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Neighbourhood Plans

In Theory, in Practice, in The Future

June 2016

Executive Summary

A Neighbourhood Plan forms part of the statutory development plan and is written by representatives of the local community. These plans can provide planning policies relating to the location, type, scale and design of development within their area and hold real weight in the decision making process. The Neighbourhood Planning and Infrastructure Bill announced in the Queen's Speech reflects a continued commitment by Government to increase the coverage of Neighbourhood Plans across the country.

Since their introduction through the Localism Act in 2011 Neighbourhood Plans have played a major role in shaping development across the country. With around 1,800 designated Neighbourhood Plan areas, they are providing local communities with a real influence on the future of their area.

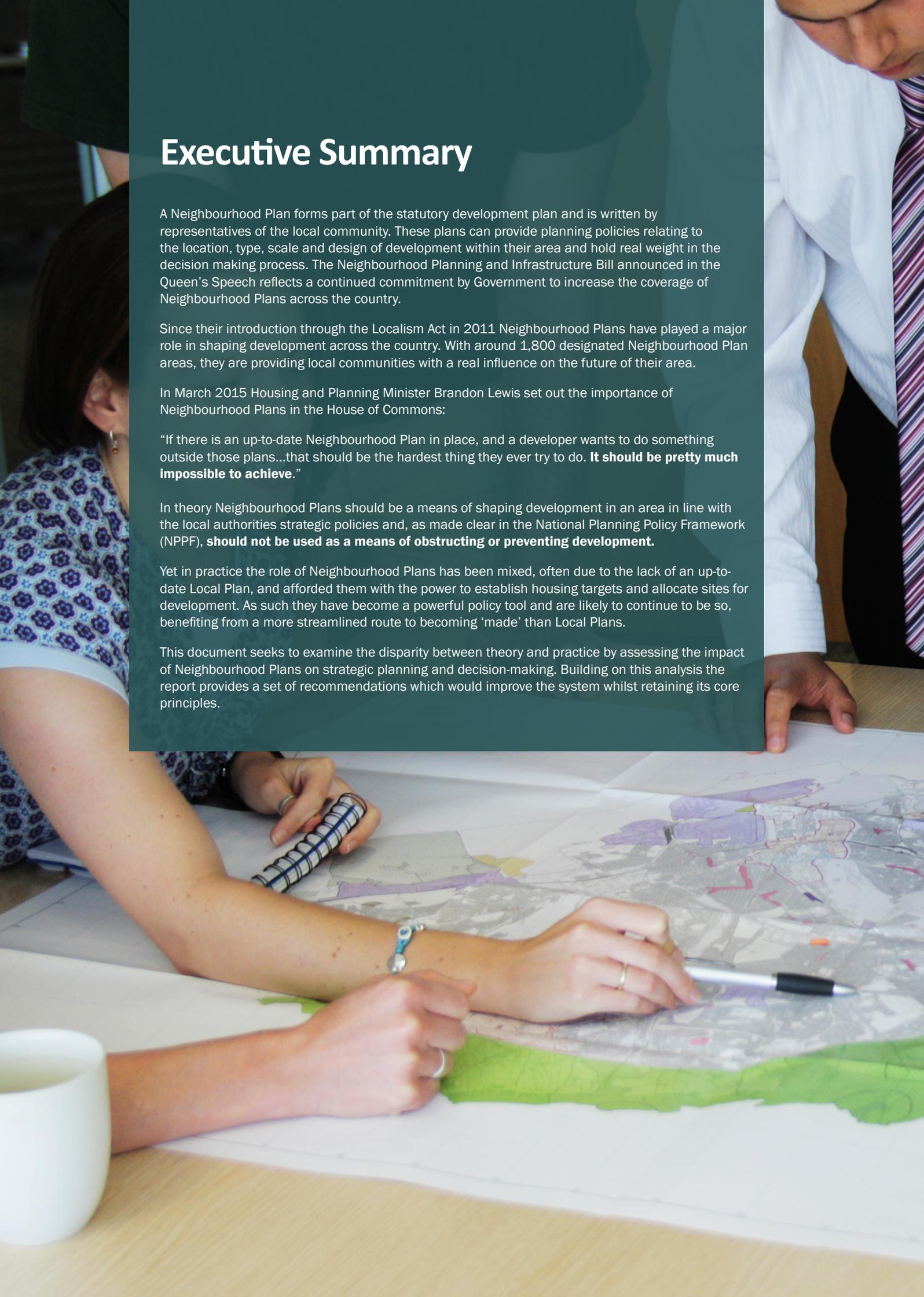
In March 2015 Housing and Planning Minister Brandon Lewis set out the importance of Neighbourhood Plans in the House of Commons:

