



# Neighbourhood Planning Examples of emerging Neighbourhood Plans influencing planning applications



This research has been carried out to support Cornwall Council's Neighbourhood Planning Toolkit Advice Note on the '[weight of emerging neighbourhood plans](#)', to provide examples of the weight given to emerging neighbourhood plans.

The following examples were collected between 28 and 31 August 2015. These build on the work of the Planning Advisory Service's (PAS)<sup>1</sup> – but incorporate all recovered appeals by the Secretary of State<sup>2</sup> (since July 2014) and recent court judgements on these appeal decisions.

The final section of this report looks at the five High Court and Court of Appeal judgements involving neighbourhood plans, which include two adopted neighbourhood plans the SoS passed judgement on, [Broughton Astley](#) and [Winslow](#). This research only includes appeals not called-in by the Secretary of State (since July 2014).

National Planning Practise Guidance<sup>3</sup> is clear Neighbourhood Plans can be developed "before or at the same time as the local planning authority is producing its local plan". However, it's also clear "Refusal of planning permission on grounds of prematurity will seldom be justified ... in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period".

Because of this, this research has not looked in detail at decisions involving Plans that have not reached the public consultation phase – such as [Mortpeth](#), [Pebworth](#), [The Wolds](#) and [Burbage](#) – as only extremely limited weight can be given to plans in this stage of the process.

## Summary of findings

The findings of this research show that emerging neighbourhood plans should be given weight in the decision making process, but the amount of weight must be assessed on a case-by-case basis. Cornwall Council's lack of a demonstrable 5-year housing supply will make it harder for the Council to refuse permissions for proposals that conflict with an emerging neighbourhood plan.

However, where these conflicts are significant and there are other material planning considerations against the proposed development, Cornwall Council can judge that these negative effects outweigh the ability of the proposal to contribute towards Sustainable Development. The advice on varying weight for emerging Neighbourhood Plans (as per National Planning Guidance) has been applied to appeal decisions, and should continue to be applied by Cornwall Council and other local authorities.

News of the appeal decision on Hurstlepoint and Sayers Common Neighbourhood Plan being overturned in the High Court in May 2015 (see below), and the SoS deciding to revisit his refusal of appeals against proposals in Rolleston on Dove and Devizes neighbourhood planning areas, has made headlines such as '*Pickles found to have given too much weight to emerging plans*<sup>4</sup>' – with some questioning the weight that can be attributed to emerging Neighbourhood Plans. However, since May 2015 there have been two court judgements upholding the Secretary of State's appeal decisions, and a SoS decision in favour of the local council's denial of planning permission, attributing partial weight to the emerging Neighbourhood Plan.

<sup>1</sup> 'Note for on issues from emerging plans – some case studies' -

<http://www.pas.gov.uk/documents/332612/1099329/Neighbourhood+Planning+Issues.pdf/c4f932db-d2c5-4a8f-8c22-3c6c6cb10c21>

<sup>2</sup> Secretary of State Recovered Planning Appeals - <https://www.gov.uk/government/collections/planning-applications-called-in-decisions-and-recovered-appeals>

<sup>3</sup> Full Practise Guidance on Neighbourhood Planning -

<http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/>

<sup>4</sup> Planning Resource article on 15 May 2015: <http://www.planningresource.co.uk/article/1347232/neighbourhood-watch-pickles-found-given-weight-emerging-plans>



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It should also be noted the Secretary of State consistently supported local councils' decisions to refuse planning permission, where a proposal conflicted with an emerging neighbourhood plan. In each case, the Secretary applied different weights to the emerging plans, based on their level of advancement and outstanding objections (often relating to issues identified by examiners).

Common arguments against adding greater weight to emerging plans are that they lack robust assessments of appropriate level of housing need and site allocation process. Communities preparing neighbourhood plans must ensure plans and supporting evidence are robust enough for planning decisions to apply appropriate weight prior to the Plan's adoption.

### **Planning Appeals called in by Secretary of State, regarding applications conflicting with emerging Neighbourhood Plans**

These are presented roughly in chronological order, with those reviewed most recently listed first.

#### **Bryning-with-Warton**

<http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/bryning-warton-parish-council-neighbourhood-plan/>

The Bryning-with-Warton Neighbourhood Plan was at an early stage, when the SoS recovered this appeal. The developer proposed 360 dwellings in October 2013, with Flyde Borough Council subsequently refusing permission, and the Inspector held a hearing in October 2014. [The Secretary of State \(SoS\) was in agreement with the Inspector](#) that the appeal should be allowed, and permission granted.

