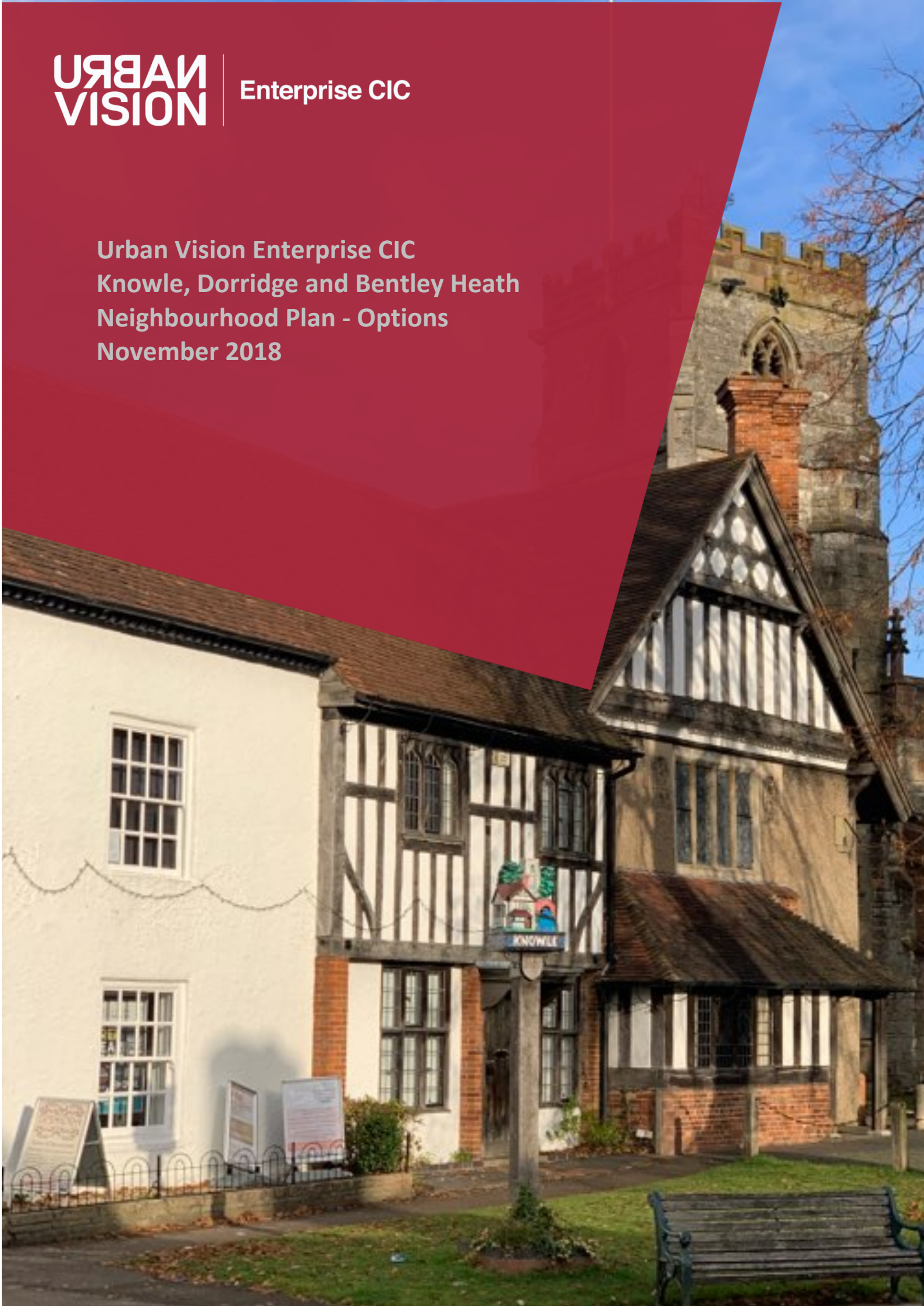


**URBAN
VISION**

Enterprise CIC

**Urban Vision Enterprise CIC
Knowle, Dorridge and Bentley Heath
Neighbourhood Plan - Options
November 2018**



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1. Introduction

1.1 Purpose of the Report

Urban Vision Enterprise CIC has been appointed by Locality under the MHCLG-funded national neighbourhood planning programme. This is in response to a request for facilitation support by the Knowle, Dorridge and Bentley Heath Neighbourhood Forum. The purpose of this report is to consider options for moving forward with modifications to the post-examination Knowle, Dorridge and Bentley Heath Neighbourhood Plan.