"If there is an up-to-date Neighbourhood Plan in place, and a developer wants to do something outside those plans...that should be the hardest thing they ever try to do. **It should be pretty much impossible to achieve.**"

In theory Neighbourhood Plans should be a means of shaping development in an area in line with the local authorities strategic policies and, as made clear in the National Planning Policy Framework (NPPF), **should not be used as a means of obstructing or preventing development.**

Yet in practice the role of Neighbourhood Plans has been mixed, often due to the lack of an up-to-date Local Plan, and afforded them with the power to establish housing targets and allocate sites for development. As such they have become a powerful policy tool and are likely to continue to be so, benefiting from a more streamlined route to becoming 'made' than Local Plans.

This document seeks to examine the disparity between theory and practice by assessing the impact of Neighbourhood Plans on strategic planning and decision-making. Building on this analysis the report provides a set of recommendations which would improve the system whilst retaining its core principles.



Neighbourhood Plans in Numbers

The National Picture



1,800
Designated
Neighbourhood
Plan Areas
nationwide



160
Made
Neighbourhood
Plans



£23m
Government
funding available
to support
Neighbourhood
Planning to date

Decision Making



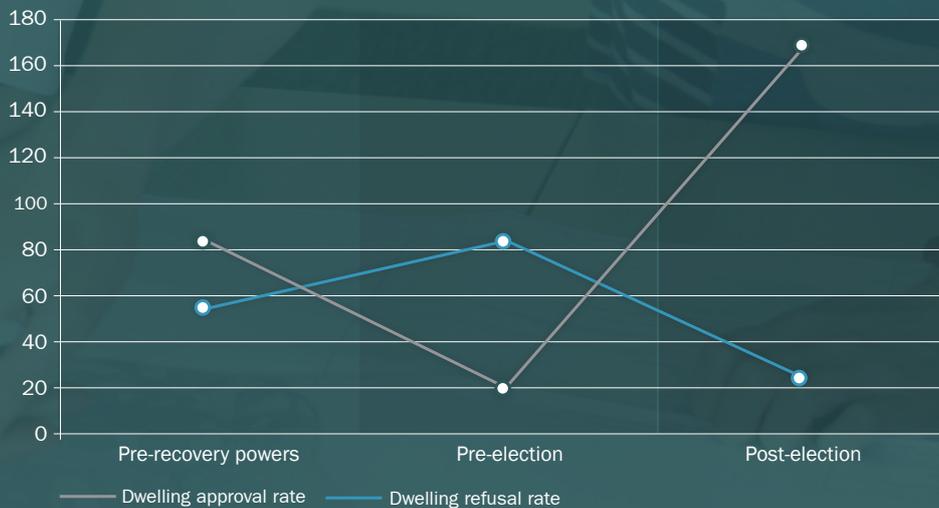
2,755
Dwellings refused
at appeal due to
Neighbourhood
Plan conflict



60%
Appeals dismissed
due to conflict with a
Neighbourhood Plan



62%
Made
Neighbourhood
Plans in force
alongside out-of-
date Local Plans



Information correct as of June 2016

This table shows the decision making patterns of the Secretary of State and how these have altered over the past two years. By dividing the number of dwellings either approved or refused by the number of appeals determined, it is clear that the 2015 general election was a turning point in how the Secretary of State assesses applications in Neighbourhood Plan

Process and Theory

This section establishes how Neighbourhood Plans are made and the role that they should play in decision-making and in the plan hierarchy.

The Route to Adoption

Neighbourhood Plans can be produced by town or parish councils, or 'Neighbourhood Forums'², and are subject to a different process to Local Plans.

