

## Where Next for Neighbourhood Plans?



**Can they withstand the external pressures?**

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## PREFACE

The **National Association of Local Councils** (NALC)<sup>1</sup> has been hugely supportive of the concept of Neighbourhood Planning since its inception. We produced training materials including *'How to shape where you live: a guide to neighbourhood planning'* jointly with the Campaign to Protect Rural England (CPRE) in 2012<sup>2</sup> and the *'Good Councillors Guide to Neighbourhood Planning'* in 2017<sup>3</sup>. Our County Associations have held neighbourhood planning seminars, often working with Community Councils and/or CPRE branches, and more than 2,000 Town and Parish Councils have engaged in the neighbourhood planning process<sup>4</sup>. Over 90% of NPs are led by Local Councils<sup>4</sup>. The Commission on the Future of Localism estimated, in the 'People Power' report they published in February<sup>5</sup> that the communities involved in the process represented some 12 million people.

Research by the Localism Commission found that neighbourhood planning had built a participatory approach to planning and local decision making, and far from it being used as a 'tool for NIMBYs', as predicted by some, it has opened up routes for communities to be proactive about development challenges. The Commission's analysis of 50 neighbourhood plans demonstrated near unanimous concern about affordable housing shortfalls and unsustainable housing and a sample of 39 plans showed they had produced housing allocations of 11% more than that in the Local Plan. Even a subsequent report by planning and development consultancy Lichfields that questioned government claims about the amount of additional housing being delivered through neighbourhood plans (due to there being no central monitoring system) conceded that additional allocations were made over and above those in Local Plans (*'Local Choices? Housing delivery through Neighbourhood Plans'*, May 2018<sup>6</sup>). (Lichfields analysed 330 plans and found that 15 of them, representing 4.5%, proposed more housing than the Local Plan. Those 15 boosted Local Plan housing numbers by an average of 3%).

A key theme in the evidence gathered by the Localism Commission was that, despite neighbourhood planning powers, communities felt principal/local authorities (LAs) were still very much in control and there were examples of poor LA practice including statements that neighbourhood plans (NPs) will not be taken into account in making planning decisions and of delays or failure to deal with applications for the designation of neighbourhood areas. There were also reports of modifications at the examination stage of NPs including changes that totally altered the plan's overall objectives.

In addition to the more unsettling findings of the Commission on the Future of Localism, NALC and some of the bodies it often works collaboratively with have become concerned by the growing number of planning appeal decisions overturning NPs (many featured in this report) and by the refreshed National Planning Policy Framework which we fear will discourage NPs due to the uncertainty over the validity of plans older than two years and other changes that will affect them. We therefore commissioned one of our National Assembly members to work with an academic doing a doctorate on neighbourhood planning to produce this report to inform deliberations about the future of neighbourhood planning.

**JONATHAN OWEN, Chief Executive, NALC**

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<sup>1</sup> NALC is the nationally recognised support body representing the interests of 80,000 local councillors serving on nearly 10,000 parish and town councils and parish meetings. It works with county associations that cover all of England.

<sup>2</sup> <https://www.nalc.gov.uk/library/publications/1633-how-to-shape-where-you-live/file>

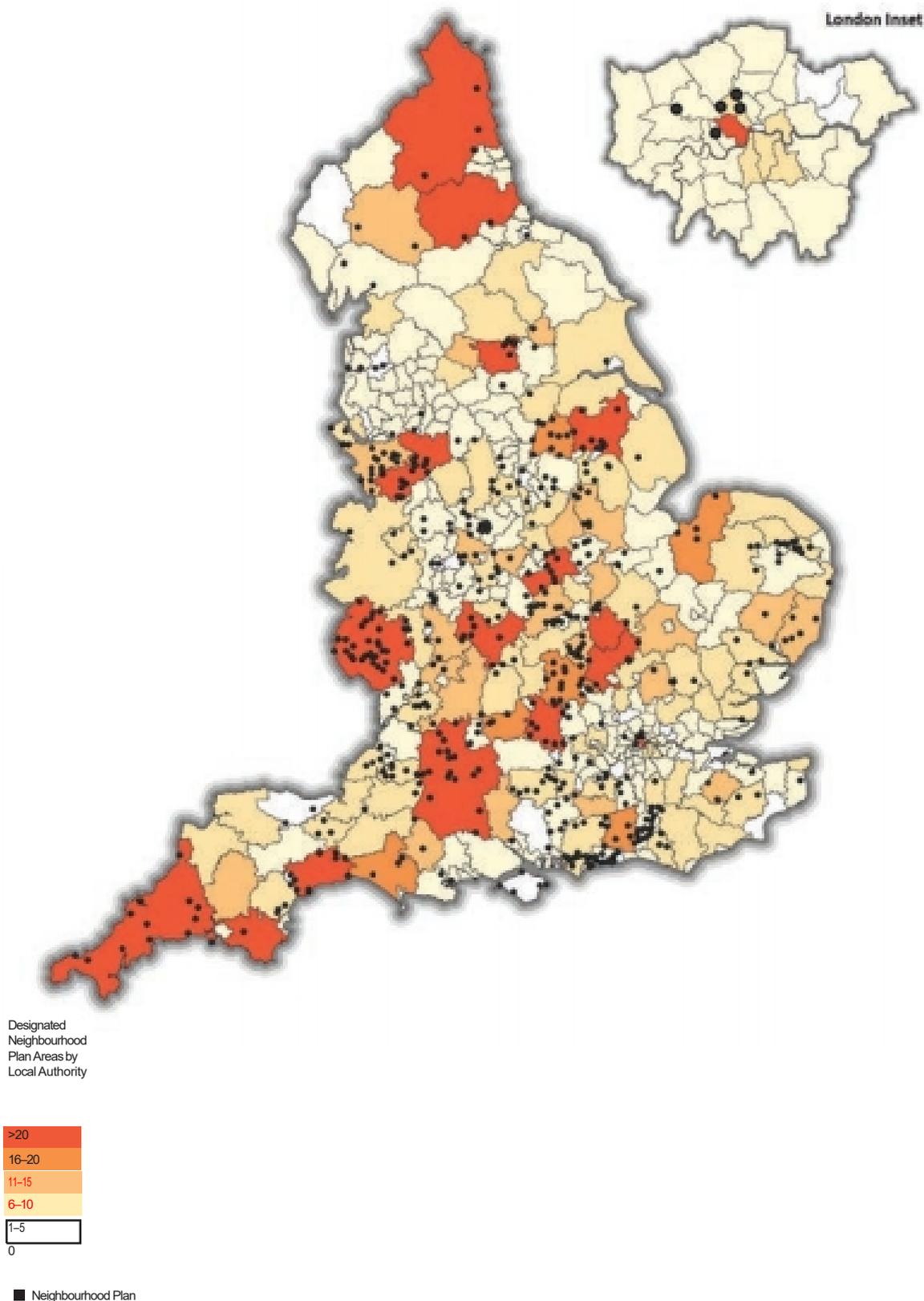
<sup>3</sup> <https://www.pottontowncouncil.co.uk/wp-content/uploads/2015/11/The-Good-Councillors-Guide-to-Neighbourhood-Planning-2017.pdf>

<sup>4</sup> Gavin Parker & Kat Salter (2017): Taking Stock of Neighbourhood Planning in England 2011–2016, Planning Practice & Research, DOI: 10.1080/02697459.2017.1378983

<sup>5</sup> <https://locality.org.uk/about/key-publications/findings-from-the-commission-on-the-future-of-localism/>

<sup>6</sup> [https://lichfields.uk/media/4128/local-choices\\_housing-delivery-through-neighbourhood-plans.pdf](https://lichfields.uk/media/4128/local-choices_housing-delivery-through-neighbourhood-plans.pdf)

**Map showing designated Neighbourhood Plan areas and made Neighbourhood Plans broken down into local planning authority areas from page 4 of the Lichfields report: 'Local Choices? Housing Delivery Through Neighbourhood Plans', May 2018**



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## INTRODUCTION

Neighbourhood-made plans were a flagship of the Localism Act of 2011. The introduction of locally worked up and locally endorsed plans that were part of the statutory planning system and on a par with Local Plans was a landmark initiative. But, from the earliest days they have been subjected to developer challenges and legislation changes. Despite the Neighbourhood Planning Act of 2017, the concept is at risk of becoming a paper tiger if the government does not act quickly to halt its demise.

According to the extant National Planning Policy Framework:

*“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development”*

(NPPF, July 2018, para. 29)

Not only that but

*“Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan covering the neighbourhood area where they are in conflict”*

(NPPF, July 2018, para. 30).

And also, very importantly:

*“Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan) permission should not normally be granted”*

(NPPF, July 2018, para. 12).

Similar powerful statements backing the concept of localism were made in the original NPPF in 2012. They have succeeded in keeping neighbourhood planning groups going at times when achieving the delivery of the plans has proved challenging.

Only a small number of neighbourhood plans have been completed within a year. Based on figures obtained from the then Department for Communities and Local Government and data collected by themselves, Professor Gavin Parker and Kat Salter concluded in their 2017 paper *‘Taking Stock of Neighbourhood Plans in England’*<sup>6</sup> that most take two to three years. Many have taken much longer. They wrote:

*“Overall, the progress to referendum has been much slower than anticipated with the time taken to complete (ie. referendum stage) going well beyond two years in many cases. Indeed, the average (median) time was 29 months”. (Page 5).*

They also wrote of the *“considerable demands”* the process places on non-planning professionals. Their research found that the time, effort, and financial resources needed to develop a neighbourhood plan placed a big burden tantamount to a full-time job on a small core group of individuals.

Many others have raised concerns about neighbourhood planning becoming 'professionalised' rather than genuinely community-led and being more burdensome than expected<sup>7</sup>. These findings have been echoed by the Commission on the Future of Localism. Nevertheless, the understood 'goal' at the end of having decided what development should go where in their locality and which green spaces and heritage assets to conserve for future generations is a sufficiently powerful incentive to keep most communities going once embarked on the process. Regrettably, as this report will show, a growing number of communities that have invested the time, effort and commitment necessary to get through the arduous neighbourhood plan process are being left deflated and incredulous when their plans are declared 'out of date' or dismissed for other reasons, following developer appeals.

The most common basis on which plans are overturned is a failure by the principal authority to meet (or be able to prove that it meets) the much fought over statutory housing land requirements. These have prompted a vast range of different formulae to determine them (with correspondingly wide variations in outcomes). Now the government has announced a 'standard' methodology for calculating housing need which is producing different results again to most existing methodologies.

The initial housing land supply requirement was for five years and this applied to every local planning authority. But, since the publication of a Written Ministerial Statement in December 2016, the requirement has reduced to three years for those neighbourhood plan areas that have allocated specific sites for housing. However, the imposition of the requirements has gradually become stricter.

In response to its call for evidence, the Raynsford Review of Planning in England, received accounts of communities feeling 'betrayed' after spending years of effort preparing a plan only to find it overturned on appeal<sup>8</sup>. And the number of plans which could and would be overridden would dramatically increase as a result of changes in the recent revision of the National Planning Policy Framework, not to mention threats posed by development corridor concepts and new garden towns and villages.

**Our focus in this report is on:**

- (1) the effectiveness of neighbourhood plans in influencing planning appeal decisions**
- (2) the impact that changes in the revised National Planning Policy Framework are likely to have on neighbourhood plans and**
- (3) flagging up their vulnerability in the face of the new, overlying spatial plans.**

NALC's interest in this topic is self-evident from the fact that neighbourhood plan processes were made the responsibility, at the local level, of Town and Parish Councils in those areas which are parished. It is only for areas with no Local (Town or Parish) Council to form a neighbourhood forum (assuming that a minimum of 21 signatories can be found).

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<sup>7</sup> Parker, G., Lynn, T. & Wargent, M. 2015. *Sticking to the script? The co-production of neighbourhood planning in England*. Town Planning Review 86 (5); Parker, G., Lynn, T., Wargent, M. & Locality 2014. *User experience of neighbourhood planning in England*. London: Locality.

<sup>8</sup> 'Planning 2020' interim report of the Raynsford Review, published by the TCPA, May 2018, page 36, <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=8c619109-a721-4efc-8eac-c9ba8ecee4b5>

After analysing statistics up to October 2016, Gavin Parker and Kat Salter, authors of *'Taking Stock of Neighbourhood Planning In England 2011-2016'*<sup>4</sup>, concluded that only 9% of neighbourhood plans were led by neighbourhood forums. (Page 5). At the time, 245 plans had passed referendum and 20 of them had been led by neighbourhood forums. It is also worth noting that roughly two thirds of NPs have been carried out in rural areas. Quintin Bradley, Amy Burnett and William Sparling noted in 2017 that out of the 1,700 neighbourhoods drawing up plans at the time, a third were in urban areas<sup>9</sup>

This report for NALC contains some prime examples of NPs withstanding challenges by developers and 'winning the day' at appeal, alongside some of the growing number of contrary cases. It also highlights the expanding catalogue of reasons whereby the plans can be overturned – which come on top of poor practice in the way some local authorities handle the plans, as flagged up in the 'People Power' report by the Commission on the Future of Localism' which called for *'a strengthening of community power'*<sup>10</sup>. But strengthening community power alone will not sort out the increasingly complex neighbourhood planning scene which has to contend with local plans that are absent, emerging, in need of updating or are being challenged, and a planning system in constant flux.

The authors of this report concentrated their investigations on planning appeals and on how recent planning changes will impact neighbourhood plans (NPs). We have not investigated the influence of neighbourhood plans on Local Authority decision-making. However, in light of our findings, we would urge research into this tier of decision-making.

We have also resisted the temptation to analyse the quality of NPs or the problems encountered by neighbourhood plan groups (NPGs) in producing their plans. On the former, we would merely emphasise the need for robustness and specificity. On the latter, we would like to flag up the latest report by Professor Gavin Parker, published in concert with Kat Salter and Mark Dobson following a 'Hive' event held at Reading University on June 6<sup>th</sup>, 2018 because this covered not just experiences during the pulling together of NPs, but also experiences later on.

The Neighbourhood Planning Hive Report: Experiences of Participants<sup>11</sup> analysed live feedback from 35 neighbourhood planning representatives from around the UK who spent a day discussing their experiences and views with Prof. Parker and colleagues. The output was described as a *"damning report on neighbourhood planning that calls for an overhaul of the system"* by Mitchell Labiak in the professional section of 'Property Week' on August 17<sup>th</sup> 2018. He summed up the findings as:

*"When the government introduced neighbourhood plans as part of the localism agenda back in 2012, the intention was that skilled local people would step forward and create plans that the community, businesses and local government could get behind.*

*The reality has been very different. Without proper support, neighbourhood planners have been left struggling to understand and get to grips with the planning process.*

*Consequently, the entire neighbourhood planning process needs a re-think according to a new University of Reading report"*

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<sup>9</sup> Neighbourhood planning and the spatial practices of localism in 'Localism and neighbourhood planning: power to the people?' (page 63) edited by Sue Brownill & Quintin Bradley. Policy Press, Bristol, 2017.

<sup>10</sup> <https://locality.org.uk/wp-content/uploads/2018/03/LOCALITY-LOCALISM-REPORT-1.pdf>

<sup>11</sup> <https://research.reading.ac.uk/neighbourhoodplanning/wp-content/uploads/sites/28/2018/06/Neighbourhood-Planning-HIVE-reportFINAL.pdf>

Some of the 'Hive' findings were not directly relevant to the main focus of this report, but do help to set the scene. For instance, participants were unsure how the £30,000 government grant was spent by principal authorities and unclear about what constituted appropriate evidence and where to gather it from. They complained about too much change and lack of consistency in the planning process, widely varying modus operandi by neighbourhood planning groups, inconsistent support from principal authorities, lack of clarity concerning conflicts of interest between Parish Council and non-elected NPG members and the divisive effect on many communities of identifying sites for housing. Also, half of them found the neighbourhood planning exercise even harder than they had anticipated.

Of most relevance to the NALC report were Reading University's findings on NP implementation, ie.

*"An aspect of increasing concern has been the use of the neighbourhood plan after it has been 'made' and when a plan may need to be amended, refreshed or a new plan prepared. Some key points to bear in mind:*

- *The 'light touch' approach to neighbourhood plan preparation has shifted over time – meaning that more care is needed over the evidence base and its robustness to challenge*
- *There is a shifting local and national planning policy context - it is unlikely that a plan's policies will remain up-to-date and relevant for the whole plan period*
- *Many groups see having a 'made' plan as the end game, however, policies need to be used as a basis for the determination of planning applications and so ensuring its application in practice is important*
- *The plan and the associated work can help to form the basis for spin-off community projects or proposals, thus yielding benefits beyond the plan"*

Para. 6.1, page 16.

Their report then went on to commend the joint NALC/ CPRE publication, 'How To Shape Where You Live'<sup>2</sup>. Significantly, however, the number one 'stand out' trend highlighted in the conclusion was:

*"Emphasis on the impact of multiple change. Substantively the multiple factors of change that act to undermine the plan during and after its finalisation loomed large in debates. Clearly much more work needs to be done to provide clarity, some certainty and also appropriate resources to sustain neighbourhood planning in the long term. Unless these issues gain focused attention from government, neighbourhood planning is likely to founder".*

Section 8, page 21.

Evidence collected by other bodies referred to above and by the authors of this report is pointing to a system in danger of collapse that needs saving. We sincerely hope this report will help convince the Ministry of Housing, Communities and Local Government (MHCLG) to launch a rescue mission which addresses the various factors and measures threatening the neighbourhood planning system.

**LILLIAN BURNS**

**ANDY YUILLE**

## EXECUTIVE SUMMARY

Neighbourhood planning was introduced to give communities more control over the ways in which their neighbourhoods developed. It was intended to transfer power from the hands of officials and insiders and give it to communities who, for too long, had felt excluded and marginalised from the planning process. It was expected that, as a result of being more in control of the scale, location and design of new development, communities would be more welcoming of it and less mistrustful of planning on the spatial/ wider scale.

The early years of neighbourhood planning showed indications of achieving this. Hundreds of communities – Town and Parish Councils in particular – rushed to take up the new powers offered to them, with over 2,300 neighbourhood plan areas currently designated. Around 90% of NPs are led by Local Councils. Developers challenged many early neighbourhood plans in the courts, but these challenges were largely defeated, with the courts appearing to support the spirit as well as the letter of neighbourhood planning legislation. Where developers appealed against decisions made against them on the basis of neighbourhood plan policies, decisions by the secretary of state frequently led to these policies being upheld in the face of applications that conflicted with them.

However, over time the picture has become more complicated and neighbourhood planning groups face much uncertainty. The National Planning Policy Framework (the original version and the renewed one) have been clear that where a planning application conflicts with a 'made' neighbourhood plan, planning permission should not normally be granted. Despite this, many applications that have conflicted with neighbourhood plans have been granted at appeal – as demonstrated in this report. A set of interconnecting considerations influences how much weight a decision-taker is likely to give to a neighbourhood plan, and therefore whether it is likely to be upheld or over-ridden, nearly all of which are beyond the control of the communities preparing the plan. Increasingly, communities are seeing years of work wiped out by appeal decisions that over-ride their plans, not through any fault of their plans but due to wider policy considerations.

Firstly, there is the requirement that a principal authority must be able to demonstrate a five-year supply of housing land (or, since December 2016, a three-year supply if there is an adopted neighbourhood plan which identifies specific sites for development). If it cannot, policies for the supply of housing in the development plan (including any neighbourhood plans) are considered out of date. This means that the 'presumption in favour of sustainable development' is triggered, making it very much easier for speculative development that would otherwise have been considered inappropriate or unsustainable to gain planning permission.

Any number of local planning authorities have struggled to demonstrate a five year housing land supply, in the face of dozens of different methods for calculating it, and the presence or absence of a five year supply is frequently contested as a decisive factor at planning appeals. The MHCLG is currently in the process of introducing a new standard method for calculating housing need, which differs from almost all existing assessments. This has the potential, certainly initially, to cause even more confusion as principal authorities and neighbourhoods alike struggle to get to grips with new realities imposed by a new set of numbers.

## EXECUTIVE SUMMARY CONTINUED

The salient fact remains that whatever housebuilding criteria is imposed by government on principal authorities, this is beyond the control of Local Councils or neighbourhood fora. Making the legitimacy of neighbourhood plans contingent on the performance of housebuilders across a wider area seems to be somewhat at odds with the principles of localism.