Both Inspector and SoS agreed the emerging Local and Neighbourhood Plan could only be given limited weight, due to their prematurity. They found the proposal comprised sustainable development, even though it had adverse impacts on the local landscape's character and highways. They also gave weight to the Borough Council's inability to demonstrate a 5-year housing land supply; and the development would help in this supply, and the supply of Affordable Homes.

#### **West Haddon**

<https://www.daventrydc.gov.uk/living/planning-policy/neighbourhood-planning/west-haddon/>

Developers submitted an application for 80 dwellings plus access road, open space provision and other infrastructure in June 2013 for land in West Haddon, Northamptonshire. Daventry District Council refused outline planning permission, and the developer subsequently appealed. In March 2015, a public hearing was held and the Secretary of State (SoS) recovered the appeal.

The [SoS decision letter](#) revealed both the Inspector and SoS were in agreement that planning permission should be refused. The reasons for refusal were impacts to Landscape Character and Appearance; Public Rights of Way; that it was in open countryside, yet the District Council could demonstrate a 5-year land supply; and both Inspector and SoS concluded the development would not be sustainable.

In addition to these reasons, both found the proposal undermined the West Haddon Neighbourhood Plan. The Plan hadn't been examined, and therefore "*didn't constitute a reason to uphold a contention of prematurity or prejudice*", but it was given 'limited weight' in their decisions.



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### Hurstpierpoint and Sayers Common

[www.hurstpierpointpc.org.uk/neighbourhood\\_plan.asp](http://www.hurstpierpointpc.org.uk/neighbourhood_plan.asp)

In April 2012, an outline planning permission for a 120-home development was made. The Local Authority refused the application. The developer appealed, receiving an appeal hearing in January 2014. [The Inspector recommended the development be allowed; however the appeal was dismissed in early September 2014 by former DCLG Secretary of State \(SoS\) Eric Pickles.](#)

Whilst the Local Plan had a significant shortfall in housing supply, the SoS gave “*significant weight*” to the emerging Neighbourhood Plan, explaining that by the time he reviewed the decision in early September, the Plan had reached the examination stage – carrying more weight than when the Inspector carried out their review.

However, in May 2015, [the High Court found the SoS had not applied enough weight to the NPPF](#). Mr Justice Holgate concluded that paragraphs 14 (presumption in favour of sustainable development) and paragraph 49 (lacking five year housing supply) should have been applied when assessing the weight to be attached to policies within the Neighbourhood Plan.

### Rolleston on Dove - <http://www.rolleston.org.uk/planning/nhdplan.htm>

Despite the Local Plan allocating land owned by Burton and South Derbyshire College for development, this draft neighbourhood plan did not allocate it within their neighbourhood plan. The [SoS originally supported East Staffordshire Borough Council's refusal of planning permission for 100 homes, against the Inspector's advice, upholding their decision in December 2014](#). However, facing a High Court Hearing in July 2015, the SoS withdrew in May 2015, meaning the appeal will be re-determined by the SoS. The Plan entered its final public consultation stage on 19 August 2015, with referendum expected in February 2016.

### Devizes - <http://www.devizesareaplan.org.uk/>

The Devizes Neighbourhood Plan faces referendum on 17 September 2015. The results will be interesting, given the SoS' decision in May 2015 to reverse his ruling to refuse planning permission for 350 homes. [Originally, in October 2014, he ruled the emerging Plan should be given more weight than the proposal's ability to contribute to Wiltshire Council's lack of a 5-year housing land supply](#). The proposal is now back with the new SoS Greg Clark.

### West Haddon - <http://www.daventrydc.gov.uk/living/planning-policy/neighbourhood-planning/west-haddon/>

West Haddon's Plan Area was designated in February 2014. A little over a year later, public consultation on the Draft Plan opened, closing on 2 April 2015. The Plan is currently being examined. Daventry District Council refused outline planning permission for residential development of up to 80 dwellings in June 2015, agreeing with local objections. They only gave limited weight for their decision on the draft Neighbourhood Plan, which allocated the land as Protected Green Space.

In August 2015, [the SoS agreed with the local authority and Inspector's view](#) that the appeal should be dismissed. Whilst the Neighbourhood Plan is in its examination phase, the Inspector found the plan could only be given limited weight due to unresolved objections, which the Examination will look at in due course (such as the draft Neighbourhood Plan envisaging housing growth of 7%, yet there are extant permissions that would lead to a 24% growth).

The Examiner found “The scheme would not accord with the emerging WHNDP which is at an advanced stage and this is also a material consideration, though not one on its own which would warrant dismissal of this appeal”.

