

**Welcome to Landmark Chambers’
‘Levelling-Up and Regeneration Bill – Session 1’
webinar**

Thursday 26 May 2022

The recording may be accessed [here](#).

Your speakers today are...



Matthew Reed QC (Chair)



Zack Simons

Topic:
Local Plans and
housing land
supply



Charles Bishop

Topic:
Neighbourhood
planning



Matthew Fraser

Topic:
National
Development
Management
Policies

Local Plans and housing land supply



Zack Simons

Neighbourhood planning



Charles Bishop

The key changes at a glance

- Clarity and further specification over what is to be included in neighbourhood plans; amendments to basic conditions required for valid neighbourhood plans and neighbourhood development orders.
- Introduction of neighbourhood priorities statements, a new tool in neighbourhood planning.
- Introduction of idea of “street votes”.
- Status of neighbourhood plans also changed by wider changes to balance between local plans, national policy and material considerations, as covered by other speakers.

Neighbourhood plans – recap

- A “neighbourhood development plan” is a plan which “sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan”: s38A(2) PCPA 2004.
- A “neighbourhood development plan” is part of the statutory development plan for the area it covers: s38(3)(c) PCPA 2004.
- Draft neighbourhood plans are consulted upon (regs. 14-16 Neighbourhood Planning (General) Regulations 2012) and submitted for examination (para 7 of Sch 4B TCPA 1990).
- The Examiner must then consider whether the draft neighbourhood development plan meets the specified statutory requirements, in particular, whether it meets the ‘basic conditions’: Sch 4B, para 8(1)(a).
- The proposal is then subject to a referendum: Sch 4B, para 14.

Neighbourhood plans – recap

- The examiner must decide whether it is appropriate for a plan to proceed having regard to national policy, and a departure from that policy must be explained: *R (Lochailort Investments Ltd) v Mendip DC* [2021] 2 P & CR 9 at [6].
- The basic conditions include a requirement that the neighbourhood plan is in “general conformity with the strategic policies contained in the development plan for the area”: para 8(2)(e) of Sch 4B TCPA 1990.
- The degree of conformity required is “general” conformity with “strategic” policies. Whether there is or is not sufficient conformity to satisfy that requirement will be a matter of fact and planning judgment: *R (DLA Delivery Ltd) v Lewes DC* [2017] PTSR 949 at [23].

Neighbourhood plans – changes

- New s38B(A1) will provide detail on what can be included within a neighbourhood plan, namely that it can:
 - allocate land for development (setting the amount, type, location and timeframe for delivery);
 - set out other land use or development related policies to achieve objectives that relate to the particular characteristics or circumstances of the neighbourhood area or parts of it;
 - detail infrastructure requirements, or requirements for affordable housing, to which development would give rise; and
 - set out design requirements.

- New s38B(2B):

“So far as the qualifying body considers appropriate, having regard to the subject matter of the neighbourhood development plan, the plan must be designed to secure that the development and use of land in the neighbourhood area contribute to the mitigation of, and adaption to, climate change.”

- s38B(2C) – new requirements?

“The neighbourhood development plan must not—

 - (a) include anything that is not permitted or required by or under subsections (A1) to (2A) or regulations under subsection (4), or
 - (b) be inconsistent with or (in substance) repeat any national development management policy.”

Neighbourhood plans/orders – changes

- Cl 89 replaces the requirement in para 8(2)(e) of Sch 4B TCPA 1990 that a draft order/plan must be in “*general conformity with the strategic policies contained in the development plan*” with a requirement that the making of the order/plan would not have the effect of preventing development from taking place which—
 - (i) is proposed in the development plan for the area of the authority (or any part of that area), and
 - (ii) if it took place, would provide housing.
- But need to read subject to cl 83(5), Sch 6, which inserts para 8(2)(da) into Sch 4B TCPA 1990 the following requirement: “*the making of the order is in general conformity with any national development management policies that are relevant to it*”
- New requirement to ensure compliance with Part 5 of the LURB (environmental outcome reports – to come in a letter session in this webinar series) (cl 89(1)(b)).
- Introduction of a new requirement in s38C(5) PCPA 2004 for neighbourhood plans *only* that they must not result in the development plan for the area of the authority proposing that less housing is provided by means of development taking place in that area than if the neighbourhood development plan were not to be made (cl 89(2)).

Neighbourhood priorities statements

- Neighbourhood priorities statements are a policy response to uneven take up of neighbourhood plans across the country, and intended to be a “simpler and more accessible way” for communities to set out their key priorities and preferences for their local areas (Ex. Notes para 58). This is particularly targeted at communities in “urban and more deprived areas” which “face additional barriers” making it “more difficult for them to progress a neighbourhood plan, including a lack of an established governance structure or finding volunteers to help prepare the plan” (Ex. Notes para 1282).
- LPAs must “have regard” to neighbourhood priorities statements when preparing local plans: new s15CA of the PCPA 2004 inserted by cl 87 and Sch 7 of the LURB.