Secondly, research has shown most neighbourhood plans taking two to three years to produce, with five not being unusual, as against the 12-18 months originally envisaged. This means a plan can be in preparation, with a huge amount of community time, effort and resource poured into it, before it is given any weight in decision-taking. Meanwhile, speculative development can come forward in order to 'beat the clock', leaving communities understandably resentful if, after months or years of work, permissions are granted that entirely compromise their vision.

Thirdly, and especially in light of the point above, neighbourhood plans are at risk of being considered out of date (and therefore triggering the 'presumption in favour') when strategic local plans are reviewed, or if local plans that they rely on are considered to be out of date. This means that neighbourhood plans can go out of date literally as soon as they have been adopted, undoing years of community effort. Furthermore, it is hard to envisage many localities being able to generate and sustain the levels of community commitment and investment that would be required to substantially review neighbourhood plans whenever a local plan is changed.

Fourthly, the cases we have researched have shown evidence of considerable inconsistency: neighbourhood plan policies being interpreted by decision-takers in ways that directly contradict the intentions of the communities that wrote them; apparently contradictory decisions being made in materially similar circumstances; emerging plans in similar circumstances being dealt with differently; and somewhat convoluted reasoning being employed in some instances to reject the wishes of local communities.

Fifthly, there are a range of measures in the revised NPPF published in July 2018 that will cause the situation to deteriorate further by introducing more specific stipulations on neighbourhood plan groups and yet more circumstances in which neighbourhood plans can be afforded less weight or overturned.

For instance, Local Plans must now be reviewed at least once every five years – thereby automatically meaning that adopted NPs will have to be reviewed as regularly; and NP groups are instructed to consider opportunities for allocating small/ medium housing developments on sites no larger than 1 hectare. And it is apparent that the housing delivery tests are going to override NPs: e.g. from November 2018, principal authorities will have to provide a 20% buffer on top of the 5-year supply of deliverable sites where delivery in the previous 3 years has been below 85% of housing requirements, and from 2020 the presumption in favour of sustainable development will apply where delivery is below 75%. This deepens the principle that if housebuilders fail to deliver, then the local plan and any neighbourhood plans lose their capacity to shape and guide development, thereby undermining the plan-led system.

## EXECUTIVE SUMMARY CONTINUED

Finally, there is an increasingly confusing situation arising from the multiplication of new spatial plans. It is unclear as to where NPs will stand in relation to spatial planning frameworks emerging from the Combined Authorities, garden cities/towns/villages or development corridors (eg. Cambridge - Oxford) or other strategic bodies expecting to sway planning outcomes.

Whether intentional or unintentional, there does appear to be a fundamental undermining of neighbourhood planning, set against a background of constantly shifting national policies which favour the delivery of development *per se*, rather than development that meets the expressed needs and desires of local communities. This is understandably eroding public and Parish Council confidence in neighbourhood planning and the planning system more widely. A key aim of neighbourhood planning is to reduce resistance to new development by enabling communities to ensure that they get the development that is appropriate and needed for their neighbourhood. The current situation, where communities can spend years bringing a plan to fruition only to have the same old badly-designed, badly-sited speculative development 'plonked' on them regardless, can only have the opposite effect. Much rests on the performance of housebuilders whose failure to deliver can effectively invalidate Local Plans and neighbourhood plans. Significant changes are needed if neighbourhood planning is to retain public trust and confidence. Without that confidence, it cannot function.

This report represents an appeal to the Ministry of Housing, Communities and Local Government to acknowledge that this excellent community initiative is in serious danger of collapsing and to plead with them to take immediate action to save it.



## THE NEIGHBOURHOOD PLAN IDEAL

Neighbourhood plans were introduced as part of the UK government's 'localism' agenda. They came with the promise that they would empower communities to make important decisions about their built and unbuilt environments. Neighbourhood planning groups (NPGs), advised by planning specialists, would lead discussions in their communities to decide which open areas and important buildings to protect, whether or not the community wanted to opt for more housing and employment land allocations than were in their Local Plan, where new development would go and at what density, what it would look like and what sort of infrastructure would be needed to support the developments.

These decisions, once signed off by an independent examiner and confirmed in a local referendum, would sit on the statute books as part of the development plan with a worthwhile life span. And, as part of the development plan, neighbourhood plans would be very difficult to overturn successfully once they were 'made.' This ideal scenario has indeed come to pass for some of the communities with formally adopted neighbourhood plans. They have successfully stood up to challenges by developers through the appeals process, and a planning inspector and/or the secretary of state at the Ministry of Housing and Local Government (MHCLG) or its predecessor has ruled that the neighbourhood plan should prevail in the face of applications that conflict with it. We would also like to believe that they have influenced local authority planning decisions and the decisions of developers as to whether to seek planning permission in the first place, but we have no evidence to support this.

Central government financial support has been made available to communities from the outset and seven out of 10 of those that have engaged in the process have taken advantage of it. The MHCLG has now guaranteed ongoing support to the tune of £23m. up to 2022. The maximum grant available to neighbourhood plan groups facing complex circumstances has been increased by £2,000 to £17,000 (with the aim of attracting more deprived neighbourhoods to engage). Access to free technical advice has been confirmed.

Making these commitments, Dominic Raab, the then minister in charge of neighbourhood planning, said:

*"Neighbourhood plans are a powerful tool to help communities shape their local area, making sure the right homes are built in the right places. It's vital that communities have the right support and advice available to help deliver a plan that meets their own ambitious aspirations"* <sup>12</sup>.

These remarks and this pledge were much welcomed.

### KEY STATISTICS

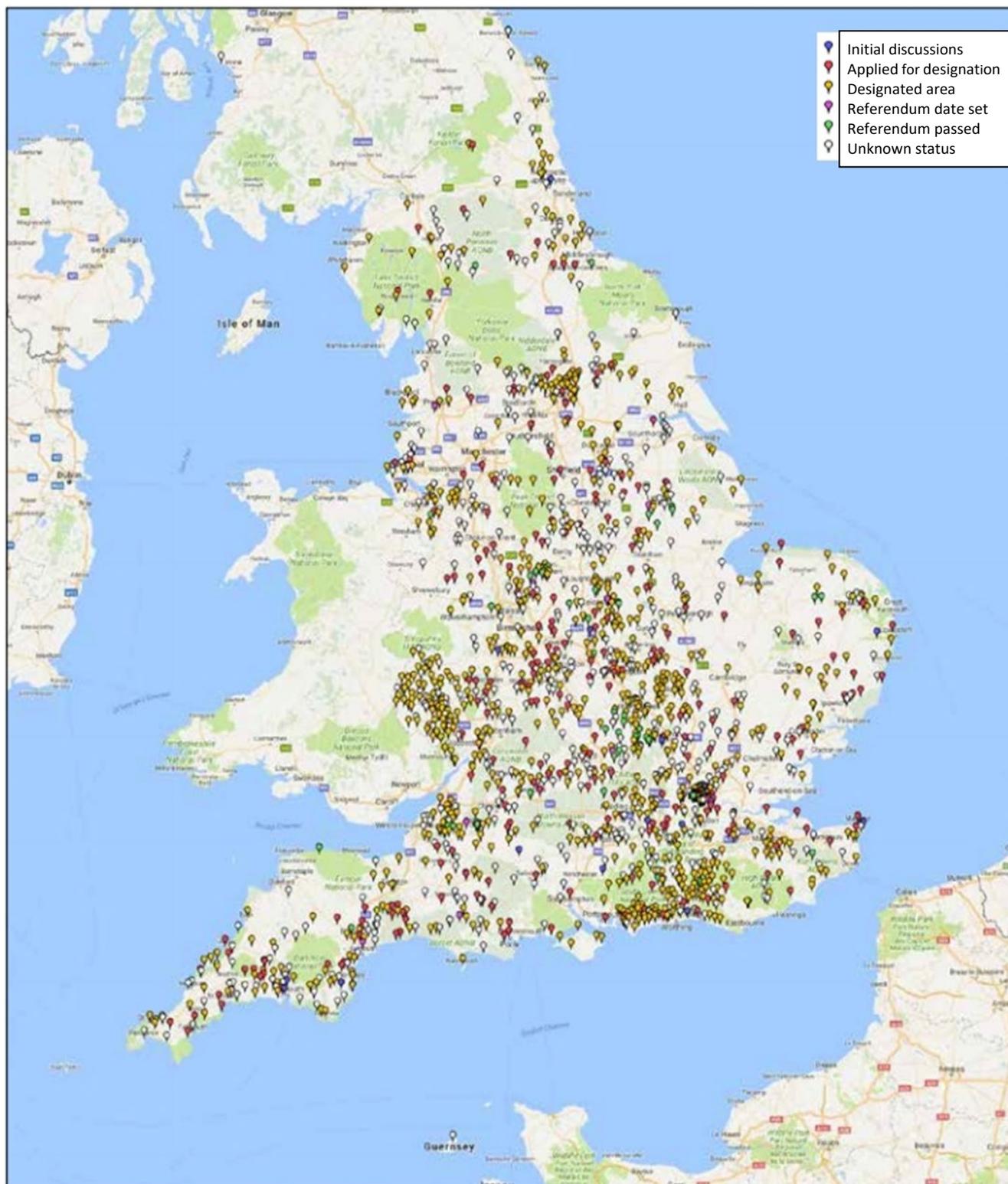
**In March 2018 when housing minister, Dominic Raab, M.P. announced further funding to encourage and assist with the development of neighbourhood plans:**

- **Over 2,300 communities had started the process of neighbourhood planning**
- **530 plans had been approved in local referenda**
- **365 plans had been finalised**

**Source: MHCLG press release, March 2018** <sup>7</sup>

<sup>12</sup> <https://www.gov.uk/government/news/government-commits-to-further-support-for-neighbourhood-planning>

### TCPA map of areas with neighbourhood plans in place or in preparation



Map taken from *'Planning 2020, interim report of the Raynsford review of planning in England'* (fig. 4, page 23) published in May 2018 by the Town & Country Planning Association (TCPA). (Final report expected late 2018)

## EVOLUTION OF THE STATUTORY NEIGHBOURHOOD PLAN

**NOVEMBER 15<sup>TH</sup> 2011** The Localism Act, which introduced the framework for establishing neighbourhood plans and which made either Local Councils or designated neighbourhood forums the leading entities in the process, became law. Neighbourhood plans, having been subjected to the scrutiny of an independent examiner and to a local referendum in which more than 50% of those who voted were in favour of the plan would become part of the statutory development plan. In the same Act, communities were given the 'right to challenge', the 'right to bid' (for assets of community value) and the 'right to build'. Also, the Act required developers to consult communities before submitting planning applications for certain types and sizes of developments. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5959/1896534.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5959/1896534.pdf)

**MARCH 27<sup>TH</sup> 2012** The National Planning Policy Framework was published. This required principal authorities to have a five year supply of housing land plus a 5% buffer and, in areas that had a record of persistent under-delivery of housing, the buffer would be 20%. Whether or not an authority can show that it meets this requirement (without which the presumption in favour of sustainable development comes into play) has consistently been contested in planning appeals. Where principal authorities have been shown not to have the required supply, neighbourhood plans have, more often than not, been over-ruled. <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

**APRIL 6<sup>TH</sup> 2012** Neighbourhood planning general regulations came into force <http://www.legislation.gov.uk/ukxi/2012/637/contents/made>

**MARCH 6<sup>TH</sup> 2014** Planning Practice Guidance for neighbourhood planning was issued which clarified that there was no legal requirement for a neighbourhood plan to have a sustainability appraisal and no automatic requirement for a strategic environmental assessment (but set out tests). It also addressed the allocation of sites in neighbourhood plans vis a vis Local Plan allocations. <http://planningguidance.planningportal.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/>, **FEB 2015** update set time limits for principal authorities to approve NPs. Further updates: **JUL 28<sup>TH</sup> & AUG 10<sup>TH</sup> 2017 & FEB 22<sup>ND</sup> 2018**. <https://www.gov.uk/guidance/neighbourhood-planning--2>

**JULY 10<sup>TH</sup> 2014** A Written Ministerial Statement (WMS) amended the criteria for the recovery of planning appeals by the communities secretary to include proposals for over 10 residential units in areas where a neighbourhood plan had been submitted or was 'made', involving the secretary of state in many more appeal decisions. <https://www.gov.uk/government/speeches/neighbourhood-planning>

**DECEMBER 12<sup>TH</sup> 2016** A WMS affirmed that, of those neighbourhood plans which had included housing figures, there was an average of 10% more houses than the local planning authority had planned for. (Developers have contested this claim). The WMS recognised that neighbourhood plan communities were often frustrated when their principal authority could not meet the 5-year housing land supply requirement and their plans were deemed to be 'out of date'. In cases where neighbourhood plans allocated specific sites for housing, it reduced the housing land supply requirement on the principal authority to 3 years. <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-12-12/HCWS346/>

**APRIL 27<sup>TH</sup> 2017** The Neighbourhood Planning Act received royal assent. It strengthened the obligation on planning authorities to render assistance with the production of neighbourhood plans and gave weight to post-examination NPs in draft form, but not to any other stages, and it introduced processes for modifying plans. Minor modifications that will not materially affect planning applications can be made without an examination or referendum. More substantial changes can adopt a streamlined process and must be examined (but no referendum). Major mods. would need a new plan. <http://www.legislation.gov.uk/ukpga/2017/20/contents/enacted>

**JULY 2018** Following a consultation in **2017** into a methodology for calculating housing need (the MHCLG's response to which is here: <https://www.gov.uk/government/consultations/planning-for-the-right-homes-in-the-right-places-consultation-proposals>) and a consultation early in **2018** into a refreshed NPPF, a revised NPPF was published with significant implications for NPs. (Detailed assessment on p. 61). [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728643/Revised\\_NPPF\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728643/Revised_NPPF_2018.pdf)

## THE EARLY DAYS

The first years of neighbourhood planning showed indications of living up to the government's rhetoric about empowering communities and enabling the people who knew and cared for their neighbourhoods to shape its development. Hundreds of communities – Town and Parish Councils in particular – rushed to take up the new powers offered to them, with over 2,300 neighbourhood plan areas currently designated. Although the process of developing a plan through to being formally 'made' almost universally took longer than anticipated, 'emerging' plans soon started to appear, with enough detail in them to indicate whether or not planning applications would conflict with them.

Where developers appealed against decisions made against them on the basis of either 'made' or 'emerging' neighbourhood plan policies, these policies were frequently upheld and applications that conflicted with them were often rejected. The secretary of state at the (then) Department for Communities and Local Government (DCLG), Eric Pickles, was a staunch supporter of the neighbourhood planning system that he introduced. So much so that, in the early days when developer challenges came forward, he was giving significant weight in his decision-making even to neighbourhood plans which had not reached the examination stage. He also used his discretion to give great weight to neighbourhood plans even when the principal authority could not demonstrate a five year housing land supply, enabling them to play a more significant role in the planning balance.

Developers also challenged many early neighbourhood plans in the courts, pitching some communities and their principal authorities into years of costly, time consuming and energy-sapping legal arguments. In many – though far from all – cases, these early challenges were defeated, with the courts appearing to support the spirit as well as the letter of neighbourhood planning legislation. However, in some cases the courts did rule against neighbourhood plans, enabling appeals to be re-opened or applications re-submitted, with decisions starting to go against neighbourhood plan groups. It is undoubtedly true that some problems have lain with the neighbourhood plans themselves lacking in specificity but the main game changers have been the legal rulings and the stricter application of the housing supply requirement.

This section outlines a series of case studies from the first few years of neighborhood planning, focusing on some of the court rulings and appeal decisions that came to shape the trajectory that neighbourhood planning appeared to be taking, and outlining the beginnings of a shift away from the early promise of neighbourhood planning into a more complicated and highly contested field.

### TATTENHALL

Even before it reached the referendum stage, **TATTENHALL** Neighbourhood Plan found itself the subject of a judicial review. The principal (unitary) authority, Cheshire West and Chester, had decided to put the plan to referendum following an independent examination when three developers stepped forward with a series of challenges. Barratt Homes, Wainwright Development and Taylor Wimpey had each been refused planning permission for three greenfield sites on the edge of the village – for 137, 68 and 110 home developments respectively. All sites were within the development area covered by the Tattenhall Neighbourhood Development Plan. All planning applications were recommended for approval by officers but had been refused by the Council's Planning Committee. (APP/A0665/A/12/2185667, APP/A0665/A/12/2188464 and APP/A0665/A/12/2180958).

The housebuilders objected to the plan on the following grounds:

- failure to comply with the Strategic Environmental Assessment Directive
- failure to meet the basic conditions
- apparent lack of impartiality of the independent examiner
- lack of evidence to support the neighbourhood plan policy on housing and
- the late introduction of a heritage designation (although this was subsequently withdrawn)

A significant part of the objection to the plan was the issue of prematurity because the neighbourhood plan proposed bringing forward policies prior to the Cheshire West and Chester Local Plan being examined and adopted. In fact, what happened was that the local plan went to examination before the judicial review was heard at the high court and the planning inspector pointed out:

*“there is nothing in the legislation to support the contention that such a situation [neighbourhood plan policies being adopted prior to local plan policies] should stop or slow down the progress of a neighbourhood plan”.*

The inspector who conducted the examination in public also noted that one of the benefits of neighbourhood plans was the relative speed with which they could come forward (compared to local plans) and a ‘made’ neighbourhood plan could provide for certainty in areas where there may otherwise be an absence of up-to-date policies.

Subsequently, in the high court (in **MAY 2014**), Mr. Justice Supperstone agreed with the local plan inspector and did not find in favour of any of the appeal grounds. On the ‘basic conditions’ matter he pointed out that the only statutory requirement was that a neighbourhood plan as a whole should be in general conformity with the development plan as a whole. He said:

*“Whether or not there was any tension between one policy in the neighbourhood plan and one element of the eventual emerging Local Plan was not a matter for the examiner to determine”*

He further noted:

*“Whereas a local plan needs to be consistent with national policy, by contrast, the function of an examiner, most importantly, in relation to a neighbourhood plan is to determine whether the plan meets the basic conditions. In that regard, the examiner has a discretion to determine whether or not it is appropriate that the plan shall proceed ‘having regard to’ national policy and guidance and has to make a judgement whether or not the neighbourhood plan ‘is in general conformity with’ the strategic policies contained in the development plan”<sup>13</sup>.*

At referendum the Tattenhall neighbourhood plan drew a 51.86% turnout of the 1,822 eligible voters. Some 905 of them (96%) voted for the plan with 38 against. The plan itself said:

*“large scale inappropriate development along existing village boundaries will not be supported by the community”.* It also had a policy which restricted the scale of individual housing developments to 30 houses.

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<sup>13</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2014/1470.html>

The Tattenhall and District Neighbourhood Plan was adopted on June 4<sup>th</sup> 2014 and the Cheshire West and Chester Local Plan (Part 1) was adopted on January 29<sup>th</sup> 2015. However, it was not until April 2017 that the secretary of state finally rejected the three recovered planning appeals from 2013-15, which dated from planning applications originally lodged in 2012. The appeals were by Taylor Wimpey (for up to 110 dwellings off Chester Road to the west of Tattenhall village), by Barratt Homes (for 68 dwellings off Chester Road) and by Ashley Wall (for up to 137 dwellings at Greenlands). In each case the communities secretary, Savid Javid, disagreed with an inspector's recommendation to approve the applications. (APP 12/02032/OUT, ref. 2180958), APP 12/03825/FUL, ref. 2188464 and APP 12/02352/OUT, ref 2185667).

A key reason for the planning inspectors' recommendations had been a lack of a five year housing land supply. However, in his 2017 ruling, the communities secretary pointed out that there were sites which had not originally been added into the calculations and that others had since come forward. He estimated that, in 2017, Cheshire West and Chester had a 5.25 year housing land supply and he said:

*"Where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted and accordingly the secretary of state gives significant weight to the conflict with the TNDP [Tattenhall Neighbourhood Development Plan]" (para. 40).*

Tattenhall's experience was in part due to it being one of the first communities to reach a near final stage of a neighbourhood plan. As well as their interests in the individual sites, developers may have been looking for a suitable case to test the process more widely. However, the length of time over which the Parish Council, the neighbourhood plan group and their principal authority had to endure the trials and tribulations of legal challenges was unusual – although the case did establish a number of rulings that have applied more widely.