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### **Sedlescombe** - <http://www.rother.gov.uk/Sedlescombe-Neighbourhood-Plan>

During the examination of the draft Sedlescombe Neighbourhood Plan, the Examiner found the proposal to designate the land south of Brede Lane as Local Green Space did not meet the basic conditions for such designation. This same land was proposed for development of 18 homes in January 2014, the application was refused by the local planning authority, and an appeal decision made by the SoS in March 2015.

In [his decision letter](#), the SoS agreed with his Inspector that only limited weight could be given to the emerging Neighbourhood Plan. However, the Secretary of State *also agrees with the Inspector that the NP has reached the stage where prematurity needs to be considered and...agrees that granting planning permission for eighteen dwellings on the appeal site would undermine the NP process by pre-determining decisions about the location of housing development that are central to an emerging plan*".

This combined with his view that the proposed development did not comply with the Core Strategy which demonstrates the availability of a 5-year housing supply, warranted grounds for refusal.

### **Earls Barton** – <http://www.earlsbartonneighbourhoodplan.org.uk/>

Wellingborough Council refused planning permission for a development of 85 dwellings in September 2013. The appeal was recovered in August 2013, with a [decision made in March 2015](#). The Earls Barton Neighbourhood Plan was submitted to the Council on 26 June 2014, having passed its legal compliance check and public consultation period, with an examination process in place at the time of the appeal.

The Plan's Examiner requested the housing site selection and Strategic Environmental Assessment processes were made available for a further six week consultation. The Secretary of State agreed that the proposal conflicted with the existing development plan, but also acknowledged the development plan's inability to demonstrate a five-year housing land supply.

The SoS agreed with his Inspector that the appeal proposal should not be rejected on grounds of prematurity with the emerging neighbourhood plan. However, he *"is of the view that the appeal proposals would harmfully undermine the intentions of the Neighbourhood Plan"*. The SoS also gave greater weight than his Inspector to *"the combined harm from the impression of sprawl, the reduction in visual amenity arising from urbanisation of the public footpath through the appeal site and the strong possibility of the loss of some best and most versatile agricultural land"*. For these reasons, he dismissed the developer's appeal.

### **Broughton Ashley** - <http://www.broughton-astley.gov.uk/neighbourhood-plan1.html>

In February 2015, the [High Court upheld the SoS decision](#) to refuse an appeal against Broughton Ashley's Neighbourhood Plan. The [original proposal for 111 homes was turned down by the SoS in April 2014](#), despite the Inspector recommending it be allowed, with significant weight applied to it conflicting with the emerging neighbourhood plan.

In his decision letter, the SoS "places very substantial negative weight on the conflict with the Neighbourhood Plan even though this is currently out of date in terms of housing land supply ahead of its review in 2018" and "considers that the adverse impacts of the appeal proposal, especially in terms of the conflict with the Broughton Astley Neighbourhood Plan, would significantly and demonstrably outweigh the benefits in terms of increasing housing supply".



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### **Farringdon Neighbourhood Plan - <http://farringdonplan.webs.com/>**

Vale of the White Horse District Council refused outline permission for 94 homes in June 2013. This decision was appealed and recovered by the SoS in August 2014, with a [decision letter published in February 2015](#).

The Farringdon Neighbourhood Plan proposed the site as Local Green Space (LGS), however the Plan's Examiner recommended their LGS policies were removed within the October 2014 Examiner's Report.

Whilst the Town Council are working with their District Council to address these and other unresolved issues, the SoS stated "In view of the particular circumstances in this case, the Secretary of State places little weight on the relevant policies of the emerging Neighbourhood Plan. Given the potential for lengthy delay to the neighbourhood planning process at Farringdon, he does not consider that it would be appropriate to delay the appeal decision pending the outcome of that process".

Despite this, the SoS ruled against his Inspector's advice, and dismissed the appeal. The Neighbourhood Plan will soon be resubmitted to the District Council, before facing its second examination.

### **Rendlesham - <http://rendlesham.onesuffolk.net/neighbourhood-plan/>**

Suffolk Coastal District Council failed to reach a decision on an application made in November 2012 to demolish and rebuild 49 homes on two adjacent sites containing a former theatre and sports centre. The appeal was recovered by the SoS in September 2013, and a [decision letter published in February 2015](#).