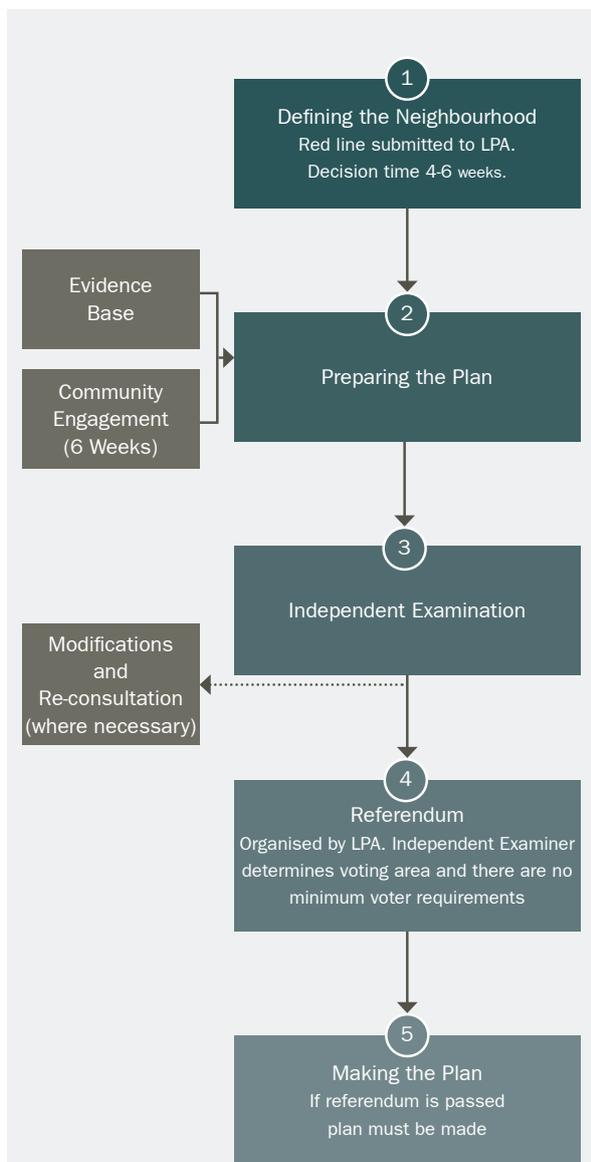


Figure 1: The Neighbourhood Plan Process

Key Differences to the Local Plan Process

- 1 Local Planning Authority (LPA) has an advisory role and is required to assist, rather than prepare a Neighbourhood Plan
- 2 Minimum of 6 weeks public consultation. The only requirement of the evidence base is that it is 'robust and proportionate'
- 3 Not examined for 'soundness' – only if 'Basic Conditions' are met:
 - LPA appoints Independent Examiner but Neighbourhood Plan group can 'veto'
 - Independent Examiner is not required to be a Member of the Royal Town Planning Institute
 - Independent Examiner's report is not binding – LPA can accept or disregard
 - Hearing held only when the Examiner considers it to be necessary

Basic Conditions

- a Have regard to national policy and advice;
- b Have special regard to the desirability of preserving any listed building, its setting or any features of special architectural or historic interest;
- c Have special regard to the desirability of preserving or enhancing the character and appearance of any conservation area;
- d Contribute to the achievement of sustainable development;
- e Be in general conformity with the strategic policies contained in the development plan for the area; and
- f Do not breach and be compatible with EU obligations.

- 4 Public Referendum to decide on whether the plan is 'made'
- 5 No requirement for Councillor or Cabinet sign-off

Once 'made' a Neighbourhood Plan is part of the Development Plan and forms a key part of the decision-making process in development management. During the formulation of a Neighbourhood Plan it should be attributed weight in accordance with Paragraph 216 of the NPPF as with any other development plan documents.

