Neighbourhood Planning

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How to prepare for, and what to expect at, Examination stage

A toolkit for neighbourhood planners

Contents

Introduction

This guidance note focuses on neighbourhood plan examinations. Often this can be a daunting prospect for everyone concerned. Having spent a long time and a great deal of effort on the neighbourhood plan, it can be frustrating and disappointing for those involved if an examiner makes modifications to it. This is particularly the case where the examiner feels it necessary to significantly reword or even delete policies.

It is also recognised that practice between examiners has not always been consistent. Guidance to both qualifying bodies and examiners has been published by the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) – the 'NPIERS' guidance - to try and ensure there is more consistency between those examining neighbourhood plans.

Planning is often a matter of judgement. This is why it is so important that the neighbourhood plan and its policies is prepared in such a way to enable the examiner to conclude that it meets the basic conditions and other requirements. This will minimise the likelihood of modifications being recommended.

The examination should not be seen in isolation or as the 'final hurdle'. Ensuring that the neighbourhood plan is well written and supported by appropriate evidence will minimise the likelihood of numerous or significant modifications being made by the examiner and the likelihood of legal challenge.

This guidance note sets out some basic information about the purpose of the examination and the role of the examiner, what to expect at examination stage and how to prepare for the examination.

In addition, there are tips on best practice and how to avoid common pitfalls.

There is a checklist at the end of this guidance note to help you to prepare for the examination stage (see Appendix A).

For information on the entire neighbourhood planning process, from getting established to referendum, please visit the Neighbourhood Plans Roadmap.

What is the purpose of the examination?

Neighbourhood plans and neighbourhood development orders (including community right to build orders) must meet certain 'basic conditions' before they can come into force. This is tested though the independent examination and will also be checked by the local planning authority before a neighbourhood plan can proceed to a referendum. There is more information on the basic conditions and how to satisfactorily meet them later in this toolkit.

Essentially, once the neighbourhood plan has been made by the local planning authority after a successful referendum, the neighbourhood plan becomes part of the statutory development plan for the area, alongside the local plan. Local planning authorities and planning inspectors considering planning applications and appeals must make their decisions in accordance with the policies of the development plan, unless material considerations indicate otherwise.

Therefore, given the neighbourhood plan's status in the planning system, it is important that an independent check is made to make sure that it has been prepared by a qualifying body (i.e. a town or parish council, or a neighbourhood forum in an unparished area), has been prepared for an area that has been designated as a neighbourhood plan area and meets all the other requirements set out in legislation and regulations (see 'The role of the examiner' section below for more information).

It is also important to see the examination stage as part of the journey towards having the neighbourhood plan made. Whilst this stage can seem daunting or mysterious, there is no need to be concerned about it if all the stages of plan preparation have been followed properly and the neighbourhood plan is well written and appropriately evidenced.

This will ensure a robust and relevant neighbourhood plan that not only reflects the aspirations of the local community, but also provides a positive and meaningful tool to achieve these aspirations.

Who are the examiners?

Independent examiners have to be suitably qualified and experienced professionals. Most will be chartered town planners, but examiners also include planning lawyers, architects and surveyors and other related professionals. Often examiners will have worked in the public, private or academic sectors and have a wide range of experience. They must be independent: this means that they cannot have an interest in any land that may be affected by the neighbourhood plan or other conflicts of interest.

It is often thought that examiners are planning inspectors. The Planning Inspectorate deals with planning appeals, national infrastructure planning applications, examinations of local plans and other planning-related and specialist casework in England and Wales. It is an arms-length body of the Department for Levelling Up, Housing and Communities (DLUHC) and the Welsh Government. Whilst some examiners are also planning inspectors, the independent examiner is not the same as a planning inspector. Some profiles of examiners are included in Appendix B.

Selecting and appointing an examiner

The local planning authority will handle the process of appointing an examiner including any contractual matters and fees. However, an examiner cannot be appointed without the agreement of the qualifying body.

There is a wide choice in the market of examiners. Examiners can be sourced through the Neighbourhood Planning Independent Examiner Referral Service known as NPIERS or other commercial providers and some examiners are happy to be appointed directly.

Ensure that you ask for information so that you can see the qualifications and background of the examiner, whether they have experience of examining similar plans and to ensure they have no conflicts of interest.

Many examiners work throughout England. Sometimes this can lead to concerns about the examiner being unfamiliar with the local area or local issues. However, examiners are experienced professionals who are used to working in different parts of the country. If an examiner is locally based, they may have an interest in the land or be 'too close' to the local planning authority or other consultants working in the area. The examiner will usually visit the area having read all the background and supporting documentation provided which should assist in identifying important features and issues.

Don't forget!

The selection of the examiner is a joint decision for the qualifying body and the local planning authority. The local planning authority cannot appoint an examiner without the agreement of the qualifying body.

The role of the examiner

The examiner's role is specified in legislation and regulations. It is actually quite limited. The examiner will check to see whether the neighbourhood plan meets the basic conditions.

A neighbourhood plan will meet basic conditions if:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan
- The making of the plan contributes to the achievement of sustainable development
- The making of the plan is in general conformity with the strategic policies in the adopted development plan for the local area
- The making of the plan does not breach, and is otherwise compatible with European Union (EU) obligations.

In order to consider the requirements to be compatible with EU obligations, a further basic condition is set out in regulations. This is that the making of a neighbourhood plan must not breach the Requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 (this is dealt with in more detail later in this document).

A neighbourhood development order that proposes certain types of development will also need an assessment of its effects on the environment to be undertaken and those findings to be taken into account. The local planning authority should be able to help with advice on this.

For neighbourhood development orders and community right to build orders, there is a further requirement: they must also have regard to the protection and enhancement of listed buildings and conservation areas.

Both neighbourhood plans and neighbourhood development orders must also meet human rights requirements.

In addition to the above, the examiner is required to check whether the neighbourhood plan:

- Has been prepared and submitted for examination by a qualifying body
- Has been prepared for an area that has been properly designated for such plan preparation
- Meets the requirements to
- specify the period to which it has effect

- not include provision about excluded development (defined in the Localism Act 2011 and which consists of various matters usually dealt with by County Councils such as minerals and waste and nationally significant infrastructure projects)
- not relate to more than one neighbourhood area
- Relates its policies to the development and use of land for a designated neighbourhood area.

The examiner must then make one of the following recommendations:

- The neighbourhood plan can proceed to a referendum on the basis it meets all the necessary legal requirements
- The neighbourhood plan can proceed to a referendum subject to modifications or
- The neighbourhood plan should not proceed to a referendum on the basis it does not meet the necessary legal requirements.

If the neighbourhood plan can proceed to a referendum with or without modifications, the examiner must also consider whether the referendum area should be extended beyond the neighbourhood plan area to which it relates.

More information about each of the requirements that the examiner will consider is set out in the next section.

What will the examiner look for?

This guidance note considers each of the basic conditions and other requirements in more detail. It contains advice on how to meet them and to demonstrate to the examiner how they have been met. It includes examples and things to watch out for as well as some common pitfalls that can delay or even result in the neighbourhood plan failing at the examination stage.

Basic condition 1 - is it met?

Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan.

The main document that sets out national planning policy is the National Planning Policy Framework (NPPF). A revised NPPF was published in 2018 and further amendments in 2019 and 2021. In particular, it explains that the application of the presumption in favour of sustainable development means that plans should positively seek opportunities to meet the development needs of their area and be sufficiently flexible to adapt to rapid change.

It states that neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies and should shape and direct development that is outside of these strategic policies.

The NPPF states that:

> **"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".**

Neighbourhood plans must be in general conformity with the strategic policies of the relevant local plan. They cannot promote less development than that set out in the strategic policies for the area or undermine those strategic policies.

The NPPF explains that strategic policy making authorities should establish a housing requirement figure for their whole area. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations. Once the strategic policies have been adopted, these figures should not need re-

testing at the neighbourhood plan examination, unless there has been a significant change in circumstances that affects the requirement.

Where it is not possible to provide a requirement figure for a neighbourhood area, the local planning authority should provide an indicative figure, if requested to do so by the qualifying body. This figure will take into account factors like the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.

