

BRIEFING NOTE: NEIGHBOURHOOD PLANNING EXAMINATIONS

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Executive summary

This briefing paper acts as a contribution to thinking about reform to neighbourhood planning and recent discussions on proposed amendments to the examination stage. It is based in part on the questionnaire responses of examiners who had examined 85% of all neighbourhood plans by the end of October 2016.

The research highlights that issues with the examination stage should not be considered in isolation. There are upstream issues which impact on examination and downstream consequences for neighbourhood plans and localities; both of which may harm the quality and durability of neighbourhood planning. Our suggested improvements to the process are as follows:

- Thorough, on-going and mandatory **training** should be a requirement for examiners;
- The establishment of a system of **peer review** and a mechanism for examiners to share information and seek advice and guidance;
- Greater **clarity on what can and cannot be included** in a neighbourhood plan and where “ancillary” material is placed and the weight it should be afforded;
- Clearer and comprehensive **guidance about examination** should be produced for all parties – to include not only the examination process but also addresses common issues that occur at examination;
- Existing documentary **resources** for neighbourhood planning groups should be filed in a systematic way e.g. according to stage in the process;
- Measures should be taken to increase groups awareness and knowledge of what happens “**post-examination**” - the examination should be seen as one stage in the process as opposed to the “final hurdle”;
- Greater focus should be placed on **up-skilling and supporting local planning authority officers** to ensure that they have the capacity and knowledge to offer advice and support.

Introduction

The examination stage of neighbourhood planning¹ is where the draft plan is assessed for its conformity with basic conditions. The appointed neighbourhood plan examiner is charged with focusing on whether the proposed plan meets this set of 'basic conditions', namely:

- *regard to national policies and advice* contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan;
- *general conformity* with strategic policies contained in the development plan for the area;
- contributes towards *sustainable development*;
- does not breach and is otherwise *compatible with EU obligations* (including not having an detrimental effect on a European designated site, such as a SPA, or a European marine site, such as a MCZ).

Given current debate about the system of neighbourhood planning (NP), and government invitations to provide input, this briefing paper acts as a contribution to thinking about reform to NP and to the examination stage. This is in part a response to the call in the Housing White Paper (Feb 2017, Q2) and ongoing debates over the emerging Neighbourhood Planning Bill – which include specific reference and amendments to the operation of examinations. As we indicate, issues with the examination stage should not be considered in isolation. There are upstream issues which impact on examination and downstream consequences for neighbourhood plans and localities; both of which may harm the quality and durability of neighbourhood planning.

This paper includes elements of recent research conducted by Professor Gavin Parker, Kat Salter and Hannah Hickman during Autumn 2016 which explored the experience of examiners in neighbourhood planning. A precis of this work is incorporated below. This was developed from a reflective piece published by the same team in the *Town and Country Planning* journal in late 2016 (see Parker et al, 2016), as well as being informed by wider studies of neighbourhood planning in terms of take-up and user experience produced through the University of Reading (see Parker and Salter, 2016; forthcoming; Parker et al, 2014; 2015; Parker and Wargent, 2017).

A number of issues relating to the examination of neighbourhood plans (NDPs) had become apparent by 2016, including concerns expressed by some examiners and neighbourhood planning groups. A desk study of examination outcomes showed that almost all examinations had produced recommendations for modification, many of which involved substantial change. Indeed Baroness Cumberlege, in moving an amendment in relation to examinations to the emerging Neighbourhood Planning Bill, made the following statement when reflecting on her own experience of NP examination: *'When the examiner came in and made these enormous changes, of which we knew nothing until we received the written material that he gave us, we were completely dumbfounded. This was not the neighbourhood plan that we wanted to put to the public. It was a plan that was written by the examiner, who deleted pages and pages of our plan which we felt were informative and useful to the local community'* (Hansard Vol. 779 col. 432, 23rd February 2017). This type of disjuncture is not uncommon but is not the only type of issue that experience is highlighting.

Our specific research exploring the NP examination stage drew on a structured questionnaire sent to a sample of NP examiners who had examined more than two NDPs each by the end of October 2016. A total of 19 examiners responded who taken together had examined 85% of all neighbourhood plans that had reached examination by that time. Participants were made aware that the findings of the research would be disseminated to policymakers and a guarantee of anonymity was provided.

¹ Under the Localism Act 2011 in England.

