

Basic Conditions and Examination

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Bristol Masterclass



Basic Conditions and Examination

- What are the basic conditions
- How will the plan be examined
- What to expect from the Examiners Report
- Learning from examined Neighbourhood Plans

After the break:

Graham Self, Neighbourhood Plan Examiner



Why is this relevant?

- A plan will stand or fall by its compliance with the basic conditions



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Role of the Examiner

- Light touch review of NDP/NDO
 - To ensure NDP/NDO meets the basic conditions
- To recommend if the referendum boundary should be extended;
- To recommend to the LPA whether or not the Plan should go to referendum;
- To recommend any changes that may need to be made.



The Basic Conditions

1. Must have appropriate regard to national policy
2. Must be in 'general conformity' with strategic elements of the Local Plan
3. Contributes toward sustainable development
4. Compatible with EU obligations



The Basic Conditions

For Neighbourhood Development Orders:

- 5. Has special regard to desirability of preserving character and setting of listed buildings**
- 6. Has special regard to desirability of preserving character and appearance of conservation areas**



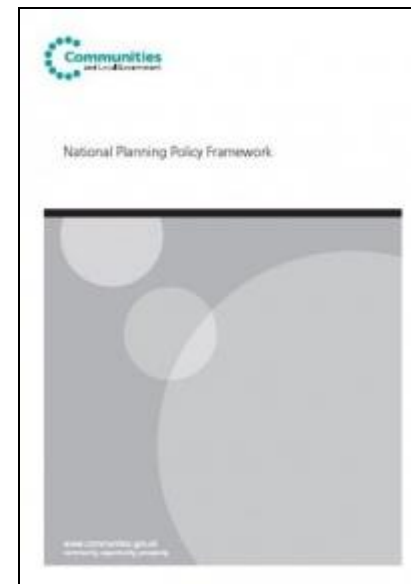
1. Regard to National Policy and Guidance

- National Planning Policy Framework (NPPF)
 - Presumption in favour of sustainable development
 - Policies must not conflict with provisions of NPPF
 - Important to have detailed understanding of NPPF
- NDP policies should enable the delivery of sustainable development in accordance with the policies in the Framework
- NDP should plan positively to support local development, shaping and directing development in the neighbourhood area that is outside the strategic elements of the Local Plan



Core Principles of the NPPF para 17

- Genuinely plan-led, and a creative process
- Promote sustainable development viewed as delivering 'needed growth'
- Seeking high quality design and standard of amenity
- Contribute to conserving/enhancing natural environment
- Take account of different roles/character of areas
- Support the transition to a low carbon future



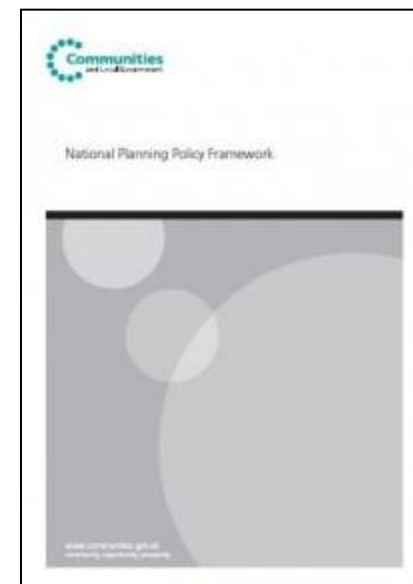
NPPF Continued...

- Encourage the effective use (re-use) of land
- Promote mixed use developments
- Conserve heritage assets in a manner appropriate to their significance for now and future generations
- Actively manage patterns of growth and transport infrastructure to create sustainable locations
- Deliver sufficient community and cultural facilities to improve health, social and cultural well-being



More on the NPPF

- Not all of the NPPF will be relevant depends on plan proposals – apply judgement!
- Core Principles overarching policy guide
- Para 154 on policy development:
 - Aspirational but realistic and spatial;
 - Clear on what will and will not be permitted and where;
 - Provide a clear indication of how a decision maker should react.



