



Blakeney NEIGHBOURHOOD DEVELOPMENT PLAN 2020 - 2040
(Examination Version December 2020)

**Pre-examination Review into the Blakeney Neighbourhood Development Plan 2020-
2040**

Timothy Jones, Barrister,

Independent Examiner,

No 5 Chambers

12th July 2021.

Part 1 – Process

	Criteria	Source	Response/Comments
1.1	Have the necessary statutory requirements been met in terms of the designation of the neighbourhood area?	North Norfolk District Council (“NNDC”) and documents supplied	They have
1.2	If the area does not have a parish council, have the necessary statutory requirements been met in terms of the designation of the neighbourhood forum?	N/A	N/A
1.3	Has the plan been the subject of appropriate pre-submission consultation and publicity, as set out in the legislation, or is this underway?	The Consultation Statement	Yes
1.4	Has there been a programme of community engagement proportionate to the scale and complexity of the plan?	The Consultation Statement	Yes
1.5	Are arrangements in place for an independent examiner to be appointed?	NNDC	The plan has not yet reached this stage where this is needed, but the appointment should not be left until a tight timetable limits the choice of examiner.
1.6	Are discussions taking place with the electoral services team on holding the referendum?	NNDC	The plan has not yet reached this stage. While a matter for the examiner, nothing in the papers that I have seen suggests to me that the referendum electorate will need to be extended beyond the parish.
1.7	Is there a clear project plan for bringing the plan into force and does it take account of local authority committee cycles?	NNDC	None is apparent to me

1.8	Has an SEA screening been carried out by the LPA?	NNDC	Screening documents were undertaken on the December 2020 edition of the Plan and copies provided. If the plan were to alter then a further update may need to take place.
1.9	Has an HRA screening been carried out by the LPA?	NNDC	Screening documents have been undertaken on the December 2020 edition of the Plan and copies provided. If the plan were to alter then a further update may need to take place.

Part 2 – Content

	Criteria	Source	Response/Comments
2.1	Are policies appropriately justified with a clear rationale?	This is dealt with in the report below.	Except to the extent detailed in the report below, policies are appropriately justified.
2.2	Is it clear which parts of the draft plan form the ‘neighbourhood plan proposal’ (i.e. the neighbourhood? <i>development plan</i>) under the Localism Act, subject to the independent examination, and which parts do not form part of the ‘ plan proposal’, and would not be tested by the independent examination?	My reading of the draft plan	Yes.
2.3	Are there any obvious conflicts with the NPPF?	This is dealt with in the report below.	Except to the extent detailed in the report below, policies are appropriately justified.
2.4	Is there a clear explanation of the ways the plan contributes to the achievement of sustainable development?	My reading of the draft plan.	Yes.
2.5	Are there any issues around compatibility with human rights or EU obligations?	My reading of the draft plan.	There are no EU obligation issues. Except to the extent that restrictions on property rights must be fully justified, there are no human rights issues.
2.6	Does the plan avoid dealing with excluded development including nationally significant infrastructure, waste and minerals?	My reading of the draft plan	Yes.
2.7	Is there consensus between the local planning authority and the qualifying body over whether the plan meets the basic conditions including conformity with strategic development plan policy and, if not, what are the areas of disagreement?	My reading of the draft plan and NNDC	No. There are some tensions between NNDC and the Qualifying Body. I deal with these below. I would encourage each to seek to resolve the differences.

2.8	Are there any obvious errors in the plan?	My reading of the draft plan.	Except to the extent detailed in the report below, there are no obvious errors.
2.9	Are the plan's policies clear and unambiguous and do they reflect the community's aspirations?	My reading of the draft plan.	Yes, but to the extent detailed in the report below there are problems with some policies.

Introduction

1. I have been instructed by North Norfolk District Council (“NNDC”) to undertake a pre-examination review, often known as a health check, of the draft Blakeney Neighbourhood Development Plan (“the Draft Plan”), which has been produced by Blakeney Parish Council (“BPC”), and also to provide independent commentary on its effectiveness as a material consideration as part of the Development Plan should it pass the tests and what changes and options the Parish may like to consider prior to submission in order to reduce the risk of material modifications through the examination process. These are distinct requirements.