Issues and recommendations

A broad range of questions were asked in our research and those of relevance to the current DCLG review into the examination process (as discussed in 'Notes on Neighbourhood Planning' edition #19 and in consultation Q2 in the Housing White Paper 2017), can be separated into the following broad themes:

1. **The training and appointment of examiners;**
2. **Knowledge and guidance for participants on the examination process;**
3. **The examination process and its "light touch" nature;**

The paper's structure accords to these areas as below. Plus, we include a fourth section on suggested improvements to the process - involving 'upstream' and 'downstream' issues which we have included below in a 'reflections' section. The intention is to aid further discussion and policy iteration to improve neighbourhood planning on the ground.

1. Training and appointment of examiners

The majority of those examiners surveyed had been appointed via the NPIERS panel. A smaller number of examiner referrals came direct from the Qualifying Bodies (QBs otherwise known as NP groups) or Local Planning Authorities (LPAs), or from those employed by another examiner third party provider. While the majority of examiners indicated that they had received some training, several had not.

Concerns were raised about the level of training and appointment process with the most recurrent issue raised being the value of experience and the need for rigour in recruitment. There was some concern about the lack of restrictions over who can examine a neighbourhood plan. Some felt this may lead to those without the relevant experience performing the role and that this in turn may lead to inconsistencies.

There was generally a broad recognition for the need of a national organisational backdrop for the recruitment and training of examiners which '*should provide quality assurance about the qualifications and experience of examiners*' (respondent #5). Reflecting on the widening of the market for examiners one respondent commented that "*if examiners are not NPIERS trained, they should have to show a level of competence comparable with the NPIERS training and have passed a similar assessment recently taken by NPIERS examiners*" (respondent #6).

We feel that thorough and mandatory training should be a requirement for examiners - shadowing experienced examiners and peer review of examination reports may factor in this training.

2. Guidance on the examination process and knowledge of participants in the process

Guidance on neighbourhood planning and the examination process was used by almost all examiners. This was largely national guidance found in the National Planning Policy Framework and the national planning practice guidance, although some drew on other sources; notably case law, other examiners reports, and conversations with DCLG and other examiner colleagues (either directly or through the NPIERS forum).

Most felt further guidance would be useful and intimated that guidance on both procedural matters and plan production would be useful for themselves and others involved. Almost all of the respondents (16 of the 19 examiners) felt the new guidance should be aimed at examiners,

as well as guidance on examination for neighbourhood planning groups (13 of the 19) and local authorities (13 of the 19). One respondent identified that guidance for landowners and developers would be helpful and another for consultants working in the sector supporting QBs.

Topics for consideration in such guidance included:

Neighbourhood Plan content issues:

- Form and content of NDPs;
- Plan making processes including consultation and EIA/legal matters;
- How much and what form of evidence is necessary to justify NP policies?

Procedural issues:

- Best practice from examiners' experiences / examples of how issues and themes have been dealt with across examinations;
- Guidance to ensure consistency of reports / a requirement for an overall check to ensure consistency;
- Soft skills guidance;
- Circumstances in which to call a hearing, whether examinations can be suspended and what is an appropriate amount of contact with the qualifying body and the council during the examination;
- The extent to which an examiner may alter a plan / the discretion available to examiners.

This indicates a need for much clearer and comprehensive guidance about examination for all parties. It may be that examiners should be enabled to provide 'advisory' points to groups regarding the likely robustness of their policies post-adoption (i.e. if 'tested' by developers at appeal) regardless of the basic conditions test.

It was felt by some that the neighbourhood plan examination process had become more detailed than originally intended (although this may vary from examination to examination and depending on the complexity of the plan and issues addressed) and further guidance and advice for examiners on recent judicial review outcomes and case law would be beneficial.

While examiners were explicitly asked about guidance on the examination process a key theme that emerged through the research was the variability in knowledge of the QBs who had been preparing plans and that this represented a challenge in the examination process. 88% of examiners reported that QBs have only a 'basic knowledge' or poor knowledge given the way they have approached the examination. This is apparently reflected in the number of instances where examiners have had to modify NDPs (see Parker and Salter, 2016; Parker, Salter and Hickman, 2016). This reflects possible issues 'upstream' as noted below.

