

Neighbourhood Planning Bill Committee

Written evidence submitted by the National Association of Local Councils

Executive Summary

- The National Association of Local Councils (NALC) represents the 10,000 local parish and town councils in England and their 80,000 councillors.
- Neighbourhood planning is being used by local councils not only to shape and influence development in their area but also to increase housing and affordable housing, help communities become more resilient and support economic development, as well as strengthening local democracy as the process is leading to more people standing for election to their local council.
- NALC broadly welcomes the Neighbourhood Planning Bill, which will build on measures in the Housing and Planning Act to give more weight to plans earlier in the process, make it easier to modify plans and neighbourhood areas and require planning authorities to publish the support they will provide.
- However during the passage of the Housing and Planning Act 2016 the Government committed to doing more to ensure neighbourhood plans have more weight and we remain concerned that despite the measures contained in the Bill this commitment is not being adequately taken forward.
- We have a number of ideas for how the Bill could be strengthened to principally accelerate and incentivise neighbourhood planning, as well as giving communities more rights within the planning process, improving financial benefits from development and further strengthening local democracy.

1. The National Association of Local Councils (NALC) represents the 10,000 local parish and town councils in England and their 80,000 councillors.
2. Our vision is to improve the quality of life for local communities through having vibrant, dynamic and effective local councils.
3. Local councils are the cornerstone of local democracy and community governance, contributing in excess of £2 billion of community investment to supporting and improving local communities and delivering neighbourhood level services.
4. Local councils are the backbone of our democracy and closest to local people, providing our neighbourhoods, villages, towns and small cities with a democratic voice and structure for taking action. Our 80,000 councillors invest around eight million volunteer hours a year in our communities, working hard to improve quality of life for local people.

5. Over 250 new local councils have been established over the last decade through a bottom-up and resident-led process putting communities more in control of their area and better able to influence other public services and spending in their area. Six new local councils were established this year in urban areas such as Ashford and Kidderminster, including England's largest local council in Sutton Coldfield in Birmingham.
6. We are submitting written evidence as local councils play an important role in communities especially in neighbourhood planning as it local councils that are at the heart of and driving forward the neighbourhood planning revolution and making it such a success story, with around 90% of the 2000 communities developing a neighbourhood plan being led by England's most local level of democracy.
7. Significantly local councils are helping communities to shake off their NIMBY critics by increasingly supporting development and growth, with the government's own evidence showing they are increasing housing numbers by around 10%.
8. Neighbourhood planning is being used by local councils not only to shape and influence development in their area but also to increase housing and affordable housing, help communities become more resilient and support economic development, in addition to strengthening local democracy as the process is leading to more people standing for election to their local council.
9. The process is also exciting local people and generating a huge community interest, encouraging citizens to engage with often difficult local issues and often becoming more involved in the community including the work of local councils.
10. Thousands of volunteers across the country are being mobilised by local councils to develop neighbourhood plans, with around 360,000 electors engaged in the process and casting their vote through local referendums.
11. Given this level of engagement it is therefore vital that neighbourhood plans are effective, respected, influential and given appropriate weight in the planning system. If they do not then people will feel let down, their efforts, contributions and votes ignored and they will be less likely to participate in the future.
12. As the key drivers of neighbourhood planning it is especially important that the voice and the experiences of local councils is heard and the regime adjusted as a result.
13. By way of an example the All Party Parliamentary Group on local democracy held a session on neighbourhood planning on 12 October and heard about the experience of Haddenham Parish Council in Buckinghamshire, who went from having their plan 'made' to six months later having the housing chapter quashed in the courts following action by a hostile developer. The presentation by Councillor David Truesdale to the meeting is enclosed at Annex A.

