

Town and Country Planning Act 1990
Neighbourhood Planning (General) Regulations 2012

WINSFORD NEIGHBOURHOOD PLAN INDEPENDENT EXAMINATION

**A report to Cheshire West and Chester Council
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30 July 2014

Contents

1. Introduction
2. The basic conditions and other statutory requirements
3. Housing
4. Other topics
5. General points
6. The making of the Plan
7. Overall conclusion

Annex.

List of minor modifications for the purpose of correcting errors or for clarification

1. Introduction

Neighbourhood Planning

- 1.1 Neighbourhood planning is the process introduced by Parliament in the Localism Act 2011, to enable those living and working in a community to take a more involved role in the process of deciding its future. They are able to establish general planning policies for the development and use of land in the neighbourhood; they are able to say, for example, where new homes and offices should be built, and what they should look like. The neighbourhood plan will set a vision for the future. It can be detailed or general, depending on what local people want.¹
- 1.2 The 2011 Act introduced the necessary amendments to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 to make the new process possible.² These came fully into force on 6 April 2012, along with the Neighbourhood Planning (General) Regulations 2012, which provided for the detailed procedures.
- 1.3 The first step towards producing a neighbourhood plan is for a parish council or other qualifying body to define a “neighbourhood area” for which it considers that a plan should be produced, and to prepare a draft plan for that area – with the assistance of the local planning authority where appropriate. The draft plan must meet what are referred to in the legislation as “the Basic Conditions” – that is, in summary, it should be generally in line with national and other local planning policies, and contribute to the achievement of sustainable development; and it must conform to other laws.³
- 1.4 The draft plan is made available for inspection within the area in question, and anyone can make representations.
- 1.5 Once a neighbourhood plan has been prepared, and everyone has had a chance to comment on it, an independent examiner is appointed by the planning authority, with the consent of the qualifying body that produced the draft neighbourhood plan. The examiner must be someone who is independent of the qualifying body and the authority, has appropriate qualifications and experience, and has no interest in any land affected by the plan.⁴
- 1.6 The role of the independent examiner is to check that the plan complies with the various statutory requirements or, if it does not comply, that it can be changed so

¹ <https://www.gov.uk/neighbourhood-planning>

² Town and Country Planning Act [“TCPA”] 1990, ss 61E to 61P, Sched 4B (neighbourhood development orders); Planning and Compulsory Purchase Act [“PCPA”] 2004, ss 38A to 38C (application to neighbourhood plans).

³ TCPA 1990, Sched 4B, para 8, applied by PCPA 2004, s 38A(3); for more details, see para 2.3 below.

⁴ TCPA 1990, Sched 4B, para 7(6), applied by PCPA 2004, s 38A(3).

that it does. The examiner produces a report, which contains one of three possible recommendations:

- “(a) that the draft plan is submitted to a referendum;
- (b) that modifications specified in the report are made to the draft plan, and that the draft plan as modified is submitted to a referendum; or
- (c) that the proposal for a plan is refused.”⁵

- 1.7 The recommended modifications can only be those that the examiner feels are necessary to ensure that the draft plan complies with the basic conditions and the other relevant statutory requirements or are needed for the purpose of correcting errors. The planning authority then decides whether it is willing to make any or all of those changes; if they are major, they may have to be the subject of a further round of consultation.
- 1.8 There is then a referendum on whether the draft plan should be “made”, subject to any changes recommended by the examiner and accepted by the planning authority. If more than half of those voting vote in favour of the plan, the planning authority must then make the plan.
- 1.9 Once it comes into force, the neighbourhood plan is part of the development plan for the area to which it relates. From then on, therefore, it is an integral part of the policy framework that guides the planning authority and the inspectorate in making all planning decisions in the area.

The proposed Winsford Neighbourhood Plan

- 1.10 Winsford Town Council (“the Town Council”) is a parish council within the terms of the Local Government Act 1972. It is therefore a qualifying body for the purposes of section 38A(12) of the 2004 Act. Cheshire West and Chester Council (“the Borough Council”) is the local planning authority for all purposes under the 1990 and 2004 Acts for the area including the parish of Winsford.
- 1.11 The Town Council initiated in December 2011 the process of requiring the Borough Council to make a neighbourhood development plan for the neighbourhood area consisting of the whole of the parish of Winsford. The details of the process, and the dates on which each stage was reached, are set out in the *Consultation Statement*, produced in April 2013. In particular, the emerging neighbourhood plan was the subject of a consultation exercise in 2012-2013.

My appointment

- 1.12 I have been appointed by the Borough Council to conduct an independent examination of the proposed Winsford Neighbourhood Plan (“the Winsford Plan”). I am independent of the Town Council and the Borough Council.
- 1.13 I am a chartered town planner (FRTPI) and chartered surveyor (FRICS), a member of the Institute of Historic Buildings Conservation (IHBC), and a barrister in private

⁵ TCPA 1990, Sched 4B, para 10(2), applied by PCPA 2004, s 38A(3).

practice. I have worked as a planning officer in a London borough council for nine years, and I have since then practised at the planning Bar for some 24 years, and written and lectured on planning matters generally. I have no interest in any land affected by the Winsford Plan.

1.14 I have been supplied with a number of relevant documents, as follows:

- *Adopted Vale Royal Borough Local Plan: First Review Alteration*, June 2006 (“the Local Plan”);
- the direction by the Secretary of State under paragraph 1(3) of Schedule 8 to the 2004 Act, dated 20 March 2009, listing those policies of the Local Plan that will be saved after 16 June 2009;
- *Winsford Neighbourhood Plan: Equality Impact Assessment and Rural Proofing*, October 2012;
- the documents, all dated April 2013 except as noted, that formed the subject of the public consultation from July to September 2013 (along with the Winsford Plan itself):
 - a map of the area to which the Plan relates;
 - *Winsford Neighbourhood Plan: Evidence Base Summary*;
 - *Winsford Neighbourhood Plan: Consultation Statement*;
 - *Winsford Neighbourhood Plan: Sustainability Appraisal*;
 - *Winsford Neighbourhood Plan: Delivery Strategy*; and
 - *Winsford Neighbourhood Development Plan: Basic Conditions Statement*, July 2013 (including *Statement on the need for Habitat Regulation Assessment of the Winsford Neighbourhood Plan*);
- the written representations of those who responded to that consultation; and
- additional documents handed in before and at the oral hearing.

1.15 I have also had regard to the legislation referred to above, to other relevant legislation and case law, and to policy guidance from central Government.

1.16 The case law included in particular the decision of the High Court in *BDW Trading Ltd (t/a Barratt Homes) and others v Cheshire West and Chester Borough Council* (“the *Tattenhall* decision”).⁶ It may be noted at this stage that, although an attempt was made to introduce into the *BDW Trading* litigation material relating to the examination of the Winsford Plan, the court resisted that; and Supperstone J made it clear at the start of the Court hearing that he had not considered any material relating to the position at Winsford.⁷

⁶ [2014] EWHC 1470 (Admin), 9 May 2014.

⁷ See the further written submissions on behalf of the Darnhall Estate.

Procedure

- 1.17 The 2004 Act provide that the general rule is that the examination of the issues by the examiner is to take the form of a consideration of written representations; but there must be an oral hearing if the examiner considers that it is necessary to consider oral representations to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case.
- 1.18 In this instance I caused a hearing to be held to deal with various issues, including:
- the appropriateness of a neighbourhood plan being made in the absence of a local plan containing saved policies as to the amount of housing land to be provided;
 - the implications of the *Tattenhall* decision;
 - the policies within the Winsford Plan relating to the amount of housing to be provided;
 - the allocation of particular housing sites;
 - the omission of other housing sites;
 - the policies relating to the town centre; and
 - the adequacy of the consultation process carried out during the preparation of the Winsford Plan.
- 1.19 A brief pre-hearing meeting was held in the Borough Council's offices in Winsford on Wednesday 8 January 2014, solely to deal with procedural issues. The hearing itself was held over the course of two days in the Winsford Lifestyle Centre, on Wednesday 15 January and Friday 30 May 2014. Minutes of the hearing have been issued separately.
- 1.20 Immediately before the first day of the hearing, I was handed written representations suggesting that the hearing should be adjourned, in order to await the *Tattenhall* decision. At the close of the first day, I heard oral submissions on that issue. After considerable discussion, I decided that an adjournment would be appropriate. In the event, the decision in that litigation was issued on 9 May 2014.
- 1.21 In addition to the oral representations of those who appeared at the hearing, and their answers to my questions, I also considered the written representations of others who had responded to the consultation.
- 1.22 I have carried out an extensive tour of Winsford and surrounding areas, accompanied only by the programme officer, and inspected the various sites and locations referred to in the Winsford Plan.
- 1.23 I am grateful to all those from the Town Council and the Borough Council, and in particular to the Programme Officer, for the considerable assistance I received in carrying out this examination, particularly in view of the pioneering nature of the exercise.

The structure of this report

- 1.24 In my examination of the Winsford Plan, I am required by paragraph 8(1)(a) of Schedule 4B to the 1990 Act to consider whether it meets “the basic conditions” and other relevant statutory requirements.⁸
- 1.25 The 2012 Regulations provide that the submission of a proposed neighbourhood plan by a qualifying body to a planning authority must be accompanied by a statement explaining how the plan meets the basic conditions, as well as other statutory requirements.⁹ In the case of the Winsford Plan, a document was produced to accompany it, entitled *Basic Conditions Statement*, which provides a helpful summary of the measures that have been taken in this case to ensure that the Winsford Plan does meet the conditions and those other requirements.
- 1.26 In Chapter 2, I outline what are the basic conditions and the other statutory requirements relating to the content of the Plan. In Chapters 3 to 5, I then turn to consider whether the Winsford Plan meets them. In Chapter 6, I consider the statutory requirements relating to the production of the Plan.

Recommended modifications

- 1.27 I have highlighted recommended modifications to the Winsford Plan by the use of **bold type**.

⁸ TCPA 1990, Sched 4B, para 8(1), applied by PCPA 2004, ss 38A(3), 38C(5)(b), (c). Sub-para 8(1)(c) does not apply to neighbourhood development plans. See para 2.1.

⁹ Neighbourhood Planning (General) Regulations [“NP(G)R 2012”], regulation 15(1)(d); see **Chapter X** below.

2. The basic conditions and other statutory requirements

The legal requirement

2.1 Paragraph 8(1) of Schedule 4B provides that, in examining a proposed neighbourhood plan, the examiner is to consider the following:

- “(a) whether the draft neighbourhood development order meets the basic conditions (see sub-paragraph (2)),
- (b) whether the draft order complies with the provision made by or under sections 38A and 38B,
- (d) whether the area for any referendum should extend beyond the neighbourhood area to which the draft order relates, and
- (e) such other matters as may be prescribed.”¹⁰

2.2 In the first part of this Chapter, I consider what are the “basic conditions”. I then examine briefly what provision is made by sections 38A and 38B in relation to the content of a plan, and mention two other relevant statutory obligations. In Chapter 6, I consider what provision is made by those sections in relation to the procedure for making a plan, and the area for any referendum. No other matters have been prescribed.

