

NEIGHBOURHOOD PLANNING

THE LAW

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Neighbourhood Planning

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Origin

- Brought in by Localism Act 2011
- Coalition stated aim:
 - giving communities the power to set the priorities for local development through neighbourhood planning*
- Introduced additional provisions into Planning and Compulsory Purchase Act 2004 and Town and Country Planning Act 1990
- Supported by regulations

Statutory Framework

- Section 38A Planning and Compulsory Purchase Act 2004
 - neighbourhood development plan:
 - 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.*
- Town and Country Planning Act 1990
 - neighbourhood areas:
 - ... area within the area of a local planning authority in England which has been designated by the authority as a neighbourhood area*
 - relevant body:
 - a parish council or 'an organisation or body which is, or is capable of being, designated as a neighbourhood forum'*
 - neighbourhood forum:
 - Defined by reference to purpose of establishment, membership, no. of members, has a constitution

Procedure

- Preparation
- Consultation
- Submission
- Independent Examination
- Basic Conditions
- Referendum

Discretion?

Local Planning Authority:

- must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan
- may make a neighbourhood development plan if there are two referendums (business area) and only one supports by a majority
- scope for modification
- scrutiny at each stage

Issues and case law

- R (Crownhall Estates Limited v Chichester District Council and Loxwood Parish Council [2016] EWHC 73
 - no need to consider objectively assessed need
 - to be assessed as a whole against local plan as a whole
 - will be tensions, but to be teased out for each application
 - difference between need to 'have regard' to national policy and the duty to ensure a development plan document is 'sound'
 - no need to identify more housing in neighbourhood plan than in local plan, even if would be necessary to do so after
- Woodcock Holdings Limited v Secretary of State for CLG [2015] EWHC 1173 Admin
 - emphasised no need to test soundness, just that the basic conditions are met
 - weight can be given to an emerging neighbourhood plan
 - weight to be given does not increase because of absence of up to date local plan
- R (on the application of DLA Delivery Ltd) v Lewes DC [2017] EWCA Civ 58
 - heard by the Court of Appeal
 - confirmed neighbourhood plan can come forward in advance of local plan; if there is no local plan there is nothing for the neighbourhood plan to be in conformity with for purpose of basic conditions
 - LPAs are under duty to keep development plan documents under review, and if neighbourhood plan made but a development plan document is then adopted containing new strategic policies the latter would prevail over inconsistent policies in the neighbourhood plan
 - housing allocations in a neighbourhood plan cannot be said to lack conformity with strategic policies of a local plan which relate to an different period
- R (on application of Stonegate Homes Limited and Littleheath Properties Limited) v Horsham DC and Henfield PC [2016] EWHC 2512
 - compliance with basic conditions includes compliance with requirement to carry out Strategic Environmental Assessment (unless screening opinion for no likely significant environmental effects)
 - SEA should 'identify, describe and evaluate the likely significant effects on environmental factors using the evidence base....reasonable alternatives must be considered and assessed in the same level of detail as the preferred approach'
 - requirement to assess compliance with basic conditions included requirement to assess the submitted SEA as adequate to discharge the obligation
 - duty to consider compliance with basic conditions including EU obligations lies with the independent examiner and also with the LPA before making the plan

Issues and case law

- 5 year housing land supply and WMS
 - NPPF requirement to treat policies for supply of housing as out of date if no 5 year housing land supply
 - WMS sought to change this if
 - neighbourhood plan in place for 2 years or less
 - it allocates some land for housing
 - LPA can demonstrate a 3 year housing land supply
 - aim to prevent neighbourhood plans being considered out of date immediately because of district wide land supply shortage
 - has been challenged on several grounds; arguable case accepted and we await the hearing date
 - WMS remains a material consideration in the meantime
- Richborough decision
 - policies for supply of housing given a narrow interpretation
 - restrictive policies are identified in the footnote to paragraph 14 which could correct the 'tilted balance' in favour of grant of consent
 - scope for 'restrictive policies' to be included in neighbourhood plans to comprise part of Development Plan?

Questions?



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