

IN THE MATTER OF
THE WAREHAM NEIGHBOURHOOD PLAN

ADVICE

INTRODUCTION

1. We are asked to advise the Wareham Town Council (“**the Town Council**”) on certain matters in relation to the emerging Wareham Neighbourhood Plan (“**the Neighbourhood Plan**”).
2. In particular, we are asked a number of questions, which we have summarised into the following:
 - 2.1. Whether the approach to the amendment of the Green Belt boundary and site allocation in Policy H4 in the Neighbourhood Plan is likely to meet the basic conditions?
 - 2.2. Whether the approach to safeguarded employment land and site allocations in Policies H5 and H6 in the Neighbourhood Plan is likely to meet the basic conditions?
 - 2.3. Whether Policy H12 in the Neighbourhood Plan is likely to meet the basic conditions?
 - 2.4. Whether Policy PC1 on the retention of pedestrian routes including the ground level railway crossing is a legitimate policy?
 - 2.5. Whether Policy PC4 referring to operational railway land can be included in the Neighbourhood Plan?

RELEVANT BACKGROUND

3. The Neighbourhood Plan is being prepared by the Town Council for the neighbourhood plan area of Wareham Town Parish. The pre-submission version

of the Neighbourhood Plan was published for consultation under regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (“**the 2012 Regulations**”) and the consultation took place between 1 June 2018 and 13 July 2018. The latest pre-submission draft version of the Neighbourhood Plan is dated 19 September 2018.

4. The current Local Plan for the area is the Purbeck Local Plan Part 1 (dated 2012) (“**the current Local Plan**”). Purbeck District Council (“**the District Council**”) is preparing an emerging District Local Plan (“**the emerging Local Plan**” or “**the new Local Plan**”). Both the emerging Neighbourhood Plan and the emerging Local Plan are being prepared at the same time. The District Council currently intend to publish the pre-submission version of the emerging Local Plan in October 2018, with adoption at the end of 2019. Instead of waiting for the Local Plan, the Town Council wish to move forward with the Neighbourhood Plan now, prior to the adoption of the emerging Local Plan.
5. The Town Council relevantly wish to allocate four sites in the Neighbourhood Plan, namely:
 - 5.1. Land West of Westminster Road for housing (Policy H4); this site is currently in the Green Belt.
 - 5.2. Westminster Road Industrial Estate for mixed-use residential and employment (Policy H5); this site is currently safeguarded for employment land within the current Local Plan.
 - 5.3. Johns Road for mixed-use residential and a new café (Policy H6); this site is also currently safeguarded for employment land within the current Local Plan.
 - 5.4. Sandford Lane to be safeguarded for employment use (Policy H12).

RELEVANT LAW AND POLICY

6. For a neighbourhood plan to pass successfully through examination and to referendum it must satisfy the “*basic conditions*”, which are less stringent and

less demanding than the requirements for a local plan. The “*basic conditions*” are as follows:

“(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,

(b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,

(c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,

(d) the making of the order contributes to the achievement of sustainable development,

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.”¹

7. The new version of the National Planning Policy Framework was published on 24 July 2018 (“**the NPPF2**”). Annex 1 of NPPF2 states that plans submitted for examination on or before 24 January 2019 will be judged against the policies of the original NPPF dated 2012 (“**NPPF1**”), however after this date all plans will be judged against the provisions in NPPF2. For the purposes of this advice we have assumed that the Neighbourhood Plan will be submitted for examination after 24 January 2019, and so will be judged against the NPPF2. NPPF2 contains a

¹ See the National Planning Policy Guidance on Neighbourhood Plans.

number of new relevant provisions on neighbourhood plans, including the following:

“The plan-making framework

17. The development plan must include strategic policies to address each local planning authority’s priorities for the development and use of land in its area. These strategic policies can be produced in different ways, depending on the issues and opportunities facing each area. They can be contained in:

a) joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or

b) a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred.

18. Policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies.

19. The development plan for an area comprises the combination of strategic and non-strategic policies which are in force at a particular time.

Strategic policies

20. Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision for:

a) housing (including affordable housing), employment, retail, leisure and other commercial development;

b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);

*c) community facilities (such as health, education and cultural infrastructure);
and*

d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.

21. Plans should make explicit which policies are strategic policies. These should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.

22. Strategic policies should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure.

23. Broad locations for development should be indicated on a key diagram, and land-use designations and allocations identified on a policies map. Strategic policies should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. This should include planning for and allocating sufficient sites to deliver the strategic priorities of the area (except insofar as these needs can be demonstrated to be met more appropriately through other mechanisms, such as brownfield registers or non-strategic policies).

...

Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. *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, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.*

30. *Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.*

8. There are also relevant policies on the use of land for purposes other than its allocated use and changes to Green Belt boundaries:

“119. Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.

120. Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and

b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

...

136. Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.”

LEGAL ANALYSIS

1) Whether the approach to the amendment of the Green Belt boundary and site allocation in Policy H4 in the Neighbourhood Plan is likely to meet the basic conditions?

9. As referred to above, the Land West of Westminster Road is currently within the Green Belt and the Town Council wish to allocate this site for housing. Policy H4 of the Neighbourhood Plan states as follows:

“Subject to the strategic decision to amend the Green Belt boundary west of Westminster Road south of Bere Road and north of Carey Road in the revised Local Plan, the Green Belt Boundary and the Settlement Boundary will be amended as shown on the Policies Map. Development of the southern part of this land as shown on the Policies Map for about 70 new homes will be supported...”

10. Paragraph 136 of NPPF2 provides that the need for any change to Green Belt boundaries (i.e. the presence of “*exceptional circumstances*”) must be established in “*strategic policies*”; paragraph 17 of NPPF2 states that such “*strategic policies*” can only be made by local authorities in a local plan, rather than in

neighbourhood plans. However, paragraph 136 then explains that once the need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through “*non-strategic policies*” in neighbourhood plans.

11. Accordingly, in line with paragraph 136 of NPPF2, the Neighbourhood Plan at Policy H4 correctly does not seek to establish the *need* for this change to the Green Belt boundary.
12. However, we do have concerns about the approach in Policy H4 which relies on the future amendment of the Green Belt boundary in the prospective new Local Plan; in circumstances where the Neighbourhood Plan will be made before the new emerging Local Plan is adopted. There are three reasons for our concern.
 - 12.1. First, the requirement in the “*basic conditions*” is for a neighbourhood plan to be in “*general conformity with the strategic policies contained in the development plan*” (emphasis added). The emerging Local Plan does not form part of the statutory development plan, and there is no requirement for a neighbourhood plan to be in general conformity with *emerging* policy. Rather, the requirement is to be in general conformity with the current Local Plan.
 - 12.1.1. As recognised in our instructions, the allocation in Policy H4 is contrary to the Green Belt boundaries presently set out in the current Local Plan. Of course, the requirement for “*general conformity*” does not require conformity with every policy (see *R (oao DLA Delivery Ltd.) v Lewes DC* [2017] EWCA Civ 58). However, it is likely that the allocation of the Land West of Westminster Road would not be in general conformity with the current Local Plan. In addition, it is likely that such an allocation in the Neighbourhood Plan would undermine “*strategic policies*” (i.e. the Green Belt policies) in the current Local Plan (contrary to paragraph 29 of NPPF2).