Not just promoting development

- NDPs can be used to protect Local green space
- NPPF paragraphs 76-78



2. Strategic Elements of the Local Plan

- What are strategic policies?
 - Housing targets
 - Employment targets
 - Strategic designations
 - Green Belt
 - Site allocations
 - Conservation Area designation and intent
- NDP can further develop “detailed” elements
- NDP Policies that would undermine the strategic elements of the Local Plan will not ‘pass’ the examination
- Relevant policies depend on content of NDP



3. Contributes to Sustainable Development

- Not necessarily Sustainability Appraisal (SA)
- Sustainability of the Plan will have to be measured
 - sustainability appraisal
 - Sustainability Appraisal (SA)
 - Sustainability checklist
 - Appraisal of sustainability
- Do the policies promote sustainable development?



4 & 5. Listed Buildings/Conservation Areas

- Will not be relevant to all NDOs
- Only relevant where one will be affected
- Uses existing statutory test applied to planning applications
- Ensures proposal is assessed like a LBC application
- English Heritage are a statutory consultee



6. Compatible with EU Obligations



- Strategic Environmental Assessment (NDP) or Environmental Impact Assessment (NDO)
 - Not all NDP/NDOs will require one
 - Only if the policies/development will give rise to significant environmental effects
 - Good practice is for policies/development to be screened by LPA
- Habitats Regulations
- Human Rights Act compatibility
 - Articles 1, 6, 8 and 14
 - Local occupancy restrictions



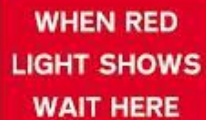
How much evidence do I need to produce?

- Will vary from Plan to Plan
- No prescriptive checklist
- Sufficient evidence to demonstrate compliance with the Basic Conditions
 - What does the NPPF say?
 - Site allocations
 - Policy justification
 - No up-to-date Local Plan will impact



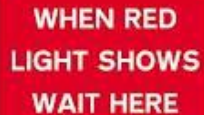
How will the plan be examined?

Independent Check



WHEN RED
LIGHT SHOWS
WAIT HERE

An **INDEPENDENT EXAMINER** will check the Plan to see if it meets the “basic conditions”



WHEN RED
LIGHT SHOWS
WAIT HERE

The examiner must:

- be appointed by LPA with the consent of the relevant parish council/forum
- be independent from both parties
- have no interest in the land
- have suitable qualifications and experience



After the Check

The Examiner's Report



The examiner will submit a report recommending either:

- proposals are submitted for referendum;
- modifications are made prior to referendum; **or**
- the proposals are refused



Modifications can only include:

- those needed to meet the “basic conditions”
- those needed for convention rights compatibility
- spelling/grammar

Significant Changes Needed?

If the examiner recommends big changes, the Forum or Parish or Town Council may need to go back out to the local community and consult again on these changes.



The Report

- The Examiner's report is non binding
- The Report will...
 - Give a reason for each of its recommendations
 - Contain a summary of its main findings
- Copy is sent to both the qualifying body and LPA
- LPA then publicise the report



What Isn't Tested?

- Non land use policies/designations (*in separate doc*);
- 'Soundness' of the Plan;
- Whether or not a **Sustainability Appraisal** has been undertaken (but sustainability of the plan is tested);
- Anything that does not relate to compliance with the Basic Conditions – or due process
 - E.g. Emerging Local Plan policies



What Else Does the Examiner Look At?

- Appropriateness of a Public Hearing - Examiner's decision
 - Normally for Examiner to investigate a complex issue further;
 - All questioning led by Examiner unless they agree to 3rd party questioning ;

Whether or not to extend the referendum area

- Default position is to those who live within the Neighbourhood Area
- Provisions to extend to those who would be directly affected by proposals
- Compliance with S38A and S38B of 2004 Act (NDP)
- Compliance with 61E(2), 61J and 61L 1990 Act (NDO)



S38A & B of 2004 Act* – Due Process

- Does it specify the period for which it will have effect?
- Does it include “excluded development”?
- Does it relate to more than one Neighbourhood Area?
- Is the Plan from a “qualifying body”?
- Does it deal with land use planning policies?

* **Planning and Compulsory Purchase Act 2004**



NDO Process – 1990 Act (Planning LB and Cons Areas)

- Is it an Order that grants planning permission?
- Does it grant permission for “excluded” development?
- Has planning permission been granted for what is proposed in the Order?
- Does the Order relate to more than one Neighbourhood Area?