1.2 Structure of the Report

Part 2 of this report sets out the methodology used. Part 3 focuses on independent examiner's reports and issues arising. Part 4 discusses options for moving forward.

1.3 Status of the Report

The report contains informal advice and suggests options for the neighbourhood planning body and the local planning authority to help in deciding how to proceed with the neighbourhood plan. The advice given in the report is based on the opinions of the author.

This is an informal document and it does not form part of the statutory neighbourhood planning process or have any legal status within that process.

1.4 Authorship

This report has been prepared by Dave Chetwyn, MA, MRTPI, IHBC, FInstLM Managing Director of Urban Vision Enterprise CIC, working on behalf of Locality.

It should be noted that Urban Vision Enterprise CIC has no connection whatsoever to the Urban Vision Partnership Limited, referred to in Paragraph 82 of the independent report.

2. Methodology

2.1 Review of Documentation

Key documents were reviewed, prior to the meetings with representatives of the qualifying bodies and local planning authority.

The main documents reviewed were:

The Knowle, Dorridge and Bentley Heath Neighbourhood Plan 2018-2033, May 2018 (submission version).

Independent Examiner's Report (undated, but version last modified on 15 November 2018).

Other relevant documents.

2.2 Telephone Interviews and Meetings

Initial telephone contact was made with the neighbourhood forum and the local planning authority 15th and 16th November 2018. Subsequent contacts were made by phone and email.

A meeting was held with representatives of the neighbourhood forum on 26th November, followed by site visits within the neighbourhood area. These were attended by:

Gill Griggs
Andrew Freeman

A meeting was also held with the local planning authority on 26th November 2018. This was attended by:

Emma Tinsley-Evans, Senior Development Officer
Gary Palmer, Planning Manager
Councillor Ian Courts, Cabinet Member for Managed Growth

2.3 Key Issues for the Neighbourhood Forum

The Neighbourhood Forum has particular concerns over a perception that the independent examiner's recommendations will be accepted in their entirety by the Local Planning Authority, rather than individual consideration of each recommendation. In particular, the Neighbourhood Forum has concerns over suggested modifications relating to policies H4, ECF2, ECF5 and E1.

3. The Examiner's Report

3.1 Consideration of the Examiner's Report

The local planning authority must consider whether the submission plan meets the basic conditions. Each of the examiners' recommendations must be considered and responded to, as set out in Section 61(E)12 in Schedule 4B of the Town and Country Planning Act 1990 (inserted by Section 116 and Schedule 10 of the Localism Act 2011). It would not be lawful to take a 'blanket' view on implementing the examiner's recommendations. They must be considered individually.

The examiners' recommendations are not binding. It is for the local planning authority to determine whether the plan meets the basic conditions and to make any modifications necessary. However, clear reasons must be given if departing from the examiner's recommendations.

It should be noted that the local planning authority can only modify the submission plan as prescribed in Section 61(E):

*“(a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),
 (b) modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights,
 (c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,
 (d) modifications specifying a period under section 61L(2)(b) or (5), and
 (e) modifications for the purpose of correcting errors”.*

Some of the policies suggested for deletion contain matters that could be legitimate concerns for development management policies. It would be constructive to consider whether modification is an alternative, bearing in mind that modifications should be limited to those necessary to meet the basic conditions and compatibility with Convention rights, as set out in Section 61(E).

Where modifications are made, the local planning authority must give clear and precise reasons in the interests of transparency and demonstrating that it has met legal requirements. This is important also where the reasoning behind the examiners' recommendation is not entirely clear.

In considering application of the basic conditions and subsequent modifications, it is useful to highlight Paragraph 16 of the NPPF 2018:

“Plans should:

- a) be prepared with the objective of contributing to the achievement of sustainable development¹⁰;
- b) be prepared positively, in a way that is aspirational but deliverable;
- c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;

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- d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;
- e) be accessible through the use of digital tools to assist public involvement and policy presentation; and
- f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant)".¹

3.2 Examiner's Recommendations

The examiners' report confirms that, subject to modifications, the plan meets the basic conditions and other legal requirements, so may proceed to referendum. The voting area is recommended as the neighbourhood area.

3.3 Policy Deletions

Some of the policies suggested for deletion seek to address legitimate planning issues and modification could be an alternative. Indeed, modification may better fit the requirements of Section 61E.

Policy H6 is recommended for deletion on the basis of more limited criteria than in national and local plan policy. Given that those other policies would still apply, modification may be an option.

