

Answers to Inspectors Questions 16 to 21

Q16

I would appreciate the Council's observations on the points made with regard to VALP's relationship with the provisions of existing made Neighbourhood Plans in paragraphs 2.1, 2.2.1, 2.3.3 and 3.1.1.2-3.1.1.14 in Mr. Wayman's (Buckingham Town Council's) representations dated 13 December 2017 and in section (2) of Great Horwood Parish Council's representation (presented by Mary Saunders)

AVDC Response

The Buckingham TC response at 2.1 asks for greater clarity in the relationship between VALP and existing neighbourhood plans (NP). AVDC has strongly supported the preparation of NP despite the lack of an up to date local plan and in the preparation of VALP aimed to leave the existing NP in place wherever possible. The only instances where VALP disagrees with the made neighbourhood plans is in relation to strategic policies as listed in paragraph 1.25 of VALP, to accord with paragraph 156 of the NPPF, and the allocation of further sites for development to meet strategic development needs.

Paragraph 1.22 of VALP states that the proposals maps for the neighbourhood plans will need to be consulted as VALP does not repeat their proposals. Paragraph 1.24 of VALP states made NP are part of the development plan which is the starting point for decision making. Specific recognition of the leading role of neighbourhood planning in Buckingham is then given at paragraph 2.4 h. as part of the VALP spatial vision. Paragraphs 3.69 and 3.73 refer to the existing made NP. Paragraph 4.122 gives status to the made NP and policy D2 makes specific reference to the role of settlement boundaries defined in made NP. Paragraph 4.124 sets out how the made NP have been affected by new allocations and paragraph 4.127 broadly specifies the site allocations in the Buckingham NP. Then paragraph 4.190 refers to the retail allocations in the Buckingham NP and where relevant site allocation policies mention the status of a site in the relevant NP.

It is therefore considered that there is considerable reference to the role of the existing made NP in the submitted VALP.

The Buckingham TC response at 2.2.1 concerns the application of VALP policy D6 on town centres in Buckingham. The aim was to leave the implementation of shopping frontages policy in Buckingham to the made Buckingham NP and E6 is not defined as a strategic policy in paragraph 1.25 of VALP so the Buckingham NP policy can operate in Buckingham without recourse to VALP. This is why footnote 33 to policy E6 refers to the definition of the frontages in the Buckingham NP. As the frontages are not defined in the VALP policies map it was considered that this sufficiently clarified the role of policy EE4 in the Buckingham NP. However should it

be found appropriate the council would be amenable to further clarification of VALP policy E6 via a minor modification.

The Buckingham TC response at 2.3.3 concerns the primacy of neighbourhood plans in relation to design. However it is considered that whilst the role of neighbourhood plans includes the potential to “shape and direct development in their area” this is a general description of their role rather than a specific role in relation to the design of new development. This view is supported by the first bullet point under NPPF paragraph 17 where both local and neighbourhood plans are referred to in relation to local people shaping their surroundings. Then the fourth bullet point under the same paragraph refers to high quality design being sought in relation to the broad term plan-making rather than in relation to neighbourhood planning. Then in the NPPF text specifically related to ‘Requiring good design’ it is stated in paragraph that local and neighbourhood plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area.

The Buckingham TC response at 3.1.1.2 to 3.1.1.14 concerns the implementation of affordable housing policy in Buckingham. VALP Policy H1 is identified as a strategic policy in VALP paragraph 1.25 and sets a minimum affordable housing target for the whole of the district of 25%. The Buckingham NP sets a minimum target of 35%. Section (2) of Great Horwood Parish Council’s representation (presented by Mary Saunders) concerns the same point as raised immediately above by Buckingham TC in that the Great Horwood NP also specifies a maximum affordable housing target of 35%. Paragraph 184 the NPPF states that neighbourhood plan policies should be in general conformity with the strategic policies of the local plan. The council does not wish to override the policies within neighbourhood plans but has taken legal advice as attached to establish what the position should be. As set out in the guidance it seems there is no means for the council superseding the affordable housing policies in the made neighbourhood plan unless the modifications to the policy suggested by respondents will allow those policies to remain in force in those areas.

RE VALP: CONFLICT BETWEEN VALP AFFORDABLE HOUSING REQUIREMENTS AND NEIGHBOURHOOD PLAN AFFORDABLE HOUSING REQUIREMENTS

ADVICE

INTRODUCTION

1. We are instructed to advise Aylesbury Vale District Council (“the Council”) on the conflict between the affordable housing (“AH”) requirement set by the Vale of Aylesbury Local Plan (“VALP”) of 25%¹ and higher AH requirements set by various made neighbourhood plans (“NP(s)”). We understand that ideally the Council would like to preserve the AH requirements set by the NPs while also, of course, ensuring that the VALP is found sound and legally compliant.