## WINSLOW

The **WINSLOW** Neighbourhood Plan in Aylesbury Vale, Buckinghamshire was another that was held up from being 'made' by legal challenges. Gladman Developments, which had unresolved planning appeals and significant land interest in Winslow, challenged whether it would be unlawful for a neighbourhood plan to come into force in the absence of a district wide strategy. Aylesbury Vale had withdrawn its draft local plan because of concerns expressed by the examination inspector that it had failed to meet the duty to co-operate.

The draft Winslow Neighbourhood Plan proposed the allocation of five sites for 455 new homes over the plan period up to 2031. Gladman argued that the neighbourhood plan effectively acted to restrict growth and was unlawful because it sought to give effect to an emerging local plan that had been withdrawn. The neighbourhood plan examiner decided to postpone his hearing and await the outcome of the Tattenhall case before proceeding.

Once the results were known, they and the planning guidance of March 2014 provided clarity that neighbourhood plans could indeed come forward in advance of local plans. The examination then took place in May 2014 and, following a 98% favourable referendum result, the neighbourhood plan was 'made' on September 10<sup>th</sup>, 2014. However, this was far from the end of what became a series of challenges.

Gladman subsequently submitted a judicial review claim seeking to overturn Aylesbury Vale District Councils' decision to allow the neighbourhood plan to proceed to referendum and to 'make' the plan. On this occasion they objected to policies in the plan to restrict development to within the Winslow settlement area. They also argued that the housing target was not based on an objective assessment of local need.

In a ruling in **DECEMBER 2014** Mr. Justice Lewis dismissed the claims. He said the Council had been fully entitled to refer the neighbourhood plan to referendum and to 'make' it after residents voted in favour of it. He also found that the plan's examiner had complied with both national policy and European Union law and had given sound reasons for recommending the plan for a referendum<sup>14</sup>.

Also, starting during this same period of time and running up to the end of 2017, Gladman submitted three sets of almost identical plans to build 211 homes on Glebe Farm in Winslow, had the applications turned down by two secretaries of state, and took the matter to the high court.

Gladman Developments first applied to build on Glebe Farm to the south west of Winslow in 2013. Following the first refusal, the farm application was recovered by communities secretary Eric Pickles in 2014. Pickles afforded 'very significant weight' to the scheme's conflict with the Winslow Neighbourhood Plan which he noted had made provision for a 35% increase in the number of homes in the town. Gladman challenged the decision, taking it to the high court, but they subsequently dropped both this and their legal challenge to the adoption of the neighbourhood plan in March 2015.

The third proposal, almost unchanged from that recovered by Eric Pickles, was recovered by Savid Javid in 2017. Javid agreed with the findings of an inspector that the scheme would have 'significant and long term adverse effects' on the landscape around the site. On consistency with the development plan, Javid agreed with the findings of his predecessor, Eric Pickles, that it would conflict with the neighbourhood plan (which he also afforded substantial weight to).

On the matter of housing land supply, the inspector had found it to be 4.5 years, which pointed to NPPF paragraph 14 being engaged and the development becoming much more likely to be allowed. But, in another planning decision relating to the same principal authority in the same year, Javid had concluded that it could demonstrate a five year supply of housing land. Having regard to the most up-to-date evidence, he found the supply amounted to at least 5.6 years. He ruled, therefore, in **NOVEMBER 2017**, that the benefits arising from the provision of market and affordable homes would be outweighed by adverse impacts on landscape and conflict with the neighbourhood plan and he dismissed the appeal. (Case ref. 3137920).

## THAME

Another interesting early case saw an emerging neighbourhood plan pitted against an emerging local plan at a local plan examination in public (EiP) and the neighbourhood plan winning the day.

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<sup>14</sup> <http://www.aylesburyvaldc.gov.uk/planning-policy/neighbourhood-planning/winslow-neighbourhood-plan/>

**THAME** Town Council had differing views from South Oxfordshire District Council on the future of the town. The principal authority were proposing an urban extension of 600 houses to the north west of Thame. But, at the EiP in summer 2012, the Town Council argued that it should be up to the neighbourhood plan to decide where development was located. The inspector agreed.

While finding the core strategy sound overall, the inspector removed the contested site allocation, deferring the decision to the neighbourhood plan. The core strategy was adopted in December 2012. The neighbourhood plan, which allocated sites for a total of 775 homes as well as new employment land and new retail space, became part of the development plan in July 2013 following a positive outcome from a referendum in May that year.

## **ROLLESTON ON DOVE**

Communities secretary Eric Pickles refused an appeal in **DECEMBER 2014** for 100 homes on a site that had not been allocated in an emerging neighbourhood plan. The application, by Burton and South Derbyshire College, was for open land on the outskirts of **ROLLESTON ON DOVE**.

East Staffordshire Borough Council refused the application and, although on appeal the inspector had recommended that the development go ahead, Pickles placed a 'very substantial negative weight' on the potential prejudicial effect it would have on the Rolleston on Dove Neighbourhood Plan. (APP P/2012/00636).

However, this was not the end of the matter. Pickles' decision was quashed by the high court in May 2015 and it fell to a successor, Savid Javid, to re-determine the scheme. Javid approved the scheme in **NOVEMBER 2016** after deciding that it would not conflict with the (still emerging) neighbourhood plan or with the East Staffordshire Local Plan Core Strategy which had recently been approved.

Javid noted that the principal authority could demonstrate that it had a five year supply of housing land and that Rolleston on Dove was listed as a 'tier 1 strategic village' in the Local Plan and as such had an allocation for 100 housing units. The neighbourhood plan, which was examined in July 2013, provided for 85 units but the independent examiner had said that that was not necessarily a ceiling.

Following receipt of the examiner's report, the Parish Council had said it would take his comments on board and produce a re-written plan but, at the time Javid considered the matter, the modified neighbourhood plan had still not been put to referendum. Javid did not feel there was conflict with the local plan and he gave significant weight to the contribution to market and affordable housing.

## **MALMSBURY**

In one case Wiltshire Council had refused White Lion Land planning permission for 77 homes on the edge of **MALMSBURY**, within sight of the Cotswolds Area of Outstanding Natural Beauty. The principal authority did not have a five-year housing land supply and the planning inspector who heard the appeal about the case had recommended granting permission (APP N/12/03456/OUT).

However, in a ruling dated **SEPTEMBER 2014**, Eric Pickles took a different view, concluding that releasing the appeal site for housing could result in a significant and demonstrable adverse impact on the outcomes of the core strategy and the Malmsbury Neighbourhood Plan which was nearing examination. (The neighbourhood plan had proposed 270 homes up to 2026, but none on the appeal site – which ranked bottom of a list of 25 potential sites for housing in the neighbourhood plan assessment). The neighbourhood plan subsequently passed a successful referendum with 90% voting in favour.

## **HURSTPIERPOINT & SAYERS COMMON**

Also in **SEPTEMBER 2014**, Eric Pickles agreed with an inspector that an appeal by Thakenham Homes (Southern) should be refused. This was the second application by the same developers for the same site. A previous one for 93 homes had been refused (ref. 12/03972). This application for 81 homes on land off College Lane, **HURSTPIERPOINT** had been recommended for refusal by officers but Mid Sussex District Council's South West Area Planning Committee resolved that planning permission should be granted. However, prior to the issue of a formal decision, the Secretary of State had called in the application for determination. (APP/13/01250/FUL, ref. D3830/V/14/2211499).

The Communities Secretary agreed with the inspector that although the site lay in open countryside where development would be contrary to the relevant policies of the development plan, the principal authority had a substantial shortfall in its supply of housing land. This would imply that the NPPF's presumption in favour of sustainable development should be applied. However, in this case, both agreed that the development would undermine the purposes of the Local Gap – and the importance of this local landscape designation had been re-enforced in the emerging neighbourhood plan.

At the time of the secretary of state's decision, the Hurstpierpoint and Sayers Common Neighbourhood Plan had been submitted for examination. The secretary of state said he considered it appropriate (as stated on the Written Ministerial Statement of July 10<sup>th</sup> 2014) to give local people an opportunity to ensure they get the right type of development for their community.

At the same time, there was another case which applied to the same (Hurstpierpoint and Sayers Common) plan which was also ruled upon by Eric Pickles and in which he again gave precedence to the neighbourhood plan. It related to an appeal by Woodcock Holdings for 120 houses, a community facility, office space, a care home and retail units to be built on the edge of **SAYERS COMMON, SUSSEX**. In this case the inspector recommended that the appeal should be allowed. The secretary of state disagreed based on the proposal's conflict with, and its prematurity to, the emerging neighbourhood plan. (APP/12/01540/OUT). This decision was made despite Mid Sussex District Council, (with its lack of a five year housing land supply), dropping its objection at the appeal.

Instead the communities secretary – who accepted the developer's locational and economic arguments – backed the Parish Council case, based on their draft neighbourhood plan, which had allocated the site for development – but only for 30 to 40 homes. Also, by the time the communities secretary dealt with the case, the plan was at a later stage and had been submitted for examination.

However, the decision was overturned by the high court in early 2015. It decreed that the secretary of state had placed too much emphasis on an emerging neighbourhood plan.

Mr. Justice Holgate concluded that the presumption in favour of sustainable development (para. 14) and the requirement for a five year housing supply (para. 49) in the National Planning Policy Framework (NPPF) applied to housing supply policies in a draft development plan – including a neighbourhood plan. This means that where the principal authority cannot show a five year supply of housing land, policies relating to the supply of housing should be considered ‘out of date’ and the presumption in favour of sustainable development should be triggered, making it very much easier for speculative development outside of allocated sites to gain planning permission. Consequently, these should have been applied when assessing the weight to be given to the policies in the emerging neighbourhood plan.

After Pickles’ decision was quashed by the high court, his successor, Greg Clark, recovered the proposal for a second time in 2016, again refusing permission against the advice of his inspector. This decision was also quashed in the high court, leading to communities secretary Savid Javid recovering the appeal for a third time. (Ref. 2189451RD). In his decision letter Javid noted that, since the previous decision by Mid Sussex District Council, they had granted permission for 40 homes plus a care home on part of the appeal site – establishing the principle of housing development on the site. This, despite the neighbourhood plan restricting the type of development suitable in the countryside and housing not being identified as a permissible land use.

Assessing the present state of play on the Council’s housing position at the end of 2017, Javid noted that the Council had published a document entitled ‘*Consideration of options to strengthen the five-year housing supply*’ in support of the examination process for the emerging Mid Sussex District Plan. Although this document indicated a 5.2 years supply of housing land, Javid ruled that the housing position must be considered to be unresolved until the examining inspector had submitted his report on the Local Plan. In the light of this he engaged the titled balance in the NPPF, paragraph 14. In the planning balance Javid found that although the scheme would not accord with the development plan it would supply housing in an area with a continued supply shortfall. Considering this to outweigh the “*less than substantial*” harm he found to a nearby listed building, he made a decision to allow the scheme in **DECEMBER 2017**.

This legal judgement had a serious impact on how emerging neighbourhood plans were subsequently regarded and began to throw into stark relief the fact that there is a conflict between the government’s support for neighbourhood plans and their overarching national policy set out in the NPPF. The operation of neighbourhood planning is intended to give communities more control over development. The operation of the NPPF, and in particular the circumstances under which the presumption in favour of sustainable development is triggered, has the opposite effect. That said, there have also, since, been further cases where substantial weight has been given to out-of-date policies. In other words, outcomes have remained unpredictable and very much at the discretion of the decision-makers. The final decision in this case took five years and three secretaries of state before being resolved and, unlike the Tattenhall case, did not result in an outcome that the local community wanted to see.

## DEVIZES

Before the first Sayers Common high court judgement was made, Eric Pickles initially refused yet another appeal he had recovered because of an emerging neighbourhood plan.

An inspector had recommended that the appeal by MacTaggart and Mickel for 350 dwellings and a local retail centre on land off Coute Road and Windsor Drive at **DEVIZES** in Wiltshire should be allowed. (APP E/2013/0083/OUT). The secretary of state agreed with the inspector that Wiltshire Council did not have a five year housing land supply but he disagreed with him on the weight that should be given to the Devizes Area Neighbourhood Plan.

Although it was still at the pre-examination stage, Eric Pickles ruled that it should be given precedence. However, when the developer took a judicial review over the case to the high court, the secretary of state decided not to fight it. (At around the same time Eric Pickles decided not to contest a high court challenge to his decision not to allow 100 homes in Staffordshire on the basis that the proposals would 'undermine' an emerging neighbourhood plan).

As far as 'made' and emerging neighbourhood plans were concerned, there was much staunch support for them in government and in court judgements in the early days – even when the principal authority did not have the requisite supply of housing land. Researchers noted that, in a series of legal judgments, the courts took a generous approach towards neighbourhood plans, which appeared to indicate that the courts were attempting to interpret the law in a way that maximised the power of neighbourhood planning groups to make decisions, and to minimise the ability of traditionally more powerful actors to use their more substantial resources to over-rule them through judicial review<sup>1</sup>

## **BROUGHTON ASTLEY**

Harborough Council did not have a five year housing land supply when developers appealed against a decision it had made in August 2012 to refuse planning permission for 111 houses and sports facilities off Crowfoot Way in **BROUGHTON ASTLEY, LEICESTERSHIRE** where there was an adopted neighbourhood plan (APP/12/04597/OUT).

The planning inspector recommended that the appeal should be allowed but communities secretary, Eric Pickles, disagreed in his decision letter of April 2014, citing conflict with the neighbourhood plan which he said '*significantly and demonstrably*' outweighed the benefits of the development. The developers took the case to the high court but lost with the judge ruling that '*significant weight*' should be given to development plan policies, including neighbourhood plans (REF. 2183653).

## **EARLS BARTON**

In a case in **EARLS BARTON, NORTHAMPTONSHIRE in March 2015** (APP/H2835/A/14/2213617), housebuilders J. M. Beatty, I. S. Clark and Redrow Homes South Midlands had appealed against a decision by Wellingborough Borough Council to refuse permission for 85 dwellings on land at Station Road (ref.. WP/2013/0457/OM).

The planning inspector had recommended that the appeal be allowed. However, the Secretary of State, Eric Pickles, disagreed with the inspector's conclusions in his decision letter of March 19, 2015.

Although the communities secretary agreed with the inspector that the principal authority could not demonstrate that it had a five-year housing land supply, he pointed out that the proposed development would conflict to “a significant degree” with the provisions of the emerging Earls Barton Neighbourhood Plan. It would be in an area to be classed as ‘open countryside’ outside the village boundary. This was despite the fact that the neighbourhood plan had not been examined (that was due to happen later the same year) or put to referendum and was not part of the development plan. (It was not adopted by Wellingborough B.C. until January 2016).

In his decision letter he said:

*“... as the inspector recognises, there would be clear conflict with the terms and intentions of the emerging Neighbourhood Plan, which would be undermined in terms of the spatial pattern of development hoped for by the community (IR204). The secretary of state takes the view that it is appropriate to give significant weight to the conflict with the emerging Neighbourhood Plan” (para. 12).*

The original decision by Eric Pickles was quashed by the high court in November 2015, and reconsidered, but it was upheld in December 2016 (with the same case reference) where the then secretary of state, Greg Clark, again noted that:

*“the appeal proposal would be in significant conflict with [neighbourhood plan] Policy EB.GD2 which aims to restrict development to within the village boundary shown on the Neighbourhood Plan Key Diagram, other than in the limited circumstances set out in that policy which are not met in this case” (para. 21).*

And which, together with local plan policies, meant that:

*“the proposal conflicts with the development plan overall” (para. 22).*



## A TURNING TIDE IN AN INCREASINGLY COMPLEX ENVIRONMENT

After those earlier, somewhat euphoric, days when it looked as though local decisions embodied in neighbourhood plans would, more often than not, win the day against developer challenges, the tide began to turn as a result of legal rulings, changes to the planning regulations, stricter adherence to the housing land supply requirement by inspectors and secretaries of state and, interestingly, also – it would appear – due to different approaches by the post holder of secretary of state.

Planning consultancy Nathaniel Lichfield and Partners produced a report in July 2016 called '*Neighbourhood Plans: In Theory, in Practice and in the Future*'. It showed that, after the 2015 general election and the introduction of temporary recovery powers by the communities secretary, there was a dramatic increase in the number of new home permissions that were granted on appeal in neighbourhood plan areas<sup>15</sup>.

Using his recovery powers, communities secretary Greg Clark (who was appointed on May 11<sup>th</sup> 2015) approved 2,214 more homes in neighbourhood plan areas than his predecessor, Eric Pickles. Pickles approved 19% of appeals by developers against neighbourhood plans, representing a total of 316 homes. Clark approved 80% of appeals, representing 2,530 new homes in neighbourhood plan areas, and re-examined some cases that his predecessor had dealt with and, in some instances, dealt with them differently or did not choose to continue with legal cases.

However, the key point is that legal arguments around neighbourhood plans were by then already becoming increasingly convoluted. The article on the following page was published on their website by law firm Pinsent Masons in May 2016. It features three planning cases that crossed over the terms of office of Eric Pickles and Greg Clark – one where an emerging neighbourhood plan was used as an argument for dismissing a developer's appeal, one where the government withdrew from a developer's challenge in the high court when it had originally been proposing to support an emerging neighbourhood plan and another where a developer had been given leave to take a case to the Court of Appeal based primarily on arguments around out of date local plans vis a vis neighbourhood plans<sup>16</sup>.

A Pinsett Mason planning expert concludes by stressing the need for neighbourhood plans to have a robust evidence base and describes neighbourhood plans as 'important' and 'complex'.

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<sup>15</sup> <https://www.planningportal.co.uk/news/article/337/rise-in-new-home-approvals-in-neighbourhood-plan-areas>

<sup>16</sup> <https://www.out-law.com/en/articles/2016/may/clark-dismisses-appeal-for-development-in-neighbourhood-planning-area-as-two-earlier-decisions-are-challenged/>



May 5th 2016

## Clark dismisses appeal for development in neighbourhood planning area as two earlier decisions are challenged

Communities secretary Greg Clark has dismissed a developer's appeal and refused permission for a 120-home scheme in a West Sussex village with an emerging neighbourhood plan. 05 May 2016. The decision comes shortly after the government decided not to contest a challenge to Clark's refusal of permission for a scheme in a Gloucestershire neighbourhood planning area and the Court of Appeal agreed to hear a challenge to an East Sussex neighbourhood plan.

Developer Sunley Estates Ltd was refused permission in December 2014 to build 120 homes, shops, sports facilities, a community centre and public open space on two fields outside the development boundary of the village of Hambrook. The developer's subsequent appeal was recovered by the communities secretary because it involved more than 10 homes in an area with an emerging neighbourhood plan.

Chichester District Council adopted a local plan in July 2015, allocating 'service villages' including Hambrook as being suitable for "small scale housing developments" and stating an indicative need for 25 new dwellings in the parish of Chidham and Hambrook. By the time a planning inspector heard the developer's appeal, the identified housing need had already been met and exceeded, with planning permissions granted for an additional 86 houses. A [decision letter](#) (52-page / 476 KB PDF) on behalf of the communities secretary said allowing the proposed development of 120 homes would not be in accordance with the local development plan. The Council was able to demonstrate a five-year supply of land for housing development and Clark gave substantial weight to conflict with policies setting the settlement hierarchy and requiring developments to be in keeping with local character.

The communities secretary said granting planning permission would also "be at odds with the shared neighbourhood planning vision" in the emerging Chidham and Hambrook Neighbourhood Plan (NP). By the time of Clark's decision, the NP had been examined and recommended for referendum, subject to modifications. The NP did not allocate any sites for housing other than those which already had planning permission. Clark gave moderate weight to the conflict with the NP and said granting permission for the scheme would "fundamentally undermine confidence in the neighbourhood planning process".