The NPPF provides decision-makers with a clear understanding of the role of a Neighbourhood Plan:

“Where a planning application conflicts with a Neighbourhood Plan ... planning permission should not normally be granted”

(Paragraph 198)

Role in the Plan Hierarchy

The 'Policy Compliant' Model

The NPPF is clear on where Neighbourhood Plans should sit within the plan hierarchy:

“The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood Plans must be in general conformity with the strategic policies of the Local Plan. ... **Neighbourhood Plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.**”

(Paragraph 184)

Summary

The law and planning policy behind Neighbourhood Plans is clear – they form part of the statutory development plan and are afforded considerable weight. All decisions should be determined in accordance with the development plan unless material considerations indicate otherwise.

NLP's Opinion

The intention was that Neighbourhood Plans would follow the strategic aims of a post-NPPF adopted Local Plan. However, due to the slow rate at which Local Plans are being adopted, many Neighbourhood Plans are being produced in a policy vacuum.



2 To be designated a Neighbourhood Forum must have a membership that includes a minimum of 21 individuals who either: live in the Neighbourhood Area work there; and/or are elected members for a local authority that includes all or part of the Neighbourhood Area. (Planning Practice Guidance - Paragraph: 016 Reference ID: 41-016-20140306)

Practice

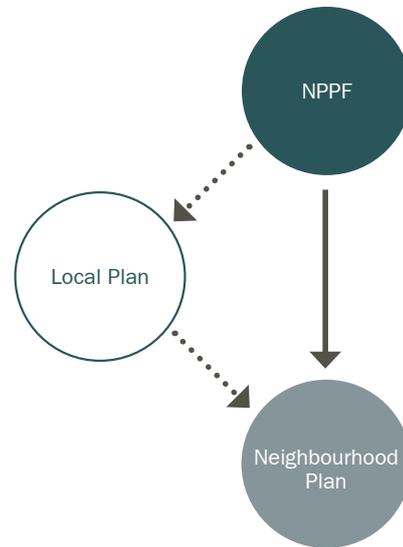
The 'Bypass' Model

The NPPF does not provide clarification on situations where a Neighbourhood Plan is made in advance of a Local Plan being adopted. The PPG³ confirms that Neighbourhood Plans can come forward prior to adoption of a Local Plan, therefore effectively 'bypassing' the normal plan preparation process.

A Neighbourhood Plan can only conflict with strategic policies (basic condition e) where such policies exist. Where they don't exist, Neighbourhood Plans can allocate housing sites, determine housing numbers and define settlement boundaries.

Given that Neighbourhood Plans are not subject to the same preparatory requirements as Local Plans this 'bypass' route may result in housing allocations and policies that are not based on full objectively assessed housing needs and decisions on site allocations may not be based on a thorough comparative analysis of sustainability.

When viewed in the context of the slow progress of many Local Plans and the government's drive to streamline and speed up the Neighbourhood Plan process, this 'bypass' of the Local Plan is likely to become increasingly common.



The 'Inverted' Model

The fact that Neighbourhood Plans can be made prior to the adoption of a Local Plan questions the extent to which such Neighbourhood Plans might shape the policies contained within an emerging Local Plan, an inversion of the order envisaged by the NPPF.

The PPG states that where there is a conflict between a Local Plan and a Neighbourhood Plan the most up-to-date document should be favoured in decision making⁴. Yet it is pertinent to ask whether an LPA would take a Local Plan forward for adoption which conflicts with policies within a made Neighbourhood Plan.

This is a relatively untested scenario, but it could be one whereby a Neighbourhood Plan shapes the preparation of the Local Plan – for example housing numbers within a settlement could be limited as they have already been 'set' by a Neighbourhood Plan. This raises issues relating to the sustainability of the plan, as new homes may be diverted to less sustainable locations and could impair aims to 'boost significantly the supply of housing'.



