



BLANDFORD + NEIGHBOURHOOD PLAN 2011 - 2033

Consultation on Draft Decision Statement 8 May 2020 to 26 June 2020

Response Form

Dorset Council is consulting on a draft Decision Statement relating to whether the plan should proceed to referendum. The statement can be viewed on Dorset Council's website via the following hyperlink: <https://www.dorsetcouncil.gov.uk/planning-buildings-land/planning-policy/north-dorset/neighbourhood-planning/submitted-plans/blandford-v2/blandford-neighbourhood-plan-version-2.aspx>

Please return completed forms to:

Email: planningpolicy@dorsetcouncil.gov.uk

Deadline: 5pm on Friday 26 June 2020. Representations received after this date will not be accepted.

Given the majority of Dorset Council's Planning staff are currently working remotely, in response to Government restrictions relating to coronavirus, the Council would ask that you refrain from sending any response forms by post if at all possible. If you have no alternative then response forms should be sent to:

Planning Policy Team, South Walks House, South Walks Road, Dorchester, Dorset, DT1 1UZ

Part A – Personal Details

This part of the form must be completed by all people making representations as **anonymous comments cannot be accepted**.

**If an agent is appointed, please complete only the Title, Name and Organisation boxes to the personal details but complete the full contact details of the agent. All correspondence will be sent to the agent.*

	Personal Details	Agent's Details *
Title	Mrs	
First Name	Jan	
Last Name	Fairman	
Job Title(if relevant)	Parish Clerk	
Organisation (if relevant)	Pimperne Parish Council	
Address	██████████ ██████████ ██████████	

Postcode	██████████	
Tel. No.		
Email Address	pimperne@dorset-aptc.gov.uk	

Part B – Representation

1. **Do you wish to?** *Please tick one box only.*

	Support
✓	Object
	Make an observation

4. **Please use the box below to give reasons for your support or objection, or to make your observation.**

Pimperne Parish Council, acting in partnership with the Dorset CPRE and Cranborne Chase AONB Partnership, have sought legal advice on Dorset Council's proposed decision to proceed to referendum with the Blandford Plus Neighbourhood Plan as modified by the Examiner and the updated constraints plan that no longer includes the areas of search.

The legal advice has been provided to you, so that you have it in full. As reflected in the advice note's summary, it is clear to us that the allocations would be unlawful on two counts.

Firstly because of the inclusion of the allocations that are plainly a strategic allocation and conflict with that adopted strategy in a very significant way. And secondly, because of the continued reference to potential development within Pimperne parish which is covered by a Neighbourhood Plan (and conflicts with that made plan) – a point that the Examiner advised on but did not consider necessary to recommend as a modification, and has not been included in your proposed changes.

Continue on a separate sheet if necessary

Signature: Jan Fairman, Pimperne Parish Clerk Date: 03/07/2020

If submitting the form electronically, no signature is required.

Data protection

By signing or electronically submitting this form, you are agreeing to your comments being made publicly available. We will not display your personal data online, however we may share your details with the independent examiner for the purposes of examining the plan. Your information will be retained by the Council in line with its retention schedule and privacy policy (www.dorsetcouncil.gov.uk/privacypolicy). Your data will be destroyed when the plan becomes redundant.

