

IN THE MATTER OF THE FINDON NEIGHBOURHOOD PLAN

ADVICE

Introduction

1. I am asked to advise the South Downs National Park Authority (SDNPA) in respect of an issue arising in respect of the application of the National Planning Policy Framework to a potential conflict between an emerging Neighbourhood Plan and the emerging South Downs Local Plan.
2. In 2016, the Findon Neighbourhood Development Plan (“NDP”) was made. The NDP did not allocate any sites for housing development. It currently forms part of the development plan for the SDNPA’s area. I am instructed that the examiner found that the NDP was satisfactory only on the basis that the emerging South Downs Local Plan (“SDLP”) would in due course allocate sites for housing development in Findon.
3. The SDLP has now been submitted for examination. The submission draft allocates two sites for development in Findon. There is some local resistance to these proposed allocations, and work has commenced on a new NDP which would allocate sites for housing as alternatives to those included in the SDLP. The new NDP is currently out for consultation, and the intention of those proposing it is that the new NDP will supersede any allocations made in the SDLP. It is assumed that the SDLP will be adopted and the new NDP will be made in 2019.
4. I am asked to consider whether both sets of allocations will be extant policies to be used in the determination of planning applications for the respective sites or whether set of allocations will supersede the other. If the latter, I am asked to consider which would take precedence.

Analysis

5. It is trite law that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan includes the development plan documents (taken as a whole) which have been adopted or approved in relation to that area and the neighbourhood development plans which have been made in relation to that area (see s 38(3)).
6. Section 38(5) Planning and Compulsory Purchase Act 2004 makes express provision for circumstances where successive elements of development plan policy conflict with each other as follows:

“(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.”

7. The 2018 National Planning Policy Framework (“NPPF”) sets out a presumption in favour of sustainable development. It then provides as follows:

“12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

13. The application of the presumption has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.

14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:

- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;

- c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and
- d) the local planning authority's housing delivery was at least 45% of that required⁹ over the previous three years."

8. Paragraph 11(d) is a reference to "where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date".

9. The NPPF then continues:

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.

30. Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.

10. It seems to me that paragraphs 28-30 of the NPPF seek to give clear priority to neighbourhood plans for non-strategic site allocations, but that they also reflect the position in s 38(5) PCPA 2004. That is because when a neighbourhood plan is made which conflicts with an earlier non-strategic policy in a local plan, the statutory provisions give priority to the later neighbourhood plan in any event.

11. That assumes, however, that the policies are in fact in conflict (and that the SDLP is adopted before the NDP). It is conceivable that a site allocation in the SDLP may not directly conflict with an alternative allocation in the NDP, and thus that both could in principle be relied upon by developers. This position would not be clearly resolved

through paragraph 14 of the NPPF, since in such circumstances both policies would be up to date.

12. It follows that in my view, those preparing the NDP would have to ensure that (a) the NDP is made after the SDLP is adopted and (b) that it expressly supersedes and is inconsistent with the SDLP allocations if they were to achieve the desired effect. If the NDP was adopted before the SDLP, then the SDLP would supersede it. The greatest risk, to my mind, is that the plans are not clearly inconsistent, but both allocation different land for development with the consequence that an excessive amount of development is directed to Findon through two separate sets of site allocations.
13. Please do not hesitate to contact me in Chambers if I can assist further on this issue.

Richard Turney
Landmark Chambers

27 July 2018