

Neighbourhood Plans: weight in development control decisions and in relation to other development plans



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Weight to be attached to a made NP – General

- A “neighbourhood development plan” is part of the statutory development plan for the area it covers: section 38(3)(c) of the PCPA 2004. It has the same legal status as a local plan: PPG at para. 006.
- Presumption in favour of the development plan unless material considerations indicate otherwise: section 38(6) of the PCPA 2004.
- NPPF, para. 12: *“Where a planning application conflicts with an up to date development plan (including any neighbourhood plans that form part of the development plan) permission should not normally be granted”*.
- 2012 NPPF, para. 198: *“where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted”*
- Woodcock Holdings v SSLCG [2015] EWHC 1173 (Admin) para. 198 neither (a) gave enhanced status to neighbourhood plans or (b) modifies the application of section 38(6) of the PCPA 2004.
- The weight to be given to any breach of a NP is for the decision-maker:
 - Keith Langmead v SSCLG [2017] EWHC 788
 - Cherwell District Council v SSCLG [2016] EWHC 2925 (Admin)

Weight to be attached to made NP – no 5YHLS (1)

- Where no 5YHLS, paragraph 11(d) of the NPPF engaged for housing applications (see fn. 7). Planning permission should be granted unless:
 - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- Breach of NP policies may be taken into account and given weight under the “tilted balance”: Gladman Developments Ltd v SSHCLG [2020] EWHC 518 (Admin).
- Weight for the decision-maker. Factors to take into account include: (i) Nature and extent of housing shortfall (ii) Reasons for and prospect of shortfall being reduced (iii) Whether the overall spatial distribution strategy remains sound: Crane v SSCLG [2015] EWHC 425 (Admin) and Barwood Strategic Land II LLP v SSCLG [2017] EWCA Civ 893.
- Breach of NP policies may also result in harm to the “social dimension” of sustainable development: Crane and Keith Langmead.

Weight to be attached to made NP – no 5YHLS (2)

- NPPF, para. 14: The adverse impact of allowing development that conflicts with a NP is likely to significantly and demonstrably outweigh the benefits, provided all of the following applies:
 - a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
 - b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
 - c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and
 - d) the local planning authority's housing delivery was at least 45% of that required over the previous three years.

Weight to be attached to made NP – no 5YHLS (3)

- Criteria (a): applies where a NP is updated through a material modification to the plan, within two years of the decision, provided all the other criteria continue to be met: PPG, para. 099.
- Criteria (b): (i) ‘policies and allocations’ in the plan should meet the identified housing requirement in full; (ii) policy on a windfall allowance alone would not be sufficient; (iii) reliance on policies and allocations within other development plan documents insufficient: see PPG, para. 097.
- Dymock Road appeal (APP/W1850/W/19/3225309): NP “supported” allocations in Local Plan, and included additional policies in relation to density. Inspector found paragraph 14 not engaged:
- *“It is the CS through the application of Policy LB1 that apportions a minimum of 800 dwellings to Ledbury and Policy LB2 directs 625 dwellings to the Viaduct site. The LNP lends its support to these Policies but does not allocate land for development. Instead, it includes Policies which guide how the quantum of housing should be developed to provide balanced communities at an appropriate density. I am not persuaded therefore that Paragraph 14 is engaged in this instance.”*

Conflict between made NP and adopted Local Plan

- Section 38(5) of the PCPA 2004: Conflict between a policy in a NP and a policy in a local plan or spatial development strategy, must be resolved in favour of the policy which is contained in the last document to become part of the development plan.
- See also PPG 044.
- Reflected in paragraph 30 of the NPPF: *“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.”*

Weight to be attached to emerging NPS

- Emerging NPs are likely to be a material consideration in many cases: PPG, para. 007.
- Weight to be attached to NPs to be judged in accordance with Para. 48 of the NPPF. Local planning authorities may give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) 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 c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)
- All three factors relevant and must be considered in each case: Woodcock Holdings at para. 141.
- PPG: “*more weight*” should be given post-publication of the referendum: para. 007.
- See Appeal Decision in March 2020 – Eye – (ref: APP/W3520/W/18/3215534) where emerging NP was decisive in refusing a non-allocated site for housing.

Weight to be attached to NP in relation to other plans:

- NPs can be developed before or at the same time as a local plan: Court of Appeal in DLA Delivery v Lewes DC [2017] EWCA Civ 58 and PPG at para. 007.
- There must be general conformity with the local plan in force at the time, and the NP will need to take into account the evidential basis of the Local Plan on issues like housing need – relevant to question of whether the NP contributes to the achievement of sustainable development. The qualifying body will need to engage with the LPA: PPG at para. 007.
- Need to minimise conflicts in light of section 38(5) PCPA 2004.
- Nevertheless, increasing trend of NP examiners and LP Inspectors reaching contrary findings in short succession: Lochailort Investments Ltd v Mendip District Council [2020] EWHC 1146 and Wilbur Development v Hart District Council [2020] EWHC 227 (Admin)

Thank you for listening

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