

CHARNWOOD BOROUGH COUNCIL

IN THE MATTER OF LAND OFF BOONTON MEADOW WAY, QUENIBOROUGH (LPA REF P/20/2349/2) AND PARAGRAPH 14 OF THE NATIONAL PLANNING POLICY FRAMEWORK

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ADVICE

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1. I am instructed on behalf of the Council. It is seized of planning application P/20/2349/2 for outline permission in respect of land off Boonton Meadow Way, Queniborough for:

*"the erection of up to 50 no. dwellings, with associated landscaping, open space, drainage infrastructure and access; and the demolition of No. 65 Glebe Road, Queniborough to facilitate the development of an emergency access. (Outline - Access only to be considered)".*

2. The Parish Council (which is also the Neighbourhood Development Forum – "NDF" and the Neighbourhood Planning Body – "NPB") has submitted a consultation response, supported by counsel's opinion, that paragraph ("¶") 14 of the NPPF applies. The Applicant, Davidsons Developments Ltd, has also submitted counsel's opinion taking issue with that submitted by the Parish Council, particularly with regard to ¶14b). Following consideration by the Council's planning committee the matter was deferred in order for the legal position to be considered further. The application is due to be reported back to committee on 24 February 2022. I am asked to advise and to answer the questions posed in my instructions.
3. This is an application that involves the provision of housing. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites. I am instructed that there are no policies in the NPPF that

could result in the application site being treated as being an area or asset of particular importance to be protected. In such circumstances ¶11d) and footnote 8 of the NPPF indicate that planning permission should be granted “unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits” when assessed against the policies in the NPPF taken as a whole.

4. However, ¶14 of the NPPF introduces a ‘gloss’ on this part of the NPPF:

“In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply<sup>9</sup>:

- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
- c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74); and
- d) the local planning authority’s housing delivery was at least 45% of that required<sup>10</sup> over the previous three years.”

<sup>9</sup> Transitional arrangements are set out in Annex 1.

<sup>10</sup> Assessed against the Housing Delivery Test, from November 2018 onwards.

5. It should be noted at this point that ¶14 advises when it is “likely” that the tilted balance will come down against an application. It does not say that:

- a. This is the only situation in which that is “likely”;
- b. That if the criteria in ¶14 are not all met, that it is not open to a decision-taker to nevertheless conclude, as a matter of planning judgment, that conflicts with a Neighbourhood Development Plan (“NDP”) still indicates that adverse impacts significantly and demonstrably outweigh the benefits.

6. It is plain that there is no serious dispute between the Applicant and the Parish Council that the requirements of ¶14 that there be both relevant “policies” and “allocations” in the NDP are satisfied<sup>1</sup>. The real issue between them and their respective counsel is whether there is an “identified housing requirement” which the policies and allocations can be said to “meet”.
7. PPG gives further guidance as to the nature of this “requirement” in a NDP (*emphasis added*):

### **How should a housing requirement figure be set for designated neighbourhood areas?**

The National Planning Policy Framework expects most *strategic policy-making* authorities *to set housing requirement figures for designated neighbourhood areas as part of their strategic policies*. While there is no set method for doing this, the general policy making process already undertaken by local authorities can continue to be used to direct development requirements and balance needs and protections by taking into consideration relevant policies such as the spatial strategy, evidence such as the [Housing and economic land availability assessment](#), and the characteristics of the neighbourhood area, including its population and role in providing services. *In setting requirements for housing in designated neighbourhood areas*, plan-making authorities should consider the areas or assets of particular importance (as set out in [paragraph 11, footnote 6](#)), which may restrict the scale, type or distribution of development in a neighbourhood plan area.

Within the administrative area of a National Park, the Broads Authority or a Development Corporation (where planning powers are conferred), each local planning authority should set a housing requirement figure for the proportion of the designated neighbourhood area which is covered by their administration.

Paragraph: 101 Reference ID: 41-101-20190509

Revision date: 09 05 2019

### **How should local planning authorities identify indicative housing requirement figures for designated neighbourhood areas, when these are needed?**

Where an indicative housing requirement figure *is requested by a neighbourhood planning body*, the local planning authority can follow a similar process to that for providing a housing requirement figure. They can use the authority’s local housing need as a starting point, taking into

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<sup>1</sup> Although the Appellant’s counsel’s opinion describes Policy Q10 in the NDP as a “purported” allocation.

consideration relevant policies such as an existing or emerging spatial strategy, alongside the characteristics of the neighbourhood plan area.

*Proactive engagement with neighbourhood plan-making bodies is important as part of this process*, in order for them to understand how the figures are reached. This is important to avoid disagreements at neighbourhood plan or local plan examinations, and minimise the risk of neighbourhood plan figures being superseded when new strategic policies are adopted.

