

Briefing Note on Neighbourhood Area and Neighbourhood Forum Designations

1 Introduction

Under the Town and Country Planning Act 1990 and Planning and Compulsory Purchase Act 2004, Local Planning Authorities have a statutory duty to advise or assist communities in the preparation of Neighbourhood Development Plans (NDP)¹.

The Localism Act 2011 (Part 6 chapter 3) sets out the LPA responsibilities. These include designating the area of the Neighbourhood Development Plan and designating a Neighbourhood Forum (where relevant). The Neighbourhood Planning (General) (Amendment) Regulations 2015 which came into force on 9 February 2015 introduce time limits by which LPA's must determine applications for designation of a neighbourhood area.

This briefing note provides information to local planning authorities (LPA) on current practice.

The Planning Practice Guidance (PPG) published in March 2014 provides further information on the designation of Neighbourhood Forums and Areas at the following link:

<http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/designating-a-neighbourhood-area/>

1.1 Designation of a Neighbourhood Area

The LPA must make a decision on a) the designation of a Neighbourhood Area and b) the confirmation that an appropriate (prospective) qualifying body is making the application.

The key elements of the process are as follows:

- Community discuss prospective Neighbourhood Area with LPA
- LPAs must consider designating areas that are wholly or predominantly made up of businesses as a 'business areas' for neighbourhood planning

¹ Schedule 4B para 3 of the 1990 Act states: A local planning authority must give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for NDOs in relation to neighbourhood areas within their area

- LPA receive an application for a Neighbourhood Area LPA publicise the application for a minimum of 4 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council and not less than 6 weeks in all other cases. Timings start from the date on which the area application is first publicised.
- LPA consider the application resulting in a designation, modification or refusal. Where the Neighbourhood Area crosses local authority boundaries, the powers of designation and modification must be exercised by all relevant authorities
- LPA publicise its decision to approve or refuse the application
- The LPA must publish a map setting out all the current Neighbourhood Areas designated, and indicate those which are designated as business areas.

The Neighbourhood Planning (General) (Amendment) Regulations 2015 introduced prescribed timeframes within which LPAs must determine applications for neighbourhood areas. The prescribed periods are as follows:

- (a) 20 weeks in a case where the area to which the application relates falls within the areas of two or more local planning authorities;
- (b) 8 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council; and
- (c) 13 weeks in all other cases

The periods start from the date immediately following that on which the application is first publicised.

1.2 Designation of a Neighbourhood Forum

The key elements of the process are:

- LPA publicises the right to make applications for a Neighbourhood Forum to be designated
- The 'qualifying body' (proposed neighbourhood forum) submits an application to the LPA including information as to how the proposed forum meets the criteria for a neighbourhood forum
- LPA publicises the application for a minimum of 6 weeks
- LPA make a decision on the application resulting in a designation or refusal
- LPA publicise the decision on designation or refusal

Where a Neighbourhood Forum has been designated the LPA may decline to consider subsequent applications for neighbourhood forum designation where one has already been designated.

The LPA can withdraw a Neighbourhood Forum designation where it is requested by that Forum, or where the LPA considers the forum is no longer meeting conditions of approval.

The Neighbourhood Forum designation expires after five years.

1.3 Format of this note

This note reports on practice to date, looking at what has worked well, issues arising and how local planning authorities are fulfilling their role to advise or assist. The format of this note is as follows;

- Issues encountered in the process of designating Neighbourhood Areas and Neighbourhood Forum – drawing out challenges and opportunities for local authorities
- How designation is working in practice –information on how different elements of the designation process are working in practice
- Some case study examples

2 Issues encountered in designating Neighbourhood Areas and Neighbourhood Forum

2.1 How should the regulations be interpreted?

The lack of prescription in the neighbourhood planning legislation offers flexibility for local authorities and communities to work together to select Neighbourhood Areas and Neighbourhood Forums which make sense in a local context. Consequently a range of different practices have been used, some examples of which are detailed later in this section. As with any legislation, responsibility for its interpretation rests with the decision taker and ultimately with the courts. As NDPs become more common place it is likely that case law as a result of legal challenges will shape the practice of LPAs. The first legal challenge in relation to designation (October 2012) was made against Wycombe District Council's decision to amend the boundary of the neighbourhood area proposed by Daws

Hill Neighbourhood Area and Forum. This case is discussed in Section 3.2 below.

