the making of the plan does not breach, and is otherwise compatible with, **EU obligations,** and
- (g) **prescribed conditions** are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the order.

Main elements in the NDP process (SM pp.3-4, para. 9)



- (1) **Preparation** of the pre-submission NDP by the qualifying body
- (2) Pre-submission **publicity and consultation** by the qualifying body on the proposals (regulation 14 of the Neighbourhood Planning (General) Regulations 2012)
- (3) **Submission** of the Draft NDP to a local planning authority (regulation 15), consideration whether it should **progress** (Schedule 4B, paras. 5, 6) and **representations** (regulation 16)
- (4) **Independent Examination** - must consider matters in para. 8(1) of Sched. 4B to the TCPA 1990 including whether the draft NDP meets the basic conditions
- (5) **Consideration** of the draft NDP by the lpa having **regard to the Examiner's report**
- (6) The **referendum** (with an additional one required for business areas)
- (7) The **making of the NDP** if supported by the referendum

What NDPs may not include



An NDP may not include provision about development that is "excluded development" (s.38B(1) of PCPA 2004, s.61K of the TCPA 1990 as applied by s.38B(6) of PCPA 2004):

- development normally dealt with by a **county planning authority** e.g. minerals and waste related development
- development described in **Schedule 1 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended)** which automatically requires an Environmental Impact Assessment
- development of nationally significant infrastructure projects (as defined in the **Planning Act 2008**)

What NDPs include (e.g. Joint Henley and Harpsden NDP 2012-2027) $\frac{L}{C}$

- **Housing allocations:** this leads to most legal challenges by aggrieved land owners/developers whose land is not included
- **Employment allocations**
- **Town centre** – redevelopment of sites
- **Open Space and environmental matters**
- **Community facilities** – renewal and enhancement of these
- **Concerns about transport impact** - can include parking provision policy which is more generous than the LP

Distinctions from local plan preparation (1) $\frac{L}{C}$

- AN NDP is the **local community's** plan, not the lpa's.
- An NDP may not relate to more than **one neighbourhood area** (s. 38B(c) PCPA 2004)
- For local plan, the test is of soundness. For an NDP it is whether the **basic conditions** are met.
- The process of examination of an NDP is **less stringent** compared to that for a local plan

Distinctions from local plan preparation (2) $\frac{L}{C}$

- The NDP has to be in **general conformity** with the strategic policies of the adopted Development Plan as a whole (dealt with by SM)
- A LP has to be consistent with national policy – an NDP can proceed **if it is appropriate “having regard to”** national policy and guidance
- There is no legal requirement for an NDP to have a **sustainability appraisal**. However, the PPG advises that qualifying bodies may find this a useful approach for demonstrating how their draft plan meets the basic conditions.
- An NDP can only be made (i.e. adopted) if supported by a simple majority at **referendum** with no minimum turnout required

The flexible approach to NDP making $\frac{L}{C}$

- In *R (oao DLA Delivery Ltd.) v Lewes DC* [2017] EWCA Civ 58, this was dealing again with a spurned developer – in this case it had failed to get its site allocated in the Newick NDP.
- In the Judgment of LJ Lindblom the background and purpose of NDPs is set out (see e.g. paras. 4 & 5 and 11 & 12).
- It is pointed out that the Examiner’s remit is **relatively limited** (para. [5]). That is a reflection of the basic conditions.
- The making of an NDP **did not have to await** the adoption of any other development plan document. It did not prevent an NDP from addressing housing needs unless or until there was an adopted development plan in place setting a housing requirement for a period coinciding with the NDP.

R (oao DLA Delivery Ltd.) v Lewes DC
[2017] EWCA Civ 58 (Cont.)

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- There was also a ground alleging “**apparent bias**” based on the fact that the arrangements by which Ipsas and PCs “actively select the examiners they want” are incompatible with the requirement that the examiner should be truly “independent” and that they give rise to apparent bias.
- The CA held that this ground had to be rejected. The selection of the Examiner had been in accordance with the primary legislation which had not been challenged.
- The performance of an Examiner is subject to the Court’s supervision in proceedings for JR.
- The Judge saw no relevance and nothing remarkable in the fact that a particular examiner has previously found all, or nearly all, of the NDPs he had examined complied with the “basic conditions” and the CA agreed.

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PART 2:
INTERACTION
WITH THE LOCAL PLAN

The approach



- NPPF[184] “.....*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.*”
- However, that leaves wide scope for **uncertainties** over how far an NDP can go in treading its own particular path on a range of issues
- That is particularly so when it is appreciated that the requirement for general conformity means with the adopted local plan **as whole** and that does not require conformity with every policy (see *Crownhall Estates v Chichester DC* [2016] EWHC 73 (Admin) & *R (oao DLA Delivery Ltd.) v Lewes DC* [2017] EWCA Civ 58).