Community Referendum



Referendum

- Organised and funded by LPA
- Outlines the importance of securing wider community support



Extending the Referendum

- The independent examiner can extend the scope of the referendum
- Only if proposal has wider effects beyond neighbourhood area



The 50%+ rule

- Require simple majority (+50%)
- If successful, LPA is compelled to 'make' the plan



Learning from examined Neighbourhood Plans

Upper Eden

- Rural multi parish plan
- Six policies
- Focus on housing

Exeter St James

- First forum plan
- 25 policies
- Non planning matters (projects)

Thame

- Large ambitious plan
- 53 policies and site allocations (750+ homes)

Tattenhall & District

- Tattenhall village + 2 other small settlements
- 6 policies
- Up to 30 houses in a development

Norland

- Protecting the conservation area

Lynton & Lynmouth

- Exmoor National Park
- Affordable housing & resisting second homes



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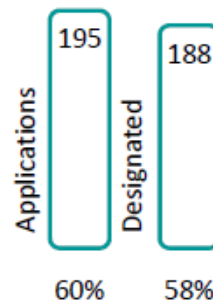
Neighbourhood Planning

From the Ground Up

852

188

Local
Authorities



96

44



14

9

Application

Designation

Draft Plan

Examination

Referendum

MADE

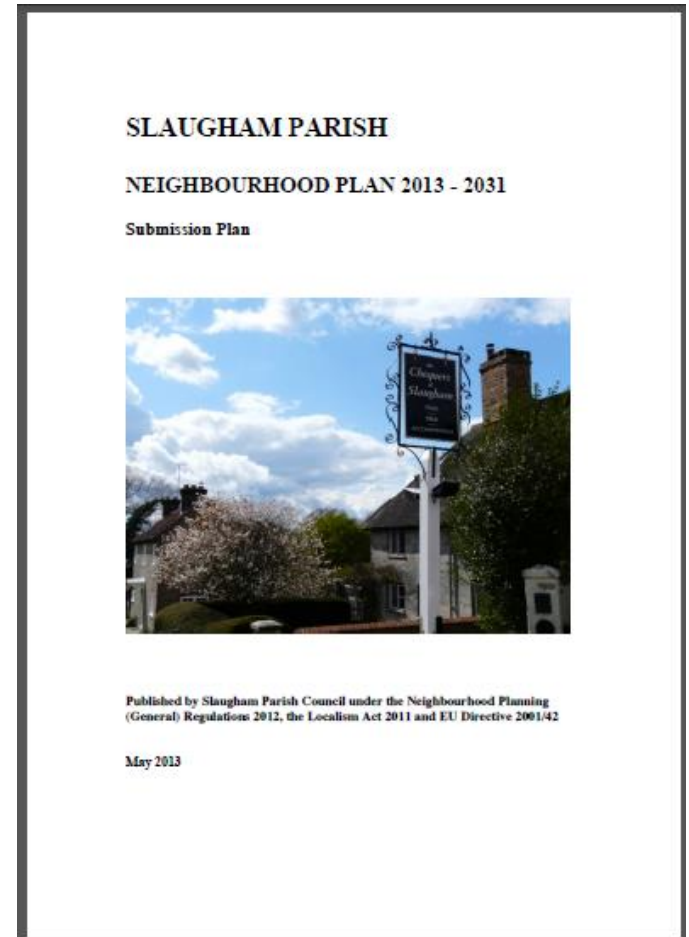
Top Tips

- Be familiar with the process, legislation and regulations
- Keep the **basic conditions** in mind all the way through right from the start
- Tell the **narrative** of your plan
- Use available **evidence** and get more if needed
- **Demonstrate** what has been done and why
- Be **clear** and **succinct**
- Relate to the legislation and regulations
- Consider having a 'health check' of the NP before it is submitted for formal examination



Slaugham 2013-2031

- Rural parish comprising four villages: Handcross, Pease Pottage, Warninglid and Slaugham (population 2,700 approx.)
- Within the High Weald Area of Outstanding Natural Beauty (AONB)
- Policies on sustainable development, housing, local green space, enterprise, broadband, retail and community facilities
- 130 dwelling 'target' set by the Neighbourhood Plan
- Allocates 3 housing sites within the AONB
- Mid Sussex new Local Plan is at early stage
- Strategic Environmental Assessment (SEA) required
- Accompanied by 2 Community Right to Build Orders (CRtBO)



Independent Examination: Slaughtam

SLAUGHAM PARISH

NEIGHBOURHOOD PLAN 2013 - 2031

Submission Plan



Published by Slaughtam Parish Council under the Neighbourhood Planning (General) Regulations 2012, the Localism Act 2011 and EU Directive 2001/42