Neighbourhood priorities statements

- CI 87 provides for Sch 7 of the LURB which makes significant amendments to the PCPA 2004. New section 15K PCPA 2004 introduces the neighbourhood priorities statements.
- A neighbourhood priorities statement “summarises what the body considers to be the principal needs and prevailing views, of the community in the neighbourhood area in relation to which the body is authorised, in respect of local matters”: s15K(1).
- The definition of “local matters” is to come by way of secondary legislation, but they will relate to (s15K(2)):
 - (a) development, or the management or use of land, in or affecting the neighbourhood area,
 - (b) housing in the neighbourhood area,
 - (c) the natural environment in the neighbourhood area,
 - (d) the economy in the neighbourhood area,
 - (e) public spaces in the neighbourhood area,
 - (f) the infrastructure, facilities or services available in the neighbourhood area, or
 - (g) other features of the neighbourhood area.

Neighbourhood priorities statements

- Requirements that statements must meet will also come by way of secondary legislation: s15K(6). These must include some form of consultation – although this appears to be substantially weaker than for neighbourhood plans (which seems to be the point): s15K(8)(a).
- Neighbourhood priorities statements are made by qualifying bodies – meaning a parish council or an organisation or body designated as a neighbourhood forum, which is authorised to act in relation to a neighbourhood area as a result of section 61F of the TCPA 1990.

CHAPTER 4

GRANT AND IMPLEMENTATION OF PLANNING PERMISSION

96	Street votes	15
	The Secretary of State may by regulations make provision for a system that permits residents of a street to—	
	(a) propose development on their street, and	
	(b) determine, by means of a vote, whether that development should be given planning permission, on condition that certain requirements prescribed in the regulations are met.	20

Street votes

- Ex. Notes para 59: “The Bill includes a placeholder for a substantive clause which will introduce a ‘Street Votes’ system that permits residents to propose development on their street and hold a vote on whether it should be given planning permission. This will provide a positive incentive for neighbours to consider the potential for development, especially in areas of higher demand, and support a gentle increase in densities through well-considered, well-designed and locally supported proposals.”

- Ex. Notes paras 564 - 567:

“564 The Government wishes to introduce a “street votes” system which would allow for intensification of predominantly housing development on existing residential streets where support for that intensification was signalled through a street vote.

565 This clause is designed as a placeholder for a substantive clause which will make provision for a system that permits residents of a street to propose development on their street and hold a vote on whether it should be given planning permission.

566 The placeholder clause allows the Secretary of State by regulations to make provision for a system that permits residents of a street to:

- a) propose development on their street, and
- b) determine, by means of a vote, whether that development should be given planning permission on condition that certain prescribed requirements are met.

567 The placeholder provision is subject to an affirmative procedure so that Parliament will be assured of an opportunity to scrutinise any proposals that could, in principle, be brought forward using the power. The Government does not intend to use the power as drafted, but to replace it with substantive provisions. The substantive provisions may mean that it is appropriate to remove the placeholder provision entirely and replace it with provisions that are subject to a different Parliamentary procedure.”

Street votes – departure from the origins?

- Idea seems to emerge from the [Policy Exchange report](#) “Strong Suburbs: Enabling streets to control their own development” (Feb 2021).
- The key idea was to allow a small group of residents on streets to propose street plans which would be subject to a vote which would be held on broadly similar terms to neighbourhood plan referendums. All on the electoral roll would be eligible to vote, with one vote per commercial ratepayer, and no votes by non-resident landlords.
- The street plan would be adopted if: (1) at least 60% of votes cast are in favour, (2) residents from at least 50% of households have voted, and (3) a resident in each of at least half of the voting households voted in favour.
- There was a suggestion of a fund to cover modest costs involved in preparing proposals, for architects etc.
- It envisaged the streets would be designated as renewal areas under the original “Planning for the future” proposals and that some street plans would incorporate pre-approved design specifications that would lead to automatic grants of planning permission.
- There is lots more detail in the Policy Exchange report – but unclear at this stage how much of it is being adopted. For example, Policy Exchange recommended a levy on properties which, having been extended or created through this policy, would sell for a substantially greater value – unclear that this is being proposed and certainly as drafted that would not be possible. They also recommended certain radical tenant protections.

Street votes



From the Telegraph, shared widely on LinkedIn by David Elvin QC.

National Development Management Policies



Matthew Fraser

The existing position: national policy in plan-making

To be found “sound” in an independent examination, a draft local plan must be (NPPF para. 35):

“**Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.”

The existing position: national policy in plan-making

Neighbourhood plans must meet certain “basic conditions” before they can come into force.

One of these is that “having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan”: para. 8 of Sch. 4B to the 1990 Act.

The existing position: national policy in decision-taking

Section 38(6) of the Planning and Compulsory Purchase Act 2004

*“Where, in making any determination under the planning Acts, regard is to be had to **the development plan**, the **determination shall be made in accordance with the plan unless material considerations indicate otherwise.**”*

The development plan for an area comprises the *“development plan documents (taken as a whole) which have been adopted ... in relation to that area”* and *“the neighbourhood development plans which have been made in relation to that area”*: section 38(3).