LPAs should ensure that all those involved in neighbourhood planning have a good understanding of the legal requirements and responsibilities, and manage the expectations of different groups in respect of the scope of neighbourhood planning and what it can achieve, ensuring it is the right planning tool for them. This should support your approach to designation.

2.2 How does experience differ between a parish and a Neighbourhood Forum?

Legislation limits those who can undertake neighbourhood planning to 'qualifying bodies'. In parished areas only parish councils can bring forward an NDP. A 'qualifying body' is a parish council or in a non-parished area a designated Neighbourhood Forum. In determining the application for a Neighbourhood Area, the LPA should be sure that parish council applications cover all or part of the parish, and that the Neighbourhood Forum application does not cover any part of a parished area.

The complexity of the designation process for Neighbourhood Areas can be greater for those in non-parished areas as a new body must be designated to take forward the neighbourhood plan. Known as the Neighbourhood Forum, this body must draw its membership from across the Neighbourhood Area and different sections of the community. Hence the legislation on neighbourhood planning encourages areas to be agreed first although some authorities have done the two simultaneously (see below). Ensuring an effective fit in terms of the representativeness of Neighbourhood Forum together with an appropriate Neighbourhood Area is seen as the greatest challenge for LPAs.

2.3 How should Neighbourhood Area boundaries be drawn?

A Neighbourhood Area is an area designated by the LPA following an application by the parish council or a prospective Neighbourhood Forum. When making an application the qualifying body must submit a map identifying the area and a statement to the LPA explaining why the area proposed is considered appropriate. The area applied for by the 'qualifying body' should be approved by the LPA unless there are clear reasons why an alternative Neighbourhood Area is more appropriate. To encourage consensus LPAs should, where possible, provide advice or support to neighbourhoods on the suitability of Neighbourhood Areas preferably even before the application for designation is made.

The starting point should be a boundary that makes sense to that community and is logical in spatial terms (e.g. not subdividing an estate).

In coming to a decision on an application LPAs should consider what makes an appropriate boundary for a Neighbourhood Area based on sound planning reasons. The following factors should be taken into account:

- village or settlement boundaries, which could reflect areas of planned expansion
- the catchment area for walking to local services such as shops, primary schools, doctors' surgery, parks or other facilities
- the area where formal or informal networks of community based groups operate
- the physical appearance or characteristics of the neighbourhood, for example buildings may be of a consistent scale or style
- whether the area forms all or part of a coherent estate either for businesses or residents
- whether the area is wholly or predominantly a business area
- whether infrastructure or physical features define a natural boundary, for example a major road or railway line or waterway
- the natural setting or features in an area
- size of the population (living and working) in the area

Electoral ward boundaries can be a useful starting point for discussions on the appropriate size of a neighbourhood area; these have an average population of about 5,500 residents.

A number of LPAs have encouraged the use of pre-existing boundaries for Neighbourhood Areas including:

- Political and administrative boundaries such as individual or combinations of parishes and wards – these areas benefit from established and recognised representation and an existing data and evidence base.
- Identified areas of development opportunity such as regeneration areas or employment zones – these areas are suitable as the purpose of promoting development required for neighbourhood planning is often already justified within local plan policy, improving the compatibility of emerging NDPs with the existing local authority plan base.

2.4 In a multi-parished neighbourhood area when does a town or parish council need to gain the consent of the other town or parish council/s in order to take the lead in producing a neighbourhood plan or Order?

A single parish or town council (as a relevant body) can apply for a multi-parished neighbourhood area to be designated as long as that multi-parished area includes all or part of that parish or town council's administrative area. But when the parish or town council begins to develop a neighbourhood plan or Order (as a qualifying body) it needs to secure the consents of the other parish councils to undertake neighbourhood planning activities. Gaining this consent is important if the pre-submission publicity and consultation and subsequently the submission to the local planning authority are to be valid.

2.5 Which comes first, designating a Neighbourhood Area or a Neighbourhood Forum?

The Neighbourhood Planning Regulations have not specified whether a Neighbourhood Area must be designated before a Neighbourhood Forum, or vice versa. However the Government's intention was that the Neighbourhood Area is designated first and then the Neighbourhood Forum.