This may reflect in part the newness of the process and QBs lack of technical planning expertise resulting in a steep learning curve for many. Despite the vast resources available for groups to access, examiners have reported QBs as having limited knowledge of basics such as the meaning of "development", attempts to include non-land-use policies in NDPs, a lack of appreciation of existing policies, imprecise wording of policies, muddled documentation and missing documents submitted for examination, and inadequate evidence to justify policies. 90% of examiners reported that they had examined NDPs where the evidence base was problematic in some respect. This included topics such as the Sustainability Appraisal, housing need and housing allocations and local green space. In order to address these issues the QBs, and where appropriate, relevant parties were asked to provide further information (documented in the public domain), the matter was discussed at a hearing and policies were modified, deleted and in certain instances the plan recommended not to proceed to referendum.

While focus on the examination is important respondents also reflected that passing the examination should not be seen as the 'end goal.' Once the plan is 'made' the neighbourhood plan policies need to be effectively implemented and stand up to challenge. Some queried whether this is likely to be achievable and raised concerns that some of the plans examined may soon be dismantled through the appeals process due to a lack of awareness of the legislation and the principles and responsibilities of plan making bodies or due to incompatibility with the emerging Local Plan which once adopted will take precedent (respondent #10 and #7). For others frustration was expressed that as a result of a lack of knowledge of communities 'samey' plans are being produced (respondent #12), with communities not being bold enough in their aspirations resulting in a lot of missed opportunities and limited ability to shape the community (respondent #1 and #4).

The ability of groups to reach examination stages with a basic level of knowledge raises questions as to how this could and should be addressed earlier in the process. It was felt by some that the examination stage was 'too late' and many issues should have been picked up and addressed earlier in the process. Poorly drafted policies and quality of plans (including supporting documents) which required extensive modifications caused frustration and negative experiences for some examiners leading one to resign from NPIERS.

In order to address these issues there was limited support for preparation and health-checking of plans as a mechanism to improve the process. While this option is already available to groups through NPIERS and the Locality support programme concern was raised by one respondent that its further roll-out would change the nature, and increase the complexity and cost, of the process (respondent #10). In order to ensure a consistent and high-quality approach health checks should be delivered through a limited and preferably administered group.

The question raised in edition #19 of *Notes on Neighbourhood Planning* (DCLG, 2017) on "what information is available to neighbourhood planning groups and others in the very early stages of the examination process and what would people find most useful?" is pertinent. Although we did not address this point directly the findings do raise questions as to whether additional information about the examination process would be beneficial and appropriate. This is because groups still appear to have only a basic knowledge of the purpose of neighbourhood planning and the processes involved, despite the wealth of resources and information already available and offered during the course of plan preparation. Thus issues are being addressed at the examination stage that *should* have been addressed earlier; but this may not necessarily or only reflect a lack of knowledge and understanding from groups about the examination process itself - rather we think there is a more substantive gap about neighbourhood planning more generally.

The majority of resources on NP are hosted on the My Community website, however, they are not categorised and it is therefore difficult for users to know what resources are available. **It would be beneficial if the resources were filed in a systematic way e.g. according to stage in the NP process and a distinction made between technical and guidance documents. This would improve usability and assist groups to access the required material.**

In addition to documentary resources available for neighbourhoods a high proportion of groups are seeking external consultancy support to assist with plan development and in particular the more 'technical' aspects such as policy writing and SEA/SA - up to 75% of groups according to the *Neighbourhood Planning Users Revisited* (NPUR) study (Parker and Wargent, 2017a,b). However, as noted by a small number of examiners "this has not always resulted in plans without problems" (respondent #5), perhaps reflecting bad advice which has resulted in (understandably) disgruntled Qualifying Bodies post-examination (respondent #18). Support for some groups has been poor as "consultants in the field often have poor knowledge to" (respondent #1) with respondent (#7) remarking that "even represented by a

planning consultant the qualifying body struggled to answer some of my simple questions at a hearing."

3. The examination process itself - including hearing sessions

More than half the sample (63%) had conducted hearings for the examination and did so to get a better understanding of matters, to investigate specific issues and to test the evidence. All reported the hearing to be helpful and adopted a similar approach - having identified the issues to discuss the examiners invited the QB, LPA and those who had raised the issues to attend the hearing.

In addition to formal hearings, one examiner reported that they held a 'clarification meeting' and in certain circumstances, where the examiner had concerns over the evidence base, relevant parties were asked to provide further information and to answer specific questions (with any correspondence documented in the public domain). Furthermore, there have been occasions where the NP examination has been suspended while further work is carried out, for example, with regards to the SEA. Examiners therefore already use additional and / or alternative ways to explore issues and seek further information aside from a formal hearing.