14. Similarly it is important that communities that want to allocate sites for development using the neighbourhood planning process are able to do so. Storrington & Sullington and Washington Parish Council's neighbourhood plan failed examination in January 2016 as the Examiner had concerns about the site assessment process and the sites that had been taken forward for development in the plan. The district council has now decided it will be re-assessing all of the sites put forward under what appears to be a very strict sustainability led set of criteria rather than taking into account the views of the local community.
15. It is also crucial that communities that are pro-growth and development benefit financially from policy measures such as the Community Infrastructure Levy (CiL). For example the Newport Pagnell neighbourhood Plan allocated three times the number of new homes required by the Core Strategy, but the Town Council is now coming up against resistance from developers about the tensions that exist in law between a principal council being obligated to consider the impact of neighbourhood plans when determining planning applications and the constraints and legal tests around CiL. Developers appear to be interpreting these legal tests as meaning that every S106 or CiL contribution must have a directly attributable impact deriving from the development. In contrast, neighbourhood plans tend, by their very nature, to address issues of importance to community as a whole, rather than those issues created by a specific development. Contributions are therefore determined in neighbourhood plans by the broader nature of impact on the community, rather than by the specific development itself, notwithstanding the implications of pooling of S106. This is particularly the case where there are multiple sites for development in an area. Developers are also demanding specific costed projects as forerunners to S106 and/or CiL agreements being signed, where such projects may only get off the ground at a time when more development has taken place.
16. The neighbourhood plan itself must go through stringent examination to ensure it meets existing planning legislation, hence no further burden should be placed on local councils to ensure they can 'prove' the requirements for infrastructure in terms of the impact a specific small development may bring, when this is part of a much larger picture of infrastructure requirements. Pooling constraints are not the issue, rather it is the need to prove the specific impact that a small scale development will have, for example in relation to the need for more town centre parking. The current legislation should mean that developers need to 'prove' that their development does not have impact on broader projects, rather than the other way around, but some developers do not see it this way, therefore the Government should therefore consider this issue and either deal with this in the Bill or publish further guidance.
17. NALC broadly welcomes the Neighbourhood Planning Bill, which will build on measures in the Housing and Planning Act to give more weight to plans earlier in the process, make it easier to modify plans and neighbourhood areas and require planning authorities to publish the support they will provide.
18. However during the passage of the Housing and Planning Act 2016 the Government committed to doing more to ensure Neighbourhood Plans have more weight, yet we are concerned the Bill still does not sufficiently take forward this commitment.

19. We are keen for the Government to consider how this might be achieved through a new 'neighbourhood right to be heard' which would ensure decisions by local planning authorities take full account of neighbourhood plans, and provides the opportunity for planning applications to be 'called in' where a local planning authority is minded to grant permission contrary to a made or advanced neighbourhood plan.
20. There are a number of other ways in which the Bill could be strengthened to accelerate and incentivise neighbourhood planning, as well as giving communities more rights within the planning process, improving financial benefits from development and further strengthening local democracy.
21. NALC wants to see the Bill amended to provide the following:
 22. A share of New Homes Bonus for local councils with an adopted neighbourhood plan to ensure the community benefits financially from housing growth to invest in locally determined priorities and alleviate pressure on the parish precept;
 23. A requirement for all planning authorities to have Community Infrastructure Levy (CiL) regimes in place by end of 2017;
 24. The share of CiL for local councils with an adopted neighbourhood plan to increase from 25% to 35% to provide an additional incentive for communities and increase the number of plans in place and allow local councils to invest in local infrastructure and services and alleviate pressure on the parish precept;
 25. New powers for local councils and communities in the planning system including the introduction of a statutory 'right to be consulted' and 'right to be heard' to give emerging plans more weight in the planning system;
 26. Greater clarity about the status and expected influence of neighbourhood plans including the interaction between local plans and neighbourhood plans especially where there is no local plan or 5 year housing supply;
 27. Measures to accelerate the creation of local councils in unparished areas to help get more plans in place including the introduction of a community 'right of appeal' within the community governance review process.
 28. An enhancement of financial support for neighbourhood planning for the life of the Parliament, in particular to ensure all communities particularly in deprived areas are encouraged and supported to develop plans, alongside a commitment to provide funding and support for every local council wanting to develop a neighbourhood plan;
 29. Financial support should be made available for communities to help them set up a local council to provide them with a democratic structure and sustainable resource to ensure the neighbourhood plan is implemented as well as drawn up.