Some LPAs (such as Bristol City Council and London Borough of Haringey) have taken the decision to designate Neighbourhood Forums and Neighbourhood Areas in parallel.

The six week consultation periods required can occur simultaneously. However this does incur a risk if the boundary of the designated Neighbourhood Area is different from the one applied for. LPAs should take account of two important considerations, when considering the order of designation:

- The degree to which the proposed Neighbourhood Forum is representative of the proposed Neighbourhood Area.
- Each Neighbourhood Area needs to be planned by one Neighbourhood Forum/Parish, and Neighbourhood Areas should not overlap.

2.6 How should cross-boundary Neighbourhood Areas be progressed

The areas to be designated as Neighbourhood Areas must not overlap. Parish council applications should cover part or all of the parish, and Neighbourhood Forum applications should not cover a parished area. LPAs need to consider how proposals for neighbourhood areas which cross parish boundaries are designated. The relevant parishes should agree which parish will lead. With mutual agreement it is possible to incorporate a number of parished areas within a NDP boundary e.g. Upper Eden which is a multi parished area that includes 13 parishes.

In the case of Neighbourhood Area applications which cross local authority boundaries, all LPAs will need to be applied to. To designate the Highgate Neighbourhood Area, the London Borough of Haringey and London Borough of Camden worked closely together on managing the designation process. LPAs will need to consider agreements of who will lead as well as the timings of designation, how and on what basis decisions to designate are made.

2.7 The impact of administrative delays

Feedback from LPA's and the organisations and agencies that provide support to qualifying bodies has highlighted the negative impact that arises when councils take a long time to come to a decision about the designation of either the prospective neighbourhood area or the forum. This causes the communities involved to lose traction with the process as interest ebbs, and can also set up a level of distrust between the LPA and the community group/parish.

In the recent past delays may have arisen as both elected members and officers in the local authority struggled to get to grips with both the regulatory framework and the implications of neighbourhood planning. However as familiarity grows, some councils are widening their delegation powers to allow for designation decisions to be taken by officers and other LPAs are endeavouring to increase transparency in the process by either providing timetables for their processes or keeping the communities up to date with regular discussion of the issues and considerations.

2.8 Can a neighbourhood area include land allocated in the Local Plan as a strategic site?

A neighbourhood area can include land allocated in a Local Plan as a strategic site. Where a proposed neighbourhood area includes such a site, those wishing to produce a neighbourhood plan or Order should discuss with the local planning authority the particular planning context and circumstances that may inform the local planning authority's decision on the area it will designate.

3 How is designation working in practice?

The following case studies highlight the approach taken and issues faced by LPAs which have designated a Neighbourhood Area or Neighbourhood Forum.

3.1 Where there has been a good degree of consensus

South Oxfordshire District Council

South Oxfordshire has four town councils and over 80 parishes within the local authority boundary. Thame and Woodcote have adopted neighbourhood

development plans that includes allocation of housing sites among other policies. The Council has designated several areas, each conforming to the parish boundary. Considerations in deciding the appropriateness of the Neighbourhood Areas have included the likely issues to be encountered in the preparation of the NDP as well as capacity for growth in each area as set out in the Local Plan and the availability of sites for allocation.

Support in the form of ad hoc advice and early discussions with parishes has been particularly beneficial in order to manage expectations of the community with respect to what can realistically be achieved. South Oxfordshire actively invited the larger villages in the area to consider producing NDPs as well as alternative planning tools available to them such as non-statutory Community led plans. The benefits of using whole parishes as Neighbourhood Areas has been highlighted by the Council as ensuring whole district coverage, with the intention of limiting the risk for isolated pockets which fall in between Neighbourhood Areas.

Herefordshire Council

Herefordshire is a fully parished area with 134 parishes within the Council boundary. To date 87 Neighbourhood Areas have been designated. Each Neighbourhood Area application received to date has conformed to the parish boundary, which was encouraged by the Council as an appropriate area to ensure that isolated unplanned areas are avoided within the parish. The Council also saw using parish boundaries as a way of ensuring that Neighbourhood Areas are inclusive and appropriate; as any differences to the parish boundary would be likely to be questioned by the local community during consultation.

The Council has found the designation process relatively straightforward once the relevant regulations were understood. A standard Neighbourhood Area application form (similar to a planning application form) has been produced together with guidance notes to ensure that parishes meet the requirements of the application submission and made available on the Council's website.