There was fairly limited support for more hearings as a mechanism to improve the process with concerns raised by one respondent that if introduced this may require Government funding to be available so that the Forums and local people would not be disadvantaged (respondent #19), and that the current level of discretion available to examiners is good (respondent #7). The point was also raised that NP examinations should not become as complicated as Local Plan examinations. Two examiners identified that a more iterative examination process would be productive and the opportunity to hold informal meetings with the QB would enable the discussion of issues without a full-scale public hearing (respondent #16).

In order to improve the process, respondents commented on the need to ensure consistency between examiners and to ensure examinations are conducted rigorously. As previously discussed, further guidance to ensure consistency would be helpful with a respondent also suggesting 'peer review or some form of quality checking or spot checking' (respondent #12).

For some, increased involvement by the LPA would assist. The level of engagement and involvement of LPAs does however vary which is in part due to their exposure to neighbourhood planning (in terms of levels of take-up), knowledge of the process and their level of resourcing. The involvement of the LPA is reflected at the examination stage with the differences showing "*in terms of direction to neighbourhood forums on points of planning policy, and in the time taken to respond to Examiner's questions*" (respondent #19), their ability to reduce friction between parties and increase knowledge for QBs (respondent #12) and their level of support and helpfulness for groups.

4. Reflections

The examination is a necessary and important feature of NP. However, it is apparent that a lack of understanding of the requirements, examiner quality and consistency are creating problems at both the examination stage and during implementation and application of the NDPs.

In our view the examination stage should not be adjusted without reference to the overall NP process. This type of system issue is best highlighted in terms of:

- **Upstream change** –including the use of consultants, LPA input, clarity of what the NDP can do, issues related to policy writing and evidence base; and

- **Downstream issues** – where the plan may well encounter resistance or challenge by developers and others or need to be defended by its authors within the neighbourhood.

It is felt that the examination process needs to be placed in a wider context and that it should be seen as one of many important stages in the process rather than the end-goal or 'final hurdle'. This brief document cannot review all stages or issues but some are covered here.

As discussed above some examiners have queried how some neighbourhood plans can and will be implemented effectively – despite having passed the basic conditions test. The ability of 'made' neighbourhood plans to stand up to scrutiny is key and their failure to do so may undermine communities' confidence in the system and the value of NP overall.

It would therefore be beneficial if measures were taken to increase NP group awareness and knowledge of what happens "post-examination" (i.e. at the decision-making stages). Furthermore, greater emphasis should be placed on the need for timely reviews of plans, particularly where the NP is made in advance of an up-to-date Local Plan.

It is also considered important to reflect on how groups perceive and approach the examination stage, It is evident that some groups submit plans for examination that they know are problematic (having being advised so by the LPA, consultants or ignoring the documentary guidance) as they want to see if they can "get it past the examiner." Their subsequent modification, or in some cases failure, should therefore be anticipated. This also raises questions about the acceptability of LPAs picking up the bill for failed examinations.

Others appear to regard examination with considerable trepidation - for some groups there is an understandable fear and apprehension over the examination process which may be due in part to their lack of involvement and control once the plan has been submitted (i.e. the LPA are responsible for organising consultation on the publicity plan and for any proposed amendments to the neighbourhood plan post-examination).

It may therefore be helpful if an advice note / guidance document were prepared which explains not only the examination process but also addresses common issues that occur at examination. This may take the form of worked examples that clearly illustrate why policies have been modified or deleted and what measures could be taken by the group to ensure the policies are robust.

In reflecting on the collaborative approach necessary between LPAs and QBs it has been reported that some LPAs are leaving the difficult decisions up to the examiner to resolve. For example one respondent commented that "*there is often too much onus on the examination and an increasing tendency to let the examiner sort out problem issues, which the LPA could easily do but seems unwilling to, as this will create an issue with the QB*" and another examiner argued that "*for the most part LPAs seem content to rely upon guidance from the Examiner*" (respondents #1 and #12).

This further emphasises the need for robust examinations and a consistent approach to be adopted between examiners, given many LPAs are accepting the proposed modifications to Plans (see Parker, Salter and Hickman, 2016).

