

## Report PC54/14 Agenda Item 11 – Appendix 3

### Testing of the situation where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place

The relationship between neighbourhood plans and emerging Local Plans has been considered through a number of neighbourhood plan examinations.

*“Just as there are examples of where neighbourhood plans follow on from new, up-to-date, adopted development plans, there will be occasions where neighbourhood plans are made ahead of emerging local plans. One of the significant benefits of neighbourhood plans is the relative speed with which they can come forward. This can enable local communities to establish policy in an efficient and effective manner and notably, can do so where planning policy may otherwise be insufficient.”*

### Examiner’s Report : Ascot, Sunninghill and Sunningdale Neighbourhood Plan

*“In England, historically, statutory forward planning has tended to be a continuous cyclical process with review commencing soon after adoption. There has been a history of more than one tier of plan making occurring simultaneously and a recurring characteristic has been plan preparation timescale slippage. Multi-tier forward planning can at its best be a mutually influencing iterative process capturing the advantages of both bottom-up and top-down approaches. Local Plans can benefit from being informed by Neighbourhood Planning processes and Neighbourhood Plans can benefit from being informed by Local Plan processes.*

*If the Neighbourhood Plan is ultimately ‘made’ it will be part of the Development Plan for the area and the Local Plan will need to give due regard to the policies of the Neighbourhood Plan. Some people may see this as the tail wagging the dog but the reality is that this is one aspect of the nature of localism. The relative speed of Neighbourhood Plan preparation offers the advantage that local communities can establish a degree of certainty in situations where otherwise an absence of up-to-date policy would leave uncertainty, which in itself can present a barrier to development and delivery.”*

### Examiner’s Report: Rolleston on Dove Neighbourhood Plan

Developers launched a judicial review to the decision by Cheshire West and Chester Borough Council to agree the draft Tattenhall Neighbourhood Plan, as amended to take account of the recommendations made by the Examiner, should be put to a referendum. One of the grounds for the legal challenge was the claimants’ belief that the Examiner had not correctly concluded the plan was in general conformity with strategic policies in the development plan. The adopted Local Plan for the parish was the Chester District Local Plan 1996-2011. The claimants’ lawyer argued that “as the [neighbourhood plan] sought to control the delivery of housing it could not be progressed in that form” since there were no strategic housing policies within the Local Plan against which to judge the content of the Neighbourhood Plan.” Therefore, the Basic Condition could not be met. They considered the wider ramifications of the Neighbourhood Plan on an emerging Local Plan had not been properly by the Neighbourhood Plan Examiner.

Judge Supperstone considered the claimants’ had confused the limited role of Neighbourhood Plan Examiner who is required to assess whether the Plan meets the Basic Conditions for a small geographical area with the more investigative scrutiny of a Local Plan Inspector charged with determining whether the Local Plan as a whole is or is not sound: “Whereas a local plan needs to be ‘consistent with national policy’ by contrast the function of an examiner, most importantly, in relation to a

*Neighbourhood Plan is to determine whether the Plan meets the “basic conditions”. In that regard the Examiner has the discretion to determine whether or not it is appropriate that the Plan should proceed “having regard to” national policy and guidance and has to make a judgment whether or not the Neighbourhood Plan is “in general conformity with the strategic policies contained in the development plan”. He said that the only statutory requirement was that the neighbourhood plan as a whole should be in general conformity with the adopted development plan as a whole: "Whether or not there was any tension between one policy in the Neighbourhood Plan and one element of the eventual emerging Local Plan was not a matter for the examiner to determine".*

Judicial Review against the decision by Cheshire West and Chester Borough Council to allow the Tattenhall Neighbourhood Plan to be put to a local referendum.