The basic conditions

2.3 Paragraph 8(2) of Schedule 4B provides that a neighbourhood development plan meets the basic conditions if:

- “(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make [the plan],
- (d) the making of [the plan] contributes to the achievement of sustainable development,
- (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),
- (f) the making of [the plan] does not breach, and is otherwise compatible with, EU obligations, and
- (g) prescribed conditions are met in relation to [the plan] and prescribed matters have been complied with in connection with the proposal for [the plan].”¹¹

2.4 Basic conditions (b) and (c), relating to the built heritage, apply to the examination of proposed neighbourhood development orders, but not to that of neighbourhood plans.

2.5 Only one further basic condition has been prescribed under paragraph 8(2)(g), as follows:

¹⁰ TCPA 1990, Sched 4B, para 8(1), applied by PCPA 2004, ss 38A(3), 38C(5)(b),(c).

¹¹ TCPA 1990, Sched 4B, para 8(2), applied by PCPA 2004, ss 38A(3), 38C(5)(d).

“The making of the neighbourhood development plan is not likely to have a significant effect on a European site ... or a European offshore marine site ... (either alone or in combination with other plans or projects).”¹²

- 2.6 It may be noted that a proposed plan must meet all of the basic conditions specified in paragraph 8(2), if it is to be submitted to a referendum, not just some of them.

The National Planning Policy Framework

- 2.7 In carrying out the examination of the Winsford Plan, and deciding whether to recommend that it should be submitted to a referendum, I am required to have regard to national policies and advice contained in guidance issued by the Secretary of State (basic condition (a)).

- 2.8 The most significant national policies relevant to planning matters are set out in the *National Planning Policy Framework* (“the NPPF”). This was issued in March 2012, and replaced almost all of the Planning Policy Guidance notes and Planning Policy Statements (PPGs and PPSs) that were extant at that time.

- 2.9 The Government’s understanding of plan-making is summarised at paragraphs 15 and 16, as follows:

“15. ... All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.

16. The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:

- develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development
- plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan”

- 2.10 The core principles that should underpin all planning are then summarised at paragraph 17, and elaborated in relation to specific topics in the remainder of the NPPF. That paragraph starts as follows:

17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency; ...”

- 2.11 The principal policies of the NPPF specifically relating to neighbourhood planning are as follows:

¹² NP(G)R 2012, Sched 2, para 1.

“183. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:

- set planning policies through neighbourhood plans to determine decisions on planning applications; and
- grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order.

184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.

185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. ...”

- 2.12 Other policies directly relating to the making of neighbourhood plans are in paragraphs 28, 56-58, 69-70, 76-77, 97, 109-111, and 117.
- 2.13 More general policies relating to “plan making” are found throughout the NPPF, but they generally refer to the making of local plans. For example, paragraphs 47 and 158-159 contain important policies regarding the need to ensure an adequate supply of housing; but these specifically refer to action by local planning authorities. Nevertheless, since neighbourhood plans are to be in general conformity with strategic policies in local plans, those policies in the NPPF relating to local plans will still be indirectly relevant.
- 2.14 More generally, the NPPF sets out a whole suite of policies relating to a wide range of issues, including in particular transport, housing, design, climate change, the natural environment, and the historic environment. I have had regard to these where appropriate in carrying out my examination.

Planning Practice Guidance

- 2.15 More detailed guidance and advice, expanding on the general policies in the NPPF, has been available since March 2014 on the Planning Portal website, as *Planning Practice Guidance* (“PPG”).¹³ This guidance relates to a whole range of planning issues.

¹³ <http://planningguidance.planningportal.gov.uk/blog/guidance/>

2.16 In particular, the PPG includes specific guidance related to neighbourhood plans; and that guidance suggests that the main source of Government policy is simply the NPPF and in particular paragraphs 16 and 184, noted above.¹⁴ However, the PPG itself would seem to constitute national “advice”, whether or not it is “policy”; and I have had regard to it accordingly.

2.17 In particular, the PPG contains the following guidance:

“How should the policies in a neighbourhood plan be drafted?”

A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”

Can a neighbourhood plan allocate sites for development?

A neighbourhood plan can allocate sites for development. A qualifying body should carry out an appraisal of options and an assessment of individual sites against clearly identified criteria. ...¹⁵

2.18 A policy that is not “clear and unambiguous” is thus not in accordance with the basic conditions. The same would presumably apply if the purported justification for a policy was not clear and unambiguous, although that is not spelt out in the PPG.

2.19 The requirement that a policy should be distinct, reflecting local circumstances, is less straightforward. Many policies in the Winsford Plan, for example Policies H2 to H6, as with those in many proposed neighbourhood plans, are to a greater or lesser extent generic policies that could apply to many if not all locations. But the fact that a particular community has chosen to include a particular generalised policy in its plan reflects its awareness that the issue in question is of special relevance in its circumstances. The inclusion of such general policies thus does not of itself mean that those policies, or the Winsford Plan as a whole, is not in accordance with the basic conditions.

2.20 I return to the question of allocating sites at the end of this Chapter.¹⁶

Other national policies and advice

2.21 The reference in the first basic condition is to national policies and advice is not limited to the guidance in the NPPF and the PPG. In particular, there were still in existence at the time when the Winsford Plan was prepared a plethora of Circulars, practice guidance notes and other such documents, supplementing the PPGs and PPSs that had been cancelled when the NPPF was produced. However, the great

¹⁴ PPG, ref ID: 41-069-20140306, ID: 41-070-20140306.

¹⁵ PPG, ref ID: 41-041-20140306, ID: 41-042-20140306.

¹⁶ See para 2.65 below.

majority of them were cancelled in March 2014, when the PPG was issued in its final form.¹⁷

- 2.22 In particular, the 2007 practice guidance documents on *Strategic Housing Market Assessments* and *Strategic Housing Land Availability Assessments* were both cancelled in the policy cull of March 2014. I mention this briefly in the following Chapter.¹⁸
- 2.23 None of those who submitted written representations, and none of those present at the pre-hearing meeting, have drawn my attention to any other national policies and advice to be taken into account in my examination of the Winsford Plan.
- 2.24 I note that the Town Council in preparing the Winsford Plan has undertaken a process known as “rural proofing”, in accordance with the guidance produced by the Commission for Rural Communities in 2009. This was stated in the *Basic Conditions Statement* to be part of a test for compatibility with EU regulations, but is in fact more properly categorised as compatibility with Government policy. The Commission was closed with effect from 31 March 2013, and that guidance has been replaced by a new publication, *Guide to Rural Proofing*, produced by DEFRA in July 2013.
- 2.25 Subject to the above, I have assumed that the relevant national policies and advice are principally those that are contained in the NPPF and the PPG.

Sustainable development

- 2.26 In carrying out the examination of the Winsford Plan, I am required to consider whether the making of it would contribute to the achievement of sustainable development (basic condition (d)).
- 2.27 Paragraph 6 of the NPPF states that:
- “The policies in paragraphs 18 to 219, taken as a whole [that is, the whole of the NPPF], constitute the Government’s view of what sustainable development in England means in practice for the planning system.”
- 2.28 Slightly more helpfully, the following paragraph summarises the concept of sustainable development and the role of the planning system as follows:
- “7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:
- *an economic role* – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
 - *a social role* – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future

¹⁷ http://www.planningportal.gov.uk/uploads/cancelled-guidance_06032014.pdf

¹⁸ See para 3.19 below.

generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and

- *an environmental role* – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

2.29 The NPPF then explains that there is a presumption in favour of sustainable development:

“14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.”

2.30 Specifically in relation to neighbourhood plans, this is expanded in paragraph 16 (quoted above).¹⁹

2.31 None of those who submitted written representations, and none of those present at the pre-hearing meeting, have drawn my attention to any other definition of sustainable development, or any other documents relating to it, that I should take into account in my examination of the Winsford Plan.

The development plan

2.32 In carrying out the examination of the Winsford Plan, I am required to consider whether it is in general conformity with the strategic policies contained in the development plan for the area (basic condition (e)).

2.33 In this case, the development plan for the area including Winsford consists principally of the *Adopted Vale Royal Borough Local Plan: First Review Alteration* (“the Local Plan”), adopted in June 2006 by the Vale Royal Borough Council, whose area included Northwich, Winsford and Frodsham. In principle that plan ceased to be effective on 16 June 2009, by virtue of paragraph 1(2)(a) of Schedule 8 to the 2004 Act; but the Secretary of State issued a direction under paragraph 1(3) of that Schedule, dated 20 March 2009, listing those policies of the Local Plan that would be saved and could therefore still be relied on after that date.

¹⁹ See para 2.9.

- 2.34 In fact that direction saved the whole of the Local Plan with the exception of policies GS1 (selection of sites) and H1 (the supply of housing land). It follows that the development plan does not contain a strategic policy providing for a specific amount of housing to be provided. The Winsford Plan therefore cannot be criticised for failing to be in conformity with a policy that does not exist.
- 2.35 The remainder of the Local Plan provided, as would be expected, a complete suite of policies to deal with a wide range of issues, all of which were saved and are still in force.
- 2.36 The development plan also includes separate local plans dealing with minerals and waste disposal, both now of considerable age. However, the Winsford Plan contains no policies relating to those matters, and no policies relating to other matters that are in conflict with any strategic policies in those plans.
- 2.37 There are no saved policies from the relevant regional spatial strategy (RSS).
- 2.38 I have therefore confined my examination in relation to basic condition (e) to considering the general conformity with the saved strategic policies in the Local Plan.
- 2.39 I note at this stage there has been no objection (either from landowners, local people or anyone else) that there has been a failure by those drafting the Winsford Plan to ensure that it is in general conformity with the strategic policies in the adopted Local Plan. Rather, the focus has been on whether it is appropriate to produce a neighbourhood plan prior to the adoption of an emerging local plan.