3 Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20140306

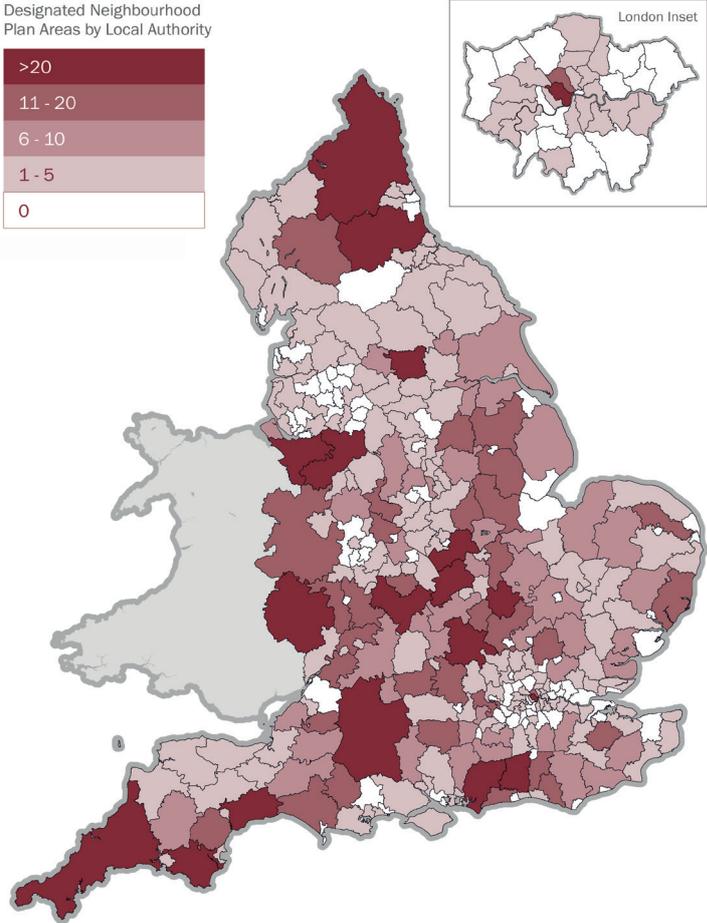
3 4 Planning Practice Guidance Reference ID: 41-009-20140306

The Future

Neighbourhood Plan Pipeline

Since their introduction through the Localism Act, the number of made Neighbourhood Plans has grown steadily – with the total number currently at 160, with a further 30 in the pipeline having achieved a successful referendum.

There are now around 1,800 designated Neighbourhood Plan Areas and, whilst not all will progress to a made Neighbourhood Plan, it clearly shows that momentum is growing and that the geographical coverage of Neighbourhood Plans can be expected to increase significantly in the future.



Information correct as of June 2016

The role of the Planning Court

The Planning Court has played a significant part in establishing the implementation and role which Neighbourhood Plans play in the planning system. Below are some of the key principles established:

- A Neighbourhood Plan can be progressed ahead of a Local Plan and therefore can allocate sites, determine housing numbers and define settlement boundaries in the absence of an up-to-date Local Plan⁵.
- Paragraph 49 of the NPPF applies to Neighbourhood Plans and as such policies relating to the supply of housing should be considered out-of-date where there is no 5 year housing land supply⁶.
- Specific policies within a Neighbourhood Plan can conflict with a Local Plan, providing there is 'general conformity'⁷.

NLP's Opinion

The Planning Court will continue to play a key role in establishing Neighbourhood Planning's role in the planning system. Key rulings have already changed the policy and decision-making landscape and this is likely to continue. Numerous cases are waiting to be heard by the Planning Court and NLP will monitor their progress and update clients on key outcomes and precedent.

5 Gladman Developments LTD | Aylesbury Vale & Winslow Town Council(2014) EWHC 4323 (Admin)
 6 Woodcock Holdings Ltd v SSCLG (2015) EHC 1153 (Admin)
 7 DLA Delivery Ltd & Lewes District Council (2015) EWHC 2311 (Admin)

The Secretary of State's Role

Pre-Recovery Powers

 165

Dwellings allowed by SoS in NP Areas

 111

Dwellings dismissed by SoS due to conflict with NP

 2

SOS Decisions

Pre-Election

 316

Dwellings allowed by SoS in NP Areas

 1,348

Dwellings dismissed by SoS due to Conflict with NP

 16

SOS Decisions

 19%

Approval Rate

Pre-Recovery Powers

Before the introduction of the temporary recovery powers there were relatively few appeal decisions in Neighbourhood Plan areas. The limited weight attributed to Neighbourhood Plans due to their early stage of preparation coupled with the lack of temporary recovery powers didn't provide the Secretary of State with the opportunity to influence decision-making to any great extent.