Policy T8 is recommended for deletion, together with Appendix 7, on the basis of dealing with highway authority matters. There may be scope for modification to bring the policy within the scope of planning, for example requiring development to have particular regard to impact on capacity and congestion. The policy could then highlight infrastructure pressure points. With some modification, the policy could be a means to localise application of national policy.

Policy T9 is also outside of the scope of planning. However, modification may be an alternative, to encourage consideration of balanced transport provision in new development proposals.

Policies H1, H5, T1, T2 and T10 are recommended for deletion for various reasons, including being beyond the scope of planning policies, or being imprecise or too prescriptive. There may be options for modification.

¹ Equivalent provisions were provided in different parts of the NPPF 2012, including Paragraphs 17, 183, 184 and 185.

3.4 Policy Modifications

Where modifications are made, the local planning authority must give clear and precise reasons in the interests of transparency and demonstrating that it has met legal requirements.

The following is not a comprehensive review of all policy modifications, but those where there may be issues to consider or possible alternative modifications.

Key Policy Issues for the Neighbourhood Forum

Policy H4

The examiner recommends significant modification to the wording. This includes:

'On allocated sites and larger sites, market housing shall be provided in the following sizes:

- *about 32% shall be a relatively even split of flats/apartments and bungalows/houses of predominantly 2 bedrooms or less*
- *about 34% shall be 3 bedroom houses*
- *about 34% shall be 4+ bedroom houses ...*

... The provision of a higher proportion of smaller dwelling units of 2 bedrooms or less and starter homes, will be supported providing the remaining housing mix is similar to the proportions referred to above'.

The neighbourhood forum has highlighted some confusion over the modified wording. The later paragraph allows for a greater proportion of 2 bedroom homes. Logic suggests that the consequent proportion of 3 and 4 bedroom houses would be roughly equal, but this is not entirely clear in the wording, which is ambiguous.

Use of the word 'homes' or 'dwellings' may be more accurate and less prescriptive than 'houses'.

The examiner points out that the policy is too prescriptive on the requirement for institutional housing for the elderly. Whilst this is correct, it is legitimate for the neighbourhood plan to include a less prescriptive requirement for homes suitable for the elderly, as part of the mix. So the proposed modification may go beyond that necessary to meet the basic conditions.

Whilst the policy can't be over-prescriptive on types of accommodation, it could set out the kinds of development that would be supported in particular. This would not be binding, but would help to encourage and enable such development.

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Policy ECF2 and ECF5

The examiner recommends the following wording for Policy ECF2:

'Where the need for additional pupil capacity has been demonstrated, provision of new or expanded schools will be supported particularly if there is compliance with the following'.

This supports development, regardless of whether or not it meets the requirements of the bullet point list (the sustainability measures). This does not fit well with the NPPF, which emphasises the need for development to be sustainable.

However, the bullet points do need some revision, in the interests of clarity and to remove conflict with other policies in the plan. For example, the requirement for buildings to be well designed creates confusion over whether this replaces the general design policies or not. So this could be deleted and a note could be added cross referencing to other relevant policies.

There is a similar issue with the proposed wording for Policy ECF5, which supports development regardless of whether it meets the bullet point criteria. Again, this is blanket support without proper consideration of sustainability, so sits uncomfortably with the NPPF.

Policy E1

The examiner proposes a 75% threshold for retail frontages. It is unclear how this figure has been derived.

Discussion with the neighbourhood forum should take place to ensure that the modified wording meets the requirement of Paragraph 16 of the NPPF, but also reflects and clarifies the policy intention, including flexibility for retail centres to adapt.

Other Policy Issues

Policies VC1 and VC3

The examiner recommends inserting the following text into Policy VC1:

'National and Local Plan green belt policies will be applied in the relevant parts of the Plan area'.

Caution is required as a neighbourhood plan can't apply either national or local plan policies – that is done by planning legislation and process.

A similar issue arises with regard to the proposed modified wording for Policy VC3

Also for Policy VC3, the following wording is proposed:

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'Non-designated assets include those buildings on the local list, in Appendix 4, "positive buildings" identified in the Knowle Conservation Area Appraisal 2007 and any future Conservation Area appraisals'.

The reference to 'any future conservation area appraisals' is slightly uncomfortable, given that this changes how the policy is applied, but is unpredictable.

Policy VC4

The submission version of the plan contains a diagrammatic plan showing the location of Local Green Space (LGS) designations. Modification of the plan must include addition of larger scale plans, using map bases with sufficient detail to indicate the precise boundary of each LGS to be designated. Without this, the precise boundary of each designation is unclear.