In 2014, the Government published a suite of planning guidance referred to as Planning Practice Guidance (PPG). The planning guidance contains a wealth of information relating to neighbourhood planning and is regularly updated.

PPG indicates that a policy should be clearly written and unambiguous to enable a decision maker to apply it consistently and with confidence when determining planning applications.

PPG advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the context and the characteristics of the area.

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken. It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.

Qualifying bodies should familiarise themselves with the relevant parts of the NPPF and PPG.

How to demonstrate this to the examiner

Use the basic conditions statement[1] to set out how the neighbourhood plan has had regard to the NPPF and PPG. Some basic conditions statements extract the key elements or headings from the NPPF and set out in tabular format which aims, objectives and policies in the neighbourhood plan relate to these elements. It is important to add a short commentary to demonstrate how national policies have been taken into account.

Alternatively, each neighbourhood plan policy could be listed in a table with three columns that show national policy and guidance (addressing this basic condition), sustainable

[1] The basic conditions statement is one of the documents that needs to be submitted alongside the neighbourhood plan, as well as a map or statement that identifies the area to which the plan relates and the consultation statement. It is the qualifying body's opportunity to demonstrate to the examiner how the basic conditions have been considered and how the plan meets their requirements.

development and the relevant strategic policies in the development plan. This means one table, rather than multiple tables, are produced.

However, you present the information, don't try to hide or ignore any possible conflicts – address them.

In a nutshell, three things are critical to remember:

- In order for a neighbourhood plan to meet this basic condition, it is important that the plan is prepared positively to support development, that it does not seek to hinder or thwart strategic development objectives in the local planning authority area, but adds an additional layer of local detail to policies in the local plan and/or has locally distinctive policies relevant to the neighbourhood plan area;

- The neighbourhood plan should be a practical framework for decision making. The plan will be used by officers, councillors and planning inspectors in dealing with planning applications and appeals as well as applicants and their agents in formulating and submitting proposals for development. The plan must be clear and its policies concise and precise – they should be clearly written and unambiguous so it is evident how a decision maker should react to development proposals;

- The policies must be supported by evidence. This evidence can take a variety of forms including the engagement carried out with the local community and businesses including any surveys or questionnaires, documents prepared by others including the local planning authority on, for example, housing needs, evidence specifically collected or commissioned as part of the work on the neighbourhood plan such as landscape character assessments, community assets or parking or transport related work.

Often examiners recommend modifications to make a policy clearer and more precise. This will mean it can provide the necessary practical framework for decision-making. Here are some examples.

Case study: Upper and Nether Poppleton Neighbourhood Plan- clarity and precision in policy wording – amended policy

Policy PNP 6A: Housing – the policy set out the approach to housing in the neighbourhood area and contained a number of separate components – identification of housing sites, support for subdivision of existing dwellings or single infill plots and conversion of existing buildings with heritage value and worthy of retention.

Here is the original policy:

> Housing proposals will be supported where they meet any of the following criteria:
>
> 1. The site is allocated on the land allocations plan for residential use as follows:

- H1 The former British Sugar Site (ST1) (City of York reference) (300 dwellings) within Poppleton
- H2 Long Ridge Lane plots (2 dwellings)
- H3 Blair

> 2. The proposal is the sub-division of an existing dwelling or is a single infill dwelling within a domestic curtilage and in compliance with other planning policies.
>
> 3. The proposal is for the conversion of an existing building that is of some heritage value worthy of retention and is in sound structure condition. The building should be genuinely redundant and it can be demonstrated its loss will not generate demand for a replacement building in the future.
>
> 4. Any development within the village must be within the village settlement limit as shown within the VDC.

Further policies dealt with site-specific proposals.

The examiner made a number of recommended changes to this policy, the main one being to separate out the policies to reflect the different elements. This was in the interests of clarity and certainty. The policy was recommended to be worded in a positive way setting out the circumstances in which development would be supported with clear requirements for the proposed housing allocations to reflect site-specific circumstances.

The wording was amended as follows:

> PNP 6A - Development within Upper Poppleton and Nether Poppleton
>
> Within the settlement limit of the two villages as shown on the Policies Map proposals for the subdivision of an existing dwelling of for the construction of a single dwelling within the curtilage of a domestic property will be supported where the proposals are:

- In character with the surrounding development;
- Designed to safeguard the amenities of existing residential properties;

- Designed to provide appropriate elements of garden and amenity space; and
- Designed to provide appropriate levels of parking and vehicular access to the City of York Council standards at the time of the application.

Further policies dealt with the following:

- PNP 6B Conversion of existing buildings to residential use
- PNP 6C Housing allocations
- PNP 6D Redevelopment of existing buildings on the Blairgowrie site
- PNP 6E Residential development of former British Sugar Site

The qualifying body had found the process very challenging and were in an unusual situation of not having an adopted local plan (of any age) thus lacking strategic direction and context. They welcomed the proposed modifications as providing clear and unambiguous policies whilst supporting the sensitivities of particular sites based on an understanding of the wider area.

Case study: Chew Valley Neighbourhood Plan– clarity and precision in policy wording - amended policy

Policy HDE15: Dark Skies Policy – the following policy was included in the submission version of the plan:

> Where planning permission is required development must:
>
> - Design lighting to minimise the risk of light spillage beyond the development site boundary and into the wider countryside, and
> - Incorporate appropriate dark corridors for bats and other light sensitive species.

It sought to ensure that development minimises light spillage beyond the site boundary of proposals and incorporates appropriate dark corridors for bats and other light sensitive species.

The examiner found that the use of the phrase *"and into the wider countryside"* was not sufficiently precise as it was too wide an area to provide a practical framework within which decisions on planning applications could be made with a high degree of predictability and efficiency.

In addition, the use of the term *"where planning permission is required*" was unnecessary as policies only relate to development requiring planning permission. Subject to those modifications the policy was found to be in accordance with the basic conditions.

The modified policy is worded:

Development must:

- Design lighting to minimise the risk of light spillage beyond the development site boundary and
- Incorporate appropriate dark corridors for bats and other light sensitive species.

This was a policy considered to be important by the local community where the rural countryside character had been assessed as a particularly important attribute of the plan area; they welcomed the policy modifications to ensure that the policy met the basic conditions and could be retained. The wording of policies had been a particular challenge for the qualifying body.

Top tips to meet this basic condition

Here are some top tips to help meet this basic condition:

- Most neighbourhood plans will include maps or diagrams. Ensure that they are legible and at a scale and level of detail that suits the designations. Often examiners will suggest that better quality maps are included that a) show the boundaries of any sites or designations clearly and b) are legible. This is because it must be clear which areas a particular policy applies to. Often just changing the text size on maps and keys will make them easier to read. Use Ordnance Survey based maps if at all possible. Some local planning authorities will provide maps for you.

- Many neighbourhood plans propose to designate areas of Local Green Space, a designation introduced in the NPPF. The NPPF sets out a number of criteria for the designation. It is important to ensure that each proposed Local Green Space has been assessed and is supported by commentary to show how each of the criteria are met. Often this can be done in a separate report or in tabular format and can be supported by photographs or other evidence of, for example, the site in question being used for a village fete or information about its historic importance or wildlife and so on.

- Whilst it can be tempting to 'copy' a policy from another neighbourhood plan and often there is no need to reinvent the wheel, it is important to ensure that the policies in your plan are appropriate and evidenced for your specific area. Just because a policy has successfully been through examination in another plan, does not necessarily mean it is appropriate for your area. See the neighbourhood plan as an opportunity to come up with distinct policies for your area that reflect the local features, characteristics and issues that have been identified as important to the

local area by the community.

- Local planning authority officers may be able to review the wording of any draft policies to make sure they are easily understood and are sufficiently clear and precise to be used when decisions on planning application are being taken.

- A health check may also be useful for this purpose. Often examiners undertake health checks of neighbourhood plans and this can ensure that any hostages to fortune or potential problems with the plan or its supporting documentation can be ironed out early on. Remember that the examiner that undertakes the health check of your plan cannot then examine the plan. To get the most out of a health check you will need a completed draft plan, a draft basic conditions statement and a draft consultation statement.