2. I am a member of the planning bar and am independent of NNDC, BPC and, to the best of my knowledge and belief of those who may be affected by the Draft NDP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service (“NPIERS”) and have extensive experience both as a planning barrister and as a neighbourhood plan examiner. I do not have an interest in any land anywhere in Norfolk.

3. The village of Blakeney is relatively sustainable *“being well-served by its variety of shops and amenities”*. It has a primary school, doctor’s surgery, some public transport, church, some local employment and a limited selection of other services, and acts as a limited service hub for nearby villages.¹ It is identified in the emerging Local Plan settlement hierarchy as one of five ‘Large Growth Villages’.² The level of growth that is appropriate is moderated by the facts that Blakeney is in the North Norfolk Coast Area of Outstanding Natural Beauty and close to European Designated Habitat Sites. There is particular concern about the impact of the demand for second homes on house prices causing them to rise beyond the reach of many younger people with average house prices beyond the reach of those on average incomes and the lack of affordable housing for local people. I have no doubt that this concern is justified.

4. A health check involves consideration of a variety of factors which may be divided into two broad categories: compliance with formal and procedural requirements; and compliance with basic conditions and human rights. To some extent this is similar to the examiner’s role; but a health check is purely on paper with no site visit and does not involve consideration of representations.

5. Unless otherwise stated all reference to a paragraph in this report are to a paragraph of the Draft Plan.

Statutory requirements (other than basic conditions and human rights)

6. I am satisfied of the following matters:

¹ Paragraph 5.28.

² Paragraph 5.27.

- (1) The Draft NDP area is the parish of Blakeney. This was designated as a neighbourhood area for the purposes of neighbourhood planning on 30th November 2017. BPC, a parish council, is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
 - (2) The Draft NDP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
 - (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
 - (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
 - (5) The Draft NDP specifies the period for which it is to have effect (namely to 2040), as required by PCPA s38B(1)(a).
7. Section 2 of the draft Basic Conditions Statement is correct.

Basic Conditions and Human Rights

8. The basic conditions are specified in the Town and Country Planning Act 1990 (“TCPA”) Sch 4B para 8(2) as varied for neighbourhood development plans, namely:
- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
 - (d)³ The making of the Plan contributes to the achievement of sustainable development;
 - (e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - (f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and
 - (g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.
9. There is one prescribed basic condition:⁴ *“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.”* Chapter 8 comprises regulations 105 to 111.
10. The combined effect of TCPA Sch 4B para 8(6) and para 10(3)(b) and of the Human Rights Act 1998 means that I must consider whether the Draft NDP is compatible with

³ The omission of (b) and (c) results from these clauses of para 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

⁴ Sch 2 of the General Regulations prescribes this.

Convention rights. ‘*Convention rights*’ are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights (“the Convention”), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention’s Article 6(1), 8 and 14 and under its First Protocol Article 1.

11. Having considered the basic conditions and human rights, examining inspectors have three options, which they must exercise in the light of their findings. These are: (1) that the Draft NDP proceeds to a referendum as submitted; (2) that the Draft NDP is modified to meet basic conditions and then the modified version proceeds to a referendum; or (3) that the Draft NDP does not proceed to referendum. If they determine that either of the first two options is appropriate, they must also consider whether the referendum area should be extended. In practice and within reason they will seek to avoid the third option, but their power to do so is limited by the requirement to be fair to those involved. The more that a draft NP gets seriously wrong, the more likely it is that option (3) will be recommended. Leaving matters that are obviously problematic to be sorted out by the examining inspector carries this risk. It also carries a risk that the modification recommended by the examining inspector will be different from the alteration that the qualifying body would have made had it recognised and responded to the problem.

12. Basic condition (a) national policies and advice contained in guidance issued by the Secretary of State should only be departed from if there are clear reasons, which should be explained, for doing so.⁵ The principal document in which national planning policy is contained is the National Planning Policy Framework (February 2019) (“the NPPF”). There is a difference of approach among examiners to the issue of duplication of policies, with some advising deletion on the ground that this is contrary to Planning Policy Guidance advice⁶ and others leaving them in on the ground that this does no harm. My advice is that if retention serves a purpose, such as giving coherence to a plan as a whole and enabling the reader to have a clearer picture of the overall policy that applies in a particular situation, repetition can be acceptable; but if it serves no purpose PPG advice should be followed. Where the former applies this should be made clear. Without an explanation, policy that merely repeats national or district policy is likely to be recommended for deletion by the examiner.