The decision came just days after the government decided to consent to judgment in a High Court challenge against Clark's decision in December to refuse permission for a 200-home scheme in the Gloucestershire town of Lydney. Developer Allaston Developments Ltd had been given permission to argue in the High Court that Clark failed properly to assess the emerging Lydney Neighbourhood Plan and the emerging Allocations Publication Plan. The developer said Clark should have considered the stage of preparation of both plans; the extent of unresolved objections; and the plans' consistency with the National Planning Policy Framework before deciding how much weight to give them in the planning balance. The developer also argued that the benefits of the proposal had not been properly assessed.

A further challenge to a neighbourhood planning decision from the communities secretary has been given permission to proceed to the Court of Appeal. The [Newick Neighbourhood Development Plan](#) (NNDP) (36-page / 4.4 MB PDF) makes allocations for housing development in the East Sussex village of Newick up to 2030. Developer DLA Delivery argues that the NNDP should not be allowed to determine the number or location of new homes in the absence of an up to date local plan.

The developer has said the NNDP proceeded on the basis of its general conformity with the 2003 Lewes District Plan, which only dealt with housing needs up to 2011 and was based on evidence that is now out of date. It argues that the 'general conformity' requirement in the National Planning Policy Framework is intended to ensure local planning documents have proper regard to local development needs: with matters not fully addressed in a neighbourhood plan, such as the objectively assessed housing need, being accounted for by its alignment with an up to date local plan dealing with those matters. The developer has also been granted leave to argue that plan making authorities should not be allowed to choose which Examiner considers their neighbourhood development plan and to argue six grounds mostly relating to the application of European law.

Planning expert Jamie Lockerbie of Pinsent Masons, the law firm behind Out-Law.com said: "These decisions demonstrate the importance and complexity of neighbourhood planning. Developers with sites in areas that are subject to neighbourhood plans, whether adopted or emerging, should pay careful attention to the relevant plan and its policies. Case law has established that a neighbourhood plan can come forward ahead of an up to date local plan and it can contain strategic policies such as site allocations, however, in either case the plan must have a sufficiently robust evidence base in support and this is frequently where neighbourhood planning groups come unstuck."

## A TURNING TIDE IN AN INCREASINGLY COMPLEX ENVIRONMENT (CONTINUED)

All this has led to a growing field of complexity and uncertainty around neighbourhood planning. An irony of this growing complexity is that a key reason for establishing neighbourhood planning was to give ordinary members of the public a foothold in the planning system, which most of them perceive as difficult to understand, get involved with, and to influence.

Over a decade ago Baker, Coaffee and Sherriff wrote of how non-expert participants in the system found it “*complex, remote, hard to understand, difficult to engage with, slow and unpredictable and generally not ‘customer friendly’*”<sup>17</sup>: precisely what the government intended to change through neighbourhood planning, with its promise of giving communities direct power to shape their neighbourhoods. Yet – as the case studies in this report show – since its establishment, neighbourhood planning has become increasingly complex and unpredictable.

Another contrary development has been the gradual weakening of local voices, in part due to some rules and regulations not being as tightly framed as they might have been; changing rules and regulations; and the extensive use of litigation by developers. Yet the prime purpose of establishing neighbourhood planning was to empower local communities. In a parliamentary debate on the Localism Bill in 2011, Alok Sharma, MP, the then planning minister said:

*“The problem with the current planning system is that it is not seen to be fair to local communities. It seeks to drown out their voices rather than to amplify them. Despite the clear wishes of local communities and local councils, the local view is that developers eventually ram through inappropriate development appeal...Overall, the current planning system seems to lead to a gladiatorial contest, pitting local residents against the might and resources of developers”.* (Hansard, Localism Bill, Vol 521, Col 629, 17 Jan., 2011).

Local communities like Tattenhall in Cheshire West & Chester, (a unitary authority), Winslow in Buckinghamshire, Yapton in West Sussex and Farnham in Surrey, that have engaged in ‘*gladiatorial contests*’ with developers over their neighbourhood plans since then – some with positive outcomes and some with negative ones - could well be forgiven for asking ‘What has changed?’

Organisations such as the National Association of Local Councils (NALC), Action with Communities in Rural England (ACRE) and the Campaign to Protect Rural England (CPRE) whose members engage with neighbourhood plans have increasingly been receiving feedback from communities which have followed the neighbourhood plan procedures in good faith, only to find themselves being dragged through legal challenges. Some have been well supported by their principal authorities, some have not. Some have won against powerful opposition from developers’ legal teams but our study of planning appeal cases has shown that growing numbers are not winning the unequal battles they find themselves fighting. Now the renewed NPPF appears to have placed yet more hurdles in the path of neighbourhood planning groups and the Local Councils and Neighbourhood Fora behind them (see page 61 of this report for more detail).

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<sup>17</sup> BAKER, M., COAFFEE, J. & SHERRIFF, G. 2007 ‘Achieving successful participation in the new UK spatial planning system’. Planning Practice & Research, 22: p.80

Neighbourhood planning groups have been subjected to criticism from bodies such as Lichfields planning consultants who questioned the value of their plans in *'Local Choices? Housing Delivery Through Neighbourhood Plans'* in May this year, pointing out that 60% of the 330 plans they analysed made no allocations for housing, and of those that did, they were rarely 'new' and communities were using the plans to focus on issues like green spaces and infrastructure provision. But they did find a 3.5% uplift in housing numbers<sup>4</sup>.

It is not known how Lichfields selected their sample group but it is worth flagging a nationwide analysis exercise conducted for Cheshire East Borough Council that produced statistics up to earlier this year, though it did not look at how many allocated houses were 'new'<sup>18</sup>. (See next two pages).

Following the Cheshire East infographics, we provide a series of case studies intended to illustrate: some of the complexities in the system, the often unpredictable outcomes and the key factors likely to determine how much weight a neighbourhood plan might receive at an appeal, and to emphasise that in an increasing number of cases, other policy considerations act on the appeal process in such a way as to reduce or eliminate the weight that is given to neighbourhood plan policies.

The most significant of these factors is whether or not the principal authority can demonstrate a five year supply of housing land (or, where neighbourhood plans allocate housing sites, a three year supply). Given the dominance of this issue across all planning appeal decisions in the past six years, and particularly those involving neighbourhood plans, we have primarily organised our case studies into sub-sections based on the five year supply position that pertained for each one. However, we must emphasise that all the factors that have an impact on the weight that can be given to neighbourhood plan policies interact with each other; while the five year supply position is often the driving concern, it does not operate in isolation from other issues.

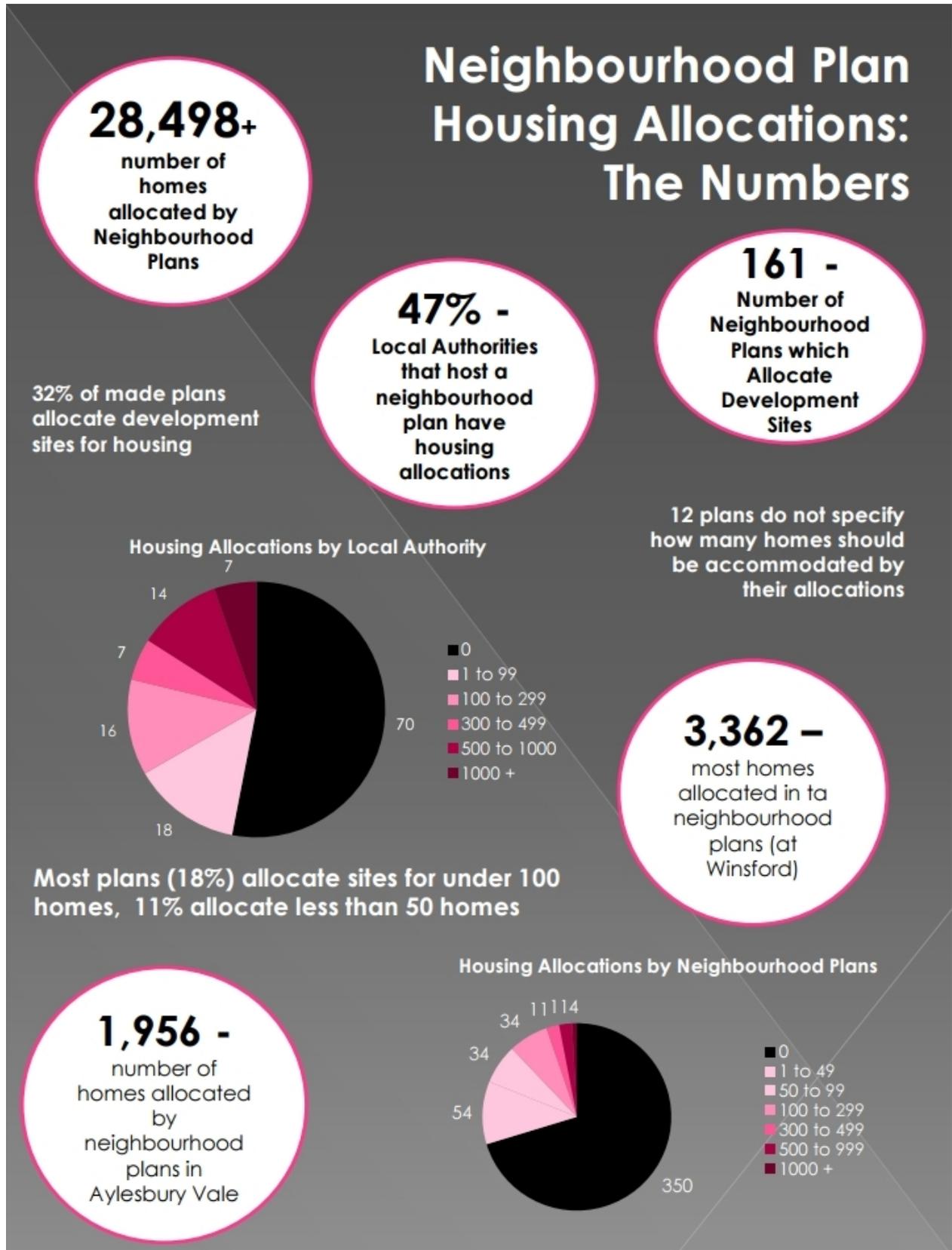
Another key consideration is whether the neighbourhood plan has been formally 'made' and, as a consequence, has become a statutory part of the development plan, or whether it is still 'emerging'. This is crucial – neighbourhood plans are taking up to five years to produce, far longer than originally anticipated. Of the more than 2,300 places designated as neighbourhood planning areas, approximately only 20% actually have a made plan in place – the rest are still in the process of plan preparation, consultation, examination and modification. The amount of time, effort and other community resources that have gone into these plans also needs to be recognised when appeal decisions are taken, and plans are increasingly being disregarded entirely for not being sufficiently advanced.

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<sup>18</sup> <https://www.cheshireeast.gov.uk/pdf/planning/neighbourhood-plan/np-housing-allocations-infographic-july-2018.pdf>

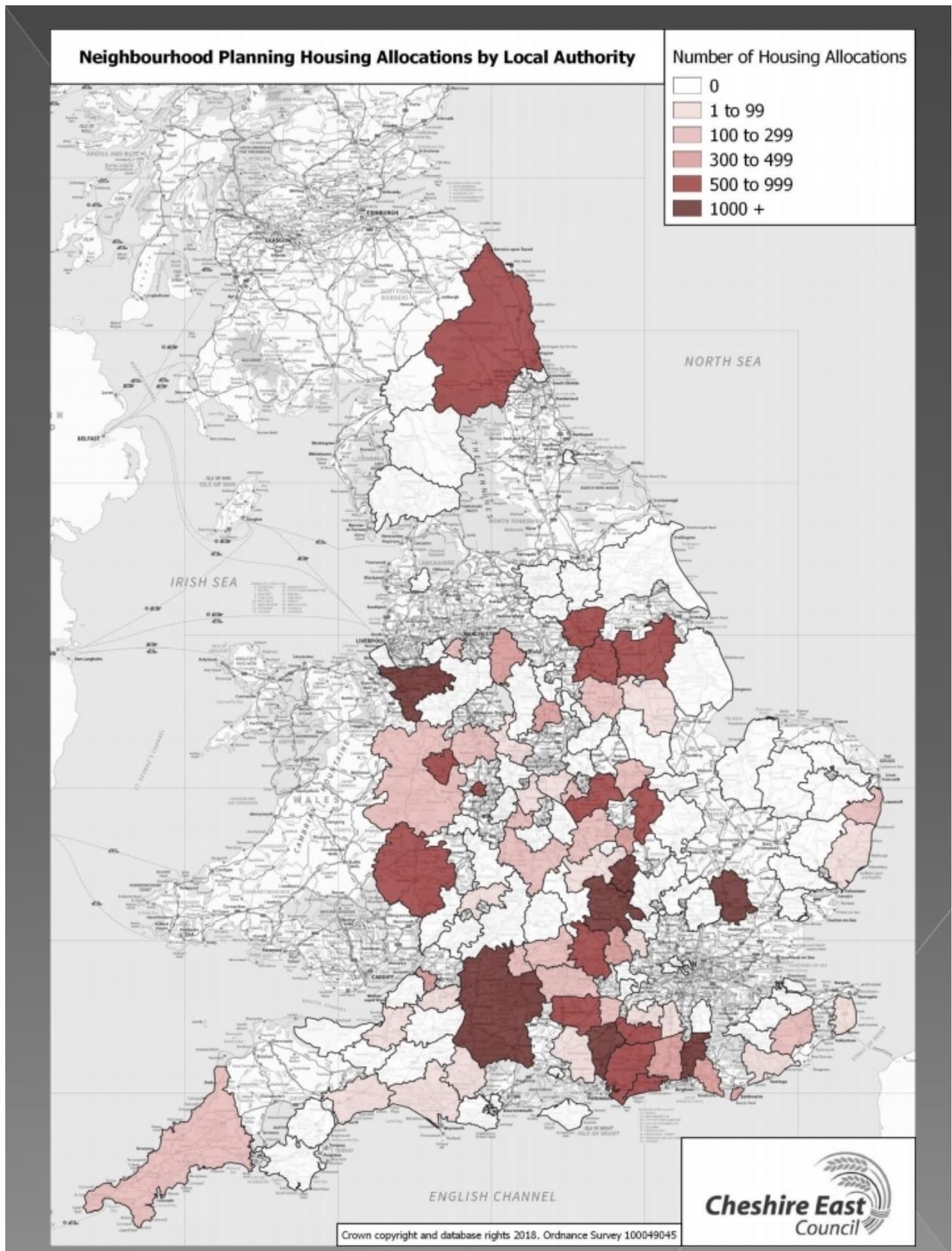
**NATIONWIDE REVIEW OF NEIGHBOURHOOD PLANS & SITE ALLOCATIONS**

Part 1 – by Cheshire East Borough Council, published April 2018



## NATIONWIDE REVIEW OF NEIGHBOURHOOD PLANS & SITE ALLOCATIONS

Part 2 - by Cheshire East Borough Council, published April 2018



## CASE STUDIES

### ON PREMATURITY

Given the relatively small geographical scale of neighbourhood plans, planning applications that are approved while a plan is in preparation can easily undermine the entire strategy and purpose of the plan. This section of the report features two case studies where the secretary of state decided that appeals should be rejected because their approval would substantially undermine a neighbourhood plan in progress, and that the decisions that would be pre-empted by allowing the appeals should by right be made through the plan-making process. It also contains an example of where both a Local Plan and a neighbourhood plan were at advanced stages but were afforded very little weight and were consequently over-ruled, substantially undermining the neighbourhood plan.

Provisions in the new NPPF (see page 61 of this report) will make it harder for decision-takers to reject applications on the grounds of prematurity in most instances, although it does afford weight to NPs at the draft plan stage (see box on next page) and that is to be welcomed. But, even before these revisions take effect, it is clear from case studies in this report that there has been much inconsistency to date in the weight and analytical thinking that that has been given to emerging plans.

#### RENDELESHAM

In **FEBRUARY 2015**, the secretary of state upheld a recommendation by an inspector to refuse an appeal by Walnut Tree Properties against Suffolk Coastal District Council because of its failure to make a decision within the prescribed period on an application to demolish a former sports centre and theatre buildings and build 49 houses across the sites in **RENDELESHAM**. (APP C/12/2408). He also agreed with the inspector on the issue of prematurity. The inspector's report said:

*“The proposal would significantly undermine the objectives and strategy of the emerging RNP [Rendlesham Neighbourhood Plan] and in particular policy RNPP1.*

*Given this, there is sufficient evidence to conclude that the proposal would be so substantial in terms of its implications for the emerging RNP that it would significantly undermine the plan-making process by predetermining decisions on the type and location of development within the District Centre of Rendlesham, which is central to its aims, objectives and strategy”. (Paragraphs 120 & 121).*

Consequently, the inspector concluded in paragraph 122 that:

*“the proposal [ie. the planning application] is premature to the emerging RNP and the proposed development runs contrary to paragraph 69 and 70 of the Framework and Policies SP1 and SP27 of the CS and DM Policies. These matters attract significant weight against the proposal”.*

So, in this instance, a neighbourhood plan was allowed to carry significant weight in an appeal decision precisely because it was ‘emerging’, albeit at a relatively advanced stage (with the draft plan submitted to the principal authority).

## SEDLESCOMBE

Similarly, in **MARCH 2015**, the Secretary of State agreed with his inspector about the prematurity of granting permission for 18 houses in **SEDLESCOMBE**, East Sussex on the basis that to do so would:

*“undermine the neighbourhood planning process by pre-determining decisions about the location of housing development that are central to an emerging plan”.*  
(APP/U1430/A/14/2219706)

## ASHBY-DE-LA-ZOUCH

An indication of how thinking and attitudes started to change after those two earlier examples is evident in the handling of an appeal case just months later prompted by Money Hill Consortium against a decision by North West Leicestershire District Council to refuse planning permission for 605 homes including a 60-unit care centre, a primary school, nursery school, health centre and community hall at **ASHBY-DE-LA-ZOUCH**, Leicestershire. The appeal was called in by communities secretary Greg Clark who agreed with an inspector that planning permission should be granted – despite the fact that consultation had taken place and closed on both the draft Local Plan and the draft neighbourhood plan. Neither were afforded much weight. (APP/LW/14703, ref. G243/A/14/2228806).

The principal authority, which had a five year supply of housing land, had refused the application on four grounds which were not upheld. Clark ruled that the scheme (the first part of a development of 1,800 dwellings which would constitute an increase of 36% in the size of the town) represented a sustainable and beneficial development. The inspector pointed out that the development would be within walking and cycling distance of local amenities. Clark pointed out that the development would provide 182 affordable homes (30%) and concluded that it would not place an unacceptable burden on local infrastructure. He ruled in favour of the appeal in **FEBRUARY 2016**.

The draft plan stage of preparation was judged to be an advanced stage in Rendlesham’s case. In the case of Ashby-de-la-Zouch it was considered to be too early a stage to afford it any weight.

### **NPPF JULY 2018, paragraphs 49 and 50**

**“Arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both**

- a) The development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging plan, and**
- b) The emerging plan is at an advanced stage but not yet formally part of the development plan for the area**

**Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination – or in the case of a neighbourhood plan – before the end of the Local Planning Authority publicity period on the draft plan. Where planning permission is refused on the grounds of prematurity, the Local Planning Authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process”.**

## WHERE THE 5-YEAR HOUSING LAND REQUIREMENT WAS OUTWEIGHED

As illustrated earlier in this report, the communities secretary who introduced the five-year requirement for easily deliverable housing land was inclined to give great weight to neighbourhood plan policies to the extent that, even when there was not a five year supply in place, neighbourhood plan policies could often prevail at appeals. However, legal precedents have been gradually established which make it more difficult for the secretary of state to exercise his discretion in deciding whether to place greater weight on the absence of a five year housing land supply or on the presence of neighbourhood plan policies. Later examples of neighbourhood plans prevailing in such situations are less common, but do exist.

### **BARTESTREE**

In **OCTOBER 2016** the secretary of state agreed with an inspector's recommendation to dismiss an appeal by Gladman Developments against Herefordshire Council's refusal to grant permission for 100 houses on land at Longworth Lane, Bartestree. (APP/W1850/W/15/3051153, ref. 143771). The decision rested mainly on the emerging Bartestree with Lugwardine Neighbourhood Plan and environmental arguments which, together, outweighed the fact that the principal authority could only demonstrate a housing land supply of 3.63 years.

