

Spatial Policy (Rm 4/24-35),
Durham County Council,
County Hall,
Durham,
DH1 5UQ

By email only to: spatialpolicy@durham.gov.uk

Dear Sir/Madam,

Re: Durham City Neighbourhood Plan – Regulation 16 consultation

This letter provides Gladman Developments Ltd (Gladman) representations in response to the draft submission version of the Durham City Neighbourhood Plan (DCNP) under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012. This letter seeks to highlight the issues with the plan as currently presented and its relationship with national and local planning policy. Gladman has considerable experience in neighbourhood planning, having been involved in the process during the preparation and examination of numerous plans across the country, it is from this experience that these representations are prepared.

Legal Requirements

Before a neighbourhood plan can proceed to referendum it must be tested against a set of basic conditions set out in paragraph 8(2) of Schedule 4b of the Town and Country Planning Act 1990 (as amended). The basic conditions that the DCNP must meet are as follows:

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order.*
- (d) The making of the order contributes to the achievement of sustainable development.*
- (e) The making of the order 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 order does not breach, and is otherwise compatible with, EU obligations.*
- (g) The making of the neighbourhood plan does not breach the requirements of Chapter 8 of part 6 of the Conservation of Habitats and Species Regulations 2017.*

National Planning Policy Framework and Planning Practice Guidance

The National Planning Policy Framework (the Framework) sets out the Government's planning policies for England and how these are expected to be applied. In doing so it sets out the requirements for the preparation of neighbourhood plans to be in conformity with the strategic priorities for the wider area and the role they play in delivering sustainable development to meet development needs.

At the heart of the Framework is a presumption in favour of sustainable development, which should be seen as a golden thread through plan-making and decision-taking. This means that plan makers should positively seek opportunities to meet the development needs of their area and Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change. This requirement is applicable to neighbourhood plans.

The recent Planning Practice Guidance (PPG) updates make clear that neighbourhood plans should conform to national policy requirements and take account of and most up-to-date evidence of housing needs in order to assist the Council in delivering sustainable development, a neighbourhood plan basic condition.

The application of the presumption in favour of sustainable development will have implications for how communities engage with neighbourhood planning. Paragraph 13 of the Framework makes clear that Qualifying Bodies preparing neighbourhood plans should develop plans that support strategic development needs set out in Local Plans, including policies for housing development and plan positively to support local development.

Paragraph 15 further makes clear that neighbourhood plans should set out a succinct and positive vision for the future of the area. A neighbourhood plan should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. Neighbourhood plans should seek to proactively drive and support sustainable economic development to deliver the homes, jobs and thriving local places that the country needs, whilst responding positively to the wider opportunities for growth.

Paragraph 29 of the Framework makes clear that a neighbourhood plan must be aligned with the strategic needs and priorities of the wider area and plan positively to support the delivery of sustainable growth opportunities.

Planning Practice Guidance

Following the publication of the NPPF (2018), the Government published updates to its Planning Practice Guidance (PPG) on 13th September 2018 with further updates being made in the intervening period. The updated PPG provides further clarity on how specific elements of the Framework should be interpreted when preparing neighbourhood plans.

Although a draft neighbourhood plan must be in general conformity with the strategic policies of the adopted development plan, it is important for the neighbourhood plan to provide flexibility and consider the reasoning and evidence informing the emerging Local Plan which will be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested against. For example, the neighbourhood planning body should take into consideration up-to-date housing needs evidence as this will be relevant to the question of whether a housing supply policy in a neighbourhood plan contributes to the achievement of sustainable development. Where a neighbourhood plan is being brought forward before an up-to-date Local Plan is in place, the qualifying body and local planning authority should discuss and aim to agree the relationship between the policies in the emerging Neighbourhood Plan, the emerging Local Plan and the adopted Development Plan¹. This should be undertaken through a positive and proactive approach working collaboratively and based on shared evidence in order to minimise any potential conflicts which can arise and ensure that policies contained in the neighbourhood plan are not ultimately overridden by a new Local Plan.

It is important the neighbourhood plan sets out a positive approach to development in their area by working in partnership with local planning authorities, landowners and developers to identify their housing need figure and identifying sufficient land to meet this requirement as a minimum. Furthermore, it is important that policies contained in the neighbourhood plan do not seek to prevent or stifle the ability of sustainable growth opportunities from coming forward.

¹ PPG Reference ID: 41-009-20160211

Relationship to Local Plans

To meet the requirements of the Framework and the Neighbourhood Plan Basic Conditions, neighbourhood plans should be prepared to conform to the strategic policy requirements set out in the adopted Development Plan. The adopted Development Plan relevant to the preparation of the DCNP is the saved policies of the Derwent District Local Plan, adopted in 1997 and the saved policies of the City of Durham Local Plan 2004 as assessed by the County Council in 2015.

Emerging Local Plan

Durham County Council is currently in the process of undertaking a new local plan which will provide an updated plan period to the year 2035. The emerging plan was submitted to the Secretary of State for Examination in Public in June 2019, for which hearing sessions are currently underway and the outcome remains uncertain. As such, it is therefore important that the DCNP allows for flexibility to respond positively to changes in circumstance which may arise over the course of the plan period. The need for flexibility is particularly important as section 38(5) of the Planning and Compulsory Purchase Act 2004 states:

'if to any extent, a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approached, or published (as the case may be).

Durham City Neighbourhood Plan

This section highlights the key issues that Gladman would like to raise with regards to the content of the DCNP as currently proposed. Whilst Gladman support the fact that the Parish Council has amended the DCNP in light of our previous representations, Gladman still consider that some policies do not reflect the requirements of national policy and guidance, Gladman have therefore sought to recommend modifications to the Plan that should be explored through the examination process.