Further tips: The importance of the evidence base

Neighbourhood plans must be based on evidence. Whilst the evidence should be proportionate, it has to demonstrate that the policies are based on a good understanding of the local area and support the identified objectives of the neighbourhood plan.

What to watch out for

Make sure that the neighbourhood plan explains the rationale and intent of the policy. Explain the evidence that supports the policy. Although you will be very familiar with local issues and have been working on the plan for a long time, the examiner will read it with fresh eyes so make sure the explanation for each policy is included in the plan and the evidence that supports it referenced appropriately.

Your checklist for supporting evidence

A good way of ensuring that a policy is explained well and supported by evidence is to consider the following checklist:

- Set out the objectives of the policy
- State the background and intent of the policy
- Include factual information such as number of listed buildings, levels of car ownership or whatever might be relevant
- Outline any relevant results from community engagement
- Refer to any national policies or guidance that support the policy
- Outline how it relates to other policies in the Local Plan
- Refer to any other evidence specifically collected as part of the neighbourhood plan process such as a local housing needs survey or landscape character assessment.

This then becomes the background to the policy, setting out its intention, rationale and the 'story line'. This will help to ensure that the intention and purpose of the policy is clear and will assist the examiner in determining whether it is effective in these respects.

Don't forget that to keep the neighbourhood plan itself concise, you can refer to a background document where all the detailed evidence can be found.

If the plan is evidenced well, this will reduce the likelihood of successful legal challenge.

Basic condition 2 - is it met?

The making of the neighbourhood plan contributes to the achievement of sustainable development

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development. In this context sustainable development is commonly defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

The NPPF explains that there are three overarching and interdependent objectives to sustainable development: economic, social and environmental. These three objectives should be pursued in mutually supportive ways:

- Economic - to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation and by identifying and coordinating development requirements, including infrastructure;

- Social - to support strong, vibrant and healthy communities by ensuring that a sufficient number and range of homes are provided to meet the needs of present and future generations and by creating a well-designed and safe built environment with accessible services and open spaces that reflect current and future needs and support the community's health, social and cultural wellbeing;

- Environmental - to contribute to protecting and enhancing the natural, built and historic environment, including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution and mitigating and adapting to climate change including moving to a low carbon economy.

How to demonstrate this to the examiner

One way of demonstrating this is to include a table in the basic conditions statement that 'maps' each of the elements of sustainable development against the aims and objectives of the neighbourhood plan with a short commentary. A second table should then be included that lists each of the neighbourhood plan policies and has a column that includes a brief statement about the purpose of each policy and a third column that sets out the desired outcome of each policy.

For more complex neighbourhood plans, whilst there is no legal requirement for a neighbourhood plan to have a sustainability appraisal, it can be useful to undertake one. This is a more systematic process and enables the ways in which the neighbourhood plan will contribute to improvements in economic, social and environmental conditions to be considered.

In a nutshell it must be clear how the neighbourhood plan has taken opportunities to secure net gains in environmental, economic or social conditions. If the plan might give rise to potential adverse effects, it should be clear that consideration has been given to how these adverse effects can be prevented, mitigated or reduced to an acceptable level, or offset.

Have a look at the Yoxall Neighbourhood Plan Basic Conditions Statement which the examiner considered to be exemplary in both its systematic approach and coverage.

Top tips to meet this basic condition

Here are some top tips to help meet this basic condition:

- Developing a vision and a set of aims or objectives for the neighbourhood plan early on and getting community backing for the vision and direction of the plan can really help with seeing how the plan can ensure that the area develops sustainably over the neighbourhood plan period – ideally involve all age groups in the community, for example thorough local schools and clubs.

- Some neighbourhood plans include a commentary on what sustainable development means for their area. This can be helpful in identifying what could be improved, for example the public realm along a High Street; what could be safeguarded for future generations such as open spaces and what could be appropriately developed like previously developed sites or edge of village locations provided that appropriate

infrastructure is in place. In other words, it can assist a holistic consideration of the characteristics of the area and any problematic issues and how the neighbourhood plan will improve the area over its lifetime for current and future residents.

Basic condition 3 - is it met?

The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area.

The first thing to find out is what the development plan for the area is. Often the development plan is not just one document, but the starting point will be your local planning authority website or contact. Bear in mind that only adopted documents form part of the development plan. Any emerging local plans or other plans currently being worked on or produced by your local planning authority and which are not yet adopted are not part of the 'development plan'.

Once you have identified the documents that constitute the development plan, you will then need to establish which policies in those documents are 'strategic'. The NPPF indicates that strategic policies are likely to be those that set out an overall strategy for the pattern:

- scale and quality of development and provide for the number of homes and jobs needed in the area,
- provide for commercial development including retail and leisure uses, infrastructure requirements for transport,
- water, waste, flood risk, telecommunications, security and so on,
- the provision of health, community and cultural facilities such as parks, hospitals and theatres,
- heritage issues or cover issues that are borough or district wide such as landscape and rivers.

These policies will look to a 15 year or so period in the future.

The NPPF indicates that plans should be very explicit in indicating which policies are strategic. They are unlikely to be policies that deal with detailed matters.

Now you know which policies are 'strategic', you will want to know what general conformity means. In essence the policies in the neighbourhood plan should support and uphold the general principle and the aims and objectives of the strategic policy in question.

If the neighbourhood plan policy conflicts with a strategic policy, then the degree of conflict will be considered. In this scenario, the evidence supporting a neighbourhood plan policy will be particularly important. If a conflict is found, but there is sufficient evidence to justify it in that particular locality, then this is more likely to be persuasive to the examiner. Conversely, if such a conflict is not supported by any justification or reasoning, it is likely to fail this basic condition.

Usually the neighbourhood plan policy should provide an additional level or layer of detail to the local planning authority's policies.

Neighbourhood plan policies can also provide a distinctive or local approach or cover detailed issues relevant to the local area. This means that the neighbourhood plan can add a layer of detail that will not necessarily be relevant to all of the local plan area, but will be relevant to the neighbourhood plan area. An example of this is specific design guidance.

Many people are often surprised that this basic condition does not relate to emerging policies at district or borough level, particularly where the current adopted development plan is of some age. It is however, good practice to find out about any emerging plans and keep an eye on them to make sure the neighbourhood plan can plan for the most up to date housing figures for example and use the evidence produced by the local planning authority. PPG advises:

> **"although the neighbourhood plan is not tested against the policies of the emerging plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested."**

This will help to ensure the neighbourhood plan will not become out of date as soon as the new local plan is adopted. Some case studies follow this section which indicate potential ways to deal with emerging local plans.

How to demonstrate this to the examiner

The examiner will look at the relevant development plan policies and any emerging plan policies too. Therefore, as well as making sure that the policies in the neighbourhood plan have been produced with an eye on development plan policies and any reasoning or evidence supporting emerging policies, a table in the basic conditions statement can set out the relevant strategic policies with a commentary on how the neighbourhood plan policies fit with them.

Alternatively, some neighbourhood plans add a 'conformity box' or paragraph alongside each policy to show which development plan policies the policy relates too.

In a nutshell do not assume that the development plan is one document or that all the policies in a county, district or borough local plan will be strategic. Remember it is only the adopted policies that this basic condition is concerned with not any emerging policies at local planning authority level.

It is not necessary to repeat policies in another plan. Ensure that your policies add a layer of detail relevant to the neighbourhood plan area or cover things that are not in other plans, but most importantly are distinct and local to your area.

Top tips to meet this basic condition

Here are some top tips to help meet this basic condition:

- Just because a policy is titled or labelled or in a section of a document called 'strategic' it might not be. The other side of the coin to this is that just because a policy isn't titled or labelled strategic, it might be. Check. Talk to your local planning authority contact as they will be able to tell you which policies in their local plan are considered to be strategic in nature. The NPPF provides clarification on this matter too.

- Consider how the neighbourhood plan fits in with other plans; they should all be complementary. There is little point in repeating policies in another plan. Examiners are likely to delete such policies to avoid unnecessary duplication. The NPPF also warns against this.