The examiner's report on the neighbourhood plan, which excluded the appeal site, became available after the appeal hearing and was admitted as evidence, prompting the following:

*"The secretary of state gives further significant weight to the conflict with the emerging BLNDP [Bartestree with Lugwardine Neighbourhood Development Plan] which is at an advanced stage". (Paragraph 42).*

However, this case is also interesting because it would appear that the social role of sustainable development was a factor in the decision-making with weight given to the ability of a community to shape their area through neighbourhood planning. The decision letter from the communities secretary said:

*"The secretary of state has also had regard to the fact that the appeal scheme would run counter to the expressed wishes of the local community as set out in the emerging BLNDP (IR462) and would be at odds with one of the Framework's core principles that planning should be genuinely plan-led, empowering local people to shape their surroundings (IR463) ... he concurs with the inspector's overall conclusions that the social benefits would not outweigh the disbenefits and therefore the proposed development would fail to satisfy the social role of sustainable development". (Paragraph 35).*

## WHERE THE 5-YEAR HOUSING LAND REQUIREMENT WAS IN THE BALANCE

This section looks at case studies where the five year housing land supply position was marginal, or uncertain, or where there were improvements in the position between the appeal being heard and the final decision being taken. It starts with two examples where the neighbourhood plan policies prevailed in such conditions, followed by two examples where they were over-ruled.

### HAMBROOK

A neighbourhood plan which had passed its examination stage at the time the secretary of state considered a planning appeal was very influential in his decision to refuse the appeal. (APP/L3815/W/15/3004052, ref. CH/14/02138/OUT). Communities secretary Greg Clark agreed with an inspector who recommended refusal for a 120 home scheme proposed by Sunley Estates at **HAMBROOK** in West Sussex in **APRIL 2016**. The appeal site lay outside the defined settlement boundary shown in both the Chidham and Hambrook Neighbourhood Plan and in the Chichester District Local Plan which was up-to-date, having been adopted in July 2015.

Chichester District Council's ability to demonstrate a five-year supply of housing land was marginal (paragraph 13) but Clark agreed with the principal authority that there would be a 'high level of change' to the landscape if the development were allowed and he said the location of the scheme would undermine the emerging neighbourhood plan. The decision letter said:

*"The secretary of state agrees with the inspector that granting permission would be at odds with the shared neighbourhood planning vision referred to in paragraph 183 of the Framework; and that it would fundamentally undermine confidence in the neighbourhood planning process that had taken place to date. Indeed the secretary of state gives even greater weight to this in view of the further progress which has been made on the CHNP [Chidham and Hambrook Neighbourhood Plan] since the close of the appeal inquiry"* (Paragraph 15).

### KINETON

A neighbourhood plan which had passed its referendum was a key factor in a decision in **OCTOBER 2016** by the secretary of state, Savid Javid, to refuse a planning appeal in **KINETON** in Warwickshire, although substantial weight was also placed on conflict with the newly adopted Stratford-on-Avon Core Strategy. Neither plan had identified the appeal site for housing. The principal authority had yet to finally prove it had a five-year supply of housing land but the secretary of state agreed with the inspector that *"the Council are approaching the identification of a 5-year housing land supply along the right lines"*. (Paragraph 16).

Sherba Homes had appealed against Stratford-on-Avon's decision to refuse permission for it to build 90 dwellings to the west of Walton Farm. A planning inspector had recommended that the appeal should be turned down and the communities secretary agreed with him. (APP/J3720/W/15/3132123, ref. 14/03602/OUT). He acknowledged the benefits of the proposed housing provision, 35% of which would be affordable, but he concluded that this was outweighed by the *"permanent and prominent environmental damage"* to the character of the countryside and the settlement. (Paragraph 20).

## WARMINSTER

In **JULY 2017** Savid Javid, secretary of state, supported an inspector's recommendation to approve a development of 35 custom-built homes in **WARMINSTER**, Wiltshire in spite of the fact that the housing land supply situation had improved sufficiently to meet NPPF requirements since the inquiry was held and despite the fact that the neighbourhood plan had been 'made' in the interim.

HPH and Hab Housing Ltd had appealed against a decision by Wiltshire Council to refuse permission for the homes at Boreham Road. (APP/Y3940/W/16/3150774, ref. 13/06782/OUT). At the time the appeal hearing took place, the principal authority did not have a five-year housing land supply and the Warminster Neighbourhood Plan was going to referendum. But, by the time the secretary of state ruled on the case, Wiltshire Council had updated the land supply figure to 5.73 years – one which the secretary of state considered to be robust – and the neighbourhood plan had been adopted.

The appeal site was outside the development limits of Warminster and the neighbourhood plan had made no changes to the development limits but nor had it made any specific reference to the appeal site – although it did contain Policy E5 which says that new developments should respect local character and the provision of green spaces that enhance its settings.<sup>19</sup>

The inspector did not accept the argument that the proposed development would be detrimental to the character and appearance of the area and considered these points to be 'neutral' on the planning balance. The secretary of state agreed. Javid considered that the proposal would have a number of housing benefits including contributing to the supply of housing, providing 30% affordable housing (10), much needed custom-build homes and bringing economic benefits after the construction phase. The communities secretary was of the opinion that the development would be reasonably located with access to the town centre and did not accept that the scheme would lead to coalescence between Warminster and Bishopstrow. He therefore granted permission for the development to go ahead.



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<sup>19</sup> This treatment of sites unallocated in neighbourhood plans contrasts markedly with other appeal decisions, eg. in Buckingham and Scothern, (pages 57 and 58 of this report), which adopted the logic that if a site is not allocated for development in a 'made' plan, it is reasonable to conclude that the plan does not support development on that site.

## ASFORDBY

In **MAY 2018** an inspector approved a scheme for 70 homes near **ASFORDBY** in Leicestershire – three months after the high court quashed the village’s neighbourhood plan, leading the communities secretary (Savid Javid) to reverse his recovery appeal decision. The appeal was by Jelson Homes against Melton Borough Council and applied to a site which adjoined one where they already held full planning permission for 100 homes. (APP/Y2430/3167407, ref. 16/00570/OUT).

The original planning appeal was heard in August 2017. A month later a referendum on the Asfordby Neighbourhood Plan produced an overwhelmingly ‘in favour’ vote. As a result, Savid Javid recovered the appeal. However, in February 2018, the neighbourhood plan was quashed by the high court which found that during the examination process “*the submission of the examiner’s report for fact checking was unlawfully used to re-open key issues*” without allowing proper debate. Following this ruling, Javid ‘de-recovered’ the application and it was returned to the original inspector for determination.

The local plan was out of date. An emerging one had only reached a pre-submission draft consultation stage and was afforded little weight. The issue of housing land supply was complicated.

Up to shortly before the inquiry, Melton Borough Council had been reporting a housing land supply of between 1.9 and 2.5 years. But, more recently it had published a substantially increased supply based on a large number of draft allocations in the emerging Local Plan. It was therefore arguing that it had a robust case for demonstrating a five year housing land supply, given than the Local Plan was progressing well.

However, the inspector was unhappy with the Council’s intention to ‘back load’ housing delivery towards the end of the plan. It would only take a “*modest slip on progress*” for the supply to fall outside the five-year period. On the other hand, he found that the appellant had presented “*persuasive evidence*” that the appeal scheme could be delivered well within five years.

The inspector noted that the scheme lay outside the settlement boundary of the village (which itself lies about three miles to the west of Melton Mowbray) and would cause “*moderate harm*” to the landscape character. Nevertheless, he was convinced this would be “*significantly mitigated in due course*” by extensive planting. In the planning balance, he weighed this harm against the scheme’s provision of housing and gave significant weight to the intention to provide 40% affordable housing.

Although he acknowledged that the council’s housing supply was likely to be improved when the emerging local plan was adopted, the inspector considered it “*likely that the council lacks a five year housing land supply*”. Engaging the tilted balance of NPPF paragraph 14, he concluded that the scheme’s benefits outweighed its conflict with the development plan and allowed the appeal.

## WHERE THE 5-YEAR HOUSING LAND REQUIREMENT WAS IN PLACE

Notwithstanding widespread criticisms of the housing land supply requirements – which many argue are arbitrary and unfair – they have provided a degree of certainty in cases where principal authorities have been able to prove that they have a five year supply of housing land. And, where a neighbourhood plan has been adopted, these two factors taken together have most often resulted in the development plan as a whole withstanding challenges from developers and landowners. This is the situation to which the NPPF refers when it says “*Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of that development plan) permission should not normally be granted*”. (NPPF July 2018, paragraph 12).

This section considers a selection of examples where this was the case. However, as our research for this report has shown, it is increasingly not ‘normal’ for a neighbourhood plan to have got all the way through the process to be ‘made’ – a process often taking 3-5 years – and for the principal authority to have a five year housing land supply in place.

### RINGMER

In **RINGMER** in East Sussex the secretary of state, Savid Javid, backed an inspector’s decision to refuse planning permission to Croudace Homes for 70 dwellings after agreeing that the benefits of the housing provision did not outweigh harm to the landscape and erosion of the separation between settlements in the light of Lewes District Council’s up-to-date housing supply.

Javid noted that the appeal site was allocated solely for sports and recreational use in both the Council’s Joint Core Strategy and in the Ringmer Neighbourhood Plan and that, according to both plans, it lay outside Ringmer’s settlement boundary. He concluded that the scheme would represent a substantial addition to the settlement boundary and not respect the village scale. (APP/P1425/W/15/3133436). The **SEPTEMBER 2016** ruling said:

*“the secretary of state considers that the appeal scheme is not in accordance with JCS policies CT1 and RG3 and with RNP [Ringmer Neighbourhood Plan] Policies 4.1, 6.3 and 7.4 and it is not in accordance with the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. However, the development plan is up-to-date and no reasons have been identified to reduce the weight to be attached to any of the policies relevant to this appeal”.* (Paragraph 22).

### HIXON

The communities secretary also agreed with an inspector that Gladman Developments should be refused permission to build up to 90 homes at **HIXON** in Stafford. (APP/Y3425/W/15/3137539).

Stafford Borough Council was able to demonstrate it had a five-year supply of housing land and there was ‘no demonstrable need’ to extend the settlement into the countryside. Also, the scheme would create an unsuitable pattern of development, even though proposed landscaping would lessen the visual impact. The **JANUARY 2017** ruling said:

*“the proposed development would contribute to an unsustainable pattern of development and would undermine the spatial strategy of the PSB and the HNP [Hixon Neighbourhood Plan]”.* (Paragraph 10).

## **ST. IVES & CARBIS BAY**

In a case with an outcome favouring a neighbourhood plan, in Cornwall in **JULY 2017**, the secretary of state, Savid Javid, turned down Godwin Developments’ application to create a mixed use urban extension to **ST. IVES and CARBIS BAY** on Gonwin Farm to the east of Carbis Bay.

There were two appeals against Cornwall Council, each for 235 homes, plus commercial, business and light industrial uses. Since the appeal hearings had taken place, the St. Ives Neighbourhood Development Plan had been ‘made’ (on May 5<sup>th</sup> 2016) – and there was conflict with that – and also Cornwall Council had adopted its Local Plan (on November 22<sup>nd</sup>, 2016) and it could show that it had a five year supply of housing land. There would be a ‘*substantial incursion*’ into the countryside’ if the development went ahead and the impact on the local landscape would be ‘*major and adverse*’. The social and economic benefits would not outweigh the adverse impacts. (APP/D0840/W/153002925, ref. PA/13/09107). The communities secretary determined that because:

*“the proposal includes some land beyond that allocated [for] development by the NDP [Neighbourhood Development Plan], the secretary of state finds that it is not compliant with policy AM4 of the NDP and gives significant weight to this conflict”.*

## **NEWICK**

However, in **NEWICK** in East Sussex the secretary of state agreed with an inspector that permission should be granted to DLA Delivery for 50 homes despite the existence of a five year housing land supply and despite the site not having been identified in the neighbourhood plan. (APP/LW/14703).

The secretary of state and the inspector pointed out that the Newick Neighbourhood Plan did not place a cap on development in Newick and neither did the Lewes Core Strategy. Also, although arguments were advanced about the need to retain a ‘green gap’ between Newick and other settlements, there was no policy conflict in this respect in the neighbourhood plan. The secretary of state and the inspector also agreed that whilst the neighbourhood plan did not allocate the site for housing, the proposal was not unacceptable in principle (although see footnote 19).

They also both agreed that while the principal authority could demonstrate a five year housing land supply, this did not negate the need for more housing to come forward. The communities secretary also concluded that whilst there would be a change in the character and appearance on the western edge of the village, there would not be any significant effects on the Ashdown Forest Special Protection Area or on the other internationally important designated areas and that, subject to suitable ecological mitigation, the scheme would not cause any significant harm to biodiversity. He further noted that the Lewes District and South Downs National Park Authority Landscape Capacity Study had identified the appeal site as one of the areas around Newick for possible development. The conclusion by the communities secretary was that the adverse impacts of the proposal did not outweigh the benefits, which included 20 affordable homes. He gave approval in **NOVEMBER 2016**. [See also Pinsent Masons analysis of this case in ‘Out-Law.com’ on page 26 of this report].

## WHERE THE 5-YEAR HOUSING LAND REQUIREMENT WAS NOT IN PLACE

Although the National Planning Policy Framework (NPPF) introduced a requirement for principal authorities to have a five-year supply of easily deliverable housing land – if the development plan were not to be considered ‘out of date’ – it did not stipulate a method for establishing this requirement. This omission has led to years of legal arguments, conflicting methodologies and contested results which the MHCLG is now partially endeavouring to address by removing some of the uncertainty over how much housing is needed in each area.

The Government’s new standard methodology for calculating housing need results in lower housing figures for some areas and much higher ones for others<sup>20</sup>. It will affect the housing figures that principal authorities supply to neighbourhood planning groups as a working starting point. However, whether or not a principal authority has a five-year supply is still likely to be disputed at appeal as there will still be scope for debate over factors such as build-out rates, viability, and probability of sites and applications coming forwards. Further uncertainty has been introduced by the Government’s proposal to review and amend the methodology once the latest sub-national household projections are released, as, based on the most recent population projections, the new methodology appears unlikely to yield the numbers that the Government had originally expected.

Over recent years, appeal case outcomes in favour of neighbourhood plans such as those quoted in the previous four sections appear to be in the minority, and appear to be dwindling. The authors of this report had no difficulty finding dozens of cases all over England where neighbourhood plans have been declared ‘out of date’ because the principal authority has been unable to prove it meets the NPPF requirement for a five year housing land requirement (reduced to three years from December 2016 for those areas which have specific housing site allocations).

While the lack of a five year supply is the factor that ties the case studies in this section (and many others!) together, there have also been many cases where neighbourhood plans were found wanting for not allocating sites, for not addressing boundary areas and for other reasons – despite the fact that they have gone through the full process of checking by the principal authority that the process they followed was legally compliant; independent examination by a suitably qualified person; referendum in the neighbourhood; and been adopted by the principal authority. And there were other cases where neighbourhood plans were set aside because they were not considered to be advanced enough – although some were in fact well advanced. We try to give a flavour of some of these other factors here and elsewhere in this report.

Undoubtedly the most upsetting cases for the communities concerned are those where they are taken on a roller coaster ride of emotions as a result of weaknesses in the neighbourhood planning system which have opened the way for repeated legal challenges. There have been a number of cases where the secretary of state has initially found in favour of local community opinion (and the neighbourhood plan) only for those decisions to be quashed in the high court, the planning appeals brought back for a second consideration and then decided in favour of developers. Such twists and turns have been agonising and confusing for neighbourhood plan groups and the Parish Councils behind them, all of whom ‘bought into’ the system they were presented with in good faith. Some such cases are presented here.

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<sup>20</sup> <https://www.gov.uk/government/consultations/planning-for-the-right-homes-in-the-right-places-consultation-proposals>

## HAYWARDS HEATH

There was a case in **HAYWARDS HEATH**, West Sussex, where the site of a planning appeal called in by the secretary of state, Sajid Javid, straddled two neighbourhood plan areas.

In the event, Javid agreed with the recommendations of an inspector and approved plans by Crest Nicholson Operations for 40 homes on land north of Birchen Lane. Crest had appealed against a decision of Mid Sussex District Council, in August 2016 to refuse permission. (APP/D3830/W/15/3137838, ref. DM/15/3415).

Javid agreed with the inspector that only limited weight could be given to the emerging Mid Sussex District Plan, referring to its

*“slow progress and previous failure to have sufficient regard to the duty to co-operate”.* (Paragraph 6).

Both the communities secretary and the inspector referred to ‘flaws’ in the Lindfield and Lindfield Rural Neighbourhood Plan that was ‘made’ in March 2016. (The LNP independent examiner had found that two of the neighbourhood plan policies paid insufficient regard to the emerging Local Plan<sup>21</sup> and lacked specificity. However, amendments had been made prior to the plan progressing to referendum and the Parish Council considered that it did then meet the basic conditions).

The Haywards Heath Neighbourhood Plan had recently been consulted upon but was yet to undergo examination was therefore considered to be at too early a stage.

Both neighbourhood plans were afforded little weight with the former deemed to be ‘out of date’ because the principal authority did not have a five-year housing land supply. It was estimated that the supply was between 1.91 and 2.36 years.

It was found that there would be some harm caused to a Grade 2\* listed property and to medieval assart fields. The inspector’s report said:

*“Developing the appeal site would transform its character to something very similar to the adjacent suburban development to the east, with the loss of heritage landscape at this location, with high resultant harm producing a negative feature”.* (Paragraph 61).

On the other hand, the inspector and the secretary of state concluded that there would be:

*“sustainable benefits as a result of new housing and affordable housing”*

and that, on balance, the benefits would outweigh the harm. (Paragraph 121). Consequently, the appeal was granted.

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<sup>21</sup> In contrast to the examination of the Farnham neighbourhood plan, which was specifically disallowed from aligning itself with the emerging Local Plan

## YAPTON

Communities secretary, Savid Javid, was involved in two separate appeals with, initially, different outcomes involving an almost identical number of homes in the village of **YAPTON** in West Sussex, which has a 'made' neighbourhood plan (adopted on November 5<sup>th</sup> 2014). The community there had been objecting to plans to build an average of 1,000 houses each year over a period of 20 years.

In **SEPTEMBER 2016** an inspector recommended allowing an appeal by Keith Langmead to build 104 housing units on land to the south of Ford Lane/ east of North End Road because the principal authority, Arun District Council, could not demonstrate a five year housing land supply. (APP/C3810/A/14/2228260). The inspector argued that the presumption in favour of sustainable development applied, with its inbuilt bias towards granting permission. The secretary of state disagreed with the inspector, stating that:

*“neighbourhood plans, once made part of the development plan, should be upheld as an effective means to shape and direct development in the neighbourhood plan area on question. Consequently ... even in the absence of a 5-year housing land supply the secretary of state places very substantial negative weight on the conflict between the proposal and [the] policy. (Paragraph 16).*

In **APRIL 2017** the legal basis of this decision was challenged in the high court with a claim that the secretary of state had erred in law by placing so much weight on a neighbourhood plan in these circumstances. Counsel for the developer argued (amongst other things) that the communities secretary misunderstood and misinterpreted the National Planning Policy Framework and it was thus not applied correctly, that he failed to take into account the independent examiner's reservations about the neighbourhood plan and that his decision was inconsistent with regard to the weight given to the Local Plan.

The court dismissed all seven grounds on which the developer made challenges and upheld the secretary of state's decision, with Ms. Justice Lang stating that, despite the lack of a five year land supply:

*“I consider that the secretary of state was entitled to conclude, in the exercise of his planning judgement, that the neighbourhood plan should be upheld as an effective means to shape and direct development in its area and to place very substantial negative weight on the conflict between the proposal and Policy BB1”. (Para. 62) Case ref: C0/5351/2016.*

However, in **OCTOBER 2017** the communities secretary took a different stance in a similar size case in Yapton. Gleeson Development had appealed against Arun's decision to refuse permission for 108 homes on land off Burndell Road. (APP Y/19/16/OUT, ref. 3158261).

The inspector recommended that planning permission should be granted and the secretary of state agreed with her because of the principal authority's 'severe' housing land supply shortfall of at least 3.1 years, a matter which he said carried more weight than conflict with the local development plan. Arun District Council was shown to have only 1.9 years' worth of housing land supply.