- 12.2. Second, there is no guarantee that the emerging Local Plan will make the requisite decision to amend the Green Belt boundaries. In these circumstances, the allocation in Policy H4 would never have any weight, and this would undermine the Neighbourhood Plan and the deliverability of the housing allocations. We think that this would cause serious concern for an examiner at examination of the Neighbourhood Plan.
 - 12.3. Third, in paragraph 136 of NPPF2 it is clear that the ability for a neighbourhood plan to make detailed amendments to Green Belt boundaries is contingent on a strategic policy in a local plan first establishing the need for changes in the Green Belt boundary. In the present case, the District Council's evidence base may well support changes to the Green Belt boundary, but this has not yet been done in a strategic adopted policy and so paragraph 136 of NPPF2 would not bite yet.
13. On the basis of the analysis set out above, our view is that there is a real risk that an examiner will find that the current approach in Policy H4 does not meet the basic conditions.
14. There are thus three ways forward for the Town Council:
 - 14.1. First, wait for the adoption of the new Local Plan and do not proceed with the making of the Neighbourhood Plan now. Then once the new Local Plan has established the need for changes to the relevant Green Belt boundary, the detailed amendments to the Green Belt boundary can be made in the Neighbourhood Plan (in accordance with paragraph 136 in NPPF2) and the Land West of Westminster Road can be allocated for housing. However, we know there is an understandable reluctance to delay the Neighbourhood Plan, so the second option set out below may be preferable.
 - 14.2. Second, proceed with the Neighbourhood Plan now but remove Policy H4 and the allocation, but commit to reviewing the Neighbourhood Plan and

the allocations once the new Local Plan is adopted in due course. One way in which to give some clarity as to the Land West of Westminster Road being allocated in the future, would be to indicate in the supporting text that the Town Council has a strong intention to review the Neighbourhood Plan and the allocations, and a strong intention for certain sites (i.e. Land West of Westminster Road) to be considered and allocated for housing; this could also be indicated on a proposals map. There is a grey area as to whether the examiner will find this approach acceptable, but we think this would achieve the right balance between avoiding the problems with allocating sites subject to amendments which may or may not happen in the new Local Plan and still achieving an element of clarity and certainty over the intentions for the Land West of Westminster Road.

- 14.3. Third, proceed with the Neighbourhood Plan and Policy H4 as it is, with the knowledge that, as we have explained above, there is a risk that the examiner will find that it does not meet the “*basic conditions*”.

2) Whether the approach to safeguarded employment land and site allocation in Policies H5 and H6 in the Neighbourhood Plan is likely to meet the basic conditions?

15. As referred to above, the sites at both Westminster Road Industrial Estate and Johns Road are presently safeguarded for employment land in the current Local Plan², and the Town Council wish to allocate these sites for mixed-use residential. Policies H5 and H6 in the Neighbourhood Plan provide as follows:

“Subject to the removal of the Employment Land Safeguarding Policy in the revised Local Plan, the mixed use redevelopment of the Westminster Road Industrial Estate for up to about 90 dwellings plus employment will be supported...”

² Policy E, page 97 of the current Local Plan.

“Subject to the removal of the Employment Land Safeguarding Policy in the revised Local Plan, the redevelopment of the industrial land at Johns Road for about 30 new homes and a new café in the vicinity of the Railway Station will be supported...”

16. Similar to the analysis above in relation to Policy H4, we do not think the approach of relying on a future amendment to the safeguarded employment land policy in the prospective new Local Plan is legitimate. Namely, because the Neighbourhood Plan must in be compliance with *current* policy rather than *emerging* policy, and there is no guarantee that the emerging Local Plan will amend the safeguarded land employment policies, meaning that the allocations in Policies H5 and H6 would never have any weight which would undermine the Neighbourhood Plan and the deliverability of the housing allocations. On this basis, our judgment is that there is a real risk that an examiner would find that the current wording of Policies H5 and H6 does not meet the basic conditions.
17. However, there is a difference here compared to the analysis with Policy H4 above. In relation to Policy H4, the NPPF2 is clear (at paragraph 136) that amendments to Green Belt boundaries are “*strategic policies*” which must be made by local authorities in local plans, rather than in neighbourhood plans. For this reason, Policy H4 cannot amend the Green Belt boundary by itself, and is contingent on the need for Green Belt release to be established first in a local plan.
18. However, there is a defensible argument that policies on employment land safeguarding are “*non-strategic policies*”, which would mean that Policies H5 and H6 could remove the employment designation themselves and there is no need to rely on prospective policies in the new Local Plan. This is explained as follows:
 - 18.1. NPPF2 (see paragraphs 17 to 30) provides that “*strategic policies*” cannot be made in neighbourhood plans, but “*non-strategic polices*” can be.
 - 18.2. “*Non-strategic policies*” are “*more detailed policies for specific areas, neighbourhoods or types of development*” and “*can include allocating sites*” (see paragraph 28 NPPF2).

