

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 later 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.

Thank you for listening

© Copyright Landmark Chambers 2022

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
📘 Landmark Chambers
📺 Landmark Chambers