The existing position: national policy in decision-taking

“The National Planning Policy Framework ... is a material consideration in planning decisions”: NPPF, para. 2.

“Other statements of government policy may be material when ... deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission”: NPPF, para. 6.

The existing position: national policy in decision-taking

Inconsistency between the development plan and more recent national policy can be a basis for concluding under section 38(6) that material considerations do justify a departure from the development plan.

NPPF Para. 218: The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this Framework has made

NPPF Para. 219: However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The existing position: national policy in decision-taking

NPPF para. 11(d)

If the “most important” policies in the development plan for determining an application are “out-of-date”, planning permission should be granted unless:

- the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

The existing position: national policy in decision-taking

A policy is out-of-date if it is deemed to be out-of-date due to the absence of a five year housing land supply (footnote 7 NPPF)

OR

It has been “overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason”

See e.g. ***Peel Investments (North) Ltd v Secretary of State for Housing, Communities And Local Government*** [2020] EWCA Civ 1175, para. 66.

The existing position: national policy in decision-taking

NPPF para. 12:

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. 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 usually be granted.

LURB: what will change?

Replacing section 38(6), new section 38(5A)-(5C):

(5A) For the purposes of any area in England, subsections (5B) and (5C) apply if, for the purposes of any determination to be made under the planning Acts, regard is to be had to—

(a) the development plan, and

(b) any national development management policies.

(5B) Subject to subsections (5) and (5C), the determination must be made in accordance with the development plan and any national development management policies, unless material considerations strongly indicate otherwise.

(5C) If to any extent the development plan conflicts with a national development management policy, the conflict must be resolved in favour of the national development management policy.”

What is a NDMP?

New section 38ZA - Meaning of “national development management policy”

- (1) A “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.
- (2) The Secretary of State may—
- (a) revoke a direction under subsection (1);
 - (b) modify a national development management policy.

Modifying or revoking a NDMP direction

Section 38ZA(3):

“Before making or revoking a direction under subsection (1), or modifying a national development management policy, the Secretary of State must ensure that such consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State thinks appropriate takes place”

Duty to “have regard to” NDMPs in plan-making

In preparing plans (e.g. local plans, minerals and waste plans etc), the plan-making body must “have regard to ... national development management policies”: see e.g. new section 15CA(5)(c) of the 2004 Act.

Avoiding inconsistency and repetition with NDMPs

The following documents "must not be inconsistent with (or in substance) repeat any national development management policy":

1. The spatial development strategy for London (i.e. the London Plan) – see new section 334(10) of the Greater London Authority Act 1999.
2. Neighbourhood development plans – see new section 38B(2C)(b) of the 2004 Act.
3. Joint spatial development strategies: new section 15AA(9)(c) of 2004 Act.
4. Local plans: new section 15C(7)(b) of the 2004 Act.
5. Minerals and waste plans: new section 15CB(6)(b) of the 2004 Act.
6. Supplementary plans: new section 15CC(10)(b) of the 2004 Act.
7. Joint local plans: new section 15IA(2) of the 2004 Act.

Avoiding inconsistency: SoS directions

If at any time it appears to the Secretary of State that it is expedient to do so for the purpose of avoiding any inconsistency with current national policies, the Secretary of State may, at any time before adoption of the joint spatial development strategy, give a direction to participating authorities not to adopt the document except in a form which includes modifications in such respects as are directed in the direction in order to remove the inconsistency.

Where a direction is given, there can be no adoption unless the plan-making body satisfies the Secretary of State that they have made the modifications necessary to conform with the direction, or the direction is withdrawn.

(New section 15AD(6)-(8) of the 2004 Act)

Alongside the LURB ...

There will be an overhaul of the NPPF (following a two-stage consultation):

1. Removing the requirement for authorities to maintain a five-year housing land supply where their local plan has been adopted within the past 5 years.
2. Deciding on which policies will be in the suite of “national development management policies” (which will be “derived from the policies set out currently in the [NPPF] where these are intended to guide decision-making”).
3. The “rest” of the NPPF will be “re-focused on setting out the principles to be taken into account in plan-making”.
4. “Streamlining national policy, making it more accessible and user-friendly”.

Comments

- Huge shake-up of the planning system.
- Promoted as creating a “genuinely plan-led system”, but does it instead signal the demise of the plan-led system and the supremacy of national policy?
- Avoids the awkwardness of how to reconcile the importance of the development plan with the importance of the NPPF – will hopefully reduce debates on whether plans are out-of-date due to NPPF inconsistency.
- Clearer division of labour between national and local policies ...
- Similarly, avoids tensions between s.38(6) and NPPF para. 11(d) because national policy trumps local policy where inconsistent. End of “tilted balance”?
- Obviously sensible to put all generic development management policies in one document rather than repeated across local plans.
- How will the tests of “inconsistency” and “repetition” be applied in practice?

Thank you for listening

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