



Neighbourhood Plans

Summary of Recent
Decisions

DLP BRIEFING NOTE 160

Prepared by
DLP Planning Consultants

May 2014

www.dlpconsultants.co.uk

DLP Planning Consultants

Bedford

Bristol

Cardiff

East Midlands

London

Milton Keynes

Sheffield

Disclaimer

DLP Consulting Group Ltd, and its constituent companies disclaims any responsibility to the client and others in respect of matters outside the scope of this Report. This Report has been prepared with reasonable skill, care and diligence, is the property of DLP Consulting Group, and is confidential to the client, DLP Consulting Group Ltd accepts no responsibility of whatsoever nature to third parties, to whom this report has been provided.

Summary

A number of recent decisions provide useful guidance on the status of Neighbourhood Plans and the weight these can be given when determining planning applications:

- An outline application for 111 homes in Broughton Astley, Leicestershire, was refused by Harborough District Council. The Inspector recommended the appeal be allowed, but the Secretary of State rejected the appeal, as although the Council could not demonstrate a five year supply, the conflict with the emerging Broughton Astley Neighbourhood Plan outweighed the lack of supply.
- Two similar outline applications for a 60 bed care home and 90 and 75 homes in Handcross, West Sussex were refused by Mid-Sussex District Council. The Inspector recommended the appeals be allowed and the Secretary of State agreed as, although the appeals were contrary to the emerging Neighbourhood Plan, this could be given little weight due to uncertainty around it and the fact that the appeals will contribute to the acknowledged housing shortfall.
- Cheshire West and Cheshire Borough Council recommended the Tattenhall Neighbourhood Plan (TNP) be put to referendum, following the recommendations of the Examiner. Three parties sought an order to block the TNP from progressing further on four grounds, after a majority voted to endorse the TNP. These grounds were i) failure to properly comply with the SEA Directive; ii and iv) failure to meet the Basic Conditions a Neighbourhood Plan must meet by law; and iii) apparent bias of the Inspector. Following a High Court appeal, Mr Justice Supperstone concluded that none of the four grounds of challenge succeed and dismissed the claim.
- Daws Hill Residents Association sought to designate a Neighbourhood Area, but Wycombe District Council designated a smaller area than sought, excluding two strategic development sites. Both the High Court and the Court of Appeal dismissed the appeals and ruled the Council had acted lawfully.

Mr Crane v The Secretary of State for Communities and Local Government

Harborough District Council refused an outline application in August 2012 for the erection of 111 dwellings, a sports hall, a neighbourhood centre, sports pitches and associated parking, open space, access and landscaping in Broughton Astley, Leicestershire. In November 2013 the Inspector recommended the appeal be allowed as it would *“make an important contribution to the housing land supply in the Council’s area, and this factor attracts significant weight.”* The Inspector noted that there was *“conflict between the proposal and the emerging neighbourhood plan”* and attributed this *“moderate weight”*. He considered that the *“adverse impacts however would not significantly and demonstrably outweigh the benefit to the housing land supply position.”* In August 2013 the Secretary of State recovered the appeal. In January 2014 the Neighbourhood Plan passed referendum and was made part of the development plan for the local area in February 2014. The site is not included as land allocated for development in the Neighbourhood Plan. The Secretary of State overruled the Inspector, rejecting the appeal and refusing the application. The central reason for refusal was the conflict with the Broughton Astley Neighbourhood Plan. Both the Inspector and the Secretary of State agreed a five year supply could not be demonstrated and that the allocated sites in the Neighbourhood Plan, while meeting some of the local housing need, would not meet all needs. However, the Secretary of State considered that paragraphs 185 and 198 of the National Policy Planning Framework (‘the Framework’) place *“very substantial negative weight on the conflict with the neighbourhood plan even through this is currently out-of-date in terms of housing land supply.”* Overall, the Secretary of State considered that while the lack of a five year housing supply *“weighs substantively in favour of the appeal”*, *“the adverse impacts of the appeal proposal, especially in terms of the conflict with the Broughton Astley Neighbourhood Plan, would significantly and demonstrably outweigh the benefits in terms of increasing housing supply”*.

Hallam Land Management Ltd and the Hyde Estate v Secretary of State for Communities and Local Government

Mid-Sussex District Council refused two outline applications in April 2013 for:

- A. up to 90 dwellings (including 30% affordable), a 60 bed care home and new community hall with caretaker's flat and associated parking; removal of the existing parish hall and caretaker's cottage and relocation of the existing bowling green; provision of areas of public open space and a new vehicle access onto the B2114, creation of pedestrian/cycle links and new planting; and
- B. up to 75 dwellings (including 30% affordable); a 60 bed care home with associated parking; use of the existing access onto the B2114; provision of areas of public open space; creation of pedestrian/cycle links and new planting.