The emerging development plan: principles

- 2.40 It would, obviously, be easier to produce a neighbourhood plan if there was available a recently adopted local plan containing up-to-date strategic policies on all topics and, in particular, as to the amount of housing and employment land required. However, there is no rule, either in the relevant statutory provisions or in central Government guidance, stating that a neighbourhood plan can only be prepared within a specific period after the adoption of a local plan.
- 2.41 This is no more than common sense, as from the moment a local plan is adopted it will become gradually more out of date, and arguably the policies within it less and less directly applicable. But the development plan will still govern planning decisions; and any neighbourhood plan will still have to be “in general conformity with” its strategic policies. And neighbourhood plans, where they exist, will provide the building blocks to help with the preparation of the next local plan, just as much as the local plan will form the basis of the next generation of neighbourhood plans.
- 2.42 In other words, following the adoption of the local plan, there will be a succession of neighbourhood plans made for the various areas within the local plan area; and in due course a new local plan will be produced and the whole cycle will start all over again. Every neighbourhood plan is thus produced after the previous local plan (which will still be in force) and before the next one; the question is therefore not whether a neighbourhood plan is produced “before” or “after” a local plan, but

simply how long after the previous plan. Clearly, the longer the interval since the adoption of the local plan, the more caution is required in applying the strategic policies within it.

- 2.43 That is why the requirement that a neighbourhood plan should be in general conformity with the local plan is not the only basic condition, and has to be set alongside the equally important requirements that the neighbourhood plan should be in line with Government policy – which itself will be gradually less and less up-to-date – and that it should help to achieve sustainable development.
- 2.44 There is thus no explicit requirement that a neighbourhood plan should be in general conformity with the strategic policies within an emerging local plan. However, those preparing the next local plan are required (by section 39 of the 2004 Act) to ensure that it contributes towards the achievement of sustainable development; and in doing that they must have regard to national policies and advice contained in guidance issued by the Secretary of State. It follows that the need to ensure that the neighbourhood plan also contributes towards that goal and has regard to national policies and advice means that a neighbourhood plan should in practice also be in harmony with an emerging local plan.
- 2.45 On the other hand, a local plan that has not yet been tested for soundness at an inquiry should not be given too much weight.
- 2.46 The implications of this are considered further in Chapters 4 and 5, particularly in relation to the amount of housing to be provided.
- 2.47 In this case, the emerging local plan is the *Cheshire West and Chester Local Plan, Part One, Strategic Policies*, currently being produced by the Borough Council for the whole of its area – including the areas formerly administered by Chester City Council (Chester, Malpas and Tarvin) and Ellesmere Port and Neston Borough Council, as well as the former Vale Royal area. A draft version of this plan was issued for consultation in 2013, and was the subject of a public examination in June 2014.

The emerging development plan: Government policy

- 2.48 The PPG provides guidance under the heading *Can a Neighbourhood Plan come forward before an up-to-date Local Plan is in place?* This provides as follows:

“Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. **They can be developed before or at the same time as the local planning authority is producing its Local Plan.**”

A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic conditions. A draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan although the reasoning and evidence informing the Local Plan process may be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested.”²⁰

²⁰ Para 41-009.

- 2.49 The NPPF notes that the preparation of a local plan is to take into account any existing neighbourhood plans:

“155. Early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses is essential. A wide section of the community should be proactively engaged, so that Local Plans, as far as possible, reflect a collective vision and a set of agreed priorities for the sustainable development of the area, including those contained in any neighbourhood plans that have been made.”

- 2.50 Further, paragraph 185 notes that:

“... Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.”

- 2.51 This seems to make it plain that a local plan may post-date a neighbourhood plan; and also, not surprisingly, that it must “reflect” the priorities contained in any relevant neighbourhood plan, and not repeat the non-strategic policies contained within it. That does not mean that the policies in a neighbourhood plan will necessarily determine what goes in to the next local plan – otherwise nothing would ever change. However, the more recent the neighbourhood plan, the more likely it will be that the local plan will closely reflect it. From which it follows that where a neighbourhood plan is being prepared at the same time as an emerging local plan, it makes sense for the two to be in harmony. But that is not one of the basic conditions.

- 2.52 Finally, under this heading, I am aware that Government policy does not have the status of law. However, the policy has now been considered, at least in passing, in the *Tattenhall* decision.²¹ That quoted (at paragraph 56) the two paragraphs from the PPG quoted at paragraph 2.48 above; it did not directly address whether or not they were correct in law, but it certainly provides no basis for suggesting that they are not.

The emerging local plan: conclusion

- 2.53 It follows from the above analysis that I see no reason in principle why a neighbourhood plan should not be prepared “before” a local plan. Indeed, it is almost inevitable that it will be prepared after (possibly long after) one local plan and before another. If the position were otherwise, the process of neighbourhood planning would grind to a halt, as communities would have to wait until a fully up-to-date plan was in place, and then rush to prepare a neighbourhood plan before the local plan became too outdated.

- 2.54 This approach is clearly supported by Government policy; and that in turn has been considered but not questioned by the High Court.

²¹ See para 1.15 above.

The SEA Directive

- 2.55 In carrying out the examination of the Winsford Plan, I am required to consider whether the making of the Plan is in general conformity with “EU obligations” (basic condition (f)). The principal relevant EU obligation is under the SEA Directive (2001/42/EC). That has been transposed into UK domestic law through the Environmental Assessment of Plans and Programmes Regulations 2004.
- 2.56 The Directive and the Regulations require, where plans and programmes are likely to have significant effects on the environment, that an environmental assessment be carried out at the time they are prepared and before they are adopted. The applicability of the obligation under the Directive was considered by the European Court of Justice in Case C-567/10 *Inter-Environnement Bruxelles ASBL v. Region de Bruxelles-Capitale*. The Court held that:
- “27. The European Commission considers that, where an authority is subject to a legal obligation to prepare or adopt a plan or programme, the test of being ‘required’ within the meaning of Article 2(a) of Directive 2001/42 is met. ...
28. ... an interpretation which would result in excluding from the scope of Directive 2001/42 all plans and programmes, inter alia those concerning the development of land, whose adoption is, in the various national legal systems, regulated by rules of law, solely because their adoption is not compulsory in all circumstances, cannot be upheld.
- ...
31. It follows that [such] plans and programmes ... must be regarded as ‘required’ within the meaning, and for the application, of Directive 2001/42 and, accordingly, be subject to an assessment of their environmental effects in the circumstances which it lays down.”²²
- 2.57 In other words, merely because the preparation of a plan is optional, rather than compulsory, that does not avoid the need for an SEA to be prepared. That confirms that an SEA is required as part of the process of preparing a neighbourhood plan, where such a plan is likely to have significant effects on the environment.
- 2.58 This too was referred to in the *Tattenhall* decision, specifically in the context of whether the failure to consider alternative scenarios amounted to a breach of the Directive. Supperstone J concluded as follows:
72. The TNP has been the subject of SEA/sustainability appraisal throughout the process of its preparation. Policy 1 had been amended to remove any limit on the overall number of houses by the time the TNP reached the examination stage. It is a Plan that covers a twenty year period which as a Neighbourhood Plan inevitably deals with a limited geographical area. As Mr Sauvain observes it will form part of a hierarchy of plans where the ultimate numbers of houses required to be built during the plan period and their broad geographical distribution across the local authority area are determined by other development plan documents. These development plan documents will have their own strategic environmental assessments and sustainability appraisals.
73. Article 5(2) of the SEA Directive requires the “environmental report” to include information which “may reasonably be required” taking into account, inter alia, the content and level of detail of the plan, its stage in the decision-making process, and the extent to which certain matters are more appropriately assessed at different levels in the

²² [2012] 2 CMLR 30, at paras 27, 28, 31.

decision-making process The requirements of the Directive, as applied to the TNP, have to be considered in that context.

74. In *Persimmon Homes v Taylor Woodrow*, Laws LJ stated:

“The question whether there is general conformity between the plans is a matter of degree and, as it seems to me, of planning judgment.”²³

I accept Mr Sauvain's submission that similarly, as the issue raised by the Claimants is not whether a SEA/sustainability appraisal was produced but whether it adequately addressed the suitable alternatives, the question is whether the Examiner's conclusion that the TNP was compatible with EU obligations is again a matter of planning judgment.”

- 2.59 This makes it plain that the extent to which the preparation of a particular plan complies with the SEA Directive is to be assessed in the light of the overall planning position, including the compliance of other emerging plans each of which will be accompanied by its own SEA exercise.

Other EU obligations

- 2.60 As well as the specific question of strategic environmental assessment, I am also required to consider whether the making of the Winsford Plan is in general conformity with “EU obligations” as a whole (basic condition (f)).

- 2.61 In addition, I am required to consider specifically whether the making of the Plan is likely to have a significant effect on:

- a European site (as defined in the Conservation of Habitats and Species Regulations 2010), or
- a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007),

either alone or in combination with other plans or projects (additional basic condition (g)).²⁴

- 2.62 This reflects the obligation under the Habitats Directive that:

“any plan or project not directly connected with or necessary to the management of [a European site] but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's nature conservation objectives.”²⁵

Other statutory requirements: the content of the Plan

- 2.63 In addition to the basic conditions, I am also required to consider whether the Winsford Plan complies with the provision made by or under sections 38A and 38B

²³ [2006]1 WLR 334, at para 22

²⁴ NP(G)R 2012, regulation 32; Sched 2, para 1; see para 2.5 above.

²⁵ Habitats Directive 92/43/EEC, article 6(3).

of the 2004 Act.²⁶ A number of provisions have been made by or under those sections, as follows:

- in sections 38A and 38B themselves;
- in Schedule 4B to the 1990 Act (introduced by section 38A(3)); and
- in the 2012 Regulations (made under sections 38A(7) and 38B(4)).

In the remainder of this Chapter I outline briefly what those provisions are, insofar as they relate to the contents of the Plan. In Chapter 6, I outline the provisions that relate to the making of the Plan.

2.64 First, a neighbourhood development plan is to be a plan that sets out policies for the development and use of land in the whole or part of the area in question.²⁷ This is a fundamental provision, as a plan that contains only other types of policies may be a worthwhile and commendable document, but it is not a “neighbourhood development plan” within the terms of the relevant legislation.

2.65 In particular, a neighbourhood plan can allocate sites for development. This seems self-evident, as it would be very odd if policies for the development and use of land were not, at least in some cases, to allocate specific sites for specific purposes. However, lest there should be any doubt, this principle is unequivocally supported by the PPG.²⁸ I thus reject the submissions made by some of the objectors to the Winsford Plan to the effect that a neighbourhood plan could not allocate sites for development.

2.66 It also follows that, if a plan is to allocate sites, it may be entirely appropriate for it to state the overall level of development for which it is providing – although that should be clearly expressed, to ensure that it is stated to be an upper limit, a lower limit, or simply an indicative level.

2.67 Secondly, a neighbourhood development plan:

- must specify the period for which it is to have effect;
- may not include provisions relating to “excluded development” – principally minerals, waste disposal and nationally significant infrastructure projects; and
- may not relate to more than one neighbourhood area.²⁹

And only one such plan may be made for each area.³⁰

2.68 Thirdly, the planning authority is not obliged to submit a plan to a referendum if it breaches any EU obligation or any rights under the Human Rights Convention.³¹ Compliance with EU obligations has been considered already. None of those who submitted written representations, and none of those present at the pre-hearing

²⁶ TCPA 1990, Sched 4B, para 8(1)(b), (e), applied by PCPA 2004, ss 38A(3), 38C(5)(b), (c); see para 2.1 above.