IN THE MATTER OF THE BLANDFORD PLUS NEIGHBOURHOOD PLAN

A D V I C E

**Jo Witherden BSc(Hons), DipTP, DipUD, MRTPI
Dorset Planning Consultant Ltd**

**[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]**

IN THE MATTER OF THE BLANDFORD PLUS NEIGHBOURHOOD PLAN

ADVICE

BACKGROUND AND INSTRUCTIONS

1. I am instructed to advise Pimperne Parish Council ('Pimperne PC'), who are acting jointly with the Cranborne Chase Area of Outstanding Natural Beauty Partnership ('CC Partnership') and the Dorset CPRE, in respect of the Blandford Plus Neighbourhood Plan ('BPNP') that has been prepared by the Blandford Forum Town Council and Blandford St Mary and Bryanston Parish Councils. Pimperne Parish lies adjacent to the neighbourhood area for this plan.
2. The BPNP is of concern to Pimperne PC, CC Partnership and the Dorset CPRE as it includes two significant allocations, Policy B2 and B3(c), for mixed use development to the north and north-east of Blandford which extend into the countryside and are partially within the Cranborne Chase AONB and partially within its setting. It is anticipated that the housing element would yield about 400 homes.
3. The current BPNP followed an earlier version issued in June 2016 that was the subject of examination, the Report of the Examiner ('the First Examiner') being issued in July 2017. That version included a similar allocation to that in Policy B2 of the current BPBP. The First Examiner concluded that the proposed allocation was a strategic allocation and would be in conflict with the NPPF and did not meet the basic condition requiring the neighbouring plan to be in general conformity with the strategic policies of the Local Plan, and recommended that the policy should be deleted from the plan. As a result, rather than proceed to

referendum on this basis, the qualifying bodies asked that the earlier version of the BPNP was withdrawn.

4. A revised plan dated January 2019 was prepared and submitted for examination. The revised BPNP contains similar allocations as in the initial version, at the same location, partially within the Cranborne Chase AONB and partially within its setting. This are for approximately 400 dwellings, a primary school, a new health and wellbeing facility, a community centre and convenience shop to serve the locality (Policy B2), as well as a proposal for employment adjacent to Sunrise Business Park (Policy B3(c)).
5. Unlike for the initial version, the local planning authority (previously North Dorset District Council and now Dorset Council) supports these allocations. The main change, in their view, that warrants this reversal, is on the basis that the Council does not now have a five year housing land supply, notwithstanding the adoption of the North Dorset Local Plan Part 1 ('the Local Plan') in January 2016.
6. Both Pimperne PC and the Cranborne Chase AONB continued to object to the neighbourhood plan. The Dorset CPRE also expressed concerns regarding the potential for the allocations to close the gap between Blandford Town and Pimperne village.
7. In his Report issued in January 2020, the Second Examiner based on the information before him, including a more detailed Sustainability Appraisal, came to a different view to the First Examiner in respect of Policy B2 and B3(c). The Second Examiner concluded that the allocations were acceptable and met the basic conditions, including that requiring general conformity with the strategic policies of the adopted Local Plan.
8. Pimperne PC raised concerns about the Report of the Second Examiner, namely that he:
 - Failed to refer to the policy wording of Policy 16 (the strategic policy for Blandford), but referred only to the supporting text in coming to a view on

conformity with the strategic policies - the policy itself makes no mention of development of any scale to the north-east of Blandford outside of the bypass;

- Made no conclusion on whether the scale of development in Policies B2 and B3 combined should, in his view, be regarded as strategic;
- Did not explain why the references to areas of search and Phase 2 (extending outside of the NP area) are acceptable when the legislation is clear that a Neighbourhood Plan should not relate to more than one Neighbourhood Area.

9. However, Dorset Council has, it is understood, taken legal advice and on that basis has indicated that they are minded to allow the BPNP to proceed to referendum including Policies B2 and B3(c). This is subject to one change which was not required by the Second Examiner and so the Council is consulting prior to confirming that it will decide to allow the BPNP to proceed (albeit that referendum will not be able to be held before 6 May 2021 because of the Coronavirus pandemic).

ADVICE SOUGHT

10. In these circumstances I am asked to advise whether a decision to include Policy B2 (either alone or in conjunction with B3c) fails to meet the Basic Conditions, and therefore be unlawful, because:
- a) Inadequate regard has been given to the national policies and guidance concerning the AONB (which also includes their setting) and/or the policies are not in general conformity with strategic policies in this regard (Local Plan Policy 4); or
 - b) It would not be in general conformity with strategic policies of the Local Plan regarding the strategy for development at Blandford (Local Plan Policy 16) which makes no reference to the development of land north of the A354 to meet Blandford's housing needs, yet the scale of development proposed is strategic in nature; or
 - c) It includes references to future phases of development in Pimperne Parish (which is a different Neighbourhood Plan area).

11. I am also asked to consider whether there are any other obvious errors or omissions with the Examiner's Report and Dorset Council's consideration of it with regard to these site allocations that would indicate it should not proceed to referendum.
12. I now set out my assessment of the issues that arise. I provide a summary of my views at the end of this Advice.