30. Improving the Section 106 Agreements process to improve consultation and enforcement by providing local councils with a statutory right to be consulted on provisions (new or renegotiated) of Section 106 Agreements prior to their being agreed, and for local councils to be able hold local planning authorities to account to ensure there is effective local enforcement around developers being held to account in adhering to Section 106 Agreements and planning conditions.

1. **Annex A.**

2. **All Party Parliamentary Group on Local Democracy: Session on Neighbourhood Planning 12 October 2016 – Presentation by Cllr David Truesdale, Haddenham Parish Council**

3. *Thank you for inviting me to talk about our experience of Neighbourhood Planning. I'm Vice-Chair of the PC, and have been on the PC for about 15 years. I originally qualified as a town planner; I've had a 40 year career in planning and housing, in the local government and housing association sectors.*

4. Haddenham Context

5. *First some context. Haddenham is a large village with a population of about 4,500 in about 2,000 homes between Thame and Aylesbury on the Buckinghamshire/Oxfordshire border. Our District Council is Aylesbury Vale (AV); our County Council is Buckinghamshire. Haddenham's history goes back 1000 years. One third of the village is within a large Conservation Area with 120 listed buildings – much used by Midsomer Murders for filming, amongst others.*

6. Why do a NP?

7. *In 2012 the PC resolved to undertake a NP, taking advantage of the opportunity of the 2011 Localism Act. We have a thriving voluntary sector and this was a great opportunity to bring the community together to plan for the future. We are in the frame for growth, being on the successful Chiltern Railway line. We wanted to have a say in shaping that growth rather than having it all done to us. Another spur to action was that our local authority, Aylesbury Vale, had (and still has) neither an approved Local Plan, nor a 5 year housing land supply. Shortly after we started, AV's draft Local Plan was abandoned at public inquiry having failed on the duty to cooperate – leaving us vulnerable to hostile planning applications, another spur to action.*

8. Referendum to quash in 6 months

9. *Our NP went to local referendum in summer 2015 having been approved by both the independent examiner and the LA. On a 52% turnout, 86% voted in favour. The NP was confirmed as "made" in the autumn - just a year ago. On advice from our local authority, we had allowed for new growth of 430 homes in addition to some 200 already in the pipeline – this was 4 times more than the numbers in the failed Local Plan, so the community was accepting of growth. But just 6 months after being made, in March 2016 our NP, or at least the key housing chapter, had been quashed in the Court at judicial review brought about by a hostile developer of a large site most of which was not allocated in the NP.*

10. Hostile Developer: Appeal Inquiry

11. *From the outset this particular developer had no intention of working with the NP process, and went ahead and submitted a planning application on their site regardless. This was in contrast to other developers who were happy to work with us doing consultation and in one case planning for real workshops with local residents. Aylesbury Vale District Council decided to grant planning permission to the hostile developer. With help from our MP, the Secretary of State called in the application because of its conflict with an emerging NP.*

12. *At a public inquiry last November, the Parish Council had to pay for both professional planning and legal representation as we were fighting both the developer and the local authority. During the inquiry two of our volunteers on the NP team were cross-examined by Counsel for the developer in a way that can only be described as utterly disgraceful. Their motives for being involved with the NP and their reputations were trounced. One of them I might say is a magistrate; the other an eminent academic and a knight of the realm – so busy people who had given of their time.*

13. Judicial Review (JR)

14. *Meanwhile the developer also launched a judicial review against our NP. Having crawled through all our site assessments, they managed to find a couple of small arithmetic errors in our site assessments. Our independent examiner had been aware of these but didn't consider them significant; neither did the inspector hearing November's inquiry. These errors did not materially change our overall site allocations, but at this time there was no mechanism in place to correct a minor error in a NP.*