²⁷ PCPA 2004, s 38A(2).

²⁸ Para 41-042 (see para 2.17 above).

²⁹ PCPA 2004, s 38B (1)

³⁰ PCPA 2004, s 38B (2)

³¹ PCPA 2004, s 38A(6).

meeting, have drawn my attention to any particular right under the Human Rights Convention that I should take into account in my examination of the Winsford Plan.

Other statutory obligations

- 2.69 A council is under a duty under section 11 of the Countryside Act 1968 to ensure that in the exercise of any of its functions relating to land they have regard to the desirability of conserving the natural beauty and amenity of the countryside. This may be relevant in the case of allocating in a neighbourhood plan a site for development at the edge of a built-up area.
- 2.70 A council is also under a duty, under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving the character and appearance of any conservation area when carrying out any function under the Planning Acts – which would obviously include the making of a neighbourhood plan.³²

³² although, oddly, not a neighbourhood development order – Planning (Listed Buildings and Conservation Areas) Act 1990, s 72(4), added by Localism Act 2011, Sched 12, para 26.

3. Housing

Introduction

3.1 I am well aware that the Winsford Plan is not just about the allocation of land for housing, and that it contains many other policies and proposals. However, it is the allocation of housing sites that is the fundamental basis for the Plan, and that has understandably attracted the most interest both from the public and from landowners. Indeed, the Plan itself states that

“one of the most important functions of this Neighbourhood Plan is deciding where new homes should go”.³³

3.2 I therefore consider housing first – starting with the overall of amount of housing to be provided, and then looking at the specific site allocations.

The amount of housing to be provided

3.3 Before turning to the allocation of individual sites, the starting point for an assessment of the housing policies in the Winsford Plan is to consider the amount of housing that should properly be provided. Paragraph 184 of the NPPF states that neighbourhood plans should not promote less development than set out in the Local Plan.³⁴

3.4 I have already noted that policies GS1 and H1 in the Local Plan were not “saved”, and have therefore not applied since 2009.³⁵ The former provided that sufficient land would be provided to satisfy demand for new housing, employment and services up to 2016. The latter built on that, providing that sufficient housing sites would be provided to accommodate a net addition to the Borough’s housing stock of about 5,500 dwellings between 2002 and 2016. The allocation of sites to provide that level of new stock was set out in policies H2 and H3, which were saved.

3.5 The result of that position is that since June 2009 there has been no development plan policy in force determining the amount of housing to be provided in Winsford over the coming years.

3.6 As noted earlier, it would, obviously, be easier to produce a neighbourhood plan if there was available a recently adopted local plan containing a precise figure for the number of new houses to be provided. However, it is also clear that the Government, rightly, does not expect that the provision of new housing should await the adoption of a new local plan – which in this case will probably not be until later in 2014 at the earliest.

³³ Para 2.1.20.

³⁴ NPPF, para 184

³⁵ See para 2.34 above.

- 3.7 In the meanwhile, a figure has to be selected. I have already noted that a neighbourhood plan should in practice be in harmony with an emerging local plan, where one exists.³⁶ It therefore seems to me that the figure in such an emerging plan for the total amount of housing to be provided is as good a starting point as any other. That does not mean that the Winsford Plan is slavishly following the figure in the emerging Local Plan – so that it would be invalid if the figure in the eventually adopted Plan were to be different. Rather, that figure is being used as a starting point. That seems to me to be precisely in line with the approach set out at paragraph 41-009 of the PPG.
- 3.8 Policy STRAT6 in the draft plan, based on the position at 2010, seeks the provision of 3,500 houses in Winsford. There are already – or at least there were at the time the *Basic Conditions* statement was prepared – some 265 houses built or permitted since 2010. The balance to be found is thus 3,235 units. The Winsford plan allocates sites for 3,362 (in Table H1); and also envisages further dwellings to be provided in the town centre (under existing Policy H3). That will therefore more than meet the demand envisaged in the emerging Local Plan. And of course the arithmetic will change as further permissions are granted.
- 3.9 It may be that, once the new Plan is finally adopted, it will specify as the amount of housing to be provided precisely the same figure as in the draft version, in which case there will be complete accord between the plans. It may be that the amount will be less, in which case the sites allocated in the Winsford Plan may be expected to provide for sufficient housing for longer. Or it may be, as suggested by some of the objectors at Winsford, that the amount in the final version of the plan will be greater than in the draft. As noted earlier, that too will be no problem, as the local plan will take precedence as being more recent. The additional sites will have been the subject of an SEA, so no problem will arise on that score.³⁷ If, for any reason, the local plan is delayed, it will be good that at least there is an allocation of sites in the neighbourhood plan.
- 3.10 This echoes the approach adopted by the High Court in *Tattenhall*:
- “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.”³⁸
- 3.11 There was considerable discussion at the hearing and in the submitted documents as to the possibility of having a reserve sites policy, or adjusting the wording to indicate that more sites might be required if the new local plan suggests a higher figure. However, on reflection, I consider that such wording would tend to obscure rather than assist. The Winsford Plan is stated to last for around fifteen years; if there is indeed a higher figure in the new local plan, so that within that time the allocated sites are used up sooner than expected, it may be appropriate to update the neighbourhood plan; but that is not impossible. And even if that updating does

³⁶ Para 2.44 above.

³⁷ *Tattenhall*, at para 72; see para 2.58 above and para 5.15 below.

³⁸ *Tattenhall*, at para 82; see para 3.27 below.

not occur, the neighbourhood plan will still be a good basis for development in the meanwhile.

- 3.12 I therefore consider that the figure in the emerging Local Plan is an appropriate starting point. Further precision is likely to be unhelpful, given that planning permission is granted from time to time for development on particular sites, and some permissions are not implemented, so that the precise picture is continually changing – as indeed has occurred already, since the Plan was drafted.
- 3.13 And there is nothing in the Winsford Plan to indicate that the figure is either an upper or lower limit – subject to my comments regarding clarification. Policy H1 in the Plan – and the associated site allocations – thus do not amount to a “cap” on development; they merely specify certain sites that are considered to be suitable, and as a matter of arithmetic total up the allocations for all of the sites thus allocated.

Amendments for clarification

- 3.14 However, there should be clarity as to what is really intended. There is no specific policy relating to the overall amount of housing to be provided, but there a number of references in the earlier parts of the Winsford Plan to the Local requirement being “3,150 units” (foreword), “at least 3,150 [new homes]” (para 2.1.19); and “a minimum of 3,150 new homes” (paras 4.4.3, 4.5.1). The allocation by the Steering Group is then described as being “up to 3,330 new homes ” (para 4.5.3). That is echoed by the text supporting the housing objective, on page 44, which refers to “a total of 3,300 new homes” (page 44). This finally becomes simply “3,362 homes”, as the total of the site allocations in Table 5.1, on the same page. Those last three figures indicate a spurious degree of precision, and suggest a firm limit.
- 3.15 **I recommend that the figures for:**
- **the total number of homes to be provided in the allocated sites, in the supporting text at the foot of page 44, and**
 - **the total at the bottom of Table 5.1 on that page,**
- both be stated as “around 3,362 homes”.**

- 3.16 I also note that Policy H1 is not the only policy providing for new houses, but it is likely that – as currently phrased – it may come to be seen as the only policy. It therefore needs to be clarified.³⁹ And it would be sensible to transpose policies H2 and H3. That would emphasise that existing Policy H3 is an allocation policy just as much as Policy H1, and that existing Policy H2 would in principle apply to new housing built on previously developed land just as much as to housing on new sites (subject, obviously, to site-specific considerations).

- 3.17 **I recommend that Policy H1 be reworded:**
- “Permission will be granted for residential development:**

³⁹ See para 2.18 above.

- as summarised in Table 5.1 and set out in the site-specific policies in section 6; and
- as provided in policy H2,

provided that it complies with the requirements set out in the other policies of this Plan and the Local Plan. Such compliance must be demonstrated by a Design and Access Statement to be submitted with each application.”

and that Policies H2 and H3 be transposed.

- 3.18 Implementing those two recommendations will, incidentally, help to make it plain that the Plan is not imposing a cap or limit on the amount of development. Thus the Plan will not be not saying that the two categories of development referred to in Policy H1 are the *only* ones that will be permitted.

National policies and advice

- 3.19 In deciding whether to recommend that it is appropriate to make the Plan, I am required to have regard to national policies and advice (basic condition (a)).⁴⁰ In the context of housing, I was referred on the first day of the hearing⁴¹ to the 2007 practice guidance on *Strategic Housing Market Assessments* and *Strategic Housing Land Availability Assessments*,⁴² and in particular to the emphasis at paragraph 17 of the former on the need to carry out an annual review of the land availability position. The Borough Council accepted at the hearing that the SHLAA produced in 2010 had formed the basis of the Winsford Plan; but maintained that it is reviewed annually. And a further SHLAA was produced in 2013.
- 3.20 Those two guidance documents were both cancelled in March 2014. They were replaced by sections in the new online PPG entitled *Housing and Economic Needs Assessments* and *Housing and Economic Land Availability Assessment*. The former notes as follows:

“Town/parish councils and designated neighbourhood forums (qualifying bodies) preparing neighbourhood plans can use this guidance to identify specific local needs that may be relevant to a neighbourhood but any assessment at such a local level should be proportionate. Designated neighbourhood forums and parish/town councils can also refer to existing needs assessments prepared by the local planning authority as a starting point.

The neighbourhood plan should support the strategic development needs set out in Local Plans, including policies on housing and economic development. The level of housing and economic development is likely to be a strategic policy.”⁴³

⁴⁰ See para 2.7above.

⁴¹ By E Reilly.

⁴²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11812/Strategic_Housing_Market_Assessments-Practice_Guidance.pdf and

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11500/399267.pdf

⁴³ PPG, para ID 2a-006.

- 3.21 It is therefore appropriate that the Winsford Plan is based on the SHLAA produced under the old regime, which will no doubt be updated in accordance with the new regime envisaged in the PPG.

Other general housing policies

- 3.22 Policies H2 to H6 seem to be in compliance with the basic conditions. The *Basic Conditions* statement explains why they are in accordance with national and local policy. That analysis seems to be sound, and I see no purpose being served by repeating it.
- 3.23 The objections that have been made to the general policy approach have in many cases been in essence objections to housing development generally. They would not be met by anything other than a much smaller allocation of housing sites, which would not be in accordance with the basic conditions. Others are thinly disguised objections to particular sites, which I consider under the following headings.
- 3.24 I am therefore satisfied that the housing policies in Chapter 5.6 are in accordance with the basic conditions, and make no further recommendations on that score.