ANALYSIS

Law

2. Section 38(5) of the Planning and Compulsory Purchase Act 2004 provides:

“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 become part of the development plan.”

3. Section 38(3) is also relevant. It provides:

¹ Policy H1 provides: “Residential developments of 11 or more dwellings gross or sites of 0.3ha or more will be required to provide a minimum of 25% affordable homes on site.”

“For the purposes of any other area in England [i.e. outside Greater London] the development plan is—

(a) the regional strategy for the region in which the area is situated (if there is a regional strategy for that region), and

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area, and.

(c) the neighbourhood development plans which have been made in relation to that area.”

4. As such, for the purposes of section 38(5), the neighbourhood plan, alongside other development plan documents, together constitute “the development plan”.²
5. In light of this, the effect of s.38(5) in the context of NPs is explained by the PPG (at Paragraph: 044 Reference ID: 41-044-20160519):

“Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.”

6. This approach is confirmed by case law. In *R (DLA Delivery Ltd) v Lewes District Council* [2017] EWCA Civ 58, which principally concerned the issue of whether a neighbourhood plan could come forwards before an up to date local plan, Lindblom LJ explained at [22], that:

“22 I do not see how Mr Young’s argument can be reconciled with the relevant statutory context. The provisions of Part 2 of the 2004 Act envisage a “local development scheme” comprising “development plan documents”, which will

² We note that s.38(5) apparently makes a distinction between a policy in “a development plan” and “the development plan”. We have considered this matter and conclude that the inclusion of the indefinite article “a” is not intended to signify a meaning different from “the development plan” as defined in s.38(3); “a development plan” here simply refers the development plan as a whole for a particular area. As such, nothing turns on the distinction. This conclusion is supported by the extract of the PPG cited in this Advice.

together form the statutory development plan for the local planning authority's area: section 17(3) of the 2004 Act. A neighbourhood development plan, once made, will be a constituent part of the development plan: section 38A(2) of the 2004 Act. As one would expect, the statutory scheme seeks to ensure an appropriate degree of consistency between a neighbourhood development plan and the strategy of the extant, statutorily adopted development plan. That is the essential purpose of the "basic condition" in paragraph 8(2)(e) of Schedule 4B to the 1990 Act. Section 13 of the 1990 Act requires local planning authorities to keep their development plan documents under review. If a neighbourhood development plan has been made and the local planning authority later produces a development plan document containing new "strategic policies", that development plan document will, under section 38(5) of the 2004 Act, prevail over any inconsistent policies in the neighbourhood development plan. And if a policy in a neighbourhood development plan is not, or ceases to be, up to date, this will be a material consideration in a development control decision, and may justify departing from that policy." (Emphasis added).³

7. It is therefore clear that a NP is within the scope of section 38(5). As a result, where there is a conflict between a policy in a NP and a local plan which was adopted subsequent to the NP, it is the local plan policy which prevails.

Application of the principles to the VALP

8. The first question is whether there is a conflict between the various NPs which set AH requirements of over 25% and the VALP which sets an AH requirement of 25%. In our view this amounts to an obvious conflict with no scope for interpreting the two development plan documents in such a way that they are compatible.
9. The next issue is how this conflict should be resolved. As set out above, the effect of s. 38(5) is that the AH requirement in the VALP will prevail over any differing AH

³ See also *R (Hoare) v Vale of White Horse District Council* [2017] EWHC 1711 (Admin).

requirements set by any existing made NPs. Importantly, there is no discretion in this regard; s.38(5) requires that the VALP prevails.

10. Therefore, if the Council want to preserve the higher AH requirements in the NPs, these requirements will need to be expressly incorporated into the VALP as part of the VALP's policy on AH. In theory, this is possible. The difficulty, however, is that the different targets will need to be robustly supported by evidence. Further, for the VALP to be found sound, it will be important to show that a consistent approach has been taken across the area on a consistent evidence base. As such, it will be difficult to justify the different treatment of a small number of areas with their own particular earlier evidence base if a similar evidence base has not been prepared for all the parishes/sub-areas covered by the VALP and in any event the earlier evidence base is now inconsistent with the latest evidence base for the Local Plan in so far as it relates to the level of provision of affordable housing.
11. A potential solution to the problem lies in waiting until the VALP has been adopted and then encouraging local communities to review their NPs. Through the process the NP will become the latest development plan document and, therefore, in the event of any inconsistency, the NP will prevail over the VALP. As we have previously advised, however, of course the NP must be consistent with the strategic policies in the VALP. As explained in the NPPF:

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

12. The difficulty here is that [1.25] of the VALP expressly provides that policy H1 on affordable housing is a “strategic policy”. As such, it is doubtful whether attempts to revise the NPs would achieve the aim sought. Rather, the reality is that if the VALP is adopted it is likely that a 25% AH requirement will be applied across the board.

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