- The neighbourhood plan should be unique to your area. Whilst it is tempting to 'copy' other policies in other neighbourhood plans, make sure that they are appropriate for your area and that the characteristics of your area support the policy. Whilst there is also not much point in 'reinventing the wheel', the policies in your neighbourhood plan will work better if they are distinctive and clearly support the vision and objectives of the plan.

Case study: Farnham Neighbourhood Plan- a plan prepared in advance of the local plan

Farnham is an historic town in the south-west of Surrey with a population of around 40,000 and the largest settlement in the Borough. Work started on the plan in 2012 at which time the emerging local plan was in its early stages of production, the adopted development plan being the Borough Local Plan 2002 (to 2006).

The examiner decided to hold a hearing to ensure adequate examination of a number of issues that had arisen to enable oral submissions on those, including whether the plan met the full objectively assessed need for housing as set out in the emerging local plan. This was held in November 2016 following submission of the plan in July 2016.

However, the basic conditions statement set out how the plan's policies had been aligned with the emerging local plan and drew on its evidence base. This general approach was found to be consistent with the PPG which advises a neighbourhood plan can be brought forward in advance of a local plan and that in such circumstances the relationship between policies should be discussed and agreed with appropriate regard to national policy.

The examiner gave particular attention to the issue of the housing requirement and potential housing supply. In order to reach an accurate and up to date position on the matter the Town and Borough Council produced a Statement of Common Ground to correct anomalies and inaccuracies that had been found. The examiner concluded that the total supply (including sites already completed within the relevant plan period, sites with permission, windfalls and allocations) generally met the emerging strategic provision and that the plan contained robust mechanisms to monitor supply and if necessary a formal review could be undertaken to respond to any changed circumstances.

The plan was the subject of judicial challenge before reaching referendum but this was dismissed on all grounds. The plan was subsequently made in July 2017. The plan is currently the subject of a partial review to seek to allocate further housing sites in response to the recent adoption of the new local plan, which identified an increased need for the town.

The neighbourhood group found the process to be challenging with the subject of site allocations being a particular 'bone of contention'. However, they were determined to have a plan in place as soon as possible to give some certainty whilst at the same time reflecting the vision and aspirations of the local community though acknowledging that all involved must 'have their say'. They also found the added expense and complexity of the hearing process to be rather onerous and somewhat disproportionate in terms of time and expense for what was supposed to be the 'community's' plan.

Case study: North Northumberland Coast neighbourhood plan- produced in advance of the local plan

The neighbourhood area encompasses the parishes of North Sunderland (including Seahouses), Bamburgh and Beadnell. The development plan applying in the North Northumberland Coast Neighbourhood Area and relevant to the plan comprises the Berwick-on-Tweed Borough Local Plan (1999). The County Council had been preparing a Core Strategy (CS) that was to replace the local plan but it was withdrawn (in July 2017) before being examined in favour of the production of a new local plan for the County.

The examiner noted that PPG states that neighbourhood plans can be developed before or at the same time as the local planning authority is producing its local plan and that although the neighbourhood plan is not tested against the policies of the emerging local plan, the reasoning and evidence informing the local plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested.

Taking account of the above, the Parish Councils agreed that the housing figure in the withdrawn core strategy was a realistic and achievable level of growth given the number of developments in the pipeline and given the aspirations for sustainable growth. The

examiner found this approach to be appropriate. Sites were not allocated but settlement boundaries drawn and development within it supported subject to a number of criteria.

The biggest issue for the group was that as a result of the withdrawal of the CS there was a need to undertake a strategic environmental assessment and habitats assessment as the ones undertaken to support the CS could no longer be relied on. This was a big blow for the Group and caused considerable delay but also resulted in the need for a lot of in-depth supporting evidence which strengthened and supported the plan.

The Group had a good working relationship with the County Council which was especially important given the above circumstance. This assisted with the plan production and, along with a health check, resulted in fewer issues being raised at the examination process which was then relatively straightforward with few modifications suggested. Whilst the process required a lot of resource and took time, the Group found that it was a positive outcome in the end.

Case study: Watlington neighbourhood plan- produced in changing circumstances

The plan area consists of the town of Watlington, a small market town with a wide range of buildings that reflect its rich built heritage, outlying smaller settlements of Christmas Common, Greenfield and Howe Hill and parts of Northend and Pishill. The wider plan area is mainly agricultural in use, sitting within a rich landscape and ecological setting, with the Chilterns Area of Outstanding Natural Beauty located to the south and east of the town.

At the time of examination in respect of which a hearing was held (examiner's report dated April 2018), the development plan consisted of the South Oxfordshire Core Strategy 2012 (to 2027) and saved / extended policies of the South Oxfordshire Local Plan 2006 (to 2011). The emerging local plan to 2033 (Publication Version) had been the subject of recent consultation and was due to be submitted to the Secretary of State.

The examiner noted that whilst this timing had not permitted the neighbourhood plan to directly take account of it, it was clear that it had nevertheless taken account of the growth and delivery agenda in general terms and in safeguarding the route of the by-pass in particular. He also noted that the neighbourhood plan anticipates a need for monitoring and review, the adoption of the local plan being a key milestone. Following the hearing, it was noted that submission of the local plan was delayed due to uncertainty in respect of one of the strategic allocations.

In dealing with the issue of housing, and whilst noting that this had attracted a series of conflicting comments, the examiner made the following comments:

> **"The Plan has actively sought to address the future levels of housing growth required in the South Oxfordshire District in general terms and in Watlington in particular. "In addition, he**

noted: "It [the plan] also takes account of Planning Practice Guidance (ID: 41-044-20160519) which comments that neighbourhood plans can come forward before an up-to-date Local Plan is in place. In particular the Parish Council has worked with South Oxfordshire District Council to discuss and aim to agree the relationship between policies in the emerging neighbourhood plan, the emerging local plan and the adopted local plan."

The emerging local plan had been evolving during the course of the preparation of the neighbourhood plan. However, the emerging local plan took account of the fact that there was an emerging neighbourhood plan and set a housing number for the area to act as a guide, which was based on the latest up to date evidence of housing need.

The number had increased significantly in comparison to the growth associated with the adopted Core Strategy. The Group found it challenging to persuade the local community to accept what was quite a significant level of growth. However, it was decided to allocate sites so that the community could direct where the development was to go and this was supported by thorough site assessments and local consultation.

However, there was not much controversy over the sites selected as they needed to support and facilitate the provision of a relief road for the congested town centre, but also best meet the wider selection criteria.

Case study: Lavenham neighbourhood plan- plan brought forward in advance of Site Allocations Plan

The development plan for the Lavenham Neighbourhood Development Plan Area comprises the Babergh Local Plan 2011-2031 Core Strategy and Policies (Part 1 of New Babergh Local Plan) February 2014 and the saved policies in the Babergh Local Plan Alteration No. 2 (2006) not replaced by the Core Strategy.

The strategic policies in the development plan include policies regarding the delivery of homes and jobs in the area. These policies provide that 1050 homes should be delivered in the Core Villages (of which Lavenham is one) and Hinterland Villages. The plan did not specify a number for Lavenham. Babergh District Council has completed initial consultation on a new combined local plan document with Mid-Suffolk District Council, to include a Site Allocations Document.

The plan therefore needed to set out how it would meet national policy in the NPPF. The plan states:

"Lavenham should, on the one hand, deliver a minimum number of homes of 35 in order to ensure delivery of required affordable homes, and on the other hand deliver additional homes in order to contribute towards the district needs of 1050 homes across all the Core and Hinterland villages. This number is likely to be less than an equal share of the numbers required from Core Villages due to the constraints on Lavenham created by limited education

infrastructure, sensitivity of the landscape and its heritage assets and Lavenham's unique topography. Delivery of any development coming forward in Lavenham is dependent on the capacity issue at the existing primary school being overcome."

The examiner noted:

"The Neighbourhood Plan Examination process does not require a rigorous examination of district wide housing land requirements. There is no legislative requirement for Neighbourhood Plans to set their own housing numbers. The Plan does not seek to determine the overall amount of houses to be built during the plan period. Instead, its emphasis is on influencing how housing will be delivered."