Allocation of specific housing sites

- 3.25 Not surprisingly, much of the opposition to the emerging Winsford Plan has come from those who are opposed either to the inclusion of housing sites close to where they lived, or from those opposed to the exclusion of sites that they own. I deal with the two categories in turn.
- 3.26 Before turning to individual sites, however, I note in passing that the total number of housing units that could potentially be provided on all the possible housing sites – that is, both those that have been included in the Plan and those that have been excluded but are the subject of representations – considerably exceeds the total amount of housing need identified (as discussed above). In those circumstances, it is inevitable that there will have to be a measure of selection. Those objecting to the inclusion of a particular site will thus always be able to argue that another site could have been selected instead; others will argue that their sites should have been included. But I am very much aware that I do not have sufficient evidence to judge in detail as between all of the sites that might have been or could be allocated. My role is simply to consider the plan as it has been brought forward for examination, including the allocation of sites for particular categories of development, and to see whether it meets the basic conditions and the other statutory requirements.
- 3.27 In the *Tattenhall* decision, Supperstone J considered the challenge that had been made to Policy 1 in the Tattenhall Neighbourhood Plan which allowed development up to a limit of 30 houses per site. He held as follows:

“81. In my view the criticisms made by the Claimants under Ground 2 of the challenge fail to appreciate the limited role of the Examiner which was to assess whether the Basic

Conditions had been met. Condition (a) required Mr McGurk [the Examiner] to have regard to national policies and then consider whether it was appropriate that the Plan should proceed. Condition (d) required that “the making of the order contributes to the achievement of sustainable development”. The Examiner considered both conditions and was entitled, in my view, on the evidence, to conclude that “Policy 1 has regard to national policy and contributes to the achievement of sustainable development” (see para 33 above).

82. Further, I accept Mr Sauvain's submission that the only statutory requirement imposed by Condition (e) is 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. ...

83 I reject Mr Tucker's submission that Mr McGurk should have considered the consequences of Policy 1 and “its wider ramifications upon the delivery of housing” In my view Mr Sauvain correctly characterises this submission as confusing the limited role of the Examiner to have regard to national policy in considering a Policy applicable to 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”. ...

84 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 a discretion to determine whether or not it is appropriate that the Plan shall 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”.

85. Further I reject the Claimants' contention that it was incumbent upon the Examiner to enquire properly into the justification for the promotion of a 30-dwelling limit. This again, as Mr Sauvain submits, suggests a misunderstanding of a neighbourhood plan examiner's role; he is not considering the matter in the way that an Inspector would when looking at whether a local plan is “sound”.

- 3.28 It seems to me that a similar approach should be applied in the present case. I have already noted my role is limited. It was forcibly pointed out by the Town Council at the hearing that the purpose of an independent examination of a neighbourhood plan is not to conduct what would be, in effect, a beauty parade as between the various sites that were or were not included in the plan. I agree.

Inclusion of particular sites

- 3.29 Whilst I am not able to assess in detail the suitability of any particular site – nor should I even if I were able to do so – it is nevertheless necessary to ensure that a neighbourhood plan contributes to sustainable development; and the inclusion of site whose development was manifestly unsustainable would therefore not be appropriate.
- 3.30 It was suggested by some local residents that various objections to particular sites – in relation to matters such as access, geology, and flooding – reflected on the extent to which the Winsford Plan would contribute to sustainability.⁴⁴ I am not

⁴⁴ Doherty.

unsympathetic to such concerns – there is, after all, no particular reason why people should be expected to welcome development that spoils views and other amenities that they presently enjoy. The fact that similar concerns were no doubt raised (and presumably considered to be outweighed by other factors) when all of the existing houses in Winsford were built does not in any way lessen the unhappiness felt now.

- 3.31 However, subject to my comments below, such concerns seem in part to lead inexorably to the conclusion that no development at all should take place on the sites in question. That would lead to the Plan making an insufficient contribution to meeting housing need, and thus failing to comply with the basic conditions. Alternatively, they relate to matters that would properly form the subject of detailed consideration at the time when a planning application is, in due course, submitted. As such they are outside my remit.
- 3.32 Thus, for example, the problems that might arise if the existing Rilshaw Lane were to be used as the only means of access to the Station Quarter sites (S1 to S3) could no doubt be overcome by the construction of a new access route, as shown on the lower plan on page 65. And the impact of new development on site STC4 on the Conservation Area could be minimised or eliminated by careful design.⁴⁵ Both points are reflected in the relevant implementation policy in the Plan. But such problems cannot lead to the sites in question simply being excluded altogether.
- 3.33 It may be, of course, that some of the site-specific problems prove to be such that solving them leads to the development of a particular site becoming uneconomic. However, the amount of development proposed means that other sites can still come forward to provide the required level of housing provision in the short and medium term future; and it may be that the Plan will need to be updated sooner than might otherwise be the case. That is a common problem where a plan allocates for development land that subsequently transpires to be either unavailable in principle or unsuitable in detail.
- 3.34 More generally, I note the process that has been undertaken in the course of the preparation of the Plan, which has involved a thorough examination of each possible site. And I have visited all of the sites that have been allocated or are in contention.
- 3.35 I am therefore content that none of the allocated housing sites are such as to lead to the Plan failing to meet the basic conditions; and I do not recommend any amendment on that basis.

Detailed points

- 3.36 It was noted at the hearing that there was some lack of clarity in some of the plans showing the extent of each site. For each group of sites, there are two plans – the upper one in each case shows in red the precise boundary of each (as far as is possible given the scale of the mapping), and also indicates by stippling the public

⁴⁵ And see paras 5.26, 5.27.

open spaces to be retained. It was accepted that it would be helpful to adjust the red-line boundaries so as to make clear the extent of the open space that was associated with each development site.

- 3.37 The upper plan on page 65 shows that to the south west of the large site S 1 is an area of open space between it and the Flashes. The red line between that open space and the development area should be removed, to make it clear that the two are linked. This should be compared with Site STC 2, which is shown as being linked to an adjacent area of open space to the east (although the labelling of the sites is not very clear). And the relationship between Site NTC 2 and the open space to the west is not clear.
- 3.38 **I recommend that the plans showing the boundaries of Sites S 1 and NTC 2 be adjusted to show clearly the extent to which each is linked to associated open space provision.**
- 3.39 The area objective for the sites south of the town centre (STC 1 to STC 4) refers to the need for a master plan. But this is not repeated in the site-specific design principles for sites STC 2 to STC 4 (the development of site STC 1 is already under way). This should be rectified in order to increase clarity, and thus to ensure compliance with the basic conditions.⁴⁶
- 3.40 **I recommend that Policy STC 2-3 is replaced with a new Policy STC 2-4:**
- “Sites STC 2 to STC 4 must be masterplanned together to deliver a comprehensive approach to the planning of this area, including open space, leisure uses, any necessary extension to St Chad’s Primary School, and improvements to local highways. Developers of any of these sites must submit a Design and Access Statement that demonstrates how the principles set out in the masterplan and in Policies STC 2 to STC 4 are incorporated within their proposals.”**
- 3.41 Similarly, the development of Sites S1, S2 and S3 are all equally subject to the same need for a master plan to be produced; but only Sites S2 and S3 refer to this in the site-specific design principles.
- 3.42 **I recommend that a new bullet point is inserted at the start of Policy S1B, identical to those in Policies S2B and S3B.**
- 3.43 Several sites have been mentioned in the Plan as presenting a flooding risk. However, there is some apparent inconsistency. Site NTC 6 is identified as being wholly within Flooding Zone 3a, and is allocated for housing. It has planning permission, issued following consultation with the Environment Agency, which was satisfied as to its suitability for development. Site NTC 7 is described as being within Zone 3a/2, but with no development to take place in Zone 3a.
- 3.44 Flooding is an issue that is of increasingly great concern, particularly as those who move into new housing rightly expect to be able to rely on planning authorities having checked rigorously that there will be no risk of flooding other than in wholly

⁴⁶ See para 2.18 above.

exceptional circumstances. This was raised at the first day of the hearing, and it was accepted that some minor amendments might be necessary.⁴⁷

3.45 **I recommend that a new bullet point be inserted between the second and third bullet points in Policy NTC 7, as follows:**

- **A flood risk assessment will be required to accompany any planning application for the development of all or part of the site.**

Omission of specific housing sites

3.46 I now turn to the objections to the emerging Winsford Plan made by those who are opposed to the exclusion of sites that they own.

3.47 However, before turning to the details of the sites, I reiterate my comment above that, in drawing up a plan of this kind, there will inevitably be a measure of selection. There is of course nothing to prevent the owner of a site that is not included coming forward with a development proposal – the development plan (including the neighbourhood plan) must after all be considered alongside all other material considerations in the determination of any application for planning permission. But a plan, if it is to have any point, cannot simply include all possible sites; it must simply identify enough sites that are suitable to be developed now, in line with its overall strategy for the future of the area.

3.48 The first category of excluded sites included two sites for which planning permission had already been granted or was expected by the landowner to be forthcoming.

3.49 The small site (of 4.79 ha) on the corner of Swanlow Lane and Welsh Lane⁴⁸ – just to the south of St Chad’s Church – was the subject of a grant of planning permission in November 2013 for the erection of 116 houses, subject to the completion of a section 106 agreement, which is now (or at least was at 30 May) with the Borough Council for signing. It may therefore be assumed that this site is likely to be developed in the relatively near future.

3.50 The site on the north-west side of Darnhall School Lane, adjoining Peacock Drive, is similar in size, at 6.5 ha, but only 2.02 ha (providing for around 50 houses) lies within the area of the Winsford Plan. It was the subject of an application for outline planning permission, which was refused solely on the ground that its development would be premature in the light of the emerging Plan. The owners appealed against that refusal, and the Borough Council decided to offer no evidence at the inquiry (which was scheduled to take place in June 2014) – although the Town Council and some local people were still opposed to the development. The owner of the land accordingly anticipates that planning permission will shortly be forthcoming.

3.51 The 6.5 ha site is itself part of a much larger site, 42 ha in area, extending up to Radcliffe Road at its north-western boundary, and bounded to the south-west by

⁴⁷ Minutes, Day One, Para 7.2.

⁴⁸ Objection WNP 46

the drive leading to Beech House Farm.⁴⁹ All of that larger site (except the 2.02 ha) lies outside the Winsford Plan area.