The appeals were recovered for the Secretary of State's determination in July 2013. In November 2013 the Inspector recommended the appeals be allowed and outline planning permission granted. The Council acknowledged a five year housing supply could not be demonstrated and the Inspector considered the proposals "*would help to address the acknowledged shortfall of housing land, and provide a proportion of affordable homes to meet a recognised need*". The Inspector considered that the proposals would be contrary to the policies in the emerging Slaugham Parish Neighbourhood Plan, which allocated much of the land for Local Green Space. However, as the Neighbourhood Plan was at that time subject to examination and there was considerable uncertainty around it (i.e. low public response rates, a number of objections and uncertainty around strategic policies in the merging District Plan with which it must be in conformity with), the Inspector only attributed to it "*some weight*". The Inspector also considered the case if the Neighbourhood Plan was to be in force, with its policies having the effect of restricting the supply of houses. The Inspector considered that "*the relevant parts of those policies would be considered out of date in terms of paragraph 49 of the Framework, in view of the shortfall in the five year housing supply. The Council's argument that this provision should not apply to Neighbourhood Plans is noted... However, the Neighbourhood Plan would form part of the development plan and ...there is not substantial reason to consider that its provisions should fall outside the general definition of relevant policies for the supply of housing.*"

The Secretary of State agreed with the Inspector's recommendation to allow the appeals and grant planning permission. Despite considering "*that the emerging Neighbourhood Plan is a material consideration in this case*", the Secretary of State "*does not consider that this document carries great weight in his determination of this appeal*" on the grounds that the Examiner of the concluded that the Neighbourhood Plan does not meet the basic conditions and recommended to the Council that it not should proceed to a referendum. The Secretary of State agreed within the Inspector that there is not "*reason to consider that it [being the proposals] could not take place alongside the housing proposals contained in the Neighbourhood Plan.*"

BDW Trading Ltd & Wainhomes Developments Ltd v Cheshire West and Cheshire Borough Council

The current development plan for Cheshire consists of the saved policies of the time expired Local Plan which was adopted in 2006. The Council is currently in the process of preparing a replacement Local Plan, with examination scheduled to commence mid June 2014.

In September 2013 an Independent Examiner considered the Tattenhall Neighbourhood Plan. A number of objections were made on the Neighbourhood Plans coming forward in advance of the replacement Local Plan. In the Examiner's Report on the Neighbourhood Plans, the Examiner notes "*the fact that there is an emerging development plan in a local authority area is not unusual and there is nothing in the legislation to support the contention that such a situation should stop, or slow down, the progress of a neighbourhood plan.*" In relation to the expired housing policy in the Local Plan, and the position put forward by objectors to the Neighbourhood Plans, the Examiner notes "*there is nothing in the legislation which states, or suggests, that the absence of a strategic housing provision policy in a development plan means that a Neighbourhood Plan should not include a housing policy, or policies. On the contrary, a Neighbourhood Plan provides a good opportunity to provide for a degree of certainty in such situations.*"

In relation to housing, the Neighbourhood Plan proposed a policy (Policy 1) which did not specify the overall quantum of housing, but required that housing developments be limited to 30 homes within or immediately adjacent to the built up part of the Tattenhall village. This approach was supported by the Examiner: *"I consider this to be a sensible and pragmatic approach which, crucially, has regard to the Framework."* *"To achieve carefully managed growth, Policy 1 allows for individual development of a modest scale, whilst, subject to other policies, playing no cap on the total number of houses to be built within the Neighbourhood Plan Area."*

The Examiner recommended the Neighbourhood Plan be put to referendum as it had passed all required tests and in October 2013 the Neighbourhood Plan passed referendum. The Claimants initially sought an order to prevent progress of the Neighbourhood Plan, but later amended their claim to halt progress after the referendum. The Claimants challenged the Council's decision for referendum on four grounds.