Having regard to the above and the evidence supporting the plan, including a Landscape Character Assessment, the examiner concluded that the main housing policy, which did not allocate sites but allowed for them within and adjacent to the built up area subject to a number of criteria, had regard to national policy, was in general conformity with strategic policies contained in the development plan and contributed to the achievement of sustainable development.

In dealing with the issue of 'how many houses' should be planned for, the plan took the rather novel approach of not seeking to identify exactly what might be an appropriate number and allocating sites to meet that need, although a number of detailed assessments of local housing need were undertaken to identify what the affordable and other need would be.

Instead the plan includes a criteria based policy that sets out how any proposals that come forward will be assessed. These criteria include relationship with existing pattern of development, school capacity, landscape character, walking distance to centre and a preference for sites to be no more than 24 dwellings. As indicated above this allows for housing within and adjacent to the built up area. The group has found this approach to be particularly successful and in fact resulted in sites coming forward that could be supported.

Basic condition 4 - is it met?

The making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations.

A neighbourhood plan must be compatible with European Union (EU) obligations, as incorporated into United Kingdom law, in order to be legally compliant.

This is a complex area as a number of EU obligations may be of relevance including Directives 2001/42/EC (Strategic Environmental Assessment), 2011/92/EU (Environmental Impact Assessment), 92/43/EEC (Habitats), 2009/147/EC (Wild Birds), 2008/98/EC (Waste), 2008/50/EC (Air Quality) and 2000/60/EC (Water).

Strategic environmental assessment

Directive 2001/42/EC relating to the assessment of the effects of certain plans and programmes on the environment is often the most relevant. Its purpose is to provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes. This directive is commonly referred to as the Strategic Environment Assessment (SEA) directive. The directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004.

As part of the package of documents you need to submit to the local planning authority you will need to submit either a statement of reasons as to why SEA is not required or, where a SEA is required, an environmental report (reporting the outputs of the SEA process) that meets the requirements of the regulations referred to above.

The best way to find out whether the neighbourhood plan will need a SEA (and the associated environmental report) is to ask your local planning authority to 'screen' the neighbourhood plan. If this screening stage is done at the earliest possible stage, then you will know whether you will need to undertake a SEA (with the associated environmental report).

The screening stage should be based on a draft plan, but of course if there is insufficient information about the policies and proposals it might not be possible to screen it.

The screening stage will assess whether or not the neighbourhood plan is likely to have significant environmental effects. The regulations set out the criteria to determine this.

These include the characteristics of the neighbourhood plan itself, the characteristics of the effects and the characteristics of the area likely to be affected. In addition in order to determine whether or not a SEA will be needed this screening opinion will need to be sent to the statutory consultees (currently the Environment Agency, Historic England and Natural

England) for their views. The screening opinion can only be confirmed once these consultees have had a chance to respond.

The process for screening is set out in the regulations and summarised in a SEA screening toolkit produced by Locality. You must make sure that the regulations are complied with as otherwise the neighbourhood plan will not meet this basic condition.

If a SEA is needed, then the requirements of what should be included in the associated environmental report are also set out in the regulations.

How to demonstrate this to the examiner

Either a statement of reasons that a SEA is not required or an environmental report must be provided as part of the package of documentation submitted to the local planning authority. Do not forget that the regulations set out the requirements for each document.

In a nutshell Often the most relevant EU obligation will be related to strategic environmental assessment. SEA is a way of evaluating the environmental effects of the neighbourhood plan.

Top tips to meet this basic condition

Here are some top tips to help meet this basic condition:

- Often a screening stage is not undertaken, or a screening opinion is carried out, but it does not meet the requirements in the regulations perhaps because it does not include sufficient information or the right information. Sometimes the statutory consultees have not been consulted. If this process is not carried out correctly, it is likely to result in long delays to the neighbourhood plan or even result in the plan failing at examination.

- Remember that if the neighbourhood plan changes significantly after the initial screening (where SEA has been determined not to be necessary) or after the SEA has been undertaken (and the associated environmental report produced), it may be necessary to revisit the screening opinion to make sure it is still valid.

- Sometimes an environmental report is submitted but it does not include a non-technical summary; something which the regulations specify must be included.

- In preparing an environmental report, reasonable alternatives to the policies or proposals need to be assessed. Often this element of the environmental report is not carried out fully.

Basic condition 5- is it met?

The making of the neighbourhood development plan does not breach the Requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

Habitats

This basic condition relates to the possible impact on specific areas called European sites or European offshore marine sites. The local planning authority will be able to confirm whether the neighbourhood plan area or part of it is covered by any such designations or whether any European sites falling outside the neighbourhood plan area may still need to be taken into account.

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, commonly referred to as the Habitats Directive, is also of relevance to the examination. A habitats regulations assessment (HRA) identifies whether a plan will affect a protected habitats site, and if so, how these effects might be mitigated. The first stage of an assessment (often referred to as screening) determines whether a likely significant effect on a European site can be ruled out on the basis of objective information, without considering any mitigation or other measures that might reduce or avoid any effects.

If the screening stage assessment concludes that the neighbourhood plan is likely to have a significant effect on a European site then more detailed assessments of the implications of the neighbourhood plan for the European site(s) will need to be undertaken (often referred to as an 'appropriate assessment').

Bear in mind that even if the neighbourhood plan area does not fall within any European sites, there may be European sites outside the plan area or within proximity that need to be taken into account and assessed. It will depend on the nature of the neighbourhood plan and the characteristics and conservation objectives of the European site(s).

If it is determined that an appropriate assessment is needed, then the neighbourhood plan will require a SEA as well.

In a nutshell, a habitats regulations assessment will show if the plan will affect a protected habitats site, and if so, how these effects might be mitigated.

How to demonstrate this to the examiner

A statement confirming that an assessment has been made under the Habitats Regulations, detailing (a) what the outcome of the screening stage was and (b) whether an appropriate

assessment has been undertaken where a likely significant effect is identified, can help to demonstrate that this has been properly considered.

Top tips to meet this basic condition

Here are some top tips to help meet this basic condition:

- It can be useful for the SEA and HRA to be screened at the same time in the same report.
- This is a complex area and one that has resulted in significant delays to the progress of neighbourhood plans in those cases where the examiner has sent the plan 'backwards' to undertake the required stages again to ensure compliance with the basic conditions. As a result, it can often be useful to ask the local planning authority to lead on this.

What are the other requirements the examiner must check?

1. The examiner must consider whether the draft neighbourhood plan is compatible with human rights

How to demonstrate this to the examiner

A section in the basic conditions statement to indicate how human rights have been taken into account in the preparation of the neighbourhood plan will help the examiner. Sometimes a useful approach to assessing the impact on human rights is to undertake an equalities impact assessment. This is an assessment of impacts against different characteristics protected by law (such as gender, ethnicity and disability).

2. Has the neighbourhood plan been prepared and submitted for examination by a qualifying body

Only a qualifying body can submit a neighbourhood plan for examination. Qualifying bodies are town or parish councils or neighbourhood forums (as defined by the Localism Act). Sometimes parish or town councils form a steering or working group to help with the process, but the town or parish council remains ultimately responsible for the neighbourhood plan.

How to demonstrate this to the examiner

Confirm who the qualifying body is in the basic conditions statement.

3. Has the neighbourhood plan been prepared for an area that has been properly designated for such plan preparation and does not relate to more than one neighbourhood area

One of the first stages of neighbourhood plan preparation will have been the designation of the area to which the plan will relate. You will have had to formally ask for the area to be designated and this will have to have been agreed by the local planning authority after a period of public consultation.

In addition, there can only be one neighbourhood plan for each neighbourhood plan area. Note though there can be more than one neighbourhood development order in each plan area.

How to demonstrate this to the examiner

Confirm the neighbourhood plan area and its designation in the basic conditions statement. Include a map of the plan area in the neighbourhood plan itself and in the basic conditions statement. Specify the date the neighbourhood plan area was designated. It might be helpful to include the letter or formal agreement from the local planning authority confirming the neighbourhood plan area and its designation date as an appendix in the basic conditions statement. Confirm that the plan is the only plan for the applicable plan area.