- 3.52 At the hearing, the Town Council explained that the two sites had not been included within the Winsford Plan for the simple reason that they did not fit in with the vision outlined in the Plan, which was focused on encouraging development nearer the centre of the town rather than on the outskirts. That of course had not prevented the owners of the two sites submitting applications; but that was no reason to allocate them.
- 3.53 The second category of sites was those that had been identified, either in the SHLAA or elsewhere, as being suitable for development but had not been brought forward. These included sites at Shepherds Fold Drive, Bradford Road, and Westholme Farm, all along the northern perimeter of Winsford.⁵⁰ These too had been excluded since, at this stage, they too did not meet the vision underlying the Plan to the same extent as those sites that had been included. The suggestion was made that such sites should be allocated as “reserve sites”, to be developed if the Local Plan called for more houses in Winsford or if for any reason the allocated sites proved to be insufficient.
- 3.54 I have already concluded that neither the approach adopted in the Winsford Plan as to the overall amount of housing to be provided – following the emerging Local Plan – nor the inclusion of those sites that have been selected, leads the Plan to fail to comply with the basic conditions. I have noted that a plan is bound to select some sites and reject others. And I have noted my limited role as an examiner of a neighbourhood plan. Against that background, I see no reason to question the decision of the council to exclude the five sites mentioned above, and no doubt others, from the Winsford Plan. That does not mean that they will never be developed; but there is no need to include them at this time, and the Town Council has produced convincing reasons as to why it has preferred to include other sites in pursuing its chosen vision.
- 3.55 I therefore do not recommend that any additional housing sites are included.

⁴⁹ Objection WNP 50

⁵⁰ Objections WNP 47, WNP 51, and WNP 57.

4. Other policies

Introduction

- 4.1 Although much of the discussion, both in the written comments on the emerging Winsford Plan and at the hearing, focused on its housing policies and allocations, the Plan in fact relates to much more than just housing.
- 4.2 Section 5 of the Plan thus also contains general policies relating to Image and identity; the Weaver Valley; the Town Centre; Employment; Community, Social and Leisure; and Transport and Movement. And many of the sites highlighted in Section 6 are allocated for purposes other than (or in addition to) housing and associated open space – notably the town centre (TC) Sites; Sites NTC 6 and STC 3 (leisure uses); Sites S4 and S5 (commercial uses); and Sites W6, W7 and O5 (employment uses).
- 4.3 There was in general little disagreement on these matters. The relevant general policies, objectives and site allocations appear to be well-considered, and generally non-contentious. They do not cause the Plan to fail to comply with the basic conditions. I therefore do not recommend any changes to the non-housing content of the Plan, with one relatively minor exception.
- 4.4 The remainder of this Chapter therefore merely picks up one or two points that seem to have caused some concern.

Image and identity; the Weaver Valley

- 4.5 The general policies in Chapters 5.2 and 5.3 are unexceptionable. Some comments have been made by local people, particularly in relation to various proposals for access to and around the Flashes, as to the practicality of what is proposed. In a few cases those concerns relate more to economic viability – almost anything can be achieved if money is no object – but that is no reason to exclude the proposals. More generally, the proposals for improvements will be brought about in association with housing development, which will provide the necessary land acquisition and finance.

The town centre

- 4.6 One factor that became abundantly clear to me as my examination proceeded was the general level of dissatisfaction with the Town Centre. Not surprisingly, the Winsford Plan seeks to remedy that by including a range of general policies in Chapter 5.4 and site-specific (TC) policies in Section 6 aimed at rejuvenating and improving the central area.

4.7 At the hearing, there was general agreement between the Councils and the agents acting for the owners of the Centre that the wording of the policies need to be amended to provide more support for the proposals now emerging for the its redevelopment and enhancement.

4.8 **I recommend that Policy TC0-5 be amended as follows:**

- **Any development proposals must demonstrate how they relate positively to the wider Town Centre.**
- **Development should seek to achieve an outward-looking modern retail environment, by:**
 - **creating a range of modern retail units, which wherever possible present active frontages onto existing streets; and**
 - **ensuring an appropriate design relationship between surface parking, service areas and the public realm.**
- **Existing pedestrian routes should be re-aligned where possible, so that they are direct.**
- **The market should be positively integrated as far as possible, by making it more visible and creating direct and good quality pedestrian routes to it.**
- **Signposting to the Centre should be improved.**

Business needs

4.9 Relevant policies are contained in Chapter 5.5 and site-specific policies O5, W7 and W8.

4.10 It was suggested at the hearing that the Winsford Plan was not in conformity with paragraph 160 of the NPPF, emphasising the need for planning authorities to have a clear understanding of business needs. This, it was said, supports the third bullet point in paragraph 17, which provides that planning should drive and support sustainable economic development.⁵¹ And paragraph 20 is to similar effect.

4.11 The Borough Council pointed out that the need for a detailed understanding of business needs in fact refers to its role in relation to the local planning process, rather than directly to neighbourhood plans; the same is true of paragraph 20. However, I am satisfied that the desirability in general terms of supporting economic development was firmly in the mind of those drafting the Winsford Plan – see, for example, Theme 4 in Chapter 4.1. I also note the duty laid upon planning authorities to co-operate with qualifying bodies in producing neighbourhood plans.

4.12 I accordingly do not recommend any modification in that regard.

⁵¹ E Reilly.

Open spaces and the natural environment

- 4.13 It was suggested at the hearing that the Winsford Plan was not in conformity with paragraphs 76 and 77 of the NPPF, which provide that neighbourhood plans should identify green areas of particular importance to local communities.⁵² However, paragraph 77 emphasises that the Local Green Space designation would not be appropriate for most open areas or green space, and in particular not for an extensive tract of land.
- 4.14 I understand that some of those making representations wished to retain unbuilt-on the open land at the edge of Winsford. However, no-one identified in their representations any green area suitable for designation as a Local Green Space; and I accordingly do not recommend any modification in that regard.
- 4.15 I consider elsewhere in this Report the general duty under the Countryside Act 1968.⁵³
- 4.16 More generally, it was suggested at the hearing that the Winsford Plan was not in conformity with paragraphs 110-113 of the NPPF.⁵⁴ Paragraphs 110-111 provide that plans to meet development needs (which include neighbourhood plans) should allocate the land with the least environmental or amenity value, and encourage the use of brown field sites. Paragraphs 112-113 relate to local plans and are not directly relevant.
- 4.17 Here too, I understand that those making such representations wish to retain unbuilt-on the open land at the edge of Winsford. However, the selection of sites for development is inevitably a delicate balancing act, and will equally inevitably involve the loss of some open space. The Winsford Plan has been drafted with such considerations well in mind; see for example paragraph 4.1.3. Whichever site is allocated, those living nearby will be disappointed.
- 4.18 I do not recommend any modification in that regard.

⁵² J Doherty.

⁵³ See para 5.25 below.

⁵⁴ J Doherty.

5. General points

Introduction

- 5.1 In the two previous Chapters of this Report I have considered housing and other specific topics. In this Chapter I focus on general points of principle, and various minor points of detail, that apply in relation to the Plan as a whole.

Conformity with the adopted and emerging Local Plans

- 5.2 As noted earlier, a neighbourhood plan is required to be in general conformity with the strategic policies contained in the development plan for the area (basic condition (e)).⁵⁵ There is no explicit requirement that it must also be in accordance with the emerging neighbourhood plan, but it should be in general harmony with it.⁵⁶
- 5.3 The Winsford Plan has been written as though there were a statutory requirement for it to be in line only with the emerging local plan. It follows from the general principles outlined earlier that it is sensible that the Winsford Plan is in reality aligned with the emerging plan, as much as with the current development plan, but the language used needs to reflect accurately the true position in law. The following recommendations seek to achieve this, emphasising that the new plan arises out of the existing local plan as well as the emerging local plan.
- 5.4 I imagine that the Foreword will need to be rewritten to some extent, and updated to reflect the current position. **If the third paragraph of the Foreword (as currently drafted) is to be retained in some form, I recommend that the last two sentences be replaced with wording along the following lines:**

“The Neighbourhood Plan conforms to this, and has identified possible sites to accommodate this level of development.”

- 5.5 I recommend:
- (a) that paragraph 1.1.5 (page 4) be amended by the omission of the words “and emerging Cheshire West Local Plan” in line 9;
 - (b) that the words from “This Plan has been developed” to the end of paragraph 1.1.5 be renumbered as paragraph 1.1.6, and later paragraphs renumbered accordingly; and
 - (c) that the expected date for the adoption of the emerging Local Plan be updated as appropriate.
- 5.6 I recommend that paragraph 1.1.10 (on page 5) be amended as follows:

⁵⁵ See para 2.32 above.

⁵⁶ See para 2.44 above..

- (a) after the entry headed “for the whole of England” be inserted a new entry as follows:

for the area of the former Vale Royal Borough Council:

The saved policies of the Vale Royal Borough Local Plan Review was the key local development document and, for as long as it remains in force, provides the strategic policies for the Vale Royal BC area.

The Vale Royal Plan will be replaced by the Cheshire West Local Plan once that has been adopted

Saved Vale Royal
Borough Local Plan
Prepared by former Vale
Royal Borough Council

- (b) the arrow from the “National Planning Policy Framework” box to the “emerging Cheshire West Local Plan” box be adjusted so that it misses the new “Saved Vale Royal Borough Local Plan” box; and a new arrow be inserted from the new box to the “Winsford Neighbourhood Plan” box;
- (c) the last part of the paragraph (to the left of the stylised map) be replaced with the following:

“1.1.12 A neighbourhood plan cannot promote less housing and economic development than provided for in any extant local plan, because it must be in conformity with the strategic policies in the local plan. However, the policy in the Vale Royal Local Plan providing for an overall level of housing is no longer in force, so the Neighbourhood Plan has been drafted to reflect the corresponding policy in the emerging Cheshire West Local Plan.”

and that subsequent paragraphs be re-numbered accordingly.

5.7 I recommend that paragraph 4.5.1 (on page 29) be amended by:

- (a) the replacement of “required in Winsford” (line 4) with “expected to be required in Winsford by the emerging Local Plan,” and
- (b) the replacement of “must” (line 5) with “should”.

Compliance with the SEA Directive

5.8 In the case of the Winsford Plan, the requirements of the SEA Directive are said by the Councils to have been met by the preparation of the document entitled *Sustainability Appraisal*. That refers to the Directive and the 2004 Regulations. It analyses the two main options considered in the preparation of the Plan, and the various site allocations, albeit in relatively summary form.