Also, Javid pointed out that the emerging local plan, which had prompted much controversy, was still subject to “a number of significant unresolved objections”. He afforded minimal weight to the neighbourhood plan in this instance because he said it had been based on an objectively assessed housing need that was no longer accurate. (Also, the inspector took issue with wording in the Yapton Neighbourhood Plan and the use of the word ‘normally’, commenting that there was nothing ‘normal’ in the circumstances). Javid ruled that the scheme’s contribution to housing (including affordable housing) in the area should outweigh the development plan conflict.

But, this was not the end of these two cases. The original application for 104 houses was re-submitted, approved by an inspector in **JANUARY 2018** and then by Javid who quashed his previous decision because of the area’s worsening housing shortfall. The application was identical to the previous one that was originally refused by Arun D.C. in 2014. Arun Council, whilst accepting that “deliverable sites in sustainable locations” must come forward to meet urgent demand, still refused the second application over concerns about infrastructure contributions, road safety and noise impacts.

On appeal, the inspector took the view that the scheme would represent sustainable development if appropriate conditions were applied and that the benefits would outweigh the conflict with the development plan.

## **BURGESS HILL**

This was yet another West Sussex case. An appeal by Jones Homes (Southern) was allowed in **JUNE 2017** for the demolition of 88 Folders Lane at **BURGESS HILL**, West Sussex and the erection of 73 dwellings (30% affordable) on a site abutting the South Downs National Park (APP/D3830/W/16/3149456).

The inspector agreed the scheme was in conflict with the Local Plan, notably the policy about a green gap, and noted that it would be affected by a policy in the Neighbourhood Plan that was ‘made’ in 2016, seeking to protect Areas of Townscape Value – Folders Lane being one such area.

However, the inspector found the housing land supply was 3.76 years and therefore gave only limited weight to both the old, adopted Local Plan and the emerging Local Plan. He concluded that, while it would involve demolition, removal of trees and building in an area of townscape value, the scheme would not conflict with the neighbourhood plan policy that sought to protect such areas – an interpretation which the NPG may well not have shared.

The inspector also concluded that the appeal scheme would have no appreciable effect on the landscape and beauty of the National Park. And he did not consider that impacts on the operations of an adjoining winery would be serious enough to withhold planning permission.

**[See comment on Homes England’s plans for Burgess Hill on page 63 of this report]**

## SANDBACH & BRERETON

In **OCTOBER 2016** there were two cases in Cheshire East where the secretary of state over-ruled 'made' neighbourhood plans because the council did not have a five-year housing land supply.

In the case of **SANDBACH**, Savid Javid concurred with an inspector that Fox Strategic Land & Property (an offshoot of Gladman Developments) should be granted permission on appeal for 190 dwellings (30% affordable) on land off Abbey Road, because Cheshire East Council were deemed to have "*a severe shortage in housing land supply*". This, despite the appeal site being outside the settlement boundary identified in the neighbourhood plan and Javid acknowledging that Sandbach was likely to provide the level of housing to 2030 that was allocated in the local plan.

The Sandbach Neighbourhood Plan was 'made' in April 2016 just before the inquiry took place but the Council's representative conceded that the three policies in it which it had been alleged were being contravened all related to the supply of housing (not the location), and were therefore considered to be 'out of date' under the NPPF. (APP 14/1189C).

In the case of **BRERETON** the planning application was contrary to both the Brereton Neighbourhood Plan (also made in April 2016) and the local plan, being outside the defined settlement boundary for Holmes Chapel, which rural Brereton has a boundary with.

However, Javid agreed with an inspector that permission should be given to Gladman Developments for 190 dwellings (30% affordable) and 3,500 sq.m. of employment use on 16 ha. of land adjacent to Holmes Chapel in Cheshire – again because Cheshire East Council could not demonstrate a five year supply of deliverable housing. Javid judged the scheme to have limited adverse landscape and visual impact. (APP 14/5921C).

## ASHOVER

In a case in **ASHOVER** in Derbyshire the communities secretary disagreed with an inspector and granted permission to Marsh Green Estates for 26 dwellings, giving little weight to a draft neighbourhood plan that had been submitted to North East Derbyshire District Council. The Council had refused permission for the development because of concerns about landscape and visual harm and the draft Ashover Parish Neighbourhood Plan defined the appeal site as being outside the proposed settlement limits. (APP/14/00766/0L).

The inspector recommended that the appeal should be dismissed because of the visually sensitive locations. Whilst recognising that it was not a nationally designated landscape, he described it as being part of a 'valued landscape'. Javid argued that the development could be seen as an extension of the existing settlement and pointed to the principal authority having only a 1.79 year supply of housing land. He concluded that the adverse aspects of the scheme did not demonstrably outweigh the benefits which would include 10 affordable homes (40% of the total). He therefore granted outline planning permission.

## SHIREOAKS

On appeal against a decision of Bassetlaw District Council, permission was granted by an inspector in **JULY 2017** for 73 dwellings (11 of them affordable) at Woodend Farm, **SHIREOAKS** near Worksop. (APP/A3010/W/17/3169450, ref. 16/00968/OUT).

The site was immediately outside but adjacent to the settlement boundary of Shireoaks which had a neighbourhood plan that was 'made' in November 2016. There was already extant planning permission for 175 dwellings to the north of the appeal site and for 380 dwellings and 129,000 sq.m of commercial floorspace to the east.

The original reason for refusal was that the appeal site formed a landscape buffer between the village of Shireoaks and the urban fringe of Worksop. However, the inspector noted that the land had no policy designation in either the Core Strategy or the neighbourhood plan although the neighbourhood plan did describe local wildlife corridors and the Vision was to keep Shireoaks as a separate settlement.

The inspector did not agree that the two settlements would coalesce but he did agree that the separation would be undermined and, basically, only retained by the A57 road itself. He conceded that there would be moderate harm to the character and appearance of the village and therefore it would conflict with the neighbourhood plan. But the Bassetlaw Council only had a 3.4 year supply of deliverable housing land and a shortage of affordable housing and therefore the inspector declared all housing policies out of date and engaged paragraph 14 of the National Planning Policy Framework.

## SOUTHBOURNE

Beechcroft Land were granted an appeal for 34 dwellings (30% affordable) against Chichester District Council on land at Breach Avenue, **SOUTHBOURNE**, West Sussex despite conflict with the local plan and the Southbourne Parish Neighbourhood Plan, in **NOVEMBER 2017**. (APP/L3815/W/17/3173380, ref. SB/16/03569/OUT). The inspector agreed with the appellant that the NP policies did not directly presume against development outside the settlement boundaries but he acknowledged that the appeal site was located to the north of the railway line, an area rejected for development by the NP.

The inspector recognised that the proposal was at odds with the aim of the NP and would represent an increase of 10% over the 350 dwellings earmarked in the local plan for Southbourne as a whole, but he concluded that the scale of the development would not be at odds with the level of residential development proposed in the local plan. He found that the Council could not demonstrate a five-year housing land supply. He concluded that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the proposal and invoked NPPF paragraph 14

Chichester DC took the case to the High Court on two grounds: (1) that the inspector failed to decide whether the proposed development conflicted with the NP as required by the NPPF and (2) that the inspector irrationally relied upon a distinction between the 'policies' of the NP and its 'aims'. However, Upper Tribunal judge Andrew Gubb dismissed the challenge in September 2018.

## **EAST LEAKE**

Also in **NOVEMBER 2017**, following an appeal by N & B Wright (Farming), an inspector granted outline planning permission for 235 homes and a primary school at **EAST LEAKE** in Nottinghamshire, despite conflict with the Rushcliffe Borough Council Core Strategy and the East Leake Neighbourhood Plan. (APP/P3040/W/17/3178343, ref. 317834).

The number of homes already approved for the village was more than double the 400 prescribed in the Local Plan, which identified East Leake as a 'key settlement'. However, Rushcliffe B.C.'s housing land supply was 3.43 years. Finding no 'firm evidence' of a concrete process in addressing the housing shortfall, the inspector considered it inappropriate to delay delivery due to the minimum number of housing units having been reached and he gave little weight to conflict with the local plan.

The Parish Council had appealed for the neighbourhood plan not to be considered out of date but the inspector said the exemptions to the WMS of December 2016 did not apply because the plan did not allocate specific sites for development – albeit this was not considered necessary at the time the plan was 'made'.

Also, the emerging local plan was not expected to be adopted until the end of 2018. The inspector said there was a conflict with the neighbourhood plan in that the development would not fully mitigate its impact on local infrastructure and local services but it would provide 20% affordable housing and it would deliver social, economic and environmental benefits.

Additionally, there was another similar case again in **EASTE LEAKE** in **JULY 2018** when an inspector granted Gladman Developments permission on appeal to build 195 homes on land off Lantern Lane. By this time the principal authority, Rushcliffe Bough Council, had an even lower housing land supply of 3.1 years. (APP/ P3040/W/18/W/18/31965, ref. 3196537).

The inspector found that while the appeal site would lead to the loss of some countryside, would have an adverse impact on the landscape and would diverge from the distribution of housing under the Council's policy, it would not fundamentally undermine the borough's spatial plan. He also attached significant weight to the social benefits of the scheme in the light of the demand for housing and he noted that East Leake had an extensive range of facilities, that these facilities would be within 15 to 20 minutes' walk of the site and that good public transport was available.

The inspector found that the lower land supply criteria of three years brought in by the Written Ministerial Statement of December 2016 could not be applied because the neighbourhood plan did not allocate specific housing sites. He declared the development plan (including the neighbourhood plan) to be 'out of date' due to the lack of the requisite housing land supply.

He concluded that the scheme constituted sustainable development and he allowed the appeal.

## LYDNEY

The community of **LYDNEY** in Gloucestershire experienced a similar roller coaster of decision-making as was experienced in Yapton. In January 2016, communities secretary Greg Clark had overturned an inspector's decision to approve an appeal by Allaston Developments for 200 dwellings including 40 self-build plots and 37 retirement apartments, plus a community building. (APP P 1284/13/OUT).

Clark found that the extent to which the proposal conflicted with the Forest of Dean District Council's allocations plan submission draft and the emerging Lydney Neighbourhood Plan outweighed the benefits of the scheme. However, at the time he made this decision, he was unable to ascertain whether or not the principal authority had a five year supply of housing land.

The high court quashed the secretary of state's ruling and in **NOVEMBER 2017** the appeal was re-determined – and permission granted – following a re-opened inquiry. Lydney Neighbourhood Development Plan was considered to be of most relevance. The secretary of state agreed with the inspector that the proposal conflicted with the Forest of Dean District Council's development plan – but the council could not demonstrate a five-year or three-year housing land supply. Consequently the policies in the core strategy and the neighbourhood plan were declared out of date and carried little weight.

## BERRY HILL, COLEFORD

Yet another case of a redetermined appeal occurred in **BERY HILL, COLEFORD**, Gloucestershire where Gladman Developments had appealed against a decision by the Forest of Dean District Council to refuse permission for a residential development of up to 200 houses (later reduced to 180) on land north of Lower Lane. (APP/P1482/14/OUT).

Although an inspector recommended that the appeal be allowed, the secretary of state initially issued a decision supporting the Council's decision in December 2016. But, that decision was challenged in the high court and quashed and, following a recovery by the secretary of state, Savid Javid, he decided to allow the appeal and granted permission in **APRIL 2018**.

The development plan included the Berry Hill, Christchurch and Edge End Neighbourhood Development Plan (BHNDP) which was made on March 1<sup>st</sup> 2018. The BHNDP specifically covered two sections of the northern edge of the appeal site and also it described the whole site as a buffer zone that formed an essential boundary between the settlement at Berry Hill and the town of Coleford.

The Coleford Neighbourhood Development Plan (CNDP) was in preparation and had been submitted to the Council. (The consultation period was March 14 – April 25, 2018). Emerging relevant policies were those covering protecting and enhancing the local landscape character and 'Green Ring'. There were some issues around consistency between the emerging Allocations Plan by the principal authority and the CNDP. The decision letter said:

*“the secretary of state considers that, whilst the over-arching aim of the relevant emerging policies [of the CNDP] is consistent with the Framework’s aim of conserving and enhancing the natural environment, at this stage it has not been demonstrated that the relevant policies of the CNDP are consistent with the Framework. Overall he takes the view that the relevant policies in the CNDP carry little weight”. (Paragraph 18).*

The secretary of state agreed with the inspector that the appeal site would change from ‘open countryside’ to ‘urban edge’ but noted that it did not warrant the classification of a ‘valued landscape’. He agreed that the proposal would be harmful to the character of the area and would have a visual effect but gave little weight to the ‘best and most versatile land’ argument. He also acknowledged that the site had Flood Zone 1 status but felt that could be dealt with through conditions.

The communities secretary concluded that the Council could not demonstrate, as it claimed, that it had a 5.88 year housing land supply. He was of the view that it was less than three years. He considered it very important that 40% of the scheme was to be affordable housing and, on the planning balance, he ruled that –although the scheme was not in accordance with the development plan and would harm the landscape character – permission should be given because of the lack of a five year housing land supply.

## **EFFINGHAM**

In **MARCH 2018** the secretary of state supported an inspector’s recommendation that an appeal by Berkeley Homes (Southern) Ltd and The Howard Partnership Trust should be upheld against a refusal of planning permission by Guildford Borough Council. He gave permission for a replacement secondary school and 258 houses to be built at **EFFINGHAM** Academy and on Lodge Farm, plus a further 37 houses on the adjoining Brown’s Field site in Surrey. (APP/14/P/02109, ref. 3151098).

Both the inspector and the communities secretary agreed that the appeal site conflicted with the development plan – specifically the Effingham Neighbourhood Plan which came into force on February 22<sup>nd</sup> 2018 – and that it would represent inappropriate development in, and cause harm to, the Green Belt. However, they gave little weight to the Submission Local Plan as it had not completed its examination in public.

The secretary of state and the inspector agreed that the development would result in a significant reduction of openness and have a harmful impact on the setting of the Effingham Conservation Area. They also acknowledged that Brown’s Field was designated in the neighbourhood plan as a Local Green Space, that the appeal site lay outside Effingham’s settlement area and the neighbourhood plan only allocated a part of Lodge Farm for development and then only for six houses.

Set against this, they recognised issues with the fabric of the old school building which needed replacement and the cost of repairs for it. In addition there was a demographic need for additional secondary school places. Guildford Borough Council were found to have only a 2.1 year housing land supply. Consequently, planning permission was granted.



## MATTISHALL

Also in **MARCH 2018** an inspector granted permission for 50 homes on land to the west of the village of **MATTISHALL** (itself located to the west of Norwich) in Norfolk despite conflict with the neighbourhood plan in the light of the principal authority's housing shortfall. (APP/F2605/W/17/3185918, ref. 3185918). Gladman Developments had originally applied for permission to build 90 homes on over four hectares of land but this had been reduced to 50 homes on 3.2 hectares.

According to the Mattishall Neighbourhood Plan, which was made on November 2<sup>nd</sup> 2017, the 'open character' of the site formed a significant part of the village's setting. The inspector admitted the scheme would see a hard, built, frontage created along the main road and this would result in harm to the rural setting despite plans for landscape mitigation and also, although the amended scheme was smaller and less dense than the original one, it would still lead to a harmful loss of open countryside which would be detrimental to the area's character.

On the other hand, Breckland District Council could only show a housing land supply of between 4 and 4.6 years and he considered this to be 'a significant shortfall'. (The criteria in the WMS of December 2016 did not apply as the neighbourhood plan did not allocate specific sites for housing).

The inspector accepted that the local community had "*gone to considerable lengths*" to plan for Mattishall's needs in making its neighbourhood plan and he acknowledged concerns that confidence in the planning process could be undermined if the appeal succeeded. However, in the planning balance, he noted the sustainable location of the scheme and the economic benefits it would bring.

Applying the tilted balance of the NPPF paragraph 14, he concluded that the scheme's harm could not outweigh the benefits of delivering housing in an area of shortfall and he allowed the appeal.

## YAXHAM

In **MAY 2018** an inspector approved 25 homes on appeal in the Norfolk village of **YAXHAM** after overruling its neighbourhood plan because it failed to allocate sites for housing – as per the ministerial statement of December 2016. The appeal was by Glavenhill Strategic Land against a decision to refuse planning permission by Breckland District Council. (APP/F2605/W/18/3194045, ref. 3PL/2016/1499/0).

The inspector found that the scheme would cause moderate harm to the character of the area and that it was in conflict with the Yaxham Neighbourhood Plan which was adopted in June 2017. However, as a result of the Council's failure to demonstrate a five-year housing land supply, the written ministerial statement of December 2026 was invoked. According to the WMS, a neighbourhood plan can be considered up-to-date in spite of a local housing supply shortfall if three criteria are met: the neighbourhood plan must allocate sites for housing, it must be less than two years old there must be a housing land supply of at least three years.

Although he acknowledged the argument from local people that allowing the appeal would undermine the neighbourhood planning process they had engaged with, the inspector found the Yaxham Neighbourhood Plan out of date' because it did not allocate any specific sites for housing.

In the planning balance, the inspector applied the tilted balance of the NPPF paragraph 14 in the light of the council's housing supply shortfall. Concluding that the scheme's benefits outweighed its harm to the character of the area, he allowed the appeal.



## WHERE THE 3-YEAR HOUSING LAND REQUIREMENT WAS IN PLACE

Initially, the rule requiring a five year housing land supply applied equally to both Local Plans and neighbourhood plans. This changed after the Written Ministerial Statement (WMS) of December 2016 by housing and planning minister Gavin Barwell. The WMS recognised that local communities have no control over the land supply for the whole of their principal authority area. However, it did not remove the land supply requirement altogether. It merely reduced it for neighbourhood plan areas – and then only for those which met three criteria. The criteria were:

- the WMS itself is less than two years old or the neighbourhood plan has been part of the development plan for two years or less
- the neighbourhood plan allocates sites for housing and
- the local planning authority can demonstrate a three year supply of deliverable housing sites

This statement has effect for all qualifying plans until December 11<sup>th</sup> 2018 and indefinitely beyond that for plans that have been part of the development plan for less than two years (although it is expected to be updated before December 2018).

A consortium of 25 developers challenged this WMS in the high court but their challenge was rejected on all grounds (Richborough Estates Ltd & 24 others vs Secretary of State for Housing, Communities and Local Government, neutral citation no [2018] EWHC 33 (Admin), case C0/452/2017).

### WADDESDON

In **JANUARY 2018** an inspector rejected an appeal by European Land acquisition for 90 homes close to Waddesdon in Buckinghamshire which would have been beyond the settlement boundary of the village as defined by the Waddesdon Neighbourhood Plans which was adopted in October 2017. (APP/J0405/W/17/3181642, ref. 3181642). The proposal had sought to demolish three terraced houses within the Waddesdon Conservation Area to make way for access to the proposed site.

There was disagreement between the parties regarding Aylesbury Vale District Council's housing land supply. However, in an appeal process which had taken place shortly before this one, an inspector had found the supply to be 4.65 years at best and 3.26 years at worst. The inspector in this case therefore applied the Written Ministerial Statement of December 2016 – noting that Waddesdon Neighbourhood Plan met all the requirements. He decided that the benefits of housing provision did not justify the proposal and not to engage the tilted balance of NPPF paragraph 14. He ruled:

*“I afford full weight to relevant policies for the supply of housing in the development plan and the tilted balance in favour of sustainable development set out in paragraph 14 of the Framework does not apply”. (Paragraph 40).*

## **BACKWELL**

Despite a lack of specificity in a neighbourhood plan and the lack of a five year housing land supply on the part of the relevant principal authority, communities secretary Savid Javid refused permission for 220 homes on land at Farleigh Fields, **BACKWELL**, Somerset in March 2018 because of conflict with the neighbourhood plan. (APP/15/P/0315/0, ref. 3153935).

Charles Church Developments were appealing against a refusal of planning permission by North Somerset Council on the grounds of conflict with the neighbourhood plan. (Their original application was for 340 homes on the site but this was subsequently reduced to 220). Javid recovered the appeal for determination in March 2017 but delayed making a decision awaiting the outcome of a high court case.