Paragraph: 102 Reference ID: 41-102-20190509

Revision date: 09 05 2019

### **How should neighbourhood planning bodies use a housing requirement figure that has been provided to them?**

Where neighbourhood planning bodies have decided to make provision for housing in their plan, *the housing requirement figure and its origin are expected to be set out in the neighbourhood plan as a basis for their housing policies and any allocations that they wish to make.*

Neighbourhood planning bodies are encouraged to plan to meet their housing requirement, *and where possible to exceed it.* A sustainable choice of sites to accommodate housing will provide flexibility if circumstances change, and allows plans to remain up to date over a longer time scale. Where neighbourhood planning bodies intend to exceed their housing requirement figure, proactive engagement with their local planning authority can help to assess whether the scale of additional housing numbers is considered to be in general conformity with the strategic policies. For example, whether the scale of proposed increase has a detrimental impact on the strategic spatial strategy, or whether sufficient infrastructure is proposed to support the scale of development and whether it has a realistic prospect of being delivered in accordance with development plan policies on viability. Any neighbourhood plan policies on the size or type of housing required will need to be informed by the evidence prepared to support relevant strategic policies, supplemented where necessary by locally-produced information.

When strategic housing policies are being updated, neighbourhood planning bodies may wish to consider whether it is an appropriate time to review and update their neighbourhood plan as well. This should be in light of the local planning authority's reasons for updating, and any up-to-date evidence that has become available which may affect the continuing relevance of the policies set out in the neighbourhood plan.

Paragraph: 103 Reference ID: 41-103-20190509

Revision date: 09 05 2019

## **Are housing requirement figures for neighbourhood areas binding?**

The scope of neighbourhood plans is up to the neighbourhood planning body. Where strategic policies set out a housing requirement figure for a designated neighbourhood area, the neighbourhood planning body *does not have to* make specific provision for housing, or seek to allocate sites to accommodate the requirement (which may have already been done through the strategic policies or through non-strategic policies produced by the local planning authority). *The strategic policies will, however, have established the scale of housing expected to take place in the neighbourhood area.*

Housing requirement figures for neighbourhood plan areas are not binding as neighbourhood planning groups are not required to plan for housing. However, there is an expectation that [housing requirement figures will be set in strategic policies, or an indicative figure provided on request](#). Where the figure is set in strategic policies, this figure will not need retesting at examination of the neighbourhood plan. *Where it is set as an indicative figure, it will need to be tested at examination.*

Paragraph: 104 Reference ID: 41-104-20190509

Revision date: 09 05 2019

## **What happens if the local planning authority does not provide a housing requirement figure for a designated neighbourhood area that wishes to plan for housing?**

Where strategic policies do not already set out a requirement figure, the National Planning Policy Framework expects an indicative figure to be provided to neighbourhood planning bodies on request. However, *if a local planning authority is unable to do this*, then the neighbourhood planning body may *exceptionally* need to *determine a housing requirement figure themselves*, taking account of relevant policies, the existing and emerging spatial strategy, and characteristics of the neighbourhood area. The [neighbourhood planning toolkit on housing needs assessment](#) may be used for this purpose. Neighbourhood planning bodies will need to work proactively with the local planning authority through this process, and the figure will need to be tested at examination of the neighbourhood plan, as neighbourhood plans must be in general conformity with strategic policies of the development plan to meet the '[basic conditions](#)'.

Paragraph: 105 Reference ID: 41-105-20190509

Revision date: 09 05 2019

8. It is therefore clear that a "housing requirement" figure is set out in a NDP must have been arrived at in one of the following ways:

- a. It was set out in strategic policies in the Local Plan. There is no need for the subsequent NDP examination to test this figure further.
  - b. An indicative figure was requested from the LPA, is arrived at after proactive engagement between the LPA and NPB, and is then tested as part of the examination of the NDP.
  - c. "Exceptionally" an indicative figure was requested from the LPA, but the LPA felt unable to provide one, the NPB arrived at a figure which was then tested as part of the examination of the NDP.
  - d. In all cases, the requirement figure must then be set out in the NDP. The PPG is silent as to precisely how this has to be done (i.e. in policy or supporting text – I consider this further below).
9. In this case it is clear to me that:
- a. There is no requirement figure set out for Queniborough in the NDP which was 'made' on 12 June 2021. The closest the NDP comes to it is by noting (¶7.3) that the Core Strategy provides for at least 500 homes to be provided in 12 settlements including Queniborough.
  - b. The NDP Examiner's Report (¶32) describes this 500 figure as a "collective requirement" which has already been exceeded. He also identified (¶35) that in the emerging Local Plan these same settlements were given a further collective requirement of 945 new homes.
  - c. There is no evidence which I have seen that the NPB requested an indicative figure from the LPA or that the LPA and NPB engaged on this matter.
  - d. No indicative figure (whether provided by the LPA or arrived at by the NDF) was tested during the NDP examination process.
10. In my opinion the requirements of NPPF ¶14b) are therefore not met in this case. In the determination of the current planning application the "likely" provision in ¶14 does not apply.

**PARAGRAPHS 11 TO 20 REDACTED AS UNRELATED TO PLANNING  
APPLICATION P/20/2349/2**

21. For the moment, nothing further occurs.

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