- 5.9 That contention is strenuously opposed by some of the objectors.
- 5.10 The *Sustainability Appraisal* does not consider every possible option for the development of Winsford – in particular, it does not analyse in detail the carrying out of development on various sites that have not been allocated, including those in the south-western quadrant. But article 5(1) only requires an assessment to consider reasonable alternatives to the preferred option, having regard to the objectives and geographical scope of the plan – not all possible alternatives. And the Appraisal does not opt for Vision B (focussing on the town centre) arbitrarily, but assesses carefully both visions. Indeed, it is noticeable that sites in Over, presumably including (or at least similar to) those in the south-west quadrant, score least highly in the analysis.
- 5.11 The sustainability appraisal does not explicitly consider a “do nothing option”. However, that approach would wholly fail to conform with Government policy, which requires plans to bring forward a reasonable supply of housing land. It also would also fail to comply with the emerging local plan, which will require land to be allocated for housing and other purposes – albeit that the precise amount to be allocated is not yet clear.
- 5.12 It is of course true, as it was at Tattenhall, that the Winsford Plan will in practice soon have to be considered alongside the new Local Plan; but, again as at Tattenhall, that will have its own sustainability appraisal.
- 5.13 In particular, I note that the Inspector considering the new Local Plan has concluded that it is not “sound” in a number of respects,⁵⁷ but has indicated that it could be made sound through a series of modifications. Clearly I cannot know what those modifications will be – or when the new Local Plan will be adopted.
- 5.14 Some of those representing landowners in Winsford made representations to the effect that the new Local Plan may well allocate more sites in Winsford than are allocated in the Winsford Plan. And one may imagine that those whose sites are not allocated in the Winsford Plan will take steps to ensure that their sites are allocated in the Local Plan.
- 5.15 However, as pointed out by the Local Plan Inspector, such further allocations would need to be the subject of a further sustainability appraisal. And in the event of a conflict between the two plans – if, for example, the new Local Plan allocates a site in Winsford that is not allocated in the Winsford Plan – the Local Plan, as the more recent plan, will prevail.⁵⁸ But that does not affect the appropriateness of allocating the sites that have already been identified in the Winsford Plan that is before me. Nor does it affect the validity of the sustainability appraisal of such allocations that has been already carried out.
- 5.16 I accordingly conclude that the sustainability appraisal of the Winsford Plan that has been carried out is sufficient to amount to compliance with the SEA Directive.

⁵⁷ See letter to CWACC, 14 July 2014.

⁵⁸ PCPA 2004, s 38(5).

Other EU obligations and ECHR rights

- 5.17 I am not aware that any of the policies in this Plan are likely to have a significant effect on any European site; nor has anyone suggested that they would. And obviously they will have no impact on any offshore site.
- 5.18 Further, none of those who submitted written representations, and none of those present at the pre-hearing meeting, have drawn my attention to any other relevant EU obligation that I should take into account in my examination of the Winsford Plan. In particular, other potentially relevant EU obligations might arise under the Waste Framework Directive, the Air Quality Directive, or the Water Framework Directive. However, none of those would seem to be relevant in this case.
- 5.19 For completeness, I note that the Plan does not appear to be in breach of the European Convention on Human Rights

The contents of a plan must comply with other statutory requirements

- 5.20 As noted earlier, in addition to the basic conditions, there are other statutory requirements that are relevant to the making of a neighbourhood plan.
- 5.21 First, policies in a proposed plan must relate to the development and use of land.⁵⁹ I initially considered that there were some provisions in the Winsford Plan that were arguably not relating to the development and use of land; however, on reflection, these are all within the general supporting text or in the “quick wins” sections. The latter, in particular, are clearly distinguished from the formal “policies” in the Plan. I am satisfied that all of the policies do relate to the development and use of land, and I therefore make no modification on that score.
- 5.22 Secondly, a neighbourhood development plan must specify the period for which it is to have effect; may not include provisions relating to “excluded development” – principally minerals, waste disposal and nationally significant infrastructure projects and may not relate to more than one neighbourhood area. And only one such plan may be made for each area.⁶⁰ In this case, the Winsford Plan specifies that it will set out the direction for Winsford until 2030. It does not include any provisions relating to excluded development. It relates only to Winsford; and is the only neighbourhood development plan relating to that area. It therefore complies with all of these requirements.
- 5.23 Thirdly, in the event of a conflict between a policy and other material in a neighbourhood development plan, the policy must prevail.⁶¹ This is no more than a principle of law, and therefore does not have to be stated explicitly within the plan. However, it would be helpful if the Winsford Plan were to contain such a provision.
- 5.24 **I recommend that a paragraph be inserted (after paragraph 5.1.2, on page 35) to the following effect:**

⁵⁹ See para 2.64.

⁶⁰ See para 2.67.

⁶¹ PCPA 2004, s 38B(3)

“5.1.3 If to any extent a policy in the Neighbourhood Plan conflicts with any other statement or information in the Plan, the policy is to prevail.”

Other statutory obligations

- 5.25 The duty under section 11 of the Countryside Act to have regard to the desirability of conserving the natural beauty and amenity of the countryside is relevant in the case of allocating for development sites at the edge of the built-up area of Winsford. However, even if one or other of the councils did not explicitly consider its duty under the 1968 Act, I have no doubt that they were both well aware of the fact that development in such locations would have an impact on the beauty and amenity of the countryside, and took that into account in considering which sites to promote.
- 5.26 The duty under section 72 of the Listed Buildings Act to pay special attention to the desirability of preserving the character and appearance of any conservation area is relevant to the making of the Winsford Plan insofar as it relates to the conservation area centred on St Chad’s Church. It is perfectly plain from the documents I have seen that, although the Plan does not explicitly refer to section 72, the councils have indeed paid special attention to the impact of their proposals on that conservation area. I note that some local residents claim, in effect, that this should have led to no development (or at any rate less development) being allowed in that area, but that is not what the Act requires.⁶²
- 5.27 I have already indicated that I am satisfied that there is no fundamental conflict; many conservation areas contain some new development, and the crucial issue is how the new housing is designed and located.⁶³ Indeed, it is noteworthy that Policy STC 4 requires that development must make a positive improvement to the conservation area and its setting.⁶⁴
- 5.28 I see no need to recommend any modifications to comply with any of these obligations.

Site ownership

- 5.29 Each of the development sites policies in Section 6 of the Plan notes the ownership of the site in question. I can understand why it was helpful to consider the current and likely future ownership of a site when considering whether it could sensibly be allocated – and this is perfectly properly reflected in the land availability plan (Figure 4.1.2). However, the suitability of a site does not only, or even principally, depend on its ownership; some owners may not wish to be publicly identified; and of course the pattern of ownership may in any event change.
- 5.30 **I recommend that the ownership of each site identified in Section 6 of the Plan be omitted.**

⁶² Baxter

⁶³ See para 3.32.

⁶⁴ See *Chandler v Secretary of State* [2007] 2 P&CR 24 at para 24.

Missed opportunities

- 5.31 There was a brief discussion at the hearing in relation to some specific sites that had been omitted, and were possibly missed opportunities.⁶⁵ An explanation was provided as to why they had been omitted, in view of either site-specific issues or the overall strategy underlying the Plan.
- 5.32 It is inevitable in a document such as this that some sites will be excluded that at a later date become available – just as some of those that are included subsequently transpire to be unavailable. That is one reason why planning applications are to be determined in the light of all material considerations, not just the development plan. It may be, therefore, that some of those “missed opportunity” sites – or others – will in due course be developed.
- 5.33 However, I am satisfied that the explanation given for the exclusion of the sites referred to was satisfactory, at least in the light of the information currently available.
- 5.34 I therefore do not make any recommendations on that score.

Other minor points

- 5.35 Given that the Winsford Plan is stated (on the cover and elsewhere) to have been prepared jointly by three bodies, it is not helpful for there to be references – other than in the Foreword – to actions that “we” have undertaken, or will undertake. It would be preferable for the Plan to state clearly who has done or is doing what. See page 6 (“what we’ve done”); page 20 (paragraph 4.1.7: “we need to think”); page 23 (paragraph 4.2.2 (“we have considered”); page 29 (paragraph 4.5.5: “we reviewed”); page 32 (paragraph 4.5.6: “we have set out”).⁶⁶
- 5.36 **I recommend that the passages referred to in the previous paragraph be clarified.**
- 5.37 Finally, in the course of my examination of the Winsford Plan, I noticed several minor typographical, grammatical or other errors. These are listed in Annex A. There may well be others.

⁶⁵ Hignett; see Minutes of Day One, para 8.1.

⁶⁶ See para 2.18 above.

6. Other statutory requirements: the making of the Plan

Introduction

- 6.1 Some of the matters referred to in paragraph 2.1 of this Report refer to the making of the Plan, rather than to its contents. I consider those matters in this Chapter. At the end of the Chapter I consider the question of the area for a referendum.

The making of a proposed plan must have complied with the relevant statutory requirements

- 6.2 The production of a plan and its independent examination must be in accordance with the provisions of Schedule 4B to the 1990 Act, and the regulations made under that Schedule – in particular with reference to the publicity given to the proposal to prepare the plan and the contents of the draft plan once made.⁶⁷
- 6.3 In this case, the only objection on procedural grounds to the Winsford Plan was from a number of local residents who considered that there had been insufficient publicity to the emerging Plan. This was raised in a number of the responses to the consultation. I accordingly invited a selection of local residents to the hearing, to give them a chance to explain in more detail the basis of their concern.⁶⁸
- 6.4 The actual statutory requirement is in regulation 14 of the 2012 Regulations, and is as follows:
- “Before submitting a plan proposal to the local planning authority, a qualifying body must—
- (a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area—
 - (i) details of the proposals for a neighbourhood development plan;
 - (ii) details of where and when the proposals for a neighbourhood development plan may be inspected;
 - (iii) details of how to make representations; and
 - (iv) the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first publicised; ...”
- 6.5 It is clear that this cannot require a neighbourhood plan to be brought to the attention of all the people who live or work in an area, including infants and hospital patients.⁶⁹ There has to be a balance between what might be ideal, in the absence of financial and other constraints, and what is practical.

⁶⁷ TCPA 1990, Sched 4B, para 4, applied by PCPA 2004, ss 38A(3), 38C; NP(G)R 2012, regulations, 14, 16.

⁶⁸ In particular T Baxter, J and D Doherty, E and H Reilly.

⁶⁹ Although I note that children were in fact fully involved in this case.