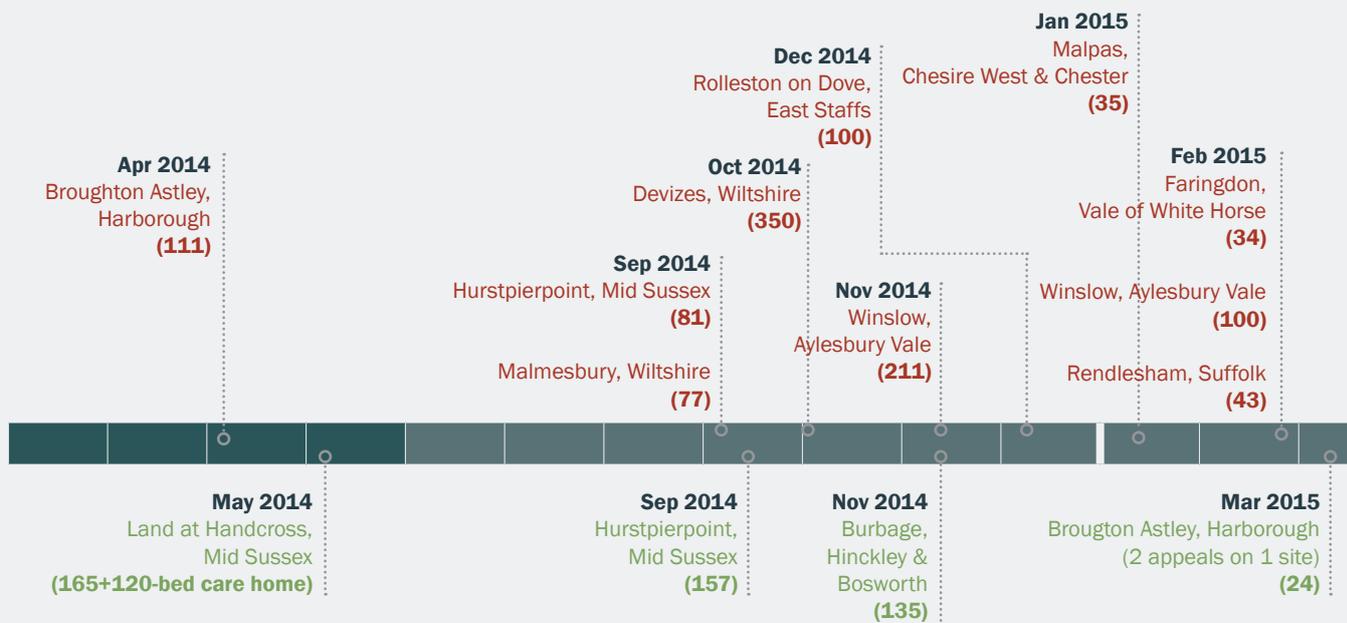
Pre-Election

The introduction of the temporary recovery powers allowed the Secretary of State to determine appeals for over 10 units in a designated Neighbourhood Plan area. The number of dwellings refused due to a conflict with a Neighbourhood Plan was over three times larger than those approved in Neighbourhood Plan areas. The frequency of refusals increased in the early months of 2015 with 6 dismissed appeals in February and March alone.

KEY DATES

July 2014
Introduction of Temporary Recovery Powers

January 2015
Extension of Temporary Recovery Powers



Post Election

 **2,530**
Dwellings allowed
by SoS in NP Areas

 **545**
Dwellings dismissed by
SoS due to conflict with
NP

 **15**
SOS Decisions

 **81%**
Approval Rate

Information correct as of May 2016

Post-Election

The general election brought with it a new Secretary of State for CLG, Greg Clark MP, and what appears to be a more positive application of the recovery powers with over 2,000 dwellings approved since May 2015. We have seen the temporary recovery powers utilised and extended - they are now due to expire in July 2016.

The weight attributed to Neighbourhood Plans early in their preparation has reduced under the new Secretary of State which is a positive sign for the development industry and this approach has been clarified through amendments to Planning Practice Guidance. However, well progressed and made Neighbourhood Plans still hold significant weight in the Secretary of State's decision making, which may be an important factor in the future as more Neighbourhood Plans become part of the statutory Development Plan.