Javid ruled that, although the Backwell Neighbourhood Plan, which was made in March 2015, did not state a 'specific quantum' of homes to be built or define the number of housing units on each site, it did identify sites where 'development will be supported'. He was of the opinion that, when read as a whole, the plan could be considered to allocate sites and that it met all three criteria in the WMS. The housing land supply was, he concluded, 3.9 years.

Javid noted that the scheme would deliver 30% affordable housing in an area with persistent housing supply shortfalls but, weighed against that, were adverse effects on the setting and character of Backwell.

## WHERE THE 3-YEAR HOUSING LAND REQUIREMENT WAS NOT IN PLACE

The December 2016 WMS has not helped, however, in cases where a three year supply of housing land does not exist. Where this is the case, the presumption in favour of sustainable development is once more engaged – even where neighbourhood plans have allocated housing sites – as in **SWINDON** and **FONTWELL**.

### WROUGHTON

There were two different outcomes to appeals involving Wroughton in Wiltshire which were decided within a few months of each other. In the first the inspector was unable to resolve whether the land supply was three years or less but refused the appeal for landscape reasons. In the second, it was established that the supply was less than three years. This was decisive in the appeal being allowed.

In **APRIL 2017** an inspector dismissed an appeal by Action Drome UK against a decision by Swindon Borough Council to refuse permission for 14 houses on land to the north of hangar 2 at Wroughton airfield. (APP/U3935/W/16/3164945, ref. S/OUT/16/0412/HC). The inspector noted that:

*“where there are relevant policies for the supply of housing in a recently made neighbourhood plan, these policies should not be considered out-of-date unless there is a significant lack of supply”.* (Paragraph 8).

However, she also found that, despite agreement that there was no five year housing land supply, it was not clear whether the lack of supply was significant, ie. whether the WMS should be engaged. But, because the proposal was in an Area of Outstanding Natural Beauty, where NPPF policies indicate that development should be restricted (NPPG paragraph 14), she decided the presumption in favour of sustainable development would not apply any way and concluded the proposal

*“would be contrary to Policies SD2 and RA2 of the Local Plan and complementary policies of the neighbourhood plan which seek to ensure residential development is located in the most sustainable locations and that the identity of Wroughton is protected”.* (Paragraph 16).

In **JULY 2017** communities secretary Savid Javid allowed an appeal by Hannick Homes and Development Land against a refusal by Swindon Borough Council for a 103-home scheme (30% affordable) on a site on the edge of Wroughton because the Council's supply of housing land was deemed to be less than two and a half years. (APP S/OUT/15/0192/JABU, ref. 3147902). This was despite accepting that the application conflicted with the Wroughton Neighbourhood Plan that was adopted in July 2016 due to the site not being within the settlement boundary or on land that had been allocated for development in the Local Plan. Both plans were given very limited weight due to the housing supply situation.

Javid said in his decision letter that even if a 20% buffer was not applied to the housing backlog, the supply would still be significantly below three years. On the other hand, he gave considerable weight to the provision of affordable housing.

Javid's ruling acknowledged that the scheme would be in excess of *"the expectations of the local community as contained in the neighbourhood plan"* when taken alongside existing permissions and allocations. (Paragraph 20).

## FONTWELL

On a site close to the South Downs National Park in **FONTWELL**, West Sussex, communities secretary Savid Javid upheld an inspector's recommendation to allow Fontwell Estates and Global Technology Racing permission to build 400 homes plus 5,000 sq.m. of light industrial space and a further 500 sq.m. of non-residential floor space on a 17.8 ha. site. In doing so, in **JULY 2017**, he overrode a protection awarded by previous housing and planning minister, Gavin Barwell, arguing that the ruling did not apply as Arun District Council had a housing land supply of less than two years. (APP C3810/V/16/3143095). Arun's emerging Local Plan was afforded little weight.

Both the communities secretary and the inspector said there was no conflict with the Walberton Neighbourhood Plan made in March 2017 as it did not make specific provision for the application and also, they said, there was no conflict with the Barnham and Eastergate Neighbourhood Plan – although Eastergate Parish Council disagreed with the inspector's interpretation of the plan's policies. In addition they agreed that there would not be any materially adverse effect on the South Downs National Park.

## SHIPLAKE

In **AUGUST 2017**, following long legal battles which included a quashed refusal in the high court, an inspector granted planning permission for up to 95 homes (40% affordable) on Thames Farm near Shiplake, Henley on Thames – despite the site not being allocated in the Henley and Harpsden Neighbourhood Plan (APP/Q3115/W/16/3161733, ref. P16/50970/0).

South Oxfordshire District Council had refused the application on two occasions but they were found by the inspector not to have a three year housing land supply and this rendered the Neighbourhood Plan out of date.

The inspector described the housing land situation in Oxford as *"serious, even dire"*, noting that – in the previous six years – only 29 affordable homes had been delivered, despite a need for at least 50 a year. Weighed against the benefit of delivering housing in an area with a severe shortfall, he considered the only downside of the scheme to be *"less than significant harm"* to the countryside. He therefore invoked paragraph 49 of the NPPF.

## BERSTED

In **FEBRUARY 2018**, in another case involving Arun District Council (as with Fontwell), another neighbourhood plan was overridden due to the principal authority having less than a three year supply of housing land and also because housing estimates had increased since the NP was 'made'.

The secretary of state, Savid Javid, called in an appeal by the Church Commissioners for England against refusal of their application for permission to build 50 homes on land at **BERSTED** near Bognor Regis in West Sussex because of its conflict with Bersted's Neighbourhood Plan. (APP/C3810/V/17/3166900, ref. BE/77/16/OUT).

Javid agreed that the site sat within a 'strategic gap' identified within the neighbourhood plan, but he noted that it amounted to less than 0.3% of the total land area of the strategic gap.

He also agreed with the inspector:

*"that the current development plan, including the BNDP [Bersted Neighbourhood Development Plan] is constraining development and not meeting local housing need or the Framework's advice to significantly boost the supply of housing. Like the inspector ... he considers that development will need to be built outside the boundaries and in the open countryside if the housing supply situation is to be improved. Such policies are therefore out of date and can only be given limited weight".* (Paragraph 11).

He further noted:

*"that the BNDP was produced at a time when the housing requirement for the district was in the region of 580 dpa. [dwellings per annum]. It has now more than doubled and is in excess of 1200 dpa. Given the severe housing shortage and the substantially increased housing need, the secretary of state considers that the conflict carries limited weight".* (Paragraph 13).

And he agreed with the inspector that the area had a 'severe' housing shortfall and that the Council only had a 2.07 year supply of housing land. Consequently, the WMS did not apply. He ruled that if the housing shortfall was to be addressed, development would need to go beyond the boundaries set by the neighbourhood plan.

This ruling appears to leave all neighbourhood plans in a state of permanent uncertainty and insecurity in the event that estimates of housing need are contested or alternatives brought forward, with no opportunity to adjust to the new realities presented by new estimates.

## WHERE THE NEIGHBOURHOOD PLANNING ACT HELPED

As is evident from the previous sections, between the early days of neighbourhood planning and the Neighbourhood Planning Act regulations coming into force in July 2017, there were a large number of planning appeals where emerging neighbourhood plans were given very little weight, regardless of what stage they were at. However, after July 2017, neighbourhood plans which had passed referenda but not been adopted can be given full weight and also weight can be afforded to plans that have passed examination. This has benefitted some communities such as Long Crendon and Gotherington which have found the change decisive and it has been a positive chink of light in what has otherwise become an increasingly fractious scene and one which has been producing growing numbers of discontented communities.

### LONG CRENDON

In **AUGUST 2017** an appeal by Gladman Developments against Aylesbury Vale District Council's refusal of a planning application for 65 dwellings at **LONG CRENDON** in Buckinghamshire was dismissed because of conflict with an emerging neighbourhood plan. (APP/J0405/W/16/3142524/ ref: 15/02670/A0P). This was even though the inspector was of the opinion that the proposal would not result in an obtrusion into open countryside that would not have significant adverse impacts and would therefore not be in conflict with local plan policies.

At the time the planning application was lodged the principal authority could not demonstrate that it had a five year housing land supply. However, by the time the inquiry took place, the inspector was satisfied that they had. The Long Crendon Neighbourhood Plan was lodged with the inquiry during a postponement of the planning appeal proceedings and a consultation on it had closed before the planning inquiry re-opened. The neighbourhood plan excluded the appeal site – which fell outside settlement boundaries.

The inspector found that the planning application would be contrary to the emerging Long Crendon Neighbourhood Plan (paragraph 50) and dismissed the appeal stating:

*“Whilst I accept the emerging LCPNP [Long Crendon Parish Neighbourhood Plan] has not yet been made ... Given the very advanced stage that the plan has reached and the strong level of local support and the fact that date for the referendum has now been set I consider that the LCPNP has a very good prospect of being made. Furthermore, it provides a clear picture as to how the local community consider that the village should be allowed to develop. As a consequence I consider that the LCPNP is a material consideration to which I must attach significant weight”. (Paragraph 71).*

And he concluded that:

*“when assessed against the policies of the Framework as a whole the LCPNP is a material consideration which leads me to determining this appeal other than in accordance with the development plan” (Paragraph 72).*

## GOTHERINGTON

There was a not unsimilar case, also in **AUGUST 2017**, in **GOTHERINGTON** in Gloucestershire where an appeal inspector decided that the planning application in question did not satisfy the criterion in the emerging neighbourhood plan. (APP/G1630/W/17/3167141, ref. 16/00539/OUT).

Lionheart Strategic Land had had an application for 75 dwellings to be built on Trumans Farm turned down by Tewksbury Borough Council which, at the time of its decision, could not demonstrate that it had a five-year housing land supply. However, by the time of the appeal hearing, it could. Also, by then, Lionheart had amended its application to 65 dwellings.

Although there was no up-to-date development plan, there was an emerging Joint Core Strategy with Gloucester City Council and Cheltenham Borough Council which had reached the main modifications stage and the Tewksbury Local Plan was in preparation as well as the Gotherington Neighbourhood Plan – which had completed its examination. (It subsequently passed its referendum).

The inspector refused the appeal, stating:

*“In view of the very advanced stage of preparation of the GNDP [Gotherington Neighbourhood Development Plan] I consider that all of the aforementioned GNDP policies should carry significant weight in the determination of this appeal”.* (Paragraph 34).



## VARIATIONS IN THE INTERPRETATION OF POLICIES

Most planning policies are open to a level of interpretation. This is taken as a given. But it only serves to undermine public confidence in the planning system if, following years of concerted community effort, a decision-taker interprets policy in a way that the community manifestly did not intend. This conflict is apparent from some of the cases cited in this report. There are many others.

There are a number of examples of decision-takers interpreting plan policies in ways which the originating neighbourhood planning groups disagreed with, such that they saw a conflict, or a greater degree of conflict, between their plans' policies and a planning application than the decision-taker did. Policies can also be interpreted in stronger or weaker ways, or given broader or narrower interpretations.

This section highlights two cases where the secretary of state disagreed with his inspector about the interpretation of policy and supported the intentions of the neighbourhood plan and one in which both he and the inspector disagreed with the neighbourhood plan's author about how a policy should be interpreted. The case in Fontwell (p. 53 of this report) also featured a disagreement between an inspector and a Parish Council about the interpretation of the Parish Council's policy.

### BUCKINGHAM

In **JULY** 2017, Savid Javid, the secretary of state rejected an inspector's recommendation to approved a planning application by Bellway Homes, Bellcross Co and Fosbern Manufacturing for 130 dwellings on land west of Castlemilk, **BUCKINGHAM** (APP/J0405/V/16/3151297, ref. 14/02601.AOP).

The disagreement between the inspector and secretary of state revolved around whether or not the application conflicted with the neighbourhood plan. The Inspector made a weak interpretation of the plan, concluding that as the plan placed no cap on housing numbers and did not mention the site in question, it was 'silent' about it, and so the 'presumption in favour of sustainable development' should be triggered and there was no conflict between the application and the plan – even though the plan did allocate other sites, and this site was outside the settlement boundary.

The secretary of state, in contrast, made a stronger interpretation. He found that as the application was for a site outside the settlement boundary (and the windfalls policy only supported sites within the boundary) and was not one of the sites allocated in the neighbourhood plan, a conflict with the plan as a whole could be inferred. (The plan itself had identified five sites for 617 dwellings and one reserve site for 300 dwellings).

Javid concluded that whilst the housing target was not a maximum number, the proposal conflicted with the Buckingham Neighbourhood Development Plan and this conflict should be given substantial weight. He said that there was

*“a policy conflict to which [he] attaches very substantial negative weight in view of the Framework policy ... that neighbourhood plans are able to shape and direct sustainable development in their area”.* (Paragraph 18).

He therefore refused the application primarily on the basis of its conflict with the neighbourhood plan although he did also attach modest weight to the scheme's encroachment into the open countryside. (Paragraph 39).

## SCOTHERN

Similarly, again in **JULY 2017**, the secretary of state overturned another inspector's recommendation, which was to allow an appeal by Jackson and Jackson Development for 36 houses at Weir Farm Paddock outside the village boundary of **SCOTHERN** in Lincolnshire. (APP/N2535/W/16/3152022, ref. 3152022).

The Inspector had again adopted a weak interpretation of the neighbourhood plan, stating that even though he suspected the neighbourhood plan group would have wanted their plan to preclude the application in question, he ruled that in fact the wording of the policy did not count against it at all (paras 143 – 151). The secretary of state disagreed, although less robustly in this case, pointing out that the Scothern Neighbourhood Development Plan had allocated three sites for housing and directed all development to be within the built up area. The conclusion was:

*"He also notes the inspector's argument at IR144 about Policy S1 not implying a presumption against development on unallocated sites. However, having regard to the conclusion in paragraph 12 above on the adequacy of the overall housing land supply position, the Secretary of State gives little weight to that argument. Overall, therefore, the secretary of state concludes that the appeal scheme would be in conflict with the adopted CLLP [Central Lincolnshire Local Plan] and the made SNDP [Scothern Neighbourhood Development Plan]"* (paras 14-15).

Other factors in this case had also changed between the inspector's report and the final decision (including West Lindsay District Council establishing a five year housing land supply in the light of an advanced emerging local plan), but this shows again the openness to interpretation of neighbourhood plan policies.

## MILTON KEYNES

In another decision in **JULY 2017**, the secretary of state ruled that plans to extend a shopping centre in **MILTON KEYNES** did not conflict with the made Central Milton Keynes Business Neighbourhood Plan (APP/Y0435/V/15/3139212) – suggesting that it would help to achieve the plan's objectives.

In contrast, Central Milton Keynes Town Council (the neighbourhood plan group which developed the plan) said it was in direct conflict with their plan, which designated part of the appeal site as a semi-open space – an area that the plan protects against any development if it could lead to a "*reduction in quantity, quality and usefulness*" of such space. While accepting that there would be some loss of space, the inspector and secretary of state found that the overall functionality and value of the semi-open space would not be reduced (paras 253-278), and so allowed the appeal.

## THE HERD OF ELEPHANTS IN THE ROOM

### CONFORMITY WITH LOCAL PLAN MODIFICATIONS AND UPDATES

It has become all too apparent that one of the major problems threatening the future of neighbourhood plans is that of 'keeping in alignment with' and conforming to local plans. As set out earlier in this report in relation to Tattenhall, the courts have ruled unambiguously that neighbourhood plans may be made in advance of strategic local plans. But, if the local plans are out of date, that presents a major issue.

#### SANDBACH

In an appeal in **SANDBACH** in Cheshire East (APP/R0660/W/15/3129235), decided by the secretary of state in **OCTOBER 2016**, the inspector noted that policies in the neighbourhood plan relied on policies in an out-of-date local plan (notably policies relating to the settlement boundary and to restricting development in the open countryside), and even though the neighbourhood plan had only recently been made:

*"It follows that, as the SNP [Sandbach Neighbourhood Plan] is seeking to be in conformity with a local plan which is significantly out of date and inconsistent with the Framework, the SNP is also out of date. No other conclusion is reasonably possible"* (para 89).

This resulted in "very limited weight" (para 118) being given to the relevant neighbourhood plan policies in this case. At the examination of the neighbourhood plan, however, it was expressly only allowed to be tested against this adopted but out-of-date local plan, and not the policies in the new, emerging Cheshire East local plan. The appeal Inspector even noted that

*"local residents wish to see that their neighbourhood plan, as part of the development plan, is upheld. However, in this case the housing related policies of the SNP were out-of-date on the day that they were made."* (para. 306).

The other side of the coin is the problem of neighbourhood plans keeping pace with regularly reviewed local plans. Most local plans are in an almost constant state of review, revision, modification and update, meaning that the foundations on which neighbourhood plans are painstakingly built can turn out to be shifting sands.

If new local plans are adopted that diverge significantly from adopted neighbourhood plans (NPs) in an area, this will significantly undermine them and leave the NPs open to speculative development on sites the community did not select and may not even have debated. Developers will insist that the NPs are out of date and the presumption in favour of sustainable development will be enforced.

## FARNHAM

A prime example of what can happen on the ground is the case of the Farnham Neighbourhood Plan in Surrey. Having been five years in the making, it was adopted a year ago – on July 26<sup>th</sup>, 2017 – following a referendum in which 88% of those who voted were in favour. However, an inspector's ruling on new housing figures in the principal authority's local plan has effectively dismantled it.

Just six months after the Farnham Neighbourhood Plan was adopted, an inspector agreed modifications to the Waverley Borough Council Local Plan which increased the borough's housing requirement by 14% to provide a minimum of 11,210 dwellings – or 590 p.a. over the 19 year period of the plan from 2013 to 2032. The bulk of the additional homes were focused on Farnham, upping the town's own targets from 2,330 to 2,780. The inspector dismissed the Town Council's plea for their neighbourhood plan to be reviewed later within its own 18-year time span (2013 to 2031) and said that Farnham's own housing requirement was too low. While this did not make the neighbourhood plan unsound, the town would have to find further housing allocations for another 450 homes.

Farnham Town Council's leader, Carole Cockburn, was quoted in the Haslemere Herald as saying:

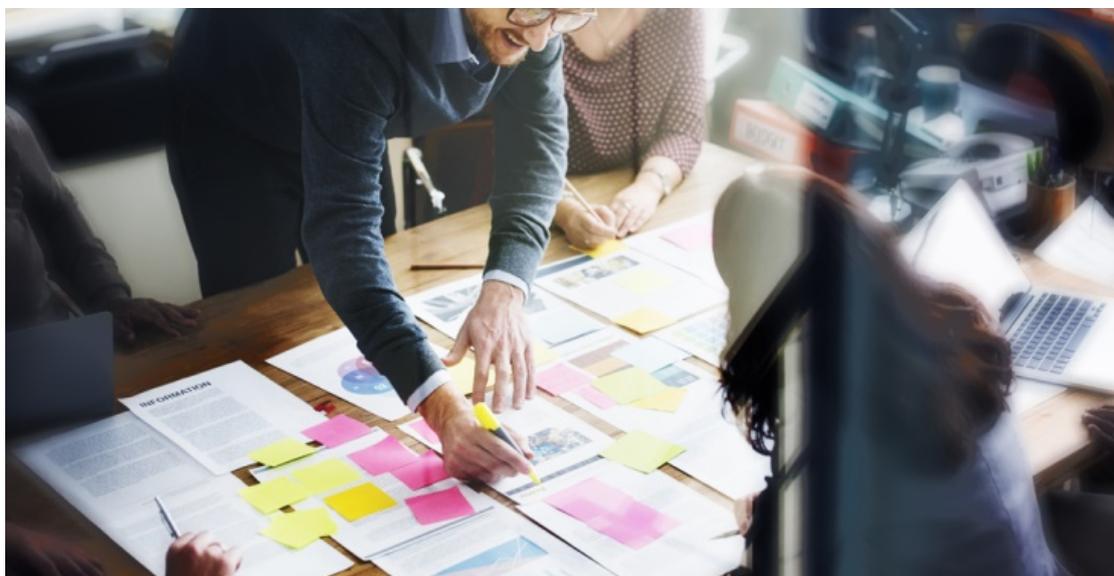
*"Disappointment doesn't come close to expressing my thoughts on the inspector's report".*

Councillor Cockburn, who was the chief architect of the neighbourhood plan, said:

*"After five years of work by hundreds of local residents, supported by thousands more, this is a cruel blow for Farnham and its desire to shape its own future".*

She explained to the local newspaper that what had happened would effectively lessen the protections which the town thought it had against five sites which were currently at appeal with the secretary of state or planning inspectors and, if all were allowed, it would mean Farnham having to accept 570 additional dwellings on sites that the local community had not chosen.