The foregoing gives rise to the following five points, or areas for attention:

- **Basis for the plan and its scope** - As part of recent DCLG contracts a series of resources have been produced and made available for NDPs which range from information on what a NDP is (e.g. Locality Roadmap), to advice and tips on key stages in the process (e.g. PAE 'Putting the Pieces together" resources) and technical guidance

(e.g. site assessment and housing needs assessment). However, despite this wealth of information poor-quality plans are still reaching the examination stage.

While there could be a range of reasons for this (including lack of awareness – see measures discussed above) it may also signal a need for a change in approach and for more direct support from professional planners who have the required skills and knowledge. **We think this could take the form of workshops and focussed training sessions using worked examples of key areas of contention at examination** (e.g. how much evidence is required for a local green space designation and what is considered to be a robust approach to site assessment).

Allocation and prioritisation of funding - equally, although LPAs receive 'burdens' funding in many cases this is unlikely to adequately cover their costs of supporting NP groups, the examination and the referendum. Furthermore, while Locality offer support and advice to NP groups no equivalent body provides support to LPAs (reflecting funding cuts to the Planning Advisory Service). The variability of resources and knowledge within LPAs will impact on the quality of neighbourhood plans that reach examination.

We feel that greater focus should be placed on up-skilling and supporting LPA officers to ensure that they have the capacity and knowledge to offer advice and support. This will also help to ensure best-practice is shared as LPAs are likely to work with multiple groups, as opposed to recourse to external consultants who offer support on a group-by-group basis with uneven and inconsistent inputs.

If changes are made to NP examination that are likely to increase the length of the examination (including, for example, a more iterative process and increased engagement between the examiner, QB and LPA) additional funding may be required for LPAs to ensure the costs of examination can be met.

- *Clarity over what is core and what is ancillary to a Plan* - it is evident that confusion remains as to what a NDP is and what it is not. Many of the policies that have been modified or deleted relate to issues outside the remit of a NDP (i.e. non land-use issues or community aspirations) or are not substantiated by sufficient evidence. This illustrates a lack of understanding from groups and may be in part due to their desire for the plan to reflect all of the community ambitions. Their subsequent deletion is therefore frustrating and may be exacerbated by a lack of consistency between examiners as to how and where non-land use issues should be addressed and what is and what is not considered an appropriate land use policy (for example, common inconsistencies include Community Infrastructure Levy policies, transport and parking and locally listed buildings).

Greater clarity on what can and cannot be included within a NDP would therefore be beneficial but of equal importance is where "ancillary" material is placed and the weight it should be afforded. It is notable that some groups are progressing a community-led plan (see Parker and Murray, 2012) alongside their NDP in order to ensure both land-use and non-land use issues are adequately addressed and consideration could be given to the further roll-out of this approach.

- *Profile, selection and training of examiners* - the market for examiners is widening as more consultancies are offering examinations as part of their service offer.

In order to ensure a high standard of examination and a consistent approach all examiners should have to undertake training. **Training should be offered on an on-going basis (as opposed to a "one-off") and consideration should also be given to the establishment of a system of peer review and a mechanism for examiners' to share information and seek advice and guidance.** Furthermore, it would be helpful if examiners could be made aware of circumstances which may require them to adopt a particular approach e.g. High Court, Judicial Reviews and for comprehensive guidance to be prepared which addresses not only common issues at examination but also process issues (for example, the discretion available to examiners, circumstances in which to call a hearing, whether examinations can be suspended and what is an appropriate amount of contact with the qualifying body and the council during the examination – as discussed in section

- ***Marketisation and public perception (i.e. concerns over a market-driven approach).*** A recent high court challenge to the Newick neighbourhood plan considered whether there was inherent and apparent bias in the examiner appointment process. While the challenge was unsuccessful broader commentary on the potential for bias remains as LPAs and QBs decide who to appoint to carry out the examination (they appoint on the basis that they are independent and have 'appropriate' qualifications and experience). However, an examiner's history in relation to NP outcomes (including major modifications or even failure) has the potential to be a factor in the choice of examiner. This freedom of choice has the potential to introduce a market element into examiner appointment (i.e. appointment on the basis of price) which also challenge stakeholders perceptions of the impartiality of the process. **In our view serious consideration should be given to closer regulation of examiner training and appointment - possibly through a single source.**

The research team are happy to discuss these issues further with interested parties and / or provide copies of cited material if it is inaccessible.

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