Ground 1. A failure to comply with the SEA Directive

The Claimant considered the fundamental issue to be that the Neighbourhood Plan has been promoted with a housing development management policy which places a practical constraint on delivery in advance of the adoption of an up to date local plan: *"No consideration was given, during the processes of the SEA of the environmental and sustainability effects of (i) limiting the extent of development that could come forward in Tattenhall during the plan period, at a time when the extent and the distribution of housing across the district has not been established and when the [time expired Local Plan]... is agreed to be out of date in so far as its housing policies are concerned and does not provide a strategic policy context against which paragraph 8 [basic conditions a NP must meet to proceed to referendum, including general conformity with the strategic policies contained in the development plan] can be properly assessed..."*

In his decision, Mr Justice Supperstone notes that the Neighbourhood Plan will *"form part of a hierarchy of plans where the ultimate numbers of houses required to be built during the plan period and their broad geographical distribution across the local authority area are determined by other development plan documents."* Reference is made to *Persimmon Homes (Thames Valley) Ltd v Taylor Woodrow Homes Ltd* quoting *"The question where there is a general conformity between the plans is a matter of degree and, as it seems to me, of planning judgement."* Mr Justice Supperstone notes that no objections were raised during the SEA process and concludes that the Council properly complied with the SEA Directive.

Ground 2. & 4. Failure to properly meet the Basis Conditions; Introduction of Policy 1 without meaningful evidence

The Claimant argued that if the Council had failed to comply with SEA Regulations (as put forward in ground 1) then they had also failed to comply with one of the Basic Conditions to comply with EU obligations. Further, as the Neighbourhood Plan sought to control the delivery of housing it could not be progressed in advance of the replacement Local Plan as there are no strategic housing policies or an evidence base to be in general conformity with, as required by the Basic Conditions.

Consideration of Ground 2 is provided above, with Mr Justice Supperstone confirming SEA Regulations had been met. The parties all agreed that there was no strategic housing policy, however the Council's Senior Manager for Spatial Planning and Strategic Transport stated *"The strategic planning of the area is more than just housing numbers."* He pointed to other policies, including policies on sustainable development and affordable housing which he considered the Neighbourhood Plan was in general conformity with. Additionally, Mr Justice Supperstone considers that Examination of a Neighbourhood Plan is not to the same extent as Examination of a Local Plan, the later requiring it be 'sound' while the former requiring that it meets 'basic conditions'.

Mr Justice Supperstone stated *"There was in my judgement no failure on the part of the Council to meet the Basic Conditions."*

In relation to Ground 4, the Claimants put forward that Policy 1 was promoted without a proper evidence base and that examination did not consider properly the evidence or the consequences of adopting Policy 1.

Council's Principal Planning Officer responded by stating this policy "*reflected that the community supports new housing growth in line with the growth proposed in the emerging Local Plan, but [the steering group] wish that development to come forward in a phased manner and at a scale that reflects the existing character of the area's setting and building... This was considered the only reasonable approach to housing taken in the Neighbourhood Development Plan that would...be supported by the community at referendum stage.*"

Mr Justice Supperstone stated that he was satisfied "*that there was a proper evidential basis for Policy 1 which was introduced by the Council after due consideration.*"

Ground 3. Apparent Bias

This ground of appeal is of little relevance to this discussion.

All four grounds of the claim were considered, with Mr Justice Supperstone dismissing the claim as none of the grounds of challenge succeed.

Daws Hill Neighbourhood Forum, Stewart Armstrong and Angus Laidlaw v Wycombe District Council

The Daws Hill Residents Association (DHRA) sought to designate a neighbourhood area. Wycombe District Council designated a smaller neighbourhood area than that sought, excluding two strategic sites. The planning process was already well underway for both sites, with one having outline permission and the other a matter of months from submitting an application for planning approval. The DHRA's desire to include these two sites within the neighbourhood area was primarily to influence the scale of development on these sites through the neighbourhood plan processes. The Council gave a number of reasons for excluding these sites from the neighbourhood area, including that these were strategic sites that would have larger than local impacts; and that any neighbourhood plan including these sites would be some time away and the ability to influence development of these sites would be limited due to their advanced state in the planning process.

The DHRA appealed the Council's decision to exclude these sites to both the High Court and the Court of Appeal. At the Court of Appeal the Appellants (being the DHRA) argued that the Council's discretion, given under subsection 61G(5) of the 1990 Act to decide what is an appropriate area to be designated as a neighbourhood area, is not a discretion to decide whether a given area should or should not be designated as a neighbourhood area, but is confined to a discretion to decide within which neighbourhood area any given site is to be included. The Appellant submitted that the whole of England should, wherever there is a wish of the local community, be covered by a patchwork of neighbourhood areas.

Lord Justice Sullivan considered Parliament's intention in relation to 61G and considered "*the language does not support the existence of such a limitation.*" "*Parliament clearly envisaged that a local planning authority might exercise the power so as to designate a smaller area as a neighbourhood area, leaving part or parts of the specified area without any neighbourhood area.*" Lord Justice Sullivan also considered the possibility of a Parish Council seeking to designate the Parish Council's area as a neighbourhood area and considered that the local planning authority is not required to designate the full extent of the Parish Council's area. He therefore dismissed the appeal.