May 2013

- Recommended not to proceed to Referendum
- SEA not satisfactory: Failed to comply with the need to consult statutory bodies on the scope and level of detail of the SEA, assess reasonable alternatives or apply relevant criteria in assessing alternative sites, provide Non Technical Summaries and a clear audit trail.
- Lack of robust evidence for 130 dwelling target
- Site allocation methodology was not justified, and did not prove exceptional circumstances required for development in the AONB
- Pre-submission consultation on the plan and preferred approach was inadequate (3 weeks) and clearer consultation statement needed
- CRtBOs recommended for refusal due to lack of EIA , regard to AONB, flood risk and deliverability
- ✓ Clear vision and approach to monitoring & review

Slaugham

- [Slaugham Neighbourhood Plan](#)





- 2nd Neighbourhood Plan successfully passed independent examination
- Referendum in May
- Covers St James ward approx. 2,500 households
- Contains 25 policies including; protecting green space, student accommodation, creation of community hub and restricting Houses in Multiple Occupation (HMOs)

Independent Examination – Exeter St James

8 recommended changes:

- Need to state the plan timeframe
- Loosen restriction on development in Hoopern Valley Park to allow for proposals which do not harm the landscape or biodiversity
- Remove word ‘contemporary’ from design policies - ambiguous
- Redefine large scale as ‘10 or more’, rather than ‘over 10’
- Remove requirement to engage local businesses in development proposals

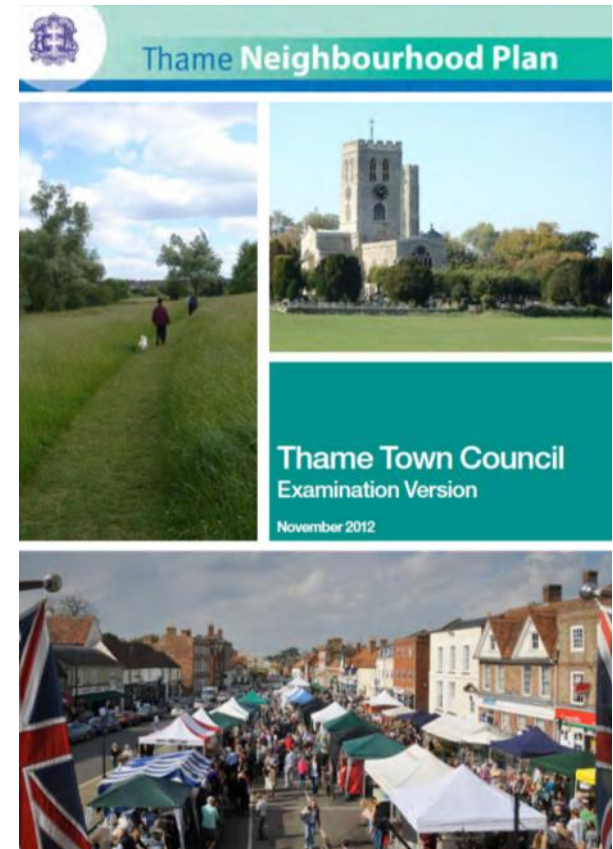




- Examined in Feb 2013
- Market Town in South Oxfordshire
- Covers approx. 5,000 households
- Contains 53 policies including; site allocations for housing and employment, also policies on retail, design, environment, heritage and views to the countryside

Independent Examination - Thame

- Held 1 hearing
- Exemplary approach to consultation
- Clear link between vision, objectives and policies
- 20 recommended changes:
 - Clearer policy wording
 - Remove conflict with NPPF on out of town shopping centres
 - Added Listed Building/Conservation consideration
 - Formatting changes





- Examined August 2013
- Parish of Lynton & Lynmouth, containing the settlements of Lynton, Lynmouth & Barbrook on Exmoor Coast
- 4 chapters: viability and deliverability, environment, economy, community
- Policies covering: development and enhancement of local environment, tourism, economy, rural buildings, parking, housing, services and community assets

Independent Examination – Lyn Plan

- No hearing but a ‘clarification meeting’
- Changes to most policies recommended for clarity (NPPF requirement)
- Human Rights issues queried at clarification meeting – right to respect for family life and home (article 8)
- Suggestions made regarding format of document and annex inclusion
- Support for reliance on environmental protection policies in Local Plan



Thank you for listening

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Question and Answer after the break...