⁵ R. (Lochailort Investments Limited) v. Mendip District Council [2020] EWCA Civ 1259, Lewison LJ, paras 6, 31 and 33, 2nd October 2020.

⁶ See, for example the Corpusty and Saxthorpe examiner’s report paragraph 7.22 – there is a slight error error. It is not legislation, but PPG advice.

13. Basic condition (d) requires consideration of an NP as a whole. Individual policies that are acceptable in themselves may have a combined effect that prevents the achievement of sustainable development.

14. Basic condition (e) requires the making of the Plan to be in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). The adjective ‘general’ allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. The draft NDP “*need not slavishly adopt every detail*”.⁷ This condition only applies to strategic policies - there is no conformity requirement in respect of non-strategic policies in the development plan or in respect of other district or county documents that do not form part of the development plan, although such documents may be relevant to other basic conditions. Emerging local plans are often in this latter category. I have not found any breach of basic condition (e) in the draft Plan..

15. Basic condition (f) requires consideration of EU obligations, none of which have changed in substance since the UK left the EU. In general a substantial number of obligations can have an effect, including those under the Strategic Environmental Assessment Directive (2001/42/EC), the Environmental Impact Assessment Directive (2011/92/EU), the Habitats Directive (92/43/EEC), the Wild Birds Directive (2009/147/EC), the Waste Framework Directive (2008/98/EC), the Air Quality Directive (2008/50/EC), the Water Framework Directive (2000/60/EC), and the General Data Protection Regulation (2016/679/EU). In practice these often add nothing to the other basic conditions. I have paid particular attention to the fact that the saltmarsh habitat immediately north of the village is of international importance, having SAC, SPA and Ramsar designation.⁸ Basic condition (g) also relates to EU-derived law. I have not found any breach of basic conditions (f) and (g) in the Draft Plan.

16. Human rights emphasise: the importance of justifying interferences with homes and property; and fairness to those on whom the Draft Plan would restrict what would otherwise be their rights and their reasonable expectations.

Housing Provision

17. There is no legal requirement that neighbourhood plans allocate land for housing. As the examiner of the Corpusty and Saxthorpe said: “*A neighbourhood plan can be narrow or broad in scope. Any plan can include whatever range of policies it sees as appropriate to its designated neighbourhood area.*” If a NP does not allocate land for housing, this does not in any way reduce that amount of housing that will have to be provided in the neighbourhood. It means that this will be decided not by the neighbourhood, but by the district council (or, as often happens, by planning inspectors determining planning appeals). An example of how local

⁷ Wiltshire Council v Cooper Estates Strategic Land Ltd [2019] EWCA Civ 840, para 3.

⁸ Paragraph 6.208 and Map 9.

people can feel when the matter is left to the district is recorded on page 23 of the Consultation Statement. Where a Draft Plan does not allocate land for housing, particular care is needed to ensure that its policies taken as a whole do not prevent or impede needed development.

Allocation for social housing

18. Policy 1 begins: *“In order to meet the housing needs of the parish, proposals which make provision by way of a section 106 agreement for affordable housing will be made available first to eligible households with a local connection to the parish of Blakeney...”*

19. NP policies must relate to planning matters and this is not a planning matter. Further the Community Infrastructure Levy Regulations 2010 reg 122(2)(a) provides *“Subject to paragraph (2A),⁹ a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is— (a) necessary to make the development acceptable in planning terms”*. Policy 1 is almost certain to be rejected by an examiner. Since there is no policy that could achieve the same thing, it is unlikely that he or she would do substantially more than delete the policy and relevant supporting text. In my opinion (although I recognise that some examiners take a different view) the qualifying body can properly record the community’s aspiration that affordable housing should meet local needs; although this should not be done in such a way as to imply (wrongly) that it was a matter for the neighbourhood plan or the parish council.