ASSESSMENT

13. Any neighbourhood plan has to comply with the basic conditions set out in paragraph 8(2) of Schedule 4 to the Town and Country Planning Act 1990 ('TCPA 1990'), as applied to neighbourhood development plans by section 38C(5) of the Planning and Compulsory Purchase Act 2004.
14. The basic conditions of particular relevance to the issues raised are (a) and (e) which provide:
 - (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,....**
 - (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),...**

I now consider each of these requirements in turn.

Basic Condition (a)

15. With regard to (a), what is required is that regard is had to the NPPF in particular, and also in my view to the Planning Practice Guidance ('PPG'). As the PPG advises (at Para 070 Ref ID: 41-070-20190509), this basic condition allows qualifying bodies, the independent examiner and local planning authority to reach a view in those cases where different parts of national policy need to be balanced. Ultimately it is therefore a matter of judgment for the Examiner and local planning authority, provided that judgment is properly and lawfully reached.

16. The Second Examiner recognised the need to address the restrictive policies in paragraph 172 of the NPPF in respect of major development in the AONB. He expressly addressed each of the three considerations set out in paragraph 172 in respect of applications for planning permission for major development within an AONB. His assessment includes his view of the likely impact of development on the sites covered by Policies B2 and B3(c). I appreciate that this is different to the view of the First Examiner and of course to that of Pimperne Parish Council and Cranborne Chase AONB.
17. I also appreciate that the PC, Dorset CPRE and CC Partnership have specific concerns in this respect in relation to matters that have not been addressed and which would and should be through a Local Plan process. However, even assuming that the Second Examiner reached a view on this aspect that he was in itself entitled in law to reach, that view was reached on the basis of the approach adopted in treating the allocations as non-strategic matters which I address below and consider incorrect.
18. Also I note that paragraph 172 of the NPPF advises that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONBs which have (along with National Parks and the Broads) the highest status of protection in relation to these issues. Landscape harm can occur even if a site is not particularly visible, as the Second Examiner concludes, and I was surprised that he did not give any or more weight to that aspect but that appears to be on the basis that the other options that had been considered were, if anything, worse than the proposed allocations in that respect. Also, there would be significant development within the setting of, and I am instructed would be very visible from, the AONB. However, in my view that simply adds to the problems that arise from these allocations being dealt with at the neighbourhood plan level and not as a strategic matter at a Local Plan stage. It seems to have been overlooked that the NPPF and PPG expressly allow an authority to meet less than its objectively assessed needs for housing and other uses where the restrictive policies in paragraph 172 of the NPPF in relation to AONBs provide a strong reason for restricting the overall scale, type or distribution of development in the plan area (see paragraph 11b of, and footnote 6 to, the NPPF).

19. With regard to Local Plan Policy 4, that seeks to protect the Natural Environment and I note that the neighbourhood area for the BPNP is bound by two AONBs in North Dorset which highlights the particular importance of that policy in setting out the requirements and expectations of the local planning authority. However, that policy is not absolute and provides that proposals which would harm the natural beauty of the AONBs will not be permitted unless it is clearly in the public interest to do so. I will return to that matter below when I consider basic condition (e) but it does seem to me that this is a matter that should be considered through the Local Plan process.

Basic Condition (e)

20. It is important to remember the wording of this basic condition:

(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),...

21. It is also important to note the basis of the First Examiner's approach to, and conclusions on, this issue. In particular:

- (1) She notes that the local planning authority contended that the plan did not meet the Basic Conditions as Policy 1 was not in general conformity with the strategic policies of the LPP1 in terms of the locations: of the proposed development. Secondly, there were issues in terms of the impact of any potential development e.g. landscape impact.

Indeed the authority's representations were clear and based on the same Local Plan as now applies and was considered by the Second Examiner and thus should be highlighted (with my emphasis):

"However, it is considered that Policy 1 in the emerging Blandford+ Neighbourhood Plan (NP) does not conform with the strategic policies of the recently adopted North Dorset Local Plan Part 1 including Policy 16 (Blandford). On this basis it is deemed that Policy 1 in the pre-submission neighbourhood plan does not meet one of the basic conditions relating to the preparation of a neighbourhood plan.