- 6.6 Such concerns were no doubt anticipated by those creating the statutory scheme for neighbourhood plans, as the Regulations provide that the submission of a proposed neighbourhood plan by a qualifying body to a planning authority is to be accompanied by a “consultation statement”, which is to explain who was consulted, how, and with what result.⁷⁰ It appears that the statement is not to be limited to the consultation required to be carried out under regulation 14.
- 6.7 The consultation that was carried out in this case was described fully in the *Consultation Statement*, issued in April 2013, and summarised orally by Mrs Rowlands at the Hearing. In short, an initial consultation was carried out, referred to as Stage 3, in or around March 2012; workshops and focus groups to develop and test options in April / May 2012; consultation on the preferred option (Stage 4) in July 2012; and further workshops and focus groups, to test policies and proposals, in September 2012. The consultation at Stage 3 and Stage 4 was not required by regulation 14 (see above), but was carried out as a matter of good practice. The consultation that was required by the Regulations (Stage 5) was then carried out from November 2012 to January 2013.
- 6.8 The *Statement* explains that, at each stage, the Town Council provided a list of known contacts. In addition, at Stage 3, less than 20 people took part in each of two workshops, around 200 people took part in the drop-in events, and 62 completed questionnaires. At Stage 4, 130 questionnaires were completed. The Winsford Plan was significantly modified in response to the Stage 4 consultation.
- 6.9 At Stage 5, the special newsletter *Winsford Voice* was delivered to every household. This was mainly done by a leaflet-delivery company but, after it emerged that the company had missed out the Rilshaw Lane area, the ward councillor delivered copies by hand to those who had been missed out. There was a ten-week consultation period. A number of other means were used, including electronic circulation of the newsletter to those known to be interested; exhibition boards were displayed at libraries, and articles were published in the *Winsford Guardian*. And some 15,000 leaflets had been distributed.
- 6.10 116 questionnaires were received at this stage. The analysis of those in the *Consultation Statement* suggests that the support for the emerging Plan was by no means unanimous; but it suggests, plausibly, that this may have been the result of pressure groups having formed to comment on specific issues, such as development on particular sites.
- 6.11 The residents complained that the consultation had been statistically non-representative and under-represented in some areas (as noted in the *Statement*); there was inadequate notice of meetings; that the website appeared to have been manipulated in one instance; that there had been a complete failure to acknowledge there was anything wrong with the process; and that there had been no willingness to change any content of the Winsford Plan.
- 6.12 Comparison was made between the process that had been undertaken at Winsford and the process adopted during the course of preparing a neighbourhood plan

⁷⁰ NP(G)R 2012, regulation 15(1)(b), (2).

Thame in Oxfordshire, where contact had been made with some 800 people out of a total population of 11,000; but even there criticism had been made of the narrowness of the demographic profile of those who had responded – being almost entirely middle-aged and white.

Consultation: conclusion

- 6.13 I recognise that local people in Winsford feel that they were not sufficiently involved. But I also know that those who are opposed to a particular proposal will often claim that it has not been sufficiently publicised – by which they generally mean that it should have been given wide publicity sufficient to generate the level of opposition that they know (or feel) to exist. Those who did respond to the Stage 5 consultation, and in particular those who I invited to attend the hearing,⁷¹ thus claimed that the initial consultation had been inadequate, and that important local knowledge had been lost. But they largely represented the areas likely to be most affected by the proposed housing allocations; and arguably nothing other than the removal of those allocations would have fully satisfied them.
- 6.14 It is certainly unfortunate that the *Winsford Voice* newsletter was not distributed in the Rilshaw Lane area, but that was rectified – albeit apparently without an addendum explaining that the time for responses had been extended. I do not think that it can be credibly suggested that that was a deliberate plot to conceal what was happening. And there were a number of other forms of publicity, even though I accept that a special newsletter is better than, for example, an article in the *Winsford Guardian*, or even 44 such articles.⁷²
- 6.15 It is easy to criticise the Council for having made leaflets available in the Library, as they would not have reached those who did not use libraries; but they have to be somewhere. And the drop-in centre was criticised for being in an under-used shopping centre; but it is difficult to see what other venue would have significantly better.
- 6.16 Overall, I am left with an impression that the consultation process was undertaken conscientiously and reasonably thoroughly, but that the results were far from ideal, in that it did not bring the emerging plan to the notice of many of those living and working in Winsford. It largely focussed, at least initially, on those who were already known to the Town Council to be involved in the community in one way or another. And the Council itself made it plain in the *Statement* that the numbers of people responding to the various consultation activities had been relatively low, and that fewer people had got involved than it would have liked.
- 6.17 However, that may be no more than a fairly general pattern whereby it is difficult to engage those who are not either already interested and active or opposing particular proposals.

⁷¹ Particularly Mr Baxter, Mr and Mrs Doherty and Mr and Mrs Reilly.

⁷² The number of such articles that were, apparently, published; see Minutes of Hearing, Day One, para 4.22.

- 6.18 It is to be hoped that the consultation process generally improves, as successive neighbourhood plans are prepared in other parts of the country, and experience is gained and shared. But I conclude, on balance, that the consultation exercise undertaken in this case was sufficient to publicise the Winsford Plan, in a manner that was likely to bring it to the attention of people who live, work or carry on business in Winsford. The requirements of regulation 14 and 15 have therefore been satisfied.

Other statutory obligations relating to the making of the Plan

- 6.19 Where a planning authority is faced with a proposal to make a neighbourhood plan that is in essence very similar to a previous proposal that has been rejected, it may decline to consider it. That does not apply in this case. In any other case, it must consider whether the proposal to prepare a draft plan has been properly made, and submit it for independent examination.⁷³ The Borough Council in this case has acted entirely correctly.
- 6.20 The Town Council, in preparing the Winsford Plan, has undertaken an equality impact assessment, which examined the impact of the Plan on groups with protected characteristics under the Equality Act 2010. This was stated in the *Basic Conditions Statement* to be part of a test for compatibility with EU regulations, but is in fact more properly categorised as compatibility with general statutory obligations on both the Town Council, in preparing the Plan, and on the Borough Council, in taking it forward.

The area for a referendum

- 6.21 Finally, in the event that I recommend that the Winsford Plan be submitted to a referendum, the area for that referendum could extend beyond the area to which the Plan relates – that is, the parish of Winsford.
- 6.22 At the hearing it was suggested, albeit not with great force, that the residents of Middlewich should be given an opportunity to express a view on the Winsford Plan. This was largely because of the feared impact of additional traffic arising as a result of the development of the new housing sites in the Station Quarter.
- 6.23 However, it is inevitable that the carrying out of development towards the edge of one neighbourhood will have some impact on the next one; and this will no doubt be the subject of anxious scrutiny at the time of any planning application. If such impact is both unavoidable and unacceptable, permission would no doubt be refused; otherwise, any permission would be subject to conditions requiring the adverse impacts to be mitigated as far as possible. Clearly the developments in question in this case would have some traffic impact on surrounding areas; but I have seen nothing to suggest that the impact in this case would be exceptional.

⁷³ TCPA 1990, Sched 4B, paras 5, 6, applied by PCPA 2004, ss 38A(3).

- 6.24 I also note that Middlewich Town Council responded at the publicity stage; and its Mayor attended a consultation event. No suggestion has been made by that Town Council that the inhabitants of Middlewich should be offered a referendum; and no-one has suggested that in any written representations.
- 6.25 I am satisfied that, if a referendum is to be held, it should be only in the parish of Winsford.

7. Overall conclusion

- 7.1 The Winsford Plan, taken as a whole, is clearly structured, and well written. It sets out a positive vision for the future of Winsford; and will provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and efficiency. It therefore complies with the core principles in the NPPF;⁷⁴ and thus to that extent with the basic conditions.
- 7.2 In particular, sections 1 to 4 describe clearly the process that has been undertaken to consider possible options for the overall pattern of development in Winsford over the next fifteen or so years. It is not for me to substitute my judgment for that of those who produced the Plan; and I am clear that the selection of the key themes and the preferred option for the location of development is in conformity both with the local plan and the emerging plan (in its current form).
- 7.3 Equally, the general policies in Section 5 of the Plan and the site-specific policies in Section 6 are in accordance with national policy and advice and, so far as applicable, with adopted and emerging local plan policy, and will contribute to the achievement of sustainable development. In particular, the relevant site allocations provide for an appropriate level of housing, without imposing a cap on overall numbers. Each planning application will need to be determined in accordance with the new local plan, once it has been adopted, and all other material considerations; and this will resolve many if not all of the concerns raised in the course of my examination.
- 7.4 In the course of this Report I have made a few recommendations as to changes to the Plan, but these are only as to details.
- 7.5 I recognise the concerns of some local people as to the nature of the consultation exercise conducted in the course of preparing the Plan; but I am satisfied, on balance, that the statutory requirements have been complied with.
- 7.6 I conclude that the Winsford Plan does comply with the basic conditions and the other relevant statutory requirements. I am therefore pleased to recommend:
- that the modifications specified in my report are made to the draft Plan as it was submitted to me, and
 - that the draft Plan as modified be submitted to a referendum.

Charles Mynors
FRTPI FRICS IHBC Barrister

30 July 2014

⁷⁴ See para 2.17 above.

Annex A. List of minor modifications for the purpose of correcting errors or for clarification

Page		Modification
16	Second bullet point	For “resident” substitute “residents”.
21	Key to upper map	This key needs to be rationalised and clarified. For example, there appears to be two colours for land “not suitable for development” – the red used for the land by the river, and the ochre used for the golf course.
24	Fig 4.3.1: Option B	For “20230” substitute “2030”.
25	Option B: second bullet point	For “creates” substitute “create”.
29	Heading above para 4.5.5	For “Regulation 14 consultation” substitute “Preliminary consultation”
29	Para 4.5.5	For “the regulation 14 consultation” substitute “the consultation that took place before the Plan was submitted to CWaC”
35	Para 5.1.2	For “dark purple” substitute “blue”.
35	Fig 5.1	For “dark purple” substitute “blue”. Consider placing last paragraph above “Policy” explanation, and substituting “preceded” for “supported”.
36	Text below Policy I1	For “Chapter 6” substitute “Chapter 5.4”.
36	Policy I2	For “Chapter 5” substitute “Chapter 5.3”.
37	Text beneath Objective “Deliver high quality development”	For “Chapter 4”, “Chapter 6” and “Chapter 8” substitute “Chapter 5.4”, “Chapter 5.5” and “Chapter 5.6”.
40	Policy TTC 2	For “defined” substitute “shown”
40	Policy TTC4	Move “considering” to before the bullet points
42	Policy E1: second and third bullet points	For “Site W7; and W8” substitute “Site W6; and Site W7”
46	Policy H5, first bullet point	Delete “and so on”
47	Policy H6, third bullet point	Line 2, for “open” substitute “Open”
47	Quick win box	In first two bullet points, for “both sites” substitute “each site”; for the third bullet point, substitute “be used in the marketing of the sites to potential developers”
48	Text above Policy CSL2	For “Section 3” substitute “Section 6”.
55	Site NT6: site description	For “mine salt” substitute “salt mine”

WINSFORD NEIGHBOURHOOD PLAN: REPORT BY INDEPENDENT EXAMINER

57	Upper map	For “TC5”, “TC6” and “TC7”, towards the right hand side of the map, substitute “TC7”, “TC8” and “TC9”.
66	Policy S1 – S3	Introductory text: for “essentially” substitute “essential”.
67	Policies S2B and S3B	For “policies” substitute “policy”
67	Policy S4: site description	For “bound” substitute “bounded”.