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Neighbourhood Plans in Appeals:

The Local Plan's Poor Relation?

Jonathan Easton

@ KCPlanningTeam 

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Contents

- Introduction
- Legal Status of NDPs
- The national policy position
- Secretary of State decisions
- Case Studies: individual appeals
- Key themes

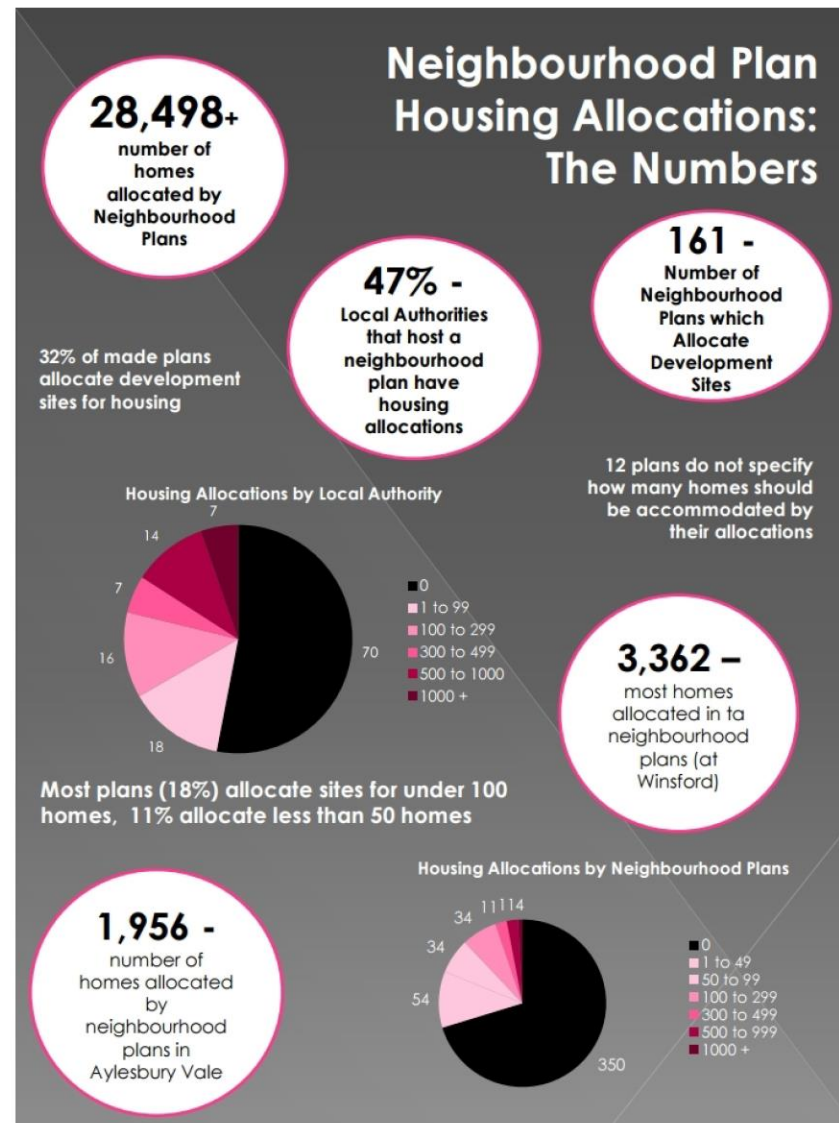


Introduction

“It is not the past that matters, but the future”

Hercule Poirot

Facts and Figures



NDPs – Legal Status

- S.38(3)(c) P&CPA, a 'made' NDP is part of the development plan
- BUT s.38(3A) P&CPA, a NDP forms part of the development if it has passed at referendum but not been 'made'
- S.70(2)(a) TCPA – as NDP is part of the development plan, must have regard to it.
- S.70(2)(aza) TCPA – must have regard to **post examination** NDP.
- S.38(5) P&CPA: where there is conflict between 2 DPDs, the one that has become part of the development plan most recently takes precedence.

Policy Position



- General point: importance of NDPs maintained
- Presumption against development that conflicts with **up to date** NDP (§12 NPPF)
- Where no 5YS and tilted balance applies, special treatment for NDPs. The tilted balance is unlikely to lead to permission if:
 - NDP not more than 2 years old
 - NDP is meeting the neighbourhood housing need
 - LPA can show **3 years** housing supply
 - LPA delivery exceeded 45% over the previous 3 years.



Policy Position

- Policies in NDP take precedence over non-strategic policies in Local Plan, where there is conflict: see NPPF§29
- Prematurity: NPPF§50 indicates that refusal on prematurity seldom justified *“before the end of the local planning authority publicity period on the draft plan”*
- Strategic policies should set out housing figures for designated neighbourhood areas: NPPF§65/66. NB – recent PPG allows communities to set their own figures.

SoS Decisions

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The BENSON Plan

- **Benson** (3180400)(20/7/18)
- SoS decision where Inspector recommended approval.
- SoS **disagreed** with Inspector's recommendation for approval. NB – the principal reason for disagreement related to NDP:
 - NDP allocated land for housing
 - NDP met its housing needs, so tilted balance did not apply
 - Accordingly, SoS gave 'very significant weight' to NDP conflict. NPPF (then §198) directed a refusal.