Policy H2

The examiner recommends adding:

'These matters may also be relevant to the consideration of some smaller scale development'.

It is sensible to apply the policy more generally, but the wording could be altered further to make clear that the policy does apply to smaller sites, rather than 'may' apply. This would create greater clarity and certainty.

Policy T3

An alternative modification may be to require electric charging provision in parking provided as part of new development, but without specifying the proportion of spaces. In practice, this would mean at least one charging point.

Policies T6 and T7

The examiner recommends adding to Policy T6:

'Development should link to existing public footpaths whenever possible'.

The words 'whenever possible' are unnecessary and render the policy inconsequential. A similar issue arises with the proposed wording for Policy T7.

Policy ECF6

The proposed wording is ambiguous, especially in the use of the words 'if necessary'. This renders the policy as inconsequential.

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Policy E3

The examiner recommends modification to make clear that retail uses would be acceptable within centres. This could be clarified further by specifying that retail should be at ground floor level.

4. Moving Forward

4.1 The Neighbourhood Plan

Modifications

Solihull MBC is responsible for determining whether the neighbourhood plan meets the basic conditions and may proceed to referendum and to make any modifications necessary to achieve this. In doing so, the council has to consider the Examiners' recommendations individually. If the plan is capable of being modified to meet the basic conditions, then the local planning authority must make those modifications, as set out in Section 61(E). The local planning authority can only make such modifications that are necessary to meet the basic conditions.

Consideration of modifications by the local planning authority should be done in close liaison with the neighbourhood forum. The neighbourhood forum has the option of withdrawing the plan if it is unhappy with the changes proposed by the local planning authority.

Withdrawal of the neighbourhood plan would pass control back to the neighbourhood forum. This would allow more substantial redrafting of policies to be done, beyond the scope of those modifications required to meet the basic conditions and other legal requirements. However, it would also set the plan back to a pre-submission stage. Following redrafting, the plan would need to repeat the process from the pre-submission consultation (Regulation 14) onwards.

NPPF References

Paragraph 214 of the NPPF 2018 states:

“The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned”.

Whilst this is intended to be helpful for plans in their late stages, it could result in the neighbourhood plan being open to claims of being out-of-date. An option may be to add references or footnotes to highlight equivalent provisions in the NPPF 2018. This would help to 'future proof' the plan.

Publicity and Consultation

As soon as possible after modifying the plan, the local planning authority must publicise details of the modification(s) and where they can be inspected on their website. The option for the neighbourhood planning body to withdraw the neighbourhood plan ends once the decision on modifications is publicised (Regulation 18 publicity).

Further consultation is only required where there is departure from the examiner's recommendations and this is based on new evidence, as set out in Section 61(E)13(1). Given that new evidence is not being introduced, it should be possible to avoid this.

4.2 The Local Plan and Site Allocations

The local planning authority is proposing to make significant strategic site allocations in the area.

The neighbourhood forum is free to make representations at different stages of the local plan process.

Following adoption of any revised local plan, the neighbourhood forum may consider whether or not revision of the neighbourhood plan would be desirable. If five years or more has lapsed since the designation of the neighbourhood forum, then redesignation would be necessary.

4.3 Planning Applications

The neighbourhood forum may make representations on planning applications. Such representations could include assessment of how well the scheme meets the policies of the neighbourhood plan. Once made, the plan will form part of the statutory development plan.

In dealing with planning applications, the weight that may be given to an emerging neighbourhood plan is described in Paragraph 48 of the National Planning Policy Framework 2018:

“Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.*

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So the post-examination neighbourhood plan is now a material consideration in decision making and greater weight should be given, due the advanced stage of preparation.

The forum could also seek to liaise with prospective developers to try to ensure that any planning application shares the aspirations of the neighbourhood plan.

Careful monitoring of planning decisions would be advisable, to assess the effectiveness of the neighbourhood plan.

The local planning authority should ensure that all elected members and officers understand the legal implications on determination of planning applications of a neighbourhood plan being at a late stage and then subsequently being made.

5. Further Advice

The National Planning Policy Framework 2018 is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740441/National_Planning_Policy_Framework_web_accessible_version.pdf

Planning Practice Guidance is available here:

<https://www.gov.uk/government/collections/planning-practice-guidance>

More advice on the neighbourhood plan process is available in the Locality Roadmap Guide, 2018 edition, here:

https://neighbourhoodplanning.org/wp-content/uploads/NP_Roadmap_online_full.pdf

6. Contact



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