.....

Policy 16, and the accompanying Figure 8.1 of the Local Plan Part 1, set out the spatial strategy for the future growth of Blandford over the plan period up to 2031. The large areas of land identified for large scale development in Policy 1 of the emerging NP are not identified for development in the North Dorset Local Plan Part 1. Therefore, it is considered that Policy 1 is not in general conformity with Policy 16 of the Local Plan Part 1. The large scale development proposals set out in Policy 1 of the NP should be assessed as part of the review of the Local Plan Part 1 rather than through the NP.

It is noted that the supporting text to Policy 1 refers to the policy in the NP as being supplementary to the Local Plan Part 1. Nevertheless, the background document to the NP, titled 'Blandford+ Visioning Document', refers to the spatial approach being promoted through the NP as being alternative to the spatial strategy detailed in LP1. A previous version of the NP, which was consulted on in 2015 also referred to the spatial strategy as being an alternative strategy."

- (2) With regard to Policy 16, the First Examiner notes (on p.27 of her Report) that the Local Plan Inspector modified Policy 16 specifically to acknowledge that there could be development beyond the bypass at some time in the future. However, this is to be later in the plan period and there is no specific reference to this site.
- (3) At paragraph 8.24 of the Local Plan the Council's preferred approach is stated to be to develop land to the south-east and south west of Blandford St Mary and notes that the Plan at 8.25 states that specific sites to take forward housing growth in Blandford will be identified in the Local Plan Part 2.
- (4) The First Examiner recognises (on p.28 of her Report) that paragraph 8.12 of the Local Plan refers to sites beyond the bypass but that paragraph 8.13 makes it clear that although there is acknowledged potential for the Neighbourhood Plan to identify sites beyond the bypass,

it is clear that it was intended that any sites identified through the Neighbourhood Plan would not be strategic.

- (5) The First Examiner therefore concluded that due to its scale Policy 1 (as it then was) is a strategic allocation and the Local Plan clearly anticipates that strategic allocations will take place through the LP2 process, which was then currently in progress.
- (6) Further, the First Examiner also concluded that the delivery of a new school to meet identified need is a strategic issue which would be more properly addressed through phase 2 of the Local Plan as the issues go beyond the boundary of the Neighbourhood Plan.
- (7) It is important again to note the actual wording of the First Examiner's Report (on p.29) as follows, as she recognised the correct approach to consider the issue of general conformity requiring considering of the development plan as a whole (see *BDW Trading Ltd v Cheshire West and Chester BC* [2014] EWHC 1470 (admin)):

*"In order to meet the Basic Conditions Policy 1 must be in general conformity with the strategic policies of the Development Plan. I accept that there can be circumstances where a Neighbourhood Plan may be considered to be in general conformity with the strategic policies of a Development Plan when taken as a whole even though there may be specific policies where there is an apparent conflict. However, even across strategic policies there will be some that have more weight and relevance than others and in considering Policy 1 of the Plan I conclude that general conformity with Policy 16 should be given great weight. NDDC have made representation that Policy 1 is not in general conformity with the strategic policies of the Development Plan and I have reached the same conclusion. On balance, having considered in great detail the relevant policy documents, the written representations received and the oral representations at the Hearing I consider that Policy 1 does not meet the Basic Conditions for the following reasons:
1. It does not have regard to National Planning Policy and Guidance in that it fails to have regard for paragraphs 115 and 116 of the NPPF.*

2. It is not in general conformity with the Strategic Policies of the Development Plan. In addition, I consider Policy 1 to be a strategic allocation, which should be more appropriately considered in Part 2 of the Local Plan process. On the basis it does not meet the Basic Conditions and the policy should be deleted.”

22. Following the withdrawal of the first version of the BPNP, the imperative for the allocation changes from providing the school to also assisting the Council in meeting the requirement to provide a 5 year housing land supply in accordance with the NPPF. The Local Plan strategy has not changed. The nature of the proposals are the same in substance. Part 2 of the Plan is not being progressed. Nonetheless, the Council now supports the BPNP in order to address its housing shortfall.