Watch out for

Ensure that the neighbourhood plan covers the same area as the designated area. If a parish or town council boundary changes during the course of preparing the plan, you need to consider whether you need to change the plan area designation or the plan.

4. Meets the requirements to specify the period to which it has effect

Ensure the neighbourhood plan has a start and end date. This is the time period over which the neighbourhood plan will have effect. It can be as short or as long as you want it to be. Usually a plan will cover a period of between 10 and 20 years. Often it can be useful to work to the same time period as a recently adopted local plan or a local plan that is being prepared. This is because it means the plans at local planning authority level and neighbourhood level will align. It also means that the evidence used by the local planning authority can also be used in preparing the neighbourhood plan.

How to demonstrate this to the examiner

Make sure that the neighbourhood plan includes a start and end date on its front cover or in the plan itself near the front of the document. Include a short statement that confirms the dates in the basic conditions statement.

5. Not include provision about excluded development

Excluded development is defined in the Localism Act 2011 and consists of certain county matters including minerals, waste development, development falling within Annex 1 to Council Directive 85/337/EEC and nationally significant infrastructure projects. Most neighbourhood plans will not include provisions on these matters, but it is particularly worth checking minerals and waste with the local planning authority.

How to demonstrate this to the examiner

This should be confirmed in the basic conditions statement. If an examiner considers that the neighbourhood plan has made provision about excluded development, it is likely that this part of the plan or any policy relating to such development would be recommended for deletion.

The importance of the basic conditions statement

Do not treat the basic conditions statement as a superficial tick box exercise. It is your opportunity to show the examiner that the neighbourhood plan meets the basic conditions and these other requirements.

6. Its policies relate to the development and use of land for a designated neighbourhood area

This is often an area where there can be some uncertainty. Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land.

Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. This can take the form of clearly distinguished aspirations or non-land use policies within the plan itself although a separate section or annex or a separate document is preferred as this is often clearer and more user friendly.

Examples of issues that do not relate to the development and use of land are traffic management such as speed limits and restrictions on heavy goods vehicles, street cleaning and signs for public footpaths or a commitment to work with other organisations.

How to demonstrate this to the examiner

Try and ensure that there is clear separation between development and use of land policies and community aspirations. This will make the examiner's task in checking this requirement much easier. However, if an examiner considers a policy does not relate to development and use of land, it is likely that a modification would be recommended to move the policy to another part or separate annex of the plan or remove the policy.

Examination checklist

Has the pre-submission consultation stage been carried out correctly?

It is very important to check that the pre-submission consultation stage (Regulation 14) has been carried out correctly. Make sure that the draft plan has been out to consultation for six weeks or more. Ensure that this period is not shorter by a day because the consultation started on a Monday but finishes on a Friday. Allow extra days for bank holidays and busy periods such as Christmas or other holiday times.

Ensure that the pre-submission stage consultation has been carried out for six weeks taking into account the points made above.

Make sure that all the people and organisations who should be consulted have been including residents, businesses, local organisations and statutory consultees. Sometimes engagement has taken place with different people, groups or organisations during the evolution of the neighbourhood plan, but this is not carried forward to the pre-submission consultation stages.

Are you ready to submit?

Before you submit the neighbourhood plan and its supporting documents to the local planning authority, make sure that all the documentation is in order. If the plan has been revised, the consultation statement and basic conditions statement will also need to be updated.

Use the Submission checklist at the end of this guidance note to make sure you are ready to submit (see Appendix A).

What needs to be submitted?

- A copy of the neighbourhood plan and any appendices
- A map or statement that identifies the area
- The consultation statement
- The basic conditions statement
- A SEA environmental report or statement of reasons why a SEA was not needed
- Confirmation that the neighbourhood plan either alone, or in combination with other plans and programmes, is not likely to have a significant effect on any European Sites
- Any evidence relied on to support the plan

Make sure that all the documents you intend to rely on are submitted to the local planning authority and available to the public.

Check and double check that all the requirements have been met before submitting the plan to the local planning authority.

Tip the value of health checks

A health check is often a useful way of helping to make sure there are no obvious or fundamental flaws with the plan and the process it has followed before submission to the local planning authority.

It is important to recognise that a health check will not be as comprehensive as the examination, but it should identify any issues that might cause delay or even failure at examination and seek to identify solutions.

Note that the examiner who does the health check cannot then examine the plan.

What does the local planning authority do next after the plan has been submitted?

The local planning authority will check that the neighbourhood plan has followed the proper legal process including that the plan is prepared for the area designated and that consultation requirements have been met. Occasionally flaws in the process are not picked up by the local planning authority, but by the examiner. Usually issues of this sort are capable of being remedied – often by the neighbourhood plan having to 'go back' to the point where the problem occurred and then moving forward again once that deficient stage has been remedied.

The local planning authority is then responsible for publicising the plan, arranging for the independent examination and arranging any referendum. At this stage, it can sometimes feel as if 'control' passes from the qualifying body to the local planning authority. Once the plan has been submitted, it is the local planning authority that will now lead on the next

formal stages of making the plan. Keeping in touch with the local planning authority and ensuring there is a good communication channel will help with this.

Once the submission stage publicity period has been carried out, all the documents including any representations made, will be sent to the examiner by the local planning authority.

Can I contact the examiner?

Usually the principal contact will be through the local planning authority. In order to be fair and transparent to all parties, including interested parties such as those who have made representations, any correspondence must be copied to all the main parties (the qualifying body, the local planning authority and the examiner) and should be made public.

How long will the examination take?

This depends on the complexity of the examination and whether any meetings or a hearing is needed. If the examiner identifies issues that need to be remedied this will also delay the examination if it needs to be suspended whilst an issue is addressed. Whilst on average an examination takes between five and ten days of examiner's time, these are unlikely to be consecutive days and will be spread over a number of weeks.

It is good practice for an examiner to let the qualifying body and the local planning authority know when the examination has started and how they intend to conduct the examination. This should include setting out the procedure and process for the examination, responding to any questions about the process and setting out an indicative timetable. This information should be made public.

When should an examiner be appointed?

Try and persuade your local planning authority to seek an examiner soon after the neighbourhood plan and supporting documentation have been submitted to them. If the appointment can be made soon after the submission period of consultation (Regulation 16) starts, this usually means the examination can start a few weeks after the consultation period has ended. This does depend on whether the local planning authority can send the examiner the relevant documents and representations within a short time once the consultation has ended. Some examiners get booked up a long time in advance. Agree time scales with the local planning authority and the examiner so that there is as much certainty as there can be.

Can we interview or meet potential examiners?

Some qualifying bodies wish to interview or meet the examiner before they are appointed. It is not generally regarded as necessary to interview or meet prospective examiners, but do ensure they have appropriate qualifications and experience before any appointment is agreed.

Can the qualifying body comment on the representations made at submission stage?

There is no provision for this in the legislation or regulations. However, the qualifying body will usually be given the opportunity to comment on the 'Regulation 16' representations if they wish to do so. Qualifying bodies should make any comments within two weeks of the close of the Regulation 16 consultation stage.

Will the examiner visit the area?

It is regarded as good practice for an examiner to visit the area. In most cases the examiner will visit unannounced. If it is necessary to view a site for example and this cannot be done from public land, then the examiner will hold an arranged site visit and will want to be accompanied by both the qualifying body and the landowner or their representative and any other relevant party such as a representative from the local planning authority in order to ensure that independence and transparency is maintained.

Can we meet the examiner?

The 'default' position is that the examination will be carried out by written representations.

Therefore whilst some qualifying bodies may wish to meet the examiner to explain their plan and the work that has gone into it or the rationale behind it, these are matters that should be clear from the plan itself or its supporting documentation and evidence base.

Occasionally, the examiner will call an exploratory meeting to discuss certain issues, particularly if there are fundamental concerns and potentially fatal flaws about the neighbourhood plan or any issues relevant to it that might mean the plan may fail at examination. In the first instance the examiner will draw these concerns to the attention of the qualifying body and local planning authority in written correspondence and invite their response to any such concerns. If appropriate, depending on the nature of these concerns, the qualifying body and/or the local planning authority may also be invited to request an exploratory meeting with the examiner.