Conclusion

Recent decisions served to demonstrate that Neighbourhood Plans can be afforded some weight, much more so when the Neighbourhood Plan has been adopted, even in the face of an undersupply of housing, or where there is no up to date Local Plan against which to consider the Neighbourhood Plan. However, where there is uncertainty around a Neighbourhood Plan, the weight it can be given is reduced and a demonstrated housing shortfall may weigh in favour of development.

When designating a Neighbourhood Area, the extent of such an area is a matter for the Local Authorities' discretion and Authorities have the power to designate areas smaller than Parishes/Town boundaries if they so wish.

How can DLP help?

If a Neighbourhood Plan is progressing it is important for developers and interested parties to be involved at all relevant stages.

DLP Planning Consultants have considerable knowledge of planning matters. Senior staff of the Practice are well versed with the neighbourhood planning process and its interaction with housing supply figures. Our Strategic Planning Research Unit is able to provide a robust up to date evidence base to objectively assess housing needs. Further, we have excellent working relationships with Local Planning Authorities, making the process clearer and smoother for our clients.

If you require any further advice regarding the above, please do not hesitate to contact one of the offices listed below. Senior staff within the practice would be very happy to assist you with regards to your enquiry. If you require more information or would like to discuss the issues mentioned in further detail please contact:

Bedford

4 Abbey Court
Fraser Road
Priory Business Park
Bedford
MK44 3WH
T 01234 832 740
F 01234 831 435

Bristol

Unit 1 Blenheim Court
Beaufort Office Park
Woodlands
Bradley Stoke
Bristol
BS32 4NE
T 01454 410 380
F 01454 410 389

Cardiff

Sophia House
28 Cathedral Road
Cardiff
CF11 9LJ
T 029 2064 6810

East Midlands

The Old Vicarage
Market Street
Castle Donington
DE74 2JB
T 01332 856971
F 01332 856973

London

1st Floor
3 More London Riverside
London
SE1 2RE
T 020 3283 4142

Milton Keynes

Midsummer Court
314 Midsummer Boulevard
Milton Keynes
MK9 2UB

Sheffield

11 Paradise Square
Sheffield
S1 2DE
T 0114 228 9190
F 0114 272 1947

BEDFORD

4 Abbey Court
Fraser Road
Priory Business Park
Bedford
MK44 3WH

t 01234 832 740
f 01234 831 435

bedford@dlpconsultants.co.uk

BRISTOL

Unit 1 Blenheim Court
Beaufort Office Park
Woodlands
Bradley Stoke
Bristol
BS32 4NE

t 01454 410 380
f 01454 410 389

bristol@dlpconsultants.co.uk

CARDIFF

28 Cathedral Road
Cardiff
CF11 9LJ

t 029 2064 6810

cardiff@dlpconsultants.co.uk

EAST MIDLANDS

The Old Vicarage
Market Street
Castle Donington
DE74 2JB

t: 01332 856971
f: 01332 856973

eastmidlands@dlpconsultants.co.uk

LONDON

1st Floor
3 More London Riverside
London
SE1 2RE

t 020 3283 4140

london@dlpconsultants.co.uk

MILTON KEYNES

Midsummer Court
314 Midsummer Boulevard
Milton Keynes
MK9 2UB

t 01908 440015
f 01908 357750

miltonkeynes@dlpconsultants.co.uk

SHEFFIELD

11 Paradise Square
Sheffield
S1 2DE

t 0114 228 9190
f 0114 272 1947

sheffield@dlpconsultants.co.uk

A summary of matters that the DLP Consulting Group provide services for follows:

Strategic Planning Research Unit (DLP)

Objective Assessment of Housing Needs
Five Year Land Supply Assessment
Economic Impact of Housing
Economic Impact of development proposals
Retail Impact Analysis
Expert Witness on housing needs
Local Plan Examinations

DLP Planning Consultants

Planning Applications and Appeals
Public Consultation
Development Promotion
Development Plan Representations
Land Searches
Project Management
Minerals and Waste Planning
Conservation Area/Listed Building Negotiation
Enforcement
Renewable Energy Planning and Delivery
Discharge of Planning Conditions

DLP Environment Ltd

Strategic Environmental Assessments
Sustainability Appraisals
Environmental Impact Assessments

If you would like to receive a brochure providing more detail of the service provided by the DLP Consulting Group, please contact any of the offices listed on the left of this page.

briefing