23. The Second Examiner concluded that (with my comments in italics):

(1) Policy 2 of the Local Plan identifies Blandford as the main service centre for the south of the NDDC area, whilst the supporting text states that housing growth in Blandford will be matched by employment growth and the provision of supporting infrastructure and that the northern edge of the town, in locations accessible to the strategic road network, will be the location for mainly B class employment (paragraph 9.2 of his Report).

That overlooks that this is not the stated preferred location for further development as the First Examiner correctly recognised. Further development to the north or north-east of Blandford would conflict with the strategy for development at Blandford in Policy 16 of the Local Plan, as the First Examiner in my view correctly concluded.

(2) Furthermore, at 8.12 of the supporting text of the Local Plan, it is said that additional greenfield sites beyond the bypass will be brought forward after the sites allocated or with planning permission, that are expected to be built out in the early part of the plan period. Paragraph 8.13 refers to the intention to produce BPNP and makes clear that this can include the allocation of additional greenfield sites beyond the bypass.

This again in my view ignores the requirement to read the text as a whole and moreover Policy 16 itself, again consistent with the approach of the First Examiner. The reference to such greenfield sites in 8.12 and 8.13 is only in supporting text and not policy and in any event is only referring to non-strategic sites as addressed further below.

- (3) In the context of the above, the allocations under B2 and B3c can be considered to be fully in accord with the strategic policy and guidance in the Local Plan (9.3). I note at [9.17] of his Report the Second Examiner is slightly more guarded and says that he has found that the current development plan for the area is generally supportive of Policies B2 and B3c, including the future need for additional greenfield sites behind the bypass, which inevitably means within an AONB or its setting.

In my view this is, with respect to the Second Examiner, not correct and exposes a misinterpretation of the strategy of the plan and in particular Policy 16. As the First Examiner says, even the reference to the neighbourhood plan identifying green field sites north of the bypass in paragraph 8.13 of the Local Plan has to be seen in the context of it being explicit that this in any event related to any such sites being non-strategic. Indeed it would be contrary to the NPPF and guidance in the PPG for a neighbourhood plan to establish a strategic site in principle unless there was clear policy identification of the location in the Local Plan for a strategic site.

The PPG advises (at Paragraph: 036 Reference ID: 41-036-20190509) that a neighbourhood plan must be in general conformity with, and plan positively to support, the strategic policies of the development plan.

The PPG further advises that a neighbourhood plan can also propose allocating alternative sites to those in a local plan (or spatial development strategy), where alternative proposals for inclusion in the neighbourhood plan are not strategic (my emphasis) (Paragraph: 044 Reference ID: 41-044-20190509). In my view the sites are clearly strategic and thus the plan conflicts with this guidance. (Paragraph: 076 Reference ID: 41-076-20190509).

- (4) With regard to the contention that the allocation for 400 dwellings under B2 is a strategic matter (9.4) the Second Examiner does not appear to directly answer this but relies on his view that although 400 dwellings does amount to major development, in respect of the NPPF [172] & footnote 55 with regard to major development AONB, it is matter for the decision maker. The definition of 'major development', the Second Examiner continues, does not help to define a scale that could be defined as strategic (9.4 of his Report).

Without expressly saying so, it appears that the Second Examiner has considered the allocations not to be strategic which I consider is very difficult to support and he certainly failed, in my view, to provide adequate reasoning for such a conclusion.

- (5) The Second Examiner continued that in any event (9.5), in terms of the argument about strategic development, it is necessary to consider, not just the policy and guidance in the Local Plan, but also the present position so far as an emerging local plan is concerned. Remembering that a current 5YHLS cannot be demonstrated for the former area of NDDC, and that it appears that this situation will continue for some considerable time, that the work on the Local Plan Review has now been abandoned, but the work that began for that purpose is now to be used as input into the new Dorset Local Plan, it seems to me, the Examiner said, to be eminently sensible for currently available data and forecasts to be shared between DC and the QB, and used as part of the evidence for the production of B+NP. Therefore, I consider that the liaison between DC and the QB, in these circumstances, has legitimately allowed for a forward look at the emerging housing and employment etc needs of the B+NP area.