It should be noted that this exploratory meeting is not a hearing which can only be convened in specified circumstances (please see below).

Case study: Upper and Nether Poppleton neighbourhood plan- written examination

The plan area covers the parishes of Upper Poppleton and Nether Poppleton. It was designated as a neighbourhood area on 13 October 2014. The plan area is located to the immediate north west of York. A significant proportion of its area (mainly to the west) is rural in character and is largely in agricultural use. The area is crossed by a number of transport links including the main east coast railway line, the northern rail line which serves Poppleton station, the River Ouse and York ring road.

The two separate and yet related settlements of Upper Poppleton and Nether Poppleton sit in the heart of the plan area. They have their separate and distinctive conservation areas. In practical terms the two historic settlements have now become combined as more recent development has occupied the space that was previously between them.

The plan was started in 2014. A major issue identified by the group was the outdated policy context as there is no formally adopted local plan though one was prepared (dated 2005) and is used for development management purposes. Regulation 14 publicity was undertaken in mid 2016 and the plan was submitted to the local planning authority (York City Council) in November 2016. The examination was undertaken by way of written representations.

The group found the plan making process to be challenging due to the lack of clear policy guidance and because the process was new for both the group and York City Council. The process was assisted greatly by the involvement of other external advisors but it was the examination itself that led to greatest clarity.

Following initial consideration of all submitted documents and a site visit to the area, the examiner decided to hold an informal pre-examination meeting. This was to clarify a number of matters, including the provision of relevant policy documents and concerns with regard to the strategic environmental assessment (SEA) procedure in respect of some of the site allocations.

These SEA matters were corrected (a proposed site allocation was removed as it was clarified that it was in the Green Belt) and further publicity undertaken before the examiner provided his final report in May 2017. It is of note that each stage of the process required approval by the Council's local plan working group and executive.

Overall, the group found the plan making process initially to be a very difficult experience as they did not feel that the local planning authority was able to give the support and direction that was needed given the strategic context and because it was a new experience for everyone.

However, they consider that the examination process helped considerably as the examiner was able to get the clarification needed (through the pre-examination meeting) and as a result of this and the site visit, became fully aware of the background and relevant context. This made the whole thing a 'pleasant experience' and resulted in greater clarity and a correction to be made in terms of procedure. The group was satisfied that the final outcome was a plan that was supported by the local community.

Will a hearing be held?

The 'rule of thumb' is that the examination will be conducted by written representations. The legislation and regulations set out two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case.

A hearing is therefore held at the examiner's discretion. Even if the qualifying body, the local planning authority or anyone who has made representations requests a hearing, whether one is held or not is entirely the examiner's decision.

If a hearing is held, the examiner will decide the format and scope of the hearing. Often the hearing will focus on one or more issues rather than consider every aspect of the plan.

If the examiner does decide to hold a hearing, the examiner will provide an agenda of the issue(s) s/he wishes to discuss and a list of participants. The qualifying body will always be asked to participate.

Usually the local planning authority will liaise with the examiner about the arrangements for the hearing and organise it, including undertaking the necessary publicity. Notice will be given and this is usually about 21 days so that everyone has time to prepare and so that a venue, ideally in the plan area, can be sourced. The qualifying body should be included in the arrangements and the date should be convenient to them.

Sometimes the examiner will ask for further information to be submitted in advance of the hearing and, more rarely, after the hearing is held. Again this is at the examiner's discretion and will depend on the issues under discussion.

If a hearing is held, some qualifying bodies become concerned about their ability to respond to queries or participate at the hearing. However, the examiner will lead the discussion and ensure that everyone has a fair chance to participate and put forward their case.

Case study: Moulton Neighbourhood Plan (an examination with a hearing)

The plan area is focused on the village of Moulton, which lies some 4 miles to the north of the centre of the county town of Northampton; though in practice it is now physically attached at its southernmost extremity. Moulton is a large village with some 3500 residents in about 1500 homes. The setting of Moulton has been significantly affected by the expansion of Northampton, while retaining the village's identity.

The plan was started in 2012, one of the first in the country.

The plan was submitted to Daventry District Council in 2015. The Examiner decided that clarification was needed on certain matters and a hearing was held in March 2016; the plan was subsequently made in December 2016.

The plan went through a long and detailed preparation as given its size and location there were a number of issues to consider. In particular, there was a concern to ensure that the existing community and any planned new growth was supported by appropriate infrastructure. The group were familiar with the planning process generally and the need for the plan to 'plan positively' and for policies and any site allocations to be fully evidenced and justified as appropriate. Professional assistance was sought to ensure that policies were effectively worded.

In respect of the examination process, the group's experience was generally a very positive one, with a good, collaborative relationship with the local planning authority, notwithstanding that it was a new process for both parties. Once the plan had been submitted to the Council, good communication continued, including when the examiner was appointed, in which the group was involved.

The examiner remained in contact with both parties throughout the process and gave clear advice regarding what further information was needed and the practical arrangements for the hearing. The group found this to be helpful to assist in being prepared for the hearing and to understand what was expected of them. At the hearing itself, the group found the examiner's approach assisted in putting them at ease. The examiner's report was received very quickly afterwards - there were no 'surprises' in terms of the modifications recommended and the group went through them with the local planning authority and were able to resolve matters satisfactorily.

Overall, the group found it to be a very positive experience, its success to a great extent a result of a good, collaborative relationship with the local planning authority, assisted by the helpful approach of the examiner.

Can we send the examiner more information?

Additional evidence will not normally be accepted. This is why it is so important to ensure that all the supporting documentation and evidence to justify the policies is submitted with the neighbourhood plan.

Occasionally, the examiner may ask for additional information, but this is the exception not the rule and will be in particular circumstances. For example, the examiner may wish to receive further information after a hearing. Any information will be made public.

What will the examiner do if they have queries about the plan?

The examiner will draw any issues or concerns to the attention of the qualifying body and the local planning authority as soon as reasonably possible. This will initially be through an exchange of written correspondence.

It is quite common for an examiner to seek to clarify various matters or request up to date information, for example about the status of a planning application. In these circumstances, the examiner will send a list of queries or clarification questions to the qualifying body and local planning authority.

What will the examiner do if s/he has fundamental concerns about the plan?

It is good practice for the examiner to give an indication as early and as reasonably possible of any more fundamental concerns that might mean the neighbourhood plan cannot proceed to referendum. Usually this will be dealt with through written correspondence although sometimes an examiner might suggest an exploratory meeting is held to consider any fundamental and potentially fatal concerns and to discuss a way forward. Any such meeting will be held in public.

An exploratory meeting can provide a chance to discuss any concerns and see what the options might be.

If, as a last resort, the examiner considers the plan should fail examination, this should not come as a surprise to the qualifying body. However, there are usually a number of options before a plan is failed and cannot proceed to referendum. These options include suspending the examination to allow remedial action to be taken because perhaps a procedure has not been followed correctly. Alternatively, the plan can be withdrawn from examination to allow the qualifying body to address the concerns and resubmit the plan at a future date.

Before a plan is failed, the qualifying body can expect to have contact with the examiner either through written correspondence, a meeting, a hearing or combination of two or more of these three things.

Why has the examiner reached a different conclusion to the person who health checked the plan?

Whilst it is recommended to have the draft plan health checked, the examination is a much more detailed and in-depth look at the plan. Sometimes circumstances may have changed such as new legislation or guidance being issued meaning that the neighbourhood plan may no longer meet the basic conditions, representations may have revealed an issue not apparent at an earlier stage of the process or new, different or more detailed evidence may be available to the examiner.

What can we expect from the examiner's report?

The examiner's report will discuss each policy or proposal in the neighbourhood plan. If the examiner considers that it is necessary to make modifications (changes) so that the policy or proposal meets the basic conditions or other requirements they will make a modification. If it is not possible to make a modification to ensure that a policy will meet the basic conditions and other requirements, they will recommend the policy be deleted. If the examiner has recommended modifications to the plan, the report should set out their reasons for suggesting the changes. It should be clear to the qualifying body why changes are being suggested.