Examples of written constitutions and justifications of the Neighbourhood Area have also been provided online. Publicity for the Neighbourhood Area application and designation is the same as for a planning application comprising a notice on the Council website and posting of site notices within the parish area.

Bristol City Council

Bristol is a non parished area. Neighbourhood Planning Forums have been designated in five areas. Designation criteria include the need for the proposed qualifying body to also meet the requirements for a Neighbourhood Forum in order to allow the opportunity for the body applying to be designated as a Neighbourhood Forum. The proposed boundaries are assessed jointly between

the local community and the Council before an application is submitted. Together they look at where likely development aspirations lay where these stood a good chance of deliverability.

The proposed Myrtle Triangle Area was the subject of an application but not formally designated as the key development site within the area was identified as an essential early education development site by the council and was therefore not available for the development anticipated by the community. Consequently, the council and the community agreed not to progress with the designation application.

Bristol has found early engagement with the local community to be essential and this has assisted in the inclusion of communities which might normally be isolated, ensuring that the Neighbourhood Area is representative. They have also developed a targeted approach to resourcing neighbourhood planning which prioritises support to those neighbourhood areas with development potential. This approach aims to maximise the benefits of neighbourhood planning in areas where intervention would be most effective, including those:

- with a high level of deprivation
- in designated regeneration areas identified as having a significant potential for promoting development, and/or where a previously unidentified opportunity for development has been proposed.

3.2 Cases where there have been boundary disputes

Stamford Hill Neighbourhood Forum and the North Hackney Neighbourhood Forum, Hackney

In July 2013 the London Borough of Hackney rejected applications by two groups to become neighbourhood forums because of fears about "community tensions" over development issues.

Rival applications were submitted by the Stamford Hill Neighbourhood Forum (SHNF) and the North Hackney Neighbourhood Forum, with both groups seeking to include overlapping wards in the north of the borough.

Both applications were refused by the London Borough of Hackney's cabinet, citing "clear tensions within the community in North Hackney" in relation to development pressures in Stamford Hill. Instead, the cabinet decided to designate a much smaller area around the centre of Stamford Hill and invite bids from interested forums.

But the SHNF then submitted a new application to Hackney to become the Central Stamford Hill Neighbourhood Forum and draw up a plan for the

designated area. A second bid was then submitted by another group calling itself the Stamford Hill (Community) Neighbourhood Forum.

Hackney has since rejected both of the new applications. A report to the Council's cabinet stated that the two groups "appear not to have been able to resolve their differences and come forward with a joint forum application. It is clear that the complexity of the area in terms of social and cultural mix has proven a significant challenge for the local community in their aspiration to deliver a socially cohesive neighbourhood plan". The report also stated "...the tide of opposition to both groups' submitted proposals would indicate that the deep-seated divisions within the community in this part of Hackney on planning issues remain unresolved. In the circumstances, it is considered that appointing either group as the forum for the Central Stamford Hill Neighbourhood Area would not be helpful to the process of bringing the community together to seek to resolve planning issues, but would merely exacerbate existing tensions".

The report recommended instead that the council push ahead with creating an area action plan (AAP) for the area. It said this "would have the benefit of bringing together the two groups and formulating a vision and plan for the area led by the council, which unites rather than divides the community".

Bermondsey Neighbourhood Forum and Bermondsey Village Action Group, Southwark

In September 2012 two groups submitted applications to Southwark Council for recognition of their proposed boundaries for neighbourhood plans in Bermondsey.

The Bermondsey Neighbourhood Forum proposed a larger area stretching from the river to New Kent Road and from Borough High Street to Tower Bridge Road. Meanwhile The Bermondsey Village Action Group proposed a plan for a much smaller area focused on St Thomas Street.

As any piece of land can only fall within one neighbourhood planning area, the council had to arbitrate and decide which boundary makes the most sense in planning terms. Establishing the 'neighbourhood area' has proved to be a complex situation for the Council to resolve.

In August 2014 the Council chose to not designate the areas proposed by both the Bermondsey Neighbourhood Forum and the Bermondsey Village Action Group. Instead the Council designated an amended area which they considered constitutes a single coherent neighbourhood which is considered to be appropriate for neighbourhood planning. The council has since invited

applications for designation as the Neighbourhood Forum for the amended area. This approach allows groups/organisations to demonstrate that their general purpose reflects the character of the designated area.