*This approach is of concern. Whilst I appreciate that legal authorities demonstrate a flexible approach to the test of general conformity where the Local Plan is old and out of date, I believe the currently situation goes well beyond such a position: see e.g. *BDW Trading Ltd v Cheshire West and Chester BC* [2014] EWHC 1470 (admin); and *R (On the application of Gladman Developments Ltd) v Aylesbury Vale DC* [2014] EWHC 4233*

(Admin); and DLA Delivery Ltd v Lewes DC and Newark PC [2017] EWCA Civ 58. In Gladman it was held that the examiner was entitled to conclude that the Neighbourhood Plan satisfied basic condition (e) if it was in conformity with such strategic policies as were contained in development plan documents notwithstanding the fact that the local planning authority had not yet adopted a development plan document. It is also possible to comply with emerging policies particularly in the absence of an existing strategy (see DLA Delivery Ltd v Lewes DC and Newark PC [2017] EWCA Civ 58).

However, that is of course in contrast to the position for Blandford with the LP strategy having been adopted as recently as 2016. It seeks to protect the AONB through Policy 4. Policy 16 provides the strategy for development at Blandford which does not include strategic sites to the north and north-east. Moreover, there is no currently emerging Local Plan to replace the 2016 version. An evidence base alone (and one which does not yet comprehensively cover the whole plan area) does not amount to an emerging plan in a meaningful sense in this context. Any change to the strategy of the adopted Local Plan has not been independently tested. The proposals to bring that forward, which were far from advanced, and limited in their geographic extent, have been abandoned. Dorset Council decided in June 2019, I understand, to produce a Dorset wide plan. I understand that there is to be an options consultation in September 2020. That would appear to me to be the appropriate vehicle for consideration of a change to the strategy for Blandford. It does therefore seem to me to be in any event questionable that a housing land supply position relating to North Dorset was being considered when, at the time of the Examination, it was the Dorset wide position that was relevant in terms of the emerging plan. Consequently the options being considered have also been on a limited and, as it seems to me, an incorrect basis.

The approach being endorsed by the Second Examiner appears to me therefore to be wrongly transferring strategic plan making policies to the BPNP because of the housing land shortage and the Council's failure (for

whatever reason) to review, or bring forward Part 2 of, the Local Plan. That shortage and conscious decision not to update the Local Plan cannot in my view justify this being clearly contrary to the NPPF and being in breach of basic condition (e) in particular but also, in this respect at least, criterion (a) the conflict with which the Second Examiner has not taken into account as he has not acknowledged B2 and/or B3(c) to be a strategic allocation.

I also note the concerns set out in my instructions regarding the assessment of housing need and supply in the Blandford Area. It does seem to me that such matters are much more appropriately dealt with through the Local Plan process, as the disputed nature of these issues re-enforces.

- (6) At 9.6 of his Report the Second Examiner states that in his view the Dorset Council and the promoters of the BPNP have simply endeavoured to produce a NP that takes a pragmatic view of the situation and to do its best in somewhat difficult circumstances.

Whilst I appreciate that the Examiner is supporting an attempt to meet housing need, that cannot override the legal and policy requirements and the duty on a local planning authority to have an up to date strategic policies. In any event a neighbourhood plan should not allocate strategic sites which is what the BPNP is seeking to do. It should not be forgotten that the adopted Local Plan itself provides the expectation to Pimperne PC and others that site allocations will be through Part 2 of the Plan. That process, or a review of the current Part 1 Local Plan, would provide proper scrutiny and overview with independent examination of the strategic policies as necessary.

- (7) The Second Examiner states that there were very few representations against the plan ([9.10]).

However, that cannot be conclusive that the BPNP complies with the basic conditions and NPPF and PPG nor can it be used to dismiss the serious and significant concerns of the Pimperne PC, the CC Partnership

and the CPRE. It should be the quality of the representations that is crucial rather than the quantity.

- (8) The Second Examiner points out [at 9.11] that the NPPF[69] requires neighbourhood planners to consider opportunities for allocating small and medium sized sites suitable for housing and, states that further on in the Framework (NPPF[94]), the importance of a sufficient choice of school places is emphasised.