Policy S2: The Requirement of Masterplans

Although recognising the importance of masterplans, it is important that this policy does not place unsubstantiated requirements to conform to certain development forms and style, as per part b of the policy "to demonstrate that it adds distinction to the City's landscape and townscape within the site through adherence to the masterplan's physical design guidelines", and that the policies contained in the plan avoid unnecessary prescription or detail that does not render development proposals unviable.

Policy H1: Protection and Enhancement of the World Heritage Site

The above policy seeks to protect Durham Cathedral and Castle World Heritage Site and its setting. This policy is considered inconsistent with the Framework as it does not allow for the balancing of harm with the benefits of development. Paragraph 138 of the Framework accepts that not all parts of a World Heritage Site and their setting necessarily contribute to their significance and that the loss of a building or element should be considered in the context of paragraph 133 or 134 of the Framework.

Whilst this policy does not rule out development, the requirement that development should protect the setting of the World Heritage Site is therefore out of kilter with the approach of national policy that accepts that harm can occur but that harm would need to be balanced against the significant public benefits as outlined at paragraph 133 of the Framework or the public benefits as outlined at paragraph 134 of the development proposal. Gladman recommend that this policy is modified to ensure it is consistent with the requirements of national policy.

Policy G2: Designations of Local Green Spaces

This policy seeks to designate land as Local Green Space (LGS). In order to designate land as LGS the Parish Council must ensure that it is able to demonstrate robust evidence to meet national policy requirements as set out in the Framework. The Framework makes clear at §99 that the role of local communities seeking to designate land as LGS should be consistent with the local planning of sustainable development.

Paragraph 99 of the Framework states that:

'The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated and be capable of enduring beyond the end of the plan period.'

Further guidance is provided at paragraph 100 which sets out three tests that must be met for the designation of LGS and states that:

'The Local Green Space designation should only be used where the green space is:

- a) In reasonably close proximity to the community it serves;***
- b) Demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and***
- c) Local in character and is not an extensive tract of land.'* (emphasis added)**

The issue of whether LGS meets the criteria for designation has also been explored in a number of Examiner's Reports across the country and highlight the following decisions:

- The Blackwell Neighbourhood Plan Examiner's Report recommended the deletion of two LGS designations measuring approximately 19ha and 32ha respectively and found both designations did not have regard to national policy which states that LGS should only be used where the area concerned 'is not an extensive tract of land.'
- The Seldlescombe Neighbourhood Plan Examiner's Report recommended the deletion of a LGS measuring approximately 4.5ha as it was found to be an extensive tract of land.
- The Oakley and Deane Neighbourhood Plan Examiner's Report recommended the deletion of a LGS measuring approximately 5ha and also found this area not to be local in character. Thereby failing to meet 2 of the 3 tests for LGS designation.
- The Alrewas Neighbourhood Plan Examiner's Report identifies that both sites proposed as LGS in the neighbourhood plan 'in relation to the overall size of Alrewas Village' to be extensive tracts of land. The Examiner in this instance recommended the deletion of the proposed LGSs which measured approximately 2.4ha and 3.7ha.

It is noted that several of the sites are quite extensive in size and are unlikely to be appropriate for LGS designation, such as the Observatory Hill Areas and Flass Vale which are both over 20ha or greater in area. Gladman recommend that such designations of extensive size that do not meet the tests as set out in national policy should be deleted.

Policy G3: Creation of the Emerald Network

This policy states that proposals that would cause significant harm to the biodiversity of a site or footpath in the Emerald Network, or the connectivity of sites in the Emerald Network, will be refused. Gladman is concerned with this policy as currently proposed as it fails to recognise that development could enhance existing biodiversity values near or in the network. Further, the Parish Council does not have the ability to 'refuse' planning applications as this responsibility falls solely to the Council who will need to determine development proposals through the planning balancing exercise.

Policy D1: Land for Residential Development

It is noted that site 3 – The Avenue under Policy D1 already benefits from planning permission, as such, it should not be promoted as housing allocations in the neighbourhood plan but instead referred to as existing commitments in the neighbourhood area.

Policy D4: Housing for Older People and People with Disabilities

The above policy seeks at least 10% of private and intermediate dwellings to be provided in the form of housing for older people. Whilst recognising the issue of an ageing population is very much of concern to the steering group, in its current form, the policy would apply to all residential developments across the neighbourhood area. Gladman consider that in seeking to apply this principle wholly, sustainable development opportunities could be missed over genuine concerns around viability and could result in an overly prescriptive policy tool.

Policy D6: Building Housing to the Highest Standards

This policy requires housing developments to meet the Building for Life Criteria, however, the policy as worded seeks to treat this guidance as though they comprise of national policy. Building for Life criteria simply sets out guidance to help new housing attain higher quality design. All the principles within Building for Life may not apply in all cases and therefore does not allow a decision maker to apply this policy consistently and with ease. It is therefore recommended that this policy seeks to 'encourage' development to incorporate building for life principles where necessary and where these would not harm the viability of a development proposal.

Conclusions

Gladman recognises the role of neighbourhood plans as a tool for local people to shape the development of their local community. However, it is clear from national guidance that these must be consistent with national planning policy and the strategic requirements for the wider authority area. Through this consultation response, Gladman has sought to clarify the relation of the DCNP as currently proposed with the requirements of national planning policy and the wider strategic policies for the wider area. Gladman hopes you have found these representations helpful and constructive. If you have any questions do not hesitate to contact me or one of the Gladman team.

Yours faithfully,

Jacob Mangham
Gladman