New Homes

20. Policy 2 seeks to address a real and substantial problem as explained in the draft NDP and, for this reason I particularly regret having to give somewhat negative advice in respect of it. It begins, *“New open market housing, excluding replacement dwellings, will be required to have a restriction to ensure its first and future occupation is restricted in perpetuity to ensure that each new dwelling is occupied only as a Principal Residence”*. NPs can include such policies where the evidence justifies them and where the examiner concludes that they will achieve their intended purpose. Examples include the St Ives’ NDP¹⁰ (which was upheld by the High Court) policies H1 and H2; the St Minver NPD.¹¹ (The Welsh Government which faces a similar problem on parts of its coast, have taken a different approach, imposing through legislation a double council tax – that however is a matter for Parliament, not for neighbourhood planning.) The efficacy of such policies is a matter of debate and the Draft Plan contains a link that challenges the nature of research by those who challenge their efficacy.¹² While there may be force in the criticisms that the article concerned includes, there remains

⁹ Which is not relevant to the issues that this report addresses.

¹⁰ <https://www.cornwall.gov.uk/media/qb2howiw/st-ives-neighbourhood-development-plan.pdf>

¹¹ <https://www.cornwall.gov.uk/media/usdc03a2/st-minver-neighbourhood-development-plan.pdf>

¹² Paragraph 6.66.

the issue whether the policy will reduce the number of second homes or simply shift demand, making those who want a second home buy existing properties and so increase their prices more than they would otherwise be. If that is the case, local people could find the old houses in the village centre taken over as second homes while they could only afford the new houses. The result in time would then be the creation of a ‘ghost’ village centre, the opposite of the aim to preserve the character of the village. It must be remembered that it is up to the qualifying body to provide evidence that supports the policy. Without that evidence, criticisms of those who oppose such policies will not be enough to support retention of the policy in the Draft Plan. I have not seen any evidence that the policy will achieve its desired effect and advise its reassessment. Indeed I have not seen any evidence that the policy will cause any reduction in the overall proportion of second homes.

Holiday Let Accommodation

21. Policy 4, Change of use from Holiday Let Accommodation to residential states:

“Proposals for the change of use or removal of occupancy restrictions from holiday accommodation use to Principal Residence housing, will be supported where the unit proposed for change of use, to residential (C3) or removal of occupancy restriction is suitable for permanent occupation.

Future occupation shall be as Principal Residence in accordance with Policy C2 of the Blakeney Neighbourhood Plan.

This policy does not apply to the change of use, or replacement of chalets, static caravans, other buildings or structures which are not suitable for permanent occupation.”

22. The references to ‘Principal Residence’ in the first two paragraphs of this policy give rise to the same concerns as those that apply to policy 2 and should be reassessed.

23. The last paragraph in part asserts that chalet and static caravans are not suitable for permanent occupation. I have not seen any evidence to justify such a broad assertion and would be most surprised if there is any. It is a matter of general knowledge that many people occupy chalet and static caravans as permanent homes apparently happily and I have no reason to believe that these are in general unsuitable for permanent occupation. When a chalet or a mobile home becoming permanent accommodation this counts towards meeting housing need and so reduces the level of need for “bricks and mortar” housing and for development on greenfield sites. The treatment of chalet and static caravans is not addressed in the draft Basic Conditions Statement. An acceptable alternative would be *“This policy does not apply to the change of use, or replacement of, buildings or structures which are not suitable for permanent occupation.”*

24. Paragraph 6.102 is inaccurate in stating that sui generis holiday lets do not benefit from permitted development rights. This can easily be corrected by replacing “permitted development rights” with “those permitted development rights that only apply to dwellinghouses”.