General Conformity *Kebbell Developments Ltd v Leeds City Council* [2016] EWHC 2664 (Admin)



- The submission Linton NDP included text which suggested that the Ridge at Linton near Weatherby should not have dwellings on it and should be **returned to the green belt**.
- The Leeds LP left open the possibility of the site being developed for housing. It was a “**Protected Area of Search**” (PAS) to provide for longer term development needs. There was no suggestion of the site being returned to the green belt. As Kerr J put it, **it was “earmarked” for housing in 2006** (in the Leeds UDP Review).
- The LNDP explained in the narrative text the Ridge’s status as a PAS site. Various reasons (countryside impact; impact on views; opportunity to return to the Green Belt etc.) were given for not following that. Policy B2 stated that it should continue to be protected from development until its longer term allocation had been determined via the City Council’s Sites Allocation Plan, following a Green Belt review but with a vision to return the site to the Green Belt and a proposed project to consider that.

Kebbell Developments Ltd v Leeds City Council
[2016] EWHC 2664 (Admin) (2)



- The Examiner recommended **deletion of Policy B2 and “all associated text”** (but not the project itself) saying that it was a matter for the City Council, because a Green Belt review is a strategic matter rather than a NP one.
- The City Council accepted the majority of the Examiner’s recommendations but **rejected the Examiner’s recommendation (M23)** dealing with the Ridge-Specific Policy B2 in part. Policy B2 was deleted but **the project list retained**, including the Ridge. Further, **a description of the land**, which the Claimant contended explained why the Ridge should remain undeveloped contrary to the Leeds LP, was included. The developer sought to JR the Council’s decision to allow the NDP to proceed to a local referendum.
- However, it was held that inconsistency was **not of itself sufficient to compel a finding of general disconformity** between the two plans as the basic condition in **Sch.4B para.8(2)(e)** only required that the draft neighbourhood plan as a whole be in “general conformity” with the strategic policies of the adopted development plan as a whole.

Kebbell Developments Ltd v Leeds City Council
[2016] EWHC 2664 (Admin) (2)



- While the Linton NDP in its final form included mention of the PC’s opposition to development of the Ridge, that did **not** mean that planning permission for future housing development would **necessarily have to be refused**.
- A developer could argue that the material plan for the purposes of s.70(2) of the 1990 Act and the PCPA 2004 s.38(6) was the Leeds Local Plan, and that even if the grant of planning permission would be out of tune with the Linton NDP, **planning permission should not be refused, because “material considerations indicate otherwise”**.
- A developer applying for planning permission to build dwellings on the Ridge could argue that the references in the Linton NDP to the PC’s opposition to that course should be disregarded or given little weight because they were not statements of policy, that the NDP should not be allowed to “promote less development than set out in the Local Plan or undermine its strategic policies” and that, for the same reason, a planning application to build dwellings on the Ridge would **not be one that “conflicts with a neighbourhood plan”** (see paras. 48, 56, 60-62 of judgment).

The Problem with that approach



- S.38(5) of the PCPA 2004 provides - *“If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.”*
- The Judge’s suggested approach to any determination of a planning application is notwithstanding that an NDP has the full force of s.38(6) being part of the development plan.
- There is also NPPF[198] which states *“...Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.”*
- The decision of the Court of Appeal is awaited.

Localism v meeting housing need: the inevitable tension (1)



- *Kebbell* is a clear example of that tension. These “tensions” can be **more subtle** and catch out developers & possibly Ipas.
- An NDP included provision for the number of homes required by the current local plan. This covered an allocation of **“around 23 homes”** for a former community use site.
- That site was purchased by a care home provider for older residents prior to the NDP being made. There was **an evident and significant need** for such provision, as well as for market and affordable housing.
- The NDP included a policy to meet the housing need of all sectors **including older residents** (55+). However, it included not a single allocation for them. The TC consider there were too many older people in the area. The planning application was “reluctantly” turned down by the Ipa on the basis of a conflict with the allocation policy.

Localism v meeting housing need: the inevitable tension (2)



- An NDP made in 2017 meant a site was subject both to a policy for proposals for new businesses on established business parks and one for green infrastructure (having been identified as a SINC).
- The site was shown as part of an employment site in the “Local Plan” which was neither up-to-date nor adopted. However, this was not carried through in the emerging local plan.
- The later NDP Site Assessment also gave the site a “Pass” in terms of its potential for development.
- An application for a car dealership was turned down for breach of green infrastructure policy. Local objections were not based on its green infrastructure status.

The Future



- Housing White Paper 2.10 – more certainty for those neighbourhoods that have produced plans but are at risk of speculative development because the lpa has failed to maintain a 5 year HLS.
- WMS to be replaced by approach in HWP2.11
- But proposed that lpa shall provide neighbourhood plan area with housing requirement and if not a standard methodology may be applied. Planning Guidance will make clear that authorities may do this by making a **reasoned judgment based on the settlement strategy** and housing allocations in their plan, so long as the local plan provides a sufficiently up-to-date basis to do so (including where an ELP is close to adoption)
- Where the LP is out of date and cannot be relied upon, a **simple formula is proposed**

The Future



- Housing White Paper proposes that **detailed GB boundaries** are for NDPs but not the general extent of the GB, which would remain a strategic matter.
- White Paper also proposes greater role of NDPs in **design matters** – set out clear design expectations/design codes.