- 18.3. There is a good argument that policies safeguarding individual sites for employment use are such “*more detailed policies for specific areas*”. We note that there is no explicit reference in NPPF2 that employment land policies are “*strategic policies*” (unlike in relation to Green Belt policies).
- 18.4. Support can be found in paragraphs 119 and 120 of NPPF2 which encourage plan-making bodies to bring forward land for different development needs and that land should be reallocated if there is no prospect of an application coming forwards and there is a need for other uses. We note that the District Council has referred to there being a surplus of employment land in the District³; if there is a sound evidence base showing this then the Town Council could draw on this evidence base to show why Westminster Road Industrial Estate and Johns Road should be de-allocated for employment and re-allocated for mixed-use residential.
- 18.5. We note that further support can also be found in paragraph 118(c) and 118(d) of NPPF2, which provide that policies should give weight to the value of using brownfield land and promote the development of under-utilised land and buildings.
- 18.6. Paragraph 30 of NPPF2 provides that the non-strategic policies in a neighbourhood plan will take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict. Accordingly, if it can be successfully shown that the employment land safeguarding policies are “non-strategic policies”, then Policies H5 and H6 will take precedence over the relevant employment land safeguarding policies in the current Local Plan.
19. On the basis of the analysis above, if Policies H5 and H6 were amended to take out the reference to the emerging Local Plan, and instead H5 and H6 re-allocate the sites for mixed-use residential on the basis of a sound evidence base as to

³ See the Wareham issues and proposed way forward – briefing note.

why the employment safeguarding is no longer justified, then there are good prospects that this would be a defensible position at examination.

20. It follows that there are the following ways forward for Policies H5 and H6:

- 20.1. First, amend Policies H5 and H6 as explained above and proceed with the Neighbourhood Plan now; there is a defensible position that these are non-strategic policies that can be made in a neighbourhood plan and a good argument that these would meet the basic conditions.
- 20.2. Second, wait for the adoption of the new Local Plan and do not proceed with the making of the Neighbourhood Plan now. Then once the new Local Plan has amended the safeguarding employment land policy, the sites can be allocated in the Neighbourhood Plan. Again, we know there is an understandable reluctance to delay the progress of the Neighbourhood Plan.
- 20.3. Third, proceed with the Neighbourhood Plan now but remove Policies H5 and H6 and the allocations, but commit to reviewing the Neighbourhood Plan and the allocations once the new Local Plan is adopted in due course. As explained in relation to Policy H4, the supporting text could refer to the strong intention to carry out the review and a strong intention to consider and allocate certain sites.
- 20.4. Fourth, proceed with the Neighbourhood Plan with Policies H5 and H6 as they are, with the knowledge that, as we have explained above, there is a risk that the examiner will find that it does not meet the “basic conditions”.

3) Whether Policy H12 in the Neighbourhood Plan is likely to meet the basic conditions?

21. The Town Council wish to safeguard the site at Sandford Lane for employment use, and Policy H12 currently provides as follows:

“The Sandford Lane area defined on the Policies Map should be safeguarded for employment use...”

22. In principle, this is a legitimate policy to include in the Neighbourhood Plan. In particular, as explained above, there is a good argument that employment land safeguarding policies are “*non-strategic*” policies which can be made in a neighbourhood plan.

4) Whether Policy PC1 on the retention of pedestrian routes including the ground level railway crossing is a legitimate policy?