May 2015
General Election

January 2016
Extension of Temporary
Recovery Powers

Mar 2015
Sedlescombe, Rother
(18)

Earls Barton,
Wellingborough
(85)

Broughton Astley, Harborough
(2 appeals on 1 site)
(28 dismissed)

Aug 2015
West Haddon, Daventry
(215)

Feb 2016
Sayers Common,
Mid Sussex **(120)**

Dec 2015
Lydney, Forest of Dean
(200)

Mar 2016
Loxwood,
West Sussex **(25)**

Apr 2016
Hambrook,
West Sussex
(120)

Sep 2015
Warton, Flyde
(360)

Dec 2015
Hook Norton,
Cherwell
(54)

Jan 2016
Ringmer, East Sussex
(110)

May 2016
Buntingford,
Hertfordshire
(56)

Oct 2015
Woburn Sands,
Milton Keynes
(53)

West
Hampstead,
Camden
(28)

Cringleford,
South Norfolk
**(650 + 2,500m²
commercial
floorspace)**

Earls Barton, Wellingborough
(39)

Banbury Road,
Warwick
(900)

2015

2016

Improving the System

Neighbourhood Planning has had a significant impact on development across England and, in many areas, has ensured that development is shaped and influenced by local people. The process is fully supported by Government and take up continues to be high across the country. Impacts so far have been mixed - some of the positive local planning envisaged has taken place

but too often the process has been used as a tool to prevent or frustrate much needed development or cause unintended confusion and uncertainty where Local Plans have failed to provide this.

NLP has therefore devised the following suggestions and recommendations to improve the system for all concerned.



For Government

1. A minimum evidence base requirement including clear understanding of local needs.
2. The Basic Conditions should ensure 'conformity' with the NPPF, rather than simply having 'regard' to it.
3. Clear guidance on the weight to be attributed to Neighbourhood Plans at all stages of their preparation including where an up-to-date Local Plan isn't in place.
4. A requirement for Independent Examiners to be chartered members of the RTPI or RICS and to be selected by PINS.
5. A presumption in favour of a public hearing at Examination, unless there are no material objections.
6. A minimum voter turnout threshold of 35% to validate referenda.



For Developers

1. Engage with the process at all stages through representations and discussion.
2. Liaise with the Town / Parish Council or Neighbourhood Forum to share knowledge of the development industry and local issues.
3. Meet with Neighbourhood Plan groups to discuss your land interests, future plans and understand community aspirations.
4. Incorporate Neighbourhood Plans into site appraisals and strategic land searching.
5. Monitor relevant decisions and emerging case law.

Summary

Post-election there appears to have been a shift in emphasis from the Secretary of State's office, with the stage of preparation and number of unresolved objections a key factor in the weight attributed to Neighbourhood Plans. The remainder of 2016 should provide answers as to whether Neighbourhood Plans will become a more positive tool in shaping development across the country, which they undoubtedly have the capacity to be. NLP's suggestions to improve the system, both in legislation and in practice, are intended to harness this potential and ensure that Neighbourhood Plans contribute to the sustainable growth of our villages, towns and cities.

About NLP

Nathaniel Lichfield & Partners (NLP) is an independent planning, economics and urban design consultancy, with eight offices across the UK.

We are one of the largest independent planning consultancies in the UK and we offer the broadest range of skills of any specialist planning firm. This includes services in economics, spatial analytics, heritage, sustainability, urban design, graphics and sunlight and daylight, as well as a full range of planning skills.

Our clients include local authorities and government bodies, as well as developers, landowners and operators in the housing, retail, leisure, commercial, and infrastructure sectors.

We prepare accessible and clear reports, underpinned by robust analysis and stakeholder engagement, and provide expert witness evidence to public inquiries and examinations.

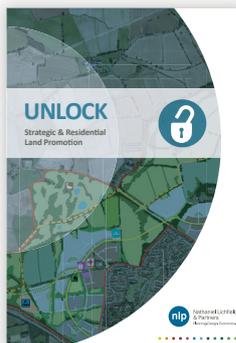
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