This again seems to me not to support Policy B2 as this is far from a small or medium site (the latter being up to 1ha as per paragraph 68(a) of the NPPF). This seems to me in fact to support the contention that these allocations are strategic sites. Further, with regard to the choice for school places, the provision of the school is a strategic matter, as the First Examiner concluded.

- (9) The Examiner also states (in 9.13 of his Report) that the Sustainability Appraisal ('SA') is far more detailed and comprehensive than that which supported NPv1 and that NDDC had also issued a new 'Call for Sites' to update the evidence on land availability. The result was that the promoters of the BPNP and the authority were able to agree a strategic land use and quantum specification for site allocations. Alternative locations for delivery of the development specification were considered, so that the SA considered spatial options, exploring the sustainability implications of delivering the development in different broad locations in the NP area.

Again, in my opinion, that cannot override the fundamental point that the allocation is a strategic one and in conflict with the housing and environmental strategy in Part 1 of the Local Plan (see the PPG Paragraph: 076 Reference ID: 41-076-20190509). In my view at the very least, whether the BPNP as a whole complied with in particular basic conditions (a) and (e) should have been considered on that basis. I also note that although the Second Examiner states that the SA considered (at 9.14) that B2 and B3(c) meet the requirements better than the other options but that was only marginally so.

- (10) The Second Examiner (at 9.17) referred to the position before him being different than that before the First Examiner in that there was increased housing need since then; a need for additional employment land; latest SHMA, Strategic Housing Land Availability Assessment, together with the requirement for a new school.

However, the strategic policy was exactly the same which is the starting point for considering basic condition (e) and relevant to basic condition (a). That information should be used for reviewing the Local Plan for producing Part 2.

- (11) The Second Examiner concluded therefore that there was a justification for BPNP and these 2 policies, which was further reinforced by the Government's aim of having a genuine plan-led system.

However, the plan led system is based upon strategic policies being within the Local Plan and non-strategic policies only being included in either a Local Plan and/or Neighbourhood Plan. So the BPNP does in fact not comply with that plan led system as set out clearly in the NPPF and as is relevant to basic condition (a).

- (12) In terms of the impact on the AONB and countryside, the Second Examiner placed reliance on his accompanied site visit (see 9.20-9.24 of his Report). He dealt with this aspect in some detail and he concluded (see 9.45 and 9.46) that the impact on the character of the AONB and visual amenity would be limited in extent (as explained in 9.35-9.38) and that the tests in paragraph 172 of the NPPF are met.

In terms of limited views of the allocations, that is addressed in paragraphs 9.35-9.38 in particular of the Report. However, what the Examiner does not appear to address in detail is the landscape character impact and not much more than by saying (at 9.26) that he considers that such impact in respect of the other options considered would be greater and notes the mitigation measures that are suggested (9.33).

24. In summary, whilst I recognise that the issue involves planning judgment, in my view the Second Examiner has approached the issue of general conformity incorrectly. In particular:

- (1) He appears to have considered the allocations not to be strategic. In my view they plainly are. Whether there is a housing shortage or a need for them should not alter that judgment. He has therefore offered no good reasons for so concluding or for differing from the First Examiner on this. This is relevant not only to basic condition (e) but also to basic condition (a), as he has failed to take into account with the NPPF policy that a neighbourhood plan should not contain strategic policies.
- (2) He has incorrectly concluded (at 9.3) that the allocations are fully in accord with the strategic policy and guidance in part 1 of the Local Plan. In my view that is in any event an incorrect interpretation of the Local Plan.
- (3) However, it is also based upon the Second Examiner's premise that the allocations are not strategic. That error infects the Second Examiner's conclusion on basic condition (e). Further, the First Examiner took a contrary view and the reasons she provided for doing so seem entirely correct and persuasive to me.

25. To underline these conclusions on general conformity, I would highlight the PPG advice on general conformity (Paragraph: 074 Reference ID: 41-074-20140306:

What is meant by 'general conformity'?