23. Policy PC1 in the Neighbourhood Plan states that:

“The main pedestrian and cycle routes within the NP area shown on Fig 26 including the surface level crossing across the railway line next to the Station shall be retained. New development should have good convenient routes to the Town Centre and main movement attractors...”

24. Our view is that this is a legitimate policy and that it is likely this will satisfy the basic conditions. Paragraph 28 of NPPF2 provides that non-strategic policies in neighbourhood plans can include “*the provision of infrastructure*”. Further, the National Planning Policy Guidance on Neighbourhood Planning states as follows:

“Should a neighbourhood plan consider infrastructure?”

A qualifying body may wish to consider what infrastructure needs to be provided in their neighbourhood area alongside development such as homes, shops or offices. Infrastructure is needed to support development and ensure that a neighbourhood can grow in a sustainable way.

The following may be important considerations for a qualifying body to consider when addressing infrastructure in a neighbourhood plan:

- *what additional infrastructure may be needed to enable development proposed in a neighbourhood plan to be delivered in a sustainable way*

- *how any additional infrastructure requirements might be delivered*
- *what impact the infrastructure requirements may have on the viability of a proposal in a draft neighbourhood plan and therefore its delivery*
- *what are the likely impacts of proposed site allocation options or policies on physical infrastructure and on the capacity of existing services, which could help shape decisions on the best site choices*

Qualifying bodies should engage infrastructure providers (eg utility companies, transport infrastructure providers and local health commissioners) in this process, advised by the local planning authority.”

25. We note that there are issues (which we have advised on previously) surrounding the District Council and Network Rail’s commitment to maintaining the ground level railway crossing. However, we consider it is likely that this does not prevent the matter from being included in Policy PC1. As set out in paragraph 29 of NPPF2, the aim of a neighbourhood plan is to give “*communities the power to develop a shared vision for their area*” and to “*shape, direct and help deliver sustainable development*”; as such it is legitimate for the local community to express their desire for the ground level railway crossing to be maintained, and for this to, and for this to be considered as part of the development plan if a planning application is made in relation to this land. We also note that one of the basic conditions is that the neighbourhood plan policies “*contributes to the achievement of sustainable development.*” Any issues surrounding the District Council or Network Rail’s desire or commitment to maintaining the ground level railway crossing may become relevant in the future (whether in the planning context or not), but that does not prevent the neighbourhood from putting across their vision of sustainable development in planning policy.

5) Whether Policy PC4 referring to operational railway land can be included in the Neighbourhood Plan?

26. Policy PC4 in the Neighbourhood Plan currently states:

“In the event of the former sidings on the north side of the railway line east of the crossing being declared surplus to operational rail requirements the site should be safeguarded for future parking space for rail users / community use.”

27. Again, our judgment is that Policy PC4 is a legitimate policy. The provision of car parking is likely to fall under the definition of “*infrastructure*”, and as discussed above, neighbourhood plans can address infrastructure matters.
28. For similar reasons to that out above, we think that it is likely that there is no problem with the fact that Policy PC4 refers to current operational railway land. Any issues surrounding ownership or railway use may become relevant in the future, but that does not prevent the neighbourhood from putting across their vision of sustainable development in planning policy, which includes the desire for the use of this land for car parking (see paragraph 29 of NPPF2).

CONCLUSION

29. In summary, we have advised as follows:
 - 29.1. There is a real risk that Policy H4 will not satisfy the basic conditions, and we have set out the various ways forward.
 - 29.2. There is also a real risk that Policies H5 and H6 as currently drafted will not satisfy the basic conditions. However, we have suggested amendments to the wording and approach in H5 and H6, which we believe would be defensible at examination. Again, we have set out various ways forward.
 - 29.3. It is likely that Policy H12 will satisfy the basic conditions.
 - 29.4. Finally, it is also likely that Policies PC1 and PC4 are legitimate and will satisfy the basic conditions.
30. If there are any further issues please do not hesitate to contact us. Further, we would be happy to advise in conference if required.

4 October 2018.

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