This entire scenario has the potential to be repeated in many other parts of the country.



## THE HERD OF ELEPHANTS IN THE ROOM: HOW THE REVISED NPPF WILL FURTHER ERODE NEIGHBOURHOOD PLANS

The revised NPPF was published on July 24<sup>th</sup> 2018 following a consultation from March 5<sup>th</sup> to May 10<sup>th</sup>. It contains measures that will have profound impacts on the neighbourhood planning process.

- 1) Footnote 7 on page 6 (and elsewhere) confirms that development plan policies (including any NPs) will be considered out of date if the local planning authority does not have a five-year supply of deliverable housing sites (or three year supply where NPs make site allocations), with an appropriate buffer. Or the LPA has failed to meet at least 75% of the new housing delivery test over the previous 3 years. [From November 2018 LPAs will need to provide a 20% buffer on top of the 5-year housing land supply where delivery over the previous 3 years has been below 85% of the housing delivery test requirement].
- 2) Paragraph 14 says the adverse impact of allowing development which conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, but only if all of four criteria apply, ie. the NP has been part of the development plan for less than two years, the NP has both policies and allocations to meet its identified housing requirement, the principal authority is meeting its housing land supply requirements, and it has delivered on its housing figures by over 45% over the previous 3 years. From 2020 the presumption in favour of sustainable development will apply where delivery is below 75%
- 3) Para. 18 refers to NPs that contain *“just strategic policies”*. A legal opinion in ‘Local Government Lawyer’ is: *“This clearly demotes all neighbourhood plan policies to the second tier of the new policy hierarchy”*.
- 4) The same lawyer’s interpretation of para. 30 (which picks up from the clause in para. 18) is that however recently NPs were adopted, their policies will not have automatic precedence over any strategic policy – only over non-strategic policies that came before adoption (<https://bit.ly/2CKq310>). This will lead to more cases like Farnham (see previous page) where the NP was overridden a few months after adoption.
- 5) Para. 33 says that all Local Plans should be reviewed *“at least once every five years”* after adoption. This would mean that NPs would have to be reviewed at least as frequently. This requirement places extra financial and capacity demands on principal authorities and local communities.
- 6) The test of soundness at para. 35 has been tweaked to require plans to provide a strategy to seek to meet the area’s objectively assessed (housing) needs as a minimum rather than ‘as much as possible’ which was the approach in the consultation draft of the revised NPPF.
- 7) Para 60 says that any housing needs not being met in neighbouring areas should be taken into account when establishing the amount of housing to be planned for, in addition to the local housing need figure.
- 8) Para. 65 says: *“Strategic policies should also set out a housing requirement for designated neighbourhood areas”* (a proposal, which would apply to up-to-date NPs). As NALC said in its NPPF consultation response, overruling communities and imposing higher housing targets in this way – due to problems in the wider local authority area – is contrary to the spirit of localism. (And to promises of empowerment).
- 9) Para. 69 says neighbourhood planning groups, as well as the LPAs should consider the opportunities to direct at least 10% of an LPA’s housing requirements to sites of one hectare or less. ‘Strong reasons’ would have to be given if this was not possible. The 10% requirement seems arbitrary and it would be difficult to comply with in rural areas without creating a random patchwork of small housing estates.
- 10) Para. 117 promotes the effective use of previously developed/ brownfield land but does not impose any compunction or penalties for not doing so. It will therefore not help to ward off concerns in point 7 above.

## COMMENTS ON THE REVISED NPPF – FROM MEDIA RELEASES

### THE LOCAL GOVERNMENT ASSOCIATION (on behalf of principal authorities)

“It is hugely disappointing that the government has not listened to our concerns about nationally set housing targets and will introduce a delivery test that punishes communities for homes not built by private developers. Councils work hard with communities to get support for good quality housing development locally and there is a risk these reforms will lead to locally agreed plans being bypassed by national targets.

Planning is not a barrier to housebuilding and councils are approving nine out of 10 applications. To boost the supply of homes and affordability, it is vital to give councils powers to ensure homes with permissions are built, enable councils to borrow to build, keep 100% of ‘Right to Buy’ receipts and set discounts locally”.

### NATIONAL ASSOCIATION OF LOCAL COUNCILS

“... The government should have gone further in giving communities more say over planning and housing in their areas.

We share the government’s desire to build attractive and better designed homes in areas where they are supported and needed and we are pleased planning authorities will be empowered to challenge poor quality and unattractive developments. But we still feel strongly that the priority moving forward should be delivering a sustainable supply of quality affordable homes, especially in rural areas. We still think that the government should ensure through the Letwin Review that planning permissions are built out”.

### CAMPAIGN TO PROTECT RURAL ENGLAND

“CPRE has labelled the revised NPPF ‘a speculative developers’ charter’ ...

Despite a promise to ‘build attractive and better designed homes in areas where they are needed’, CPRE points out that far from fulfilling this promise the NPPF will continue to favour the delivery of any development, rather than development that meets communities’ needs ....

CPRE’s key concern is the new housing delivery test [which] will penalise councils when house builders fail to deliver homes .... This in turn will leave the countryside open to speculative development.

CPRE have a number of other concerns:

- . a failure to provide an effective brownfield first policy
- . the discouragement of neighbourhood planning because of the uncertainty over the validity of plans older than two years
- . continued implicit support for hydraulic fracturing for shale oil and gas despite massive public opposition and little evidence of need”

### ROYAL TOWN PLANNING INSTITUTE

“We must recognise the significant pressure the new NPPF requirements will put on local authority planning teams. It is imperative that chief executives, council leaders and politicians resource planning departments sufficiently, particularly as they will be held more accountable for delivery under the housing delivery test and are expected to carry out more regular reviews of their plans ....

The revised NPPF misses opportunities to improve sustainable development patterns but has provided overdue clarity elsewhere ....

The working of the policy on density implies a lesser standard of ‘acceptable’ rather than ‘good’ for living standards ....

.. pleased connection to Climate Change Act re-instated [but] missed opportunity to align framework with United Nations Development Goals ....

On the Green Belt, we strongly recommended that an additional social objective be included [but] ... government explicitly states that it does not consider further definitions are required ...”

## THE EVER-EXPANDING ARRAY OF SPATIAL PLANNING CONCEPTS

In recent years an ever-expanding array of spatial planning concepts have been initiated. The application of these will inevitably cut across neighbourhood plans, further reducing the opportunities whereby communities can have a meaningful say over the development of their areas. These include:

- 'Garden Communities', be they garden cities, towns or villages – and for which formal 'bids' are now invited (see next page) – and the new wave of new town development corporations envisaged to be set up to help deliver them.
- Pan-regional economic growth initiatives such as the Northern Powerhouse, the Midlands Engine and the 'Constellation Partnership' (which covers the southern part of the former and the northern part of the latter). These all involve Local Enterprise Partnerships (LEPs) as well as local authorities – and all LEPs also each have their own Strategic Economic Plans (SEPs). As recently as July 2018, the 11 Northern LEPs have come together to form strategic body in support of the Northern Powerhouse, a government-funded board styled 'NP11'.
- The Cambridge to Oxford development corridor being promoted by government (see next page)
- Combined Authorities' Spatial Frameworks (six CAs already formed and more promised)
- Residential development partnerships between principal authorities and developers, established to deliver thousands of homes. (Initiative first unveiled by Cambridgeshire County Council in 2015 and since followed by Derbyshire County Council, Surrey and East Sussex, jointly, and Durham)
- The recommendations arising from the six strategic road studies being carried out by the Department for Transport and Highways England, three of them in concert with Transport for the North (TfN), and the recommendations emerging directly from pan-regional bodies such as TfN
- The Nationally Significant Infrastructure Project regime which, alongside its original remit to deliver large scale projects relating to transport, energy, water, waste water, waste, or business and commercial use, now includes in its scope housing development of up to 500 homes related to an NSIP application, and which commentators are postulating as a potential route for consenting new garden towns and villages.

Also, the expanded role of Homes England will cut across neighbourhood plan areas. For instance in Burgess Hill in West Sussex where it has acquired 176 hectares of land which it says could deliver 3,080 new homes, two new primary schools and leisure facilities and for which it intends to submit planning applications later this year. (Burgess Hill has a neighbourhood plan – see page 40 of this report). Homes England is also working on major housing sites at Spencer's Park within Dacorum Borough Council, Hemel Hempstead (1,000 homes on 37 ha), and the former china clay works near Marsh Mills at Coypool, Plymouth (400 homes on a 32 ha site) as well as working with Folkstone and Hythe District Council on a 60 ha. garden town at Otterpool Park, Shepway, Kent.

In addition to all of these spatial planning innovations, there has been a dramatic extension to the scope of permitted development rights over the last few years which are having an effect at the local level, eg. the conversion of offices, storage and distribution units and agricultural buildings to residential use and increases in the size of agricultural buildings and domestic house extensions allowed without planning permission. The MHCLG needs to consider the future of neighbourhood planning in the light of these concepts.

## GARDEN COMMUNITIES PROSPECTUS & OX-CAM EXPRESSWAY

On August 15<sup>th</sup> 2018 the MHCLG launched the 'Garden Communities Prospectus'<sup>22</sup> – a call to developers, investors, local authorities and Local Enterprise Partnerships to put forward suggestions for new garden towns of more than 10,000 homes and garden villages of 1,500 to 10,000 homes. The new garden communities can be discrete new settlements or could involve the transformational development of an existing settlement. The government envisages up to 23 such settlements which, by the middle of the century, would deliver up to 200,000 new homes. Each proposal put forward for consideration must recognise the character of the built and the unbuilt environment and take into account wildlife and specially designated areas.

While the prospectus does speak of engaging local communities, it makes no mention of neighbourhood planning groups or neighbourhood plans. It does, however, specifically reference the Cambridge-Milton Keynes-Oxford Corridor (in paragraph 30) and the National Infrastructure Commission's claim that up to a million new homes will need to be built in that corridor by 2050 if the area is to reach its economic potential. (The NIC has also never recognised neighbourhood plans). The prospectus says priority will be given to those proposals which can be built out 'at pace' although it maintains that the government is looking for quality as well as quantity from bids for government support and partial funding. The deadline for lodging proposals/ bids is November 9<sup>th</sup>.

On September 12<sup>th</sup> 2018 the Department for Transport and Highways England announced their preferred route for the Oxford-Cambridge Expressway which they explained will incorporate some existing 'A' roads but which will have sections across open countryside. A consultation on this proposal will take place in 2019. The same announcement referred to the strategic road studies coming to a head on other 'corridors' elsewhere. At the time of writing this report it is not known how many neighbourhood plan areas will be affected by these proposals<sup>23</sup>.

It is difficult to envisage how any bidders – who must have local authority and Homes England approval – could assemble in under three months even outline designs of such scale, have discussions with all named bodies and consider everything from infrastructure needs to funding while also having meaningful conversations with local communities that cover neighbourhood plans.

It is also worrying that the prospectus contains no reference to making efficient use of land and leaves open the matter of density (both feature in most NPs). The prospectus lauds the creator of the concept of garden communities, Ebenezer Howard, who published 'Garden Cities of Tomorrow' at the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries – but it is worth noting that he envisaged communities of 30,000 people (which he regarded as sufficient to support good public services) on sites of 1,000 acres (400 ha), ie. a density of 40 homes per ha. at a time when household sizes were much bigger.

The lack of any reference at all to neighbourhood planning when these big spatial entities are floated is a matter of utmost concern. The important NP initiative, so welcomed by NALC and large numbers of Town and Parish Councils, appears to be in serious danger of being overlooked by sweeping large scale development concepts. And the other issue which seems in danger of being forgotten in the push to provide more homes is that of the need to rural proof all policies. If the policies are not rural proofed, then the outcomes could potentially be disastrous for rural areas.

<sup>22</sup> <https://www.gov.uk/government/publications/garden-communities-prospectus>

<sup>23</sup> <https://www.gov.uk/government/news/corridor-announced-to-unlock-full-potential-of-englands-economic-heartland>

## CONCLUSIONS

Neighbourhood planning was introduced to give people more control over how the places where they live develop and change and the government's approach was described as 'light touch'. This new tool was intended to transfer power from the hands of officials and 'insiders' to communities who, for too long, had felt excluded and marginalised from the planning process. It was expected that – as a result of being more in control of its scale, location, design etc. - communities would be more welcoming towards new development and less resistant to having development imposed upon them.

The early years of neighbourhood planning showed indications of delivering on this promise. Hundreds of communities – Town and Parish Councils in particular – rushed to take up the new powers offered to them. (There are currently over 2,300 neighbourhood plan areas designated). Developers challenged many early neighbourhood plans in the courts, but these challenges were largely defeated, with the courts appearing to support the spirit as well as the letter of neighbourhood planning legislation. Where developers appealed against decisions made against them on the basis of neighbourhood plan policies, decisions by the secretary of state frequently led to these policies being upheld in the face of applications that conflicted with them.

However, over time, the picture has become more complicated and the 'light touch' approach is less evident. A neighbourhood plan is part of the statutory development plan, on a par with the Local Planning Authority's local plan. As such, planning applications should normally be determined in accordance with a neighbourhood plan. But in practice there are a set of interconnecting factors that influence how much weight a decision-taker is likely to give to a neighbourhood plan, which are largely beyond the control of the community. The evidence suggests that, at appeal, these factors very often combine in such a way as to result in neighbourhood plan policies being outweighed by other considerations, and applications that conflict with those plans being allowed. The circumstances that determine what a 'normal' situation is are complex. Evidence increasingly seems to be pointing towards a 'new normal' in which applications that conflict with neighbourhood plans are granted at appeal. Most prominently (in particular in relation to housing development), these factors include:

- Whether the principal authority can demonstrate a 5-year supply of easily deliverable housing land (required by the National Planning Policy Framework). If not, how severe the shortfall is
- If the plan allocates sites for housing, whether the LPA has a three-year supply of easily deliverable housing land – and if not, how severe the shortfall is
- Whether the plan is formally 'made' (adopted by the LPA following a successful local referendum) or still emerging?
- If still emerging, what stage it is at, whether it commands widespread community support, whether there are significant outstanding objections, and how consistent it is with national policy – all of which are open to interpretation by decision-takers
- What the inspector/secretary of state considers to be an early stage in the neighbourhood plan process, and what weight they attach to each stage
- Whether it conforms to an up-to-date Local Plan that is consistent with national policy
- How open to interpretation the plan's policies are

There is a dearth of government statistics about neighbourhood planning per se and planning appeals involving them in particular. However, this report has provided extensive examples of how the considerations listed above are being interpreted by planning inspectors and secretaries of state in appeal decisions. It finds that, in practice, there is actually a relatively narrow band of circumstances in which neighbourhood plans are given full weight, and within which they can be said in any

meaningful sense to be exerting “*direct power... to shape the development and growth of their local area*”, as promised in the NPPF.

It could be argued that what all this adds up to is national policy functioning as it is intended to, permitting speculative development to take up the slack where the plan-led system is not delivering. The problem with this is that national policy, functioning in this way, fundamentally undermines the conceptual basis for neighbourhood planning by favouring development per se rather than development which meets the expressed needs and wishes of communities. This can only erode public confidence in both neighbourhood planning and the planning system more widely.

Probably the most concerning aspect of all is the extent to which control over the effectiveness of local plans and neighbourhood plans is removed from the hands of local councils and communities. In effect, if developers fail to deliver on house-building requirements, then the development plan becomes unable to guide and shape development. Once this happens, it becomes much easier to obtain planning permissions on sites which would otherwise have been refused. It seems contrary to the spirit of localism that so much power rests with developers and so little with communities.

The changes to the NPPF, introduced in July 2018, and the ongoing development of other spatial planning concepts which will cut across neighbourhood plans are likely to make the situation worse. Legal opinion in ‘Local Government Lawyer’ (September 7<sup>th</sup> 2018) is that the new NPPF demotes all neighbourhood plan policies to the second tier of the new policy hierarchy. Neighbourhood planning groups face much uncertainty, not just whilst formulating their plan but throughout its lifetime.

As the interim report of the Raynsford Review reported, many communities are seeing years of work negated by appeal decisions that override their plans, not through any fault of the plans themselves, but because of the interplay of these wider factors. In order to fulfil the Government’s stated intentions for neighbourhood planning, there is a pressing need for significant changes to the way in which these plans are treated in development management decisions.

The concerns outlined by the authors of this report are very much in harmony with those expressed by Dr. Matthew Wargent and Professor Gavin Parker in their paper ‘*Re-imagining neighbourhood governance: the future of neighbourhood planning in England*’, published in April this year<sup>24</sup> who said

*“We harbour some concerns about the longevity of neighbourhood planning as a progressive, democratic project in its current form, given NDPs [neighbourhood development plans] are already becoming out of date in terms of their strength and validity, whilst plans are increasingly recognised as a focus for litigation and are situated within a contested planning system that is in a state of near permanent reform”.*

Their opinion very much sums up the evidence gathered for this report.

Wargent (Sheffield University) and Parker (Henley Business School/Reading University) also said:

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<sup>24</sup> Re-imagining neighbourhood governance: the future of neighbourhood planning in England, Wright, Matthew; Parker, Gavin. The Town Planning Review, Liverpool. Vol. 89. Iss. 4 (2018). 379-402. DOI:10.3828/tpr.2018.23

*“Following incremental policy reforms, we argue that neighbourhood planning has reached a critical juncture where the future of the initiative is at stake. ... Despite being a state-led initiative, central government has failed to provide an image of success for neighbourhood planning which we argue has held back widespread innovation and progressive participation.*

*We foresee three trajectories with the following potential outcomes: first, neighbourhood planning fades from the policy landscape as fewer communities come forward and plans become out of date (policy decline); second, the policy ossifies as the best resourced communities continue to dominate uptake with the aid of private consultants with, in many cases, identikit plans with minimal added-value (policy stagnation) or third, it evolves into an innovative, responsive and even radical tool of local democracy (policy innovation)”.*

In their conclusion they praise the Localism Commission's call for more local empowerment<sup>8</sup> and say:

*“To date, neighbourhood planning has encountered numerous issues and has lacked an ‘image of success’ against which citizens, policy-makers or researchers might productively assess the policy. This situation has allowed many commentators to project their own expectations onto existing governance arrangements, particularly concerns over local empowerment, inclusivity and democratic legitimacy. However, we feel that neighbourhood planning can still act as a catalyst for genuine bottom-up community action, centred around local attachments to place and emergent political identities, by providing space for local knowledge to be better integrated within the planning system – but only if steps are taken to learn the lessons on offer ... it should not be overlooked that neighbourhood planning has successfully embedded a form of participatory democracy into a wider representative model without causing significant ructions to the fabric of democracy”.*

NALC believes that if the public and Local Councils are to retain their trust in neighbourhood planning, they must be able to have confidence that neighbourhood plan policies will, in the vast majority of cases, prevail over planning applications that are in conflict with them. They must also have confidence their efforts are unlikely to be undermined before the plan-making process is complete. Neighbourhood planning groups need reassurance that they are not expected to be revisiting their efforts every few years. Most of all, they need to feel that some power genuinely rests with them. The MHCLG must find a better-balanced solution to promoting sustainable housebuilding which does not invalidate local plans and neighbourhood plans if developers fail to deliver on housing numbers.

All neighbourhood plans are necessarily plans for development and all contribute to shaping their areas by providing policies that guide appropriate development to the most suitable locations, be that through allocations or criteria. This should reduce opposition to development and make development that complies with those policies easier and quicker to bring forward than in areas that do not have a neighbourhood plan due to the fine-grained, hyper-local detail that they are able to add. These plans should have the opportunity to bring forward development as part of the plan-led system.

If communities are to welcome new development because they feel in control, they must first feel in control. There must be a clear signal from government that local communities are really able to make plans that will have effect. This means significantly reducing the incidence of neighbourhood plans being overturned at appeal due to circumstances beyond their control.

We would urge the Government to read this report and work with NALC and other bodies to realise the full potential that effective neighbourhood planning offers.