SoS Decisions

- **Lower Weybourne Lane, Farnham (3132971)(29/3/18)**
- One of series of 3 decisions in which Farnham NDP considered.
- NDP did not meet housing requirement, but Town Council committed to an early review (DL19 & 20).
- SoS held that tilted balance did not apply **because** of early review of NDP.
- Appeal Site outside NDP settlement boundary, to which SoS gave “substantial weight” (see NPPF12 §198) (DL22).

Lower Weybourne Lane, Farnham



*“The Secretary of State notes the appeal site’s location outside the Neighbourhood Plan’s Built Up Area Boundary, and in Countryside Beyond the Green Belt. He considers that the conflict with the relevant policies, **particularly the policies of the Neighbourhood Plan**, carries very substantial weight against the proposal. In reaching this conclusion, he has taken into account paragraph 198 of the Framework, which states that where a planning application conflicts with a Neighbourhood Plan that has been brought into force, planning permission should not normally be granted” (DL31)*



Highnam, Gloucestershire

- **App Ref: 3184272 (20/12/18)**
- Decided under NPPF 2018.
- No housing allocated in Highnam NDP, so §14 NPPF could not apply (DL29). Tilted balance still applied.
- BUT appeal dismissed: NDP conflict (along with landscape harm) significantly and demonstrably outweighed the benefits.

*“Paragraph 12 of the Framework states that where a planning application conflicts with a Neighbourhood Plan that has been brought into force, planning permission should not normally be granted. Although the Neighbourhood Plan does not allocate sites, meaning that paragraph 14 of the Framework is not engaged, or set a settlement boundary, **it represents an expression of how the community wishes to shape its local environment, and is relevant to the assessment whether the appeal proposal is acceptable or not.**” (DL29)*



Highnam Neighbourhood Development Plan

2011-2031

An aerial photograph of a residential area in Edenthorpe, showing Mere Lane. A semi-transparent white circle is overlaid on the left side of the image, containing text. The map shows a large yellow-colored area, likely a park or sports field, bordered by a green line. To the left of the yellow area is a residential street with houses. To the right is a green field, possibly a sports field. The text in the circle discusses planning documents (NPPF18, NDP) and their relevance to the area.

Mere Lane, Edenthorpe

- Post NPPF18.
- NDP in draft.
- Therefore, in accordance with NPPF §48, only limited weight to NDP.

SoS Decisions: Key Themes

- ‘Made’ NDP given substantial weight by SoS
- Conflict with up to date NDP may well be determinative (NPPF §12)
- SoS has sought to insulate NDPs from failure of LPA to identify deliverable supply of housing land
- Successive SoSs have recognised the aspirations behind neighbourhood planning.
- BUT draft NDPs usually given limited weight (NPPF §48)

Inspector Decisions



Deerlands Road, Wingerworth

- North East Derbyshire
- **Ref: 319225**, 19/11/18
- 180 houses outside settlement limit
- NDP did not allocate housing; this was left to Local Plan
- Inspector held that failure to allocate housing meant that NDP 'did not add anything of substance to the relevant policy base' (DL25).
/i.e. as the most important policies in the Local Plan were out of date, so were the NDP policies.
- Appeal allowed.

Crowell Road, Chinnor

- Ref: 3188694, 24/12/18
- Residential development (54 dwellings) outside settlement limits
- 14 day inquiry!
- One key relevant issue – the Chinnor NP did not allocate housing but recognised the need for further development provided that appropriate infrastructure was brought forward.

- Appellant argued that whilst there were CNP Policies that were permissive of development, there were no specific policies **restricting** the development of the appeal site.
- Inspector held that the plan must be read as a whole with a focus on its relevant objectives and the policies that give rise to those objectives.
- Appellant's approach would undo the balance between allowing development that was needed & unrestricted development in the countryside.
- Although there was residual harm to the landscape and heritage, the conflict with the CNP and its housing strategy resulted in a refusal.



Dunholme, West Lindsey

- Ref: 3204838
- Approval of 64 houses on site allocated in NDP and LP for 49.
- Essentially a design-led decision but illustrates the potential mismatch between the aspirations of local communities and the application of NDP policies by Inspectors.

Chaswood, Bosham

- **3208456**, 25/2/19
- 10 houses outside development limits.
- NDP did not allocate land for housing but did not resist windfall sites provided that they complied with other DP policies.
- Appellant argued that NDP did not preclude development outside settlement limits.
- Inspector rejected this argument and considered the spatial strategy of the NDP, which directed development to settlements.
- Appeal dismissed.



Fleckney Road, Kibworth Beauchamp

- **3218248**, 4/4/19
- 22 houses outside settlement limit in NDP.
- NDP policy allowed development outside SL only in 'exceptional circumstances'
- Appellant argued that CS was out of date because it had not been reviewed after 5 years (NPPF §33). That was rejected.
- Full weight given to CS and NDP and despite limited landscape and visual harm, appeal refused.

Appeal Decisions: Key Themes

- NDPs remain beholden to LPA housing numbers (but that may change – see NPPF §65/66 and PPG + Standard Method)
- Shifting national policy can render NDPs out of date
- NDPs that allocate housing will better withstand challenges
- Some Inspectors look at objectives and overall strategy of NDP, especially where development is outside settlement limits.
- Inconsistent approaches

Thank you

Any Questions?

Jonathan Easton

@KCPlanningTeam



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