PURPOSE OF THIS GUIDANCE

1. The purpose of this document is to give guidance on Neighbourhood Development Plans (NDPs) since the Council withdrew the Vale of Aylesbury Plan (VAP) from examination. This was as a result of the Interim Inspectors Report (7 January 2014), which concluded the Council had not engaged with neighbouring Councils and others in the Luton and Milton Keynes Housing Market Area constructively, actively and on an ongoing basis and that this undermined the effectiveness of the Plan. In terms of the overall provision of jobs and homes, the Inspector concluded that the Plan was not positively prepared, it was not justified or effective and inconsistent with national policy. As such, most of the evidence produced for VAP can not be relied on for NDPs. AVDC will be reviewing the evidence in a new plan for the district.

2. The withdrawal of VAP raises a number of challenges for NDPs. This advice note sets out the options for NDPs.

CURRENT ISSUES

General conformity with the strategic policies for Aylesbury Vale

3. The Neighbourhood Planning regulations (2012) require NDPs to be in general conformity with the strategic policies for the district and national planning policy. Paragraph 184 of the NPPF states ‘The ambition of the neighbourhood should be aligned with the strategic needs and priorities 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.’

4. The withdrawn Vale of Aylesbury Plan would have set the strategic policies for the district, including housing and employment targets with broad apportionment for the towns and villages in Aylesbury Vale. Now that this plan has been withdrawn, there is currently no strategic planning context for NDPs to plan within, in particular housing targets. This is because our future work will have to place more emphasis on working together with other authorities so that we jointly meet the housing needs of the wider area. It will be approximately two years before AVDC reaches an agreed position on what the strategic needs and priorities of the district are through an adopted plan.

5. The existing development plan for the district is the Aylesbury Vale District Local Plan (AVDLP) 2004 – 2011. Currently NDPs for Aylesbury Vale are required to be in conformity with AVDLP as it forms the adopted development plan for the district. This has a number of saved policies which are relevant for emerging NDPs to be in general conformity with. However it does not have up to date employment and housing numbers required across the district (i.e. does not identify or meet objectively assessed housing needs in line with the National Planning Policy Framework), as such there is currently no up to date housing target for NDPs to plan within.

Can a NDP be adopted ahead of an up-to-date Local Plan?

6. Until recently NDPs across the country had been approved at examinations where no up-to-date Local Plan is in place. However a recent Inspector’s decision recommending the Tattenhall NDP in Cheshire for referendum, has been legally challenged, arguing a NDP should not be adopted before an up-to-date Local Plan is in place. Because of this legal
challenge, two other NDPs have had their examinations put on hold, one of which is within Aylesbury Vale for Winslow Town Council, the other is the Winsford NDP in Cheshire. Since then, on 6 March 2014, the National Planning Practice Guidance (NPPG) was published. This clearly states ‘neighbourhood plans can be developed before or at the same time as the local planning authority is producing its Local Plan.’ Because of this the examination for the Winslow NDP is no longer postponed. A hearing day is scheduled for May 2014.

Can a Neighbourhood Plan come forward before an up-to-date Local Plan is in place?

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 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.

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 condition. A draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan.

Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:
• the emerging neighbourhood plan
• the emerging Local Plan
• the adopted development plan and their degree of consistency with the National Planning Policy Framework.

The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft Neighbourhood plan has the greatest chance of success at independent examination.

The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan.

Can a NDP define housing provision and put a ‘cap’ on development?

7. It is not recommended a NDP tries to define its own objectively assessed housing need as this is a strategic policy which should be identified by the local planning authority. However where NPDs are looking to allocated housing in advance of AVDC identifying the objectively assessed housing need, the level of development should be based on what is sustainable development for the neighbourhood area, defining where development would and would not be sustainable.

8. AVDC has been closely monitoring the outcome of the NDP examinations where housing numbers have been set. To date eighteen NPDs have had successful examinations, but subject to modifications made by an examiner. Examiner reports show where NDPs have identified a housing number, this cannot represent a ‘ceiling’ figure or a cap on development levels. This means the NDP can plan for a number and shape the development for that identified number, but it cannot set a definitive maximum for the plan period and therefore additional development may still occur, however this additional development could still be shaped through other NDP policies,
e.g. housing mix, design, layout, density, open space provision and car parking standards. This approach has been taken for those areas which have an up-to-date Local Plan and those like Aylesbury Vale who do not have an up-to-date Local Plan in place. However it should be noted the outcomes of NDP examinations is still evolving with varying approaches being taken by different examiners. The outcome of examinations is being closely monitored by AVDC to help inform NDP groups within Aylesbury Vale.

9. The Rollenston and Dove NDP is located in East Staffordshire Borough where there is no up-to-date Local Plan in place. The submission NDP proposed a cap of 85 dwellings, however the examiner reworded the housing policy to read:

‘An assessed housing requirement of 85 dwellings will be met over the plan period 2012 to 2031 on the sites identified in Policies H5a and H5b, and on windfall sites, and on sites already granted planning permission. The housing requirement does not represent a ceiling on development and will be objectively assessed through independent review at five year intervals throughout the plan period. Such reviews may lead to additional housing land allocations’

10. Another example where this has happened is the Woodcote NDP in South Oxfordshire where there is an adopted Core Strategy from 2011. The Woodcote NDP also tried to put a cap for 73 dwellings. The examiner reworded the housing policy to read:

‘planning permission will be granted for a minimum of 73 new homes to be built in Woodcote…’

11. The examiners reasons stated ‘the National Planning Policy Framework, in establishing a presumption in favour of sustainable development, states that plans should meet objectively identified needs, with sufficient flexibility to adapt to change. It is recognised that sustainable development is about positive growth. As worded, policy H1 would not allow for any residential development, no matter how sustainable, above the maximum figure. As such, it seeks to impose an inflexible policy and in the light of national policy, an inappropriate approach to sustainable development.

