

## PLANNING NOTES

## PLANNING POLICY

## NEIGHBOURS OR NIMBYS?

Amid widespread public perception that the government has skewed the planning system to favour housebuilders at the expense of local communities, Martin Edwards considers a contrary finding



The National Planning Policy Framework ("NPPF") places importance on boosting significantly the supply of housing. So it is little surprise that a recent survey by consultancy Development Intelligence found nimbysism at an all-time high, with 90% of people surveyed thinking that their neighbourhood is already overdeveloped – a finding that should be a source of alarm for developers and government.

However, as a recent High Court case illustrates, the reality may be different. The introduction of the localism agenda, now enshrined in the Town and Country Planning Act 1990 ("the Act"), can provide local communities with the ability to exert real control over development in their areas.

#### Crownhall development

In *R (on the application of Crownhall Estates Ltd) v Chichester District Council and Loxwood Parish Council* [2016] EWHC 73 (Admin) Crownhall was promoting a development of 25 dwellings on a site in the village of Loxwood in West Sussex. On 14 July 2015, the local planning authority ("LPA") adopted its local plan 2014-2029. The developer submitted no objections to the local plan and did not challenge its adoption in the High Court.

In 2013, Loxwood Parish Council, a "qualifying body" for the purposes of section 61E of the Act, began the process for preparing the Loxwood neighbourhood plan ("LNP"), the LPA having designated the whole parish as the neighbourhood planning area. While the draft LNP included land for 60 new dwellings, it did not include Crownhall's site. Formal adoption was not an easy task. The first draft passed through the examination process and, in the referendum in July 2014, 97.7% voted in favour. However, this was then quashed by consent on grounds in the Environmental Assessment of Plans and Programmes Regulations 2004.

In the meantime, Crownhall applied for planning permission for its scheme but in June 2014 permission was refused on grounds including conflict

with the emerging LNP. An appeal was lodged but was still outstanding at the date of the judgment.

#### Objections and referendums

A resubmitted draft was then put out to consultation. The developer objected on the basis that its site had not been identified for housing. The draft was then submitted for independent examination using the written representations procedure. After some modifications recommended by the examiner the LPA decided to hold a fresh referendum.

The developer then applied for judicial review arguing that the decisions to accept the examiner's recommendation and to hold the referendum were taken outside the scope of delegated authority. This was then overtaken by a fresh decision to hold a referendum that itself became the subject of a third application for judicial review. Nevertheless, that referendum went ahead with 98.5% voting in favour of the LNP and it was formally adopted on the same day as the local plan. Both documents then became part of the statutory development plan.

#### Judicial review hearing

The outstanding judicial review applications were consolidated and heard together by Holgate J. The challenge was rejected. Crownhall argued that both the examiner and the LPA had failed to consider whether it was "appropriate" to make the LNP, having regard to national policy and, in particular, whether land for more than 60 dwellings should have been allocated. It was also contended that the examiner's reasoning was inadequate. The judge rejected these arguments.

While not needing to decide the issue of whether the same standard of reasoning applicable to planning appeals set out in *South Bucks District Council v Porter (No2)* [2004] 1 WLR 1953 also applied to LNP examinations, the judge expressed some doubt that it did because the statutory scheme limits the examiner to giving reasons for recommendations and providing a

summary of main findings. This judgment also highlights the marked differences between the examination of neighbourhood plans and development plan documents (where there is a requirement to consider "soundness"). In the judge's view, there was no defect in the examiner's reasoning.

One ground of challenge concerned a site scoring system that resulted in two other sites being chosen as the locations for the new dwellings. The judge accepted that there had been errors, meaning that Crownhall's site scored marginally better than one of the chosen sites, but it was not enough to vitiate the examiner's conclusions.

Firstly, Crownhall had not argued at the examination that its site should have been preferred, rather that it should have been an additional, third site. Secondly, the examiner acknowledged some of Crownhall's criticisms but added that the technique was "not an exact science" and that the two sites had received local support in the consultation process. Ultimately the judge held that this was a matter of planning judgment.

#### Win for local communities

It is clear that emerging neighbourhood plans have potential to enable communities to gain real control over the location of new development in their area. When judged against the statutory framework, legal challenges to neighbourhood plans are unlikely to succeed. Consequently, there can be no substitute for developers fully engaging with the local plan and neighbourhood plan preparation processes and making representations and lodging objections when necessary, a feature at the heart of the development plan-led system since 1991. Any developer who thinks that they can simply rely on the NPPF in default may be badly mistaken.

*Martin Edwards is a barrister at Cornerstone Barristers*