Open spaces

25. The Draft Plan does not seek to create local green spaces,¹³ but does, through its policy 13, seek to protect certain open spaces. An important distinction is that while an LGS should “be capable of enduring beyond the end of the plan period”,¹⁴ there is no such requirement for a designated open space. Open space designation is widespread and any examiner will be familiar with the concept. It needs to be justified. There should be no problem with publicly owned land such as the Pastures that was bought to provide open space¹⁵ and unlikely to be a problem with other areas of land whose main use is recreation. I would not anticipate any problems with a registered village green, with National Trust land that is held as open country rather than part of the grounds of a stately home or with a green within a housing development that is designed as such¹⁶. The designation is not in my experience used for car parks, although where an area of land that is predominantly recreational includes a car park that is ancillary to this use, that may be included. I can see no justification for the inclusion of car parks in the Draft Plan and note that none of the policies in the draft Basic Conditions statement supports making car parks designated open spaces. I advise their deletion. Where land is not a green designed within a development, but appears to be a natural infill site, its designation is unlikely to survive the examination. In considering proposed green spaces, examiners, who are entitled to exercise planning judgment, will often be greatly influenced by their site visit.

26. As a matter of law, planning policies cannot require transfer of ownership. This in effect would be the imposition of taxation without parliamentary authority. The second and third numbered paragraphs of policy 14 should therefore be deleted. It would however be acceptable to include within the supporting text the following or similar words: “One way in which the objectives of policy 14 can be achieved is by a transfer of the land to the ownership of the parish council or the district council with a sufficient capital payment to cover continuing maintenance.”

27. There is a minor error in paragraph 5.25 of the draft Plan (‘where’ should be ‘were’). Page 112 is inaccurate in respect of the Localism Act 2011: “that became” should be replaced with “relevant parts of which became”.

¹³ Paragraph 6.265.

¹⁴ NPPF paragraph 99. This was considered in R. (Lochailort Investments Ltd) v Mendip District Council [2020] EWCA Civ 1259, 2nd October 2020.

¹⁵ Paragraph 6.242 and the photographs on pages 82 and 87.

¹⁶ From the map the green in Kingsway looks like this..

The Basic Conditions Statement

28. Paragraphs 1.5, 1.6, 3.32 and 3.34 of the draft Basic Conditions Statement ('the draft BCS') are wrong. There has been no SEA and no HRA. Neither were needed.
29. If the advice in this report is followed the BSC will require major consequential alteration to reflect altered policies in the draft Plan.
30. The word 'algin' should be replaced by 'align' (page 11, twice).
31. Paragraphs 3.11 to 3.17 of the draft BCS deal with provisions that have nothing to do with neighbourhood plans. They should be deleted.
32. Paragraph 3.37 is in the wrong place. Human Rights derive from the European Convention on Human Rights, which is a Council of Europe, not an EU, document.
33. Paragraph 3.39 is wrong. The prescribed condition mentioned in paragraph 9 above applies and should be addressed.
34. Subject to the above, the draft BCS is adequate.

The Consultation Statement

35. The Consultation Statement records extensive consultation, more extensive than in many neighbourhood plans. This is likely to impress an examiner.
36. Paragraph 1.7's reference to Aylsham is, no doubt, an error.
37. The final sentence in column 1 of the first box on page 14 is incomplete.
38. Subject to the above and with the still-to-be-completed parts completed, the Consultation Statement is in my view adequate, although it could be more detailed and some examiners might be more critical. In particular consultation statements often give more detail on methodology and on how feedback was considered.

HRA and SEA Screening

39. There are no problems with the HRA/SEA Screening Assessment, which was prepared by NNDC.

Miscellaneous matters

40. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations without a hearing. A hearing only takes place if the examiner considers that oral representations are necessary to ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. The first is mainly limited to plans where there are competing development sites. I have yet to come across the second, but it might apply where people with a significant interest lack adequate literacy in English. On the papers I have seen a hearing seems unlikely in this case.

41. Site visits are more common and, are often unaccompanied. Unaccompanied sites visits are limited to points to which the general public has rights of access, such as roads, pavements, public footpaths and bridleways and many beaches, or an implied right of access such as supermarket car parks, churchyards and cemeteries. It can help inspectors to have suggested viewpoints for a site visit.

42. It is regrettable that there is some tension between NNDC and BPC. I very hope that these can be resolved by BPC recognising the expertise and professional of the relevant officers of NNDC and NNDC recognising the importance in neighbourhood planning of localism and of keeping demands on time and money proportionate. I am confident that each council will recognise and respect the hard work that has gone into consideration of the contents of the draft Plan and associated documents.

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12th July 2021.