12. These recent decisions suggest that a NDP cannot be used to put an absolute limit on development, regardless of the size of development planned for as this is not in general conformity with the NPPF.

THE OPTIONS FOR NDPs

13. We recognise in this complex situation it is difficult for parish councils to decide the best way forward with their NDPs. Set out below are some key considerations to help you decide.

Option 1. ‘Carry on as normal’

14. The withdrawal of the Vale of Aylesbury Plan has significant impacts on NDPs because there is now no planning context in terms of housing numbers to plan for. There is no longer an evidence base for housing need or any other of the emerging strategic policies. The existing development plan, AVDLP, lies silent on most strategic policies, with many out of date policies. Without this direction it is difficult for NDPs to know what to plan for and setting your own housing needs figure will require a significant amount of new evidence for NDPs groups to produce (which we do not recommend), as the majority of the evidence for VAP relating to levels of growth can not necessarily be relied upon.
15. Once the district wide housing figure is identified, this may mean the figures in a NDP will need to change, leading to an early review of the NDP, otherwise there is a risk the policies will become out of date. If the housing figure in a new Local Plan is higher than the NDP, then the Local Plan will take precedence in planning decisions. Based on the VAP Inspector comments it is likely that the figures in the new Local Plan will be higher than in VAP.

Option 2. ‘Wait until evidence for the new Local Plan is published’

16. Following the guidance of the NPPG, if you want to include housing numbers in your NDP, you should work in parallel with the local planning authority. AVDC will continue to work with neighbourhood planning groups to share new emerging evidence for the new Local Plan so there is consistency with the emerging strategic policies and NDP policies. AVDC will be reviewing the district’s objectively assessed housing need. Up to date population figures derived from the Census 2011 (latest ONS Population Projections) will be a key component of this and also working with other authorities to identify whether any unmet needs from other authorities should be accommodated in Aylesbury Vale. We are still waiting for the data and evidence from other authorities for this.

17. Whilst this is likely to delay your plan, to allow a district assessment of objectively assessed needs, this is the most robust approach in the current circumstances. Another consideration of delaying the NDP to run parallel with the new Local Plan, is the implementation of the Community Infrastructure Levy (CIL). AVDC will be adopting CIL, but this can only happen once the new Local Plan is adopted (anticipated late 2016 at the earliest). AVDC is aware there are a number of NDPs being produced to take advantage of CIL. Once adopted, NDPs can receive 25% of CIL payments, instead of 15% where there is no NDP. This CIL payment can then be used to fund community facilities.

Option 3. ‘Not to plan for a level of growth but focus on shaping development’

18. The third option is for NDPs not to define how many future homes, but instead to focus on how new development should be shaped. This could be through criteria based policies saying where development would be supported, by identifying what would be sustainable development for the neighbourhood area, for example the mix of dwellings and sizes, design and access (footpaths and cycle ways). The advantage of this is the NDP would not be trying to justify the level of growth, but how future development should be shaped and therefore housing numbers will not need to be debated as this will be addressed in the new Local Plan.

19. As the Local Plan will be all encompassing, including allocations, we will be looking to work with you for identifying sites. There is also a consultation running from April to May 2014, where we are asking for potential sites to be promoted to AVDC. This is a statutory process we are required to do. It does not mean that all sites promoted will be allocated or granted planning permission. We will work in parallel with your NDP to allocate sites for the Local Plan to ensure the principles of development are inline with each other. Another advantage of this option is it may also mean there is a planning policy framework in place before the new Local Plan to help influence decisions of speculative developers. These means the NDP does not need to wait until the new Local Plan is adopted.

Option 4. ‘Rely on the new Local Plan’

20. This option is working with AVDC to influence our new Local Plan. The Local Plan will be an all encompassing plan, looking at the strategic policies, detailed development management policies and site allocations. This is a different approach to the withdrawn
Vale of Aylesbury Plan which only included strategic policies. As the new Local Plan is going to include the more detailed policies, this gives the opportunity for town and parish councils to influence detailed level policies, lessening the need for individual town/parish level policies. This approach is more resource efficient for time and money for both volunteers and officers, it will result in fewer examinations and will is not dependent on a referendum. Removing the need for a referendum means there is less risk for plan making. Whether this option is suitable for your community will depend on what you are trying to achieve in your plan and whether this can be included in a district wide policy document.

**CONCLUSIONS**

21. During this early stage of the Local Plan production, it is very difficult to advise on what a NDP should contain as far as the level of growth for a particular settlement is concerned. Because of this, it is advised NDPS wait until there is more certainty on what the new Local Plan will contain and therefore run in parallel with the Local Plan production. Where NDPS have progressed to the end stages, we recommend the policies are more about shaping development, rather than planning to a particular number of houses as it is likely housing numbers will increase in some places, particularly for the more sustainable settlements. For the villages within Aylesbury Vale, development will still need to be sustainable, to be in general conformity with the NPPF and therefore the range of potential future development is less due to the fewer services and facilities in those locations restricting the amount of sustainable growth. However we cannot identify at this stage what the growth need for towns and villages will be for the Local Plan. Ultimately the right decision for each NDP will depend on what the community is trying to achieve and your local circumstances. Whilst we acknowledge the current difficult circumstances for NDPS there are benefits, as the process of getting a policy framework in place is quicker than the Local Plan process and therefore provides guidance for development during this time of developing a new Local Plan.

22. In the meantime we know developers are seeking to take advantage of the policy vacuum and government has given a clear signal that seeks to significantly boost the level of house building across the country. We cannot refuse to consider these applications and the guidance is that we could not refuse a scheme because of an emerging NDP until quite late on in the NDP process.