Will we be able to comment on a draft examiner's report?

A draft of the examiner's report will be sent to both the local planning authority and the qualifying body for comment. This is typically referred to as the 'fact check' stage. Usually a week or two is given for comments to be made.

It helps the examiner if one set of comments is received and usually the local planning authority can coordinate this.

It is not an opportunity to discuss the modifications suggested or to submit further evidence or information in support of the plan. Rather, this stage is there to ensure that the examiner has understood everything correctly and provides an opportunity to see and comment on the draft report before it is finalised to ensure that dates, street names, any references and so on are correct.

What happens after the examiner's report has been received?

The role of the examiner ends. The local planning authority now decide whether or not to accept the examiner's modifications and what course of action to take.

Don't forget it is the responsibility of the local planning authority to ensure that the neighbourhood plan is compatible with EU and human rights obligations when it takes the decision on whether the plan should proceed to referendum and whether or not to make the plan after any successful referendum.

What happens if we disagree with the modifications the examiner recommends?

The examiner's modifications are recommendations. In other words they are not binding. It is up to the qualifying body and the local planning authority to discuss the modifications suggested and ultimately the local planning authority to decide whether or not to accept the modifications.

If the local planning authority decide to take a different course of action to that recommended by the examiner, then the following must be notified: the qualifying body, anyone who made a representation at submission stage and any consultation body previously consulted. They must be notified of the decision the local planning authority propose to take and the reason for it. There is then an opportunity for further representations to be made. A period of six weeks is given for any such representations to be made.

In addition, the local planning authority can refer the issue to independent examination if it decides it is appropriate to do so.

Once the six week period for representations has ended, the local planning authority must make a decision within five weeks or within five weeks of receiving the examiner's report if the issue has been referred to examination.

We really don't like the modifications recommended by the examiner; can we withdraw the plan?

A qualifying body can withdraw the neighbourhood plan before the local planning authority makes a decision on what action it will take on each of the examiner's modifications. Once the local planning authority makes this decision, the plan cannot be withdrawn.

Can we ask the Secretary of State to get involved and intervene?

Yes, the Secretary of State can intervene if requested by a qualifying body if:

- the local planning authority does not make a decision to send the plan to referendum within five weeks of receiving the examiner's report or within five weeks of the end of the period for any further representations
- the local planning authority decides not to accept all of the examiner's recommended modifications
- the local planning authority modifies the plan in a way that was not recommended by the examiner (unless that modification is to ensure that the plan is compatible with EU or human rights obligations or to correct an error).

The qualifying body should make a request in writing and state why the request for intervention is being made. Any request must be made within six weeks in the case where the local planning authority decides not to accept an examiner's modification or makes modifications that were not recommended by the examiner. There is no time limit for making a request where the local planning authority does not make a decision on whether to send the plan to referendum within five weeks.

Why does the examiner have the ability to decide on the area the referendum should be held?

The examiner will consider as part of their role, whether or not the referendum area should be extended beyond the designated neighbourhood area. If the examiner considers the area should be extended, they must specify what that extended area should be.

Sometimes it can be appropriate to extend the referendum area where the nature or scale of the proposals in the neighbourhood plan might have an impact beyond the area.

Don't forget there are Neighbourhood Planning Champions throughout England who have a wealth of knowledge and experience in neighbourhood planning and are there to help you.

The examination stage – step by step process

1. Qualifying body submit documentation to local planning authority
2. Local planning authority send documents to the examiner
3. Examination begins
4. Examiner deals with any queries as appropriate via written correspondence, meeting or a hearing
5. Examiner issues draft report for fact checking purposes
6. Examiner issues final report to the qualifying body and the local planning authority
7. Local planning authority publishes report
8. Local planning authority consider report and decide whether or not to progress the plan to referendum

Top tips for a smooth examination

Here are some top tips for a successful examination:

- Cooperation, close working and good communication between the qualifying body and the local planning authority throughout the plan preparation process is a critical success factor in ensuring a successful outcome to the examination. The local planning authority can share evidence and information, check policies are worded robustly and are workable, often help with maps and assist with meeting the requirements for SEA and Habitats regulations.

- The examination should be conducted in an open and transparent way. It is important to ensure that all documents are available, any correspondence is placed within the public domain promptly and any meetings are held in public.

- A health check can help to avoid the unfortunate situation where an examiner has no option but to recommend extensive modification of the plan in order to meet the basic conditions or even recommend it does not progress to referendum.

- Put yourself in the examiner's shoes – ensure that the neighbourhood plan has a clear and distinctive vision for the area, that policies and proposals are clearly differentiated from other non-planning community aspirations, that each policy and proposal is clearly worded, explained and justified by proportionate evidence.

Appendix A: Submission checklist – are you ready for examination?

Question	Answer yes/no
Has the neighbourhood plan been prepared by a qualifying body?	
Has the neighbourhood plan area been designated?	
Does the neighbourhood plan cover the same area as the area that was designated for this purpose? Are you sure? Sometimes the boundary of a Parish or Town Council has changed through boundary reviews.	
Is this only neighbourhood plan for the neighbourhood area?	
Does the plan specify a start and an end date?	
Are you sure that the plan doesn't include any policies on excluded development?	
Do all the policies in the plan relate to development and use of land?	
Are any community policies, proposals or aspirations that do not relate to the development and use of land clearly differentiated from the planning policies?	

Has the pre-submission consultation (Regulation 14) period run for a minimum of six weeks? Are you sure that it is not a day or two short?	
Has the submission consultation (Regulation 16) period run for a minimum of six weeks?	
Is each policy clear, concise and precise?	
Are all maps, plans and diagrams clear and legible?	
Is each policy supported by appropriate evidence?	
Is the consultation statement prepared and up to date?	
Is the basic conditions statement prepared and up to date?	
Has the plan be screened for strategic environmental assessment (SEA)?	
If the plan does not need a SEA, has a statement of reasons been prepared and consulted upon?	
If the plan needs a SEA, has an environment report that meets the requirements been prepared and consulted upon?	

Have you considered the plan's impact, alone and in combination with other plans and proposals on European sites? Even if there are no European sites within the plan area or within the local planning authority area? Does the plan or its supporting documents enable the examiner to be sure this basic condition can be met?	
Have human rights been considered all the way through plan preparation?	

If you can answer 'yes' to all these questions, then the plan is likely to be ready for submission.

Appendix B: Who are the examiners?

Chris Collison

Chris is a chartered town planner and economic development professional who has served as Chief Planning Officer in two rural districts, two urban districts, a metropolitan district and a London borough. Chris has a particular interest in heritage as he is a member of the Institute of Historic Building Conservation and chair of a city Conservation Area Committee. Chris is also a parish councillor and so understands neighbourhood plan preparation from that perspective. He has now examined over 60 neighbourhood plans and enjoys the work.

Chris says:

> **"It has given me exposure to varied communities who have found different ways of using neighbourhood plans to shape their areas and has enabled me to visit many wonderful parts of England".**

Rosemary Kidd

Rosemary is a chartered town planner with over 30 years experience in planning policy in local government in the north of England. She has worked in National Parks, Areas of Outstanding Natural Beauty and Green Belt as well as in communities on the edge of urban areas, market towns and seaside towns.

As a volunteer with Planning Aid England, Rosemary has supported neighbourhood plan groups to develop their consultation programmes and policies for their neighbourhood plans.

Rosemary joined the NPIERS Panel in 2013 and has completed over 30 examinations and health checks throughout England.

John Slater

John says he has had “a lifetime’s experience in preparing planning policy as well as using that policy in determining planning applications”. Having spent over 34 years as a local authority planner, including eight years as Head of Planning at Portsmouth City Council, John set up his own consultancy in 2012.

He has completed over 50 examinations in all parts of the England from Cumbria to Cornwall, Cleveland and the Isle of Wight and also helps groups to prepare their own plans.

John loves the variety of the plans from urban areas through to the smallest village. As well as the opportunity to see parts of the country not previously visited, the diverse range of issues that plans seek to address attract John to the role which he sees as ensuring the plan delivers what the community is looking for, but at the same time ensuring the plan meets the legal and other requirements.

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