When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:

- whether the neighbourhood plan policy or development proposal supports **and upholds the general principle that the strategic policy is concerned with**
- the degree, if any, of conflict between **the draft neighbourhood plan policy or development proposal and the strategic policy**

- whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a **distinct local approach to that set out in the strategic policy without undermining that policy**
 - the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.
26. Applying those considerations having regard in particular to policies 4 and 16 of the Local Plan, it is clear that these allocations:
- (1) Do not uphold the principle of the relevant strategies in the Local Plan.
 - (2) Conflict with that strategy in a very significant way as they involve strategic allocations in or within the setting of the AONB that benefits from the highest status of landscape protection in the NPPF, which is of course underpinned by section 85 of the Countryside and Rights of Way Act 2000. That provision requires that in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.
 - (3) The allocations are clearly undermining the Local Plan strategy.
 - (4) The aim of the BPNP does not provide justification for the approach which is in my view plainly a strategic allocation contrary to the Local Plan.
27. Those views are on the basis of considering both the Local Plan and the BPNP as a whole but recognising the fundamental role that the allocations have in the BPNP.
28. Finally, Pimperne PC is concerned about the reference to potential development in its area which is of course outside but adjacent to the neighbourhood area covered by the BPNP. The Second Examiner (at 15.4) recommended removal of the reference within item xii of Policy B2 to Phase 2 scheme, which relates to

land within the parish of Pimperne. In my view, as this relates to an area outside of the BPNP, it should not have been included.

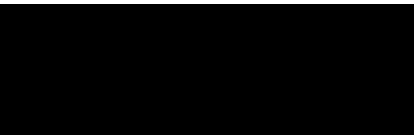
29. The BPNP cannot lawfully refer to a Phase 2 within Pimperne since, as the Second Examiner states, this could give some 'legitimate expectation of the Phase 2 scheme. I am very surprised that this is, if I understand correctly, not to be removed as in my view it should be.
30. This matter goes to legal compliance as well as basic condition (a), as the NPPF and PPG are clear that a neighbourhood plan can only relate to the area it covers – sections 38A(2) and 38B(1)(c) of the Planning and Compulsory Purchase Act 2004. Further, the Examiner was required to consider whether the Draft Plan complies with sections 38A and 38B in accordance with paragraph 8(1)(b) of Schedule 4B to the Town and Country Planning Act 1990 (as applied by section 38C(5) of the Planning and Compulsory Purchase Act 2004).
31. This continued inclusion of reference to Phase 2 further underlines the strategic nature of these allocations and the wholly inappropriate nature of including the allocations in a neighbourhood plan. Indeed, I understand that a pre-application consultation on an intended planning application has commenced that covers by Phases 1 and 2. That reference to Phase 2 should undoubtedly be removed as it is in conflict the legislative provisions. Any reliance by that applicant on the BPNP in respect of the latter would be misconceived.

SUMMARY

32. I appreciate that North Dorset District Council found itself in a difficult position with regard to its housing land supply. However, in my view it could not, and Dorset Council cannot, seek to address this by re-writing strategic policy through the mechanism of a neighbourhood plan.
33. The First Examiner considered the allocations to be strategic and the first version of the neighbourhood plan to not be in general accordance with the Local Plan.

If my understanding of the position on the emerging Local Plan is correct, then I cannot see that anything material has changed in that respect and therefore I consider that the Second Examiner's approach to these matters is not in accordance with basic conditions (a) and (e) or relevant national policy and guidance.

34. I recognise the flexible approach that the courts have applied to the requirement for general conformity in this context. However, in my view, it is strongly arguable that the allocations in the BPNP take such flexibility too far so as to be unlawful. In essence, the BPNP is usurping the Local Plan process and allocating strategic development which conflicts with the strategy of the Local Plan for Blandford and the surrounding countryside.
35. This is best demonstrated by North Dorset DC's objections to the first version of the BPNP and the First Examiner's support for those concerns.
36. I also consider that the BPNP cannot lawfully or properly refer to Phase 2 of the proposed developed in Pimperne parish.
37. I trust that this deals with all the matters raised in my Instructions. If there is any matter that requires clarification, my instructing consultant should of course not hesitate to raise this with me.



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2 July 2020