St Quintin and Woodlands Neighbourhood Area, Kensington & Chelsea and Hammersmith & Fulham

The application for the St Quintin and Woodlands Neighbourhood Area in north Kensington, mostly covers land in the Royal Borough of Kensington and Chelsea (RBKC) and a smaller area in the London Borough of Hammersmith and Fulham (LBHF). It was jointly submitted by the St Helen's Residents Association in RBKC and the Woodlands Area Residents in LBHF.

RBKC approved the application for its part of the area and to designate the forum in July 2013. But in October 2013 LBHF Council refused the application by the prospective St Quintin and Woodlands Neighbourhood Forum for the part of the area that lies within its boundaries after another residents' group and local members opposed it.

Brickfields Area Residents Association which represents residents in the LBHF part of the proposed neighbourhood area and elected LBHF ward Members did not support the designation of the wider neighbourhood area which extends into RBKC. However the Localism Act requires LBHF "to designate at least a part of the proposed area as a neighbourhood area" and as such the Council designated a smaller area.

LBHF Council officers also refused the designation of the proposed St Quintin and Woodlands Neighbourhood Forum within LBHF as it was not considered to reflect the views of local residents and because the proposed Forum had not secured the support and membership of Brickfields Area Residents Association or elected ward Members.

Daws Hill neighbourhood area, Wycombe

In September 2012 Wycombe District Council designated a neighbourhood forum and area in response to applications by the Daws Hill Residents' Association.

The council had to decide the most appropriate area for the neighbourhood to plan for. What made this particularly difficult was that the residents' group wanted to include two sites that adjoin the existing residential suburb but on which plans of district-wide significance had reached an advanced stage. The first site currently houses the district's ageing sports centre. An application has been submitted for development including a new sports centre and a commercial scheme on this land. The second site is a former RAF base sold last year to housebuilder Taylor Wimpey. This land is currently the site making the largest

contribution to the Council's five-year housing supply. With green belt and other protected land tight around the town, making best use of sites like this is central to the "brownfield first" policy in the Council's adopted core strategy.

The council had to balance the group's desire to prepare a neighbourhood plan for the "live" sites with its duties as planning authority, including negotiating "positively and proactively with applicants" now.

With a neighbourhood plan probably taking a year to complete its stages and with no certain outcome until after an examination and a referendum, the council decided it couldn't wait. As a result, their cabinet modified the neighbourhood plan area to exclude the two strategic sites. In parallel, it also approved a district council development brief for the ex-RAF site, amended to reflect input from local residents.

The Daws Hill Neighbourhood Forum submitted a legal challenge, in the form of a Judicial Review, against that decision. Lord Justice Sullivan found that the reasons given by the Council for the exclusion of the sports centre site at Handy Cross and the former RAF site from the Neighbourhood Area were sound and the council therefore acted lawfully.

The Forum argued in Court that s.61G Town and Country Planning Act, in requiring the Council to consider and designate such area as they considered 'appropriate', constrained it to place all the land within the claimed Neighbourhood Area into one or more such Areas and that it was not permitted to exclude any part of the claimed Area from designation in some Neighbourhood Area. This, they said, was the whole idea of neighbourhood planning and they argued that the Council had undermined the statutory purpose. Consequently, they said that its statutory discretion was narrow and not, as Supperstone J had held at first instance, broad. They continued that the Council, being constrained in this way, had been wrong to have regard to the wider planning context and circumstances, in particular, the strategic nature of the Daws Hill and Handy Cross sites, their mature planning status and the Council's view that preparing a Neighbourhood Plan would be a disproportionate use of resources given the planning context, potentially leading to frustration on the part of local residents. A further issue to which the Council had regard was the 'mismatch' between a neighbourhood planning exercise and the strategic nature of the sites, requiring, potentially, a referendum over a wide area of High Wycombe. The Council argued that it had been entitled to have regard to the planning context and had done what s.61G required of it by designating an Area in which the Forum could undertake neighbourhood planning.

The Court of Appeal rejected the narrow approach to construction, and accordingly held that there was no undermining of the statutory purpose. They concluded that the Council had been entitled to designate a smaller area than that claimed on the basis of the matters which they had taken into account in reaching their view as to what was an 'appropriate' area for designation.