15. *The JR was due to be heard in March 2016. In a JR the defendant is the local authority; the PC is only an interested party. A week before the JR, AV advised us that it was not prepared to defend the action, and was going to sign an agreement whereby the housing chapter (the core bit) of our NP was quashed. We were under the impression that a made NP is legally part of the local authority's approved development plan, and that therefore the Council should have been prepared to defend it.*

16. *Soon after, the Sec of State then approved the planning application on appeal from our hostile developer because by now the NP now had no force, AV's own plan was "out of date", and it didn't have a 5 year housing land supply.*

17. Situation today

18. *The situation today is that AV this summer published a draft Local Plan with far higher needs assessments than previously advised, which will render all NPs in the District "out-of-date" and in need of reviewing – which means going through the whole process (including referendum) all over again - if Parishes are minded to do so. In Haddenham's case we are now looking at growth of over 1,000 homes; we are also a frontrunner for a possible new settlement/garden village of 4,500-plus homes by 2033. So no wonder they were not prepared to defend us at either the planning inquiry or the JR.*

19. Lessons & Reflections

20. *So all in all, I regret to say that our experience of NPs hasn't been a good one – and I say this as someone really keen in getting people more engaged in planning. We have witnessed the belittling of volunteers. All the enthusiasm and commitment we had has been destroyed and replaced by cynicism. This will make it very difficult now to undertake any revision to our NP, and I think there'll be very little likelihood of getting people out to vote all over again. The overall message we're now encountering is: why bother?*
21. *Some reflections on the lessons of this story:*
22. *There's a real need for a clear statement of what weight is, or is not, to be given to made NPs, particularly: where there is or isn't an approved Local Plan; where there is or isn't a 5 year housing land supply. There have been inconsistent appeal decisions on this. We cannot expect communities to put lots of work in NPs if they don't have weight in certain situations.*
23. *Similarly clarity is needed for emerging NPs: should or shouldn't they have any weight at all until actually "made"? If not, at what stage should they have an influence?*
24. *I'm sure many NPs are being done because local communities are under the impression that they'll be setting the agenda. Need for a clear statement of where NPs sit in the hierarchy of plan making. If their true position is to sit underneath the District Plan, and conform to the housing numbers set by the District Plan, that should be clearly said.*
25. *If that is the case, then don't let NPs spend huge resources undertaking housing needs and/or site assessments.*
26. *Think carefully about doing housing and site assessments in your NP unless your lpa has an approved and up-to-date Local Plan and a 5 year housing land supply.*
27. *Make clear to local authorities that NPs are here to stay (assuming they are!) and that LAs need to trust and work with their local communities. If AV had been more open with us, we could have used the NP process to plan for the 1000 homes now required. We would also have saved a fortune in fees fighting them and that developer.*
28. *Make clear to developers that NPs are here to stay and are regarded as important by Government. Otherwise be very careful of taking on hostile developers with a cynical attitude to neighbourhood planning – they have deep pockets and you won't win.*
29. *NPs were meant to make planning accessible to volunteers per localism – but actually it isn't – the process needs to be as rigorous, fully documented and transparent as with a District Plan – otherwise it will be open to challenge – and developers in turn should expect that a robust process has been followed.*
30. *Do use professionals and not volunteers to do housing and site assessments.*
31. *Include provision in the budget for professional fees, including in case things go wrong (our Parish - a larger one - has spent more than the entire precept of most PCs in defending all this).*

32. *Is there now a mechanism in place for correcting errors in NPs without the need to go through the entire process again?*
33. *I see from a couple of recent appeal decisions that that development may be allowed on unallocated sites if the proposals are considered “sustainable”. Local communities are probably unaware that their NPs could thereby be undermined. Is this intended?*