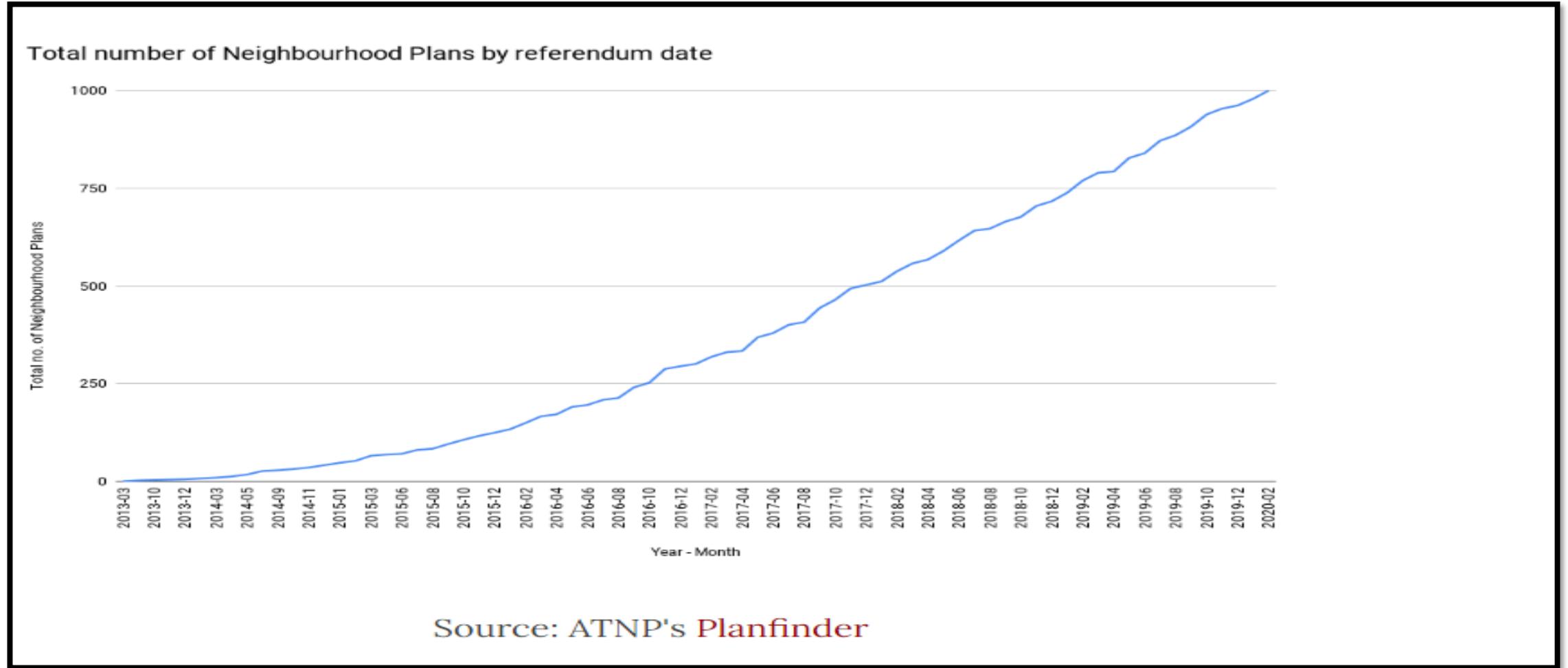


Neighbourhood plans



James Neill

The growth in Neighbourhood Plan Coverage



Neighbourhood Plans – why are they so critical?

- **Policy precedence over local plans:** NPPF19 para. 30:
Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.
- **Legal precedence:** conflict resolved in favour of last plan to be adopted. PPG para. 44:
“Should there be a conflict between a policy in a neighbourhood plan and a policy in a local plan or spatial development strategy, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan”.

NPs, housing allocations, and relevance to the tilted balance

- PPG para. 44: “A neighbourhood plan can also propose **allocating alternative sites** to those in a local plan (or spatial development strategy), where alternative proposals for inclusion in the neighbourhood plan are not strategic, but a qualifying body should discuss with the local planning authority why it considers the allocations set out in the strategic policies are no longer appropriate”
- “A neighbourhood development plan may include policies dealing with the use and development of land for housing, including policies dealing with the location of a proposed number of new dwellings, **even where there is at present no development plan document setting out strategic policies for housing.** : Gladman v Aylesbury Vale DC at [58] approved by Court of Appeal in DLA Delivery v Lewes DC [2017] EWCA Civ 58
- **NPPF para 14**: adverse impact of conflict with NP likely to significantly outweigh benefits (subject to conditions)

NPs: Examiners v Inspectors

- Key test is whether the NP meets the basic conditions (paragraphs 8(1) and (2) of Schedule 4B of TCPA 1990):
 - (a) Having regard to national policies and advice contained in guidance issued by the Secretary, **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

The low bar for NPs to pass examination

- The role/degree of scrutiny at examination is “relatively limited”: see eg Holgate J in Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin), at paragraphs 61, 62, 132 and 133
- Low bar:
 - Whether or not there is **general** conformity with LP is a matter of planning judgment: DLA Delivery
 - Issue is whether NP **as a whole** complies with LP **as a whole**, tension between individual policies isn’t a matter for the NP Examiner: BDW Trading Limited v Cheshire & West and Cheshire BC [2014] EWHC 1470 (Admin)
 - No need to consider whether a draft policy is supported by a **proportionate evidence base**: *BDW* at [85] and Crownhall Estates Limited v Chichester District Council [2016] EWHC 73 (Admin)

The tension between emerging local plans and NPs: **Landmark Chambers**

Lochailort Investments Ltd v Mendip District Council [2020] EWHC 1146

- July 2019: NP examiner decided that designating 10 LGS met the basic conditions
- Sep 2019: Mendip LP Inspector: overall approach in LP to (some of) the same LGS was unsound and did not meet “high bar” in the NPPF re justification
- Legal challenge to the NP was unsuccessful, primarily because (1) different statutory roles of 2 inspectors and (2) local plan report post-dated NP Report
- Is this a trend? See also Wilbur Development v Hart District Council [2020] EWHC 227 (Admin) 11 Feb 2020 (coalescence/settlement gaps between villages): Examiner report July 2019, modifications published at same time on basis of indication LP Inspector at LP hearing that gap not supported by adequate evidence. Claim still unsuccessful.

Thank you for listening

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