The Rendlesham Neighbourhood Plan had been submitted to the District Council by the time of the Appeal Hearing, and faced referendum on 5 March 2015, at the time the SoS wrote his report. The SoS agreed with his Inspector that "*as the established uses of the appeal sites are Class Use D2 (Assembly and Leisure), which would be lost, with no provision for any leisure, education, retail or community uses, the proposal conflicts with Policy RNPP1 of the emerging RNP*" significantly undermining the objectives and strategy of the emerging neighbourhood plan.

The SoS gave moderate weight to the Neighbourhood Plan, due to its stage in the process – i.e. still awaiting the outcome of referendum and to 'be made' by the District Council as part of the adopted development plan. Due to this and its failure to comply with the District Council's Local Planning policies, the SoS found the proposed development? did not comply with the local development plan and could not find any material planning considerations to justify permitting the development on any other grounds.

### **Malmesbury - [www.malmesburyneighbourhood.com/](http://www.malmesburyneighbourhood.com/)**

Wiltshire Council's decision to deny a development proposal for 77 new homes in Malmesbury, June 2013, was appealed by the developer. [In September 2014, the SoS refused permission, despite the local authority lacking a 5-year land supply, on the weight of the Malmesbury Neighbourhood Plan beginning examination.](#)

The community had completed a site-selection process, which considered the proposed land, ranking it amongst the lowest of 25 possible sites. The SoS concluded "*the immediate benefits of releasing the appeal site as a contribution to meeting overall housing demand in the wider area are insufficient to justify the release of this site so soon before the examination of the [neighbourhood plan] proposals is complete and there has been an opportunity to test them by means of the referendum*".





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### Malpas and Overton Neighbourhood Plan - <http://malpasplan.co.uk/>

Cheshire West & Chester Council refused outline permission on an application for 35 dwellings made in May 2013 and an appeal was dismissed. This appeal decision was recovered by the SoS in September 2014, with his [decision letter published in January 2015](#). Coinciding with these timescales, Malpas Parish Council submitted their draft Neighbourhood Plan at the start of September 2014.

The Inspector found the proposal conflicted with the draft Neighbourhood Plan policies H4 and BE1 and emerging Local Plan, in addition to environmental harm including to the landscape's character and to the setting and heritage significance of the Grade II listed Broselake Farmhouse. Despite the Council unable to demonstrate a five-year land supply, the inspector identified "the emerging plans do demonstrate how sufficient housing could be provided. The SoS agreed with his Inspector and the District Council's original refusal of permission.

### Other Court Cases involving Neighbourhood Plans

The following is a full list up to September 2015 of High Court<sup>5</sup> and Court of Appeal<sup>6</sup> judgements involving neighbourhood plans, where these are not passing judgement on an SoS Appeal Decision.

#### Uppingham - [www.uppinghamneighbourhoodplan.info](http://www.uppinghamneighbourhoodplan.info)

In June 2015, the [Court of Appeal rejected a challenge by developer Larkfleet Homes](#) – which tried to argue that Neighbourhood Plans did not have the ability to allocate site, and Uppingham Neighbourhood Plan's Strategic Environmental Assessment screening process was insufficient. Both arguments were rejected, and the [High Court's original ruling](#) and Rutland District Council's decision to refuse permission for the proposed development was upheld. Throughout the developmental stages of the Uppingham Plan, Larkfleet Homes challenged the legality of the process, because land under their control that they sought to develop housing on was not included in the Plan's site allocations.

#### Newick – <http://www.lewes.gov.uk/planning/22187.asp>

In August 2015, [the High Court rejected an appeal made by DLA Delivery](#) that the Newick Neighbourhood Plan failed to observe European Habitats Regulations or have regard to the NPPF, meaning their allocated land for housing development was "undeliverable". The High Court's judge was "unable to see any flaw in the process by which the NDP was formulated". A potential development site of DLA Delivery was not included in the Neighbourhood Plan's site allocations.

<sup>5</sup> High Court judgements on neighbourhood planning cases: [http://www.bailii.org/cgi-bin/sino\\_search\\_1.cgi?method=phrase&query=neighbourhood+plan&results=50&rank=on&callback=on&mask\\_path=ew%2Fcases%2FEWHC%2FAdmin](http://www.bailii.org/cgi-bin/sino_search_1.cgi?method=phrase&query=neighbourhood+plan&results=50&rank=on&callback=on&mask_path=ew%2Fcases%2FEWHC%2FAdmin)

<sup>6</sup> Court of Appeal judgements on neighbourhood planning cases: [http://www.bailii.org/cgi-bin/sino\\_search\\_1.cgi?method=phrase&query=neighbourhood+plan&results=50&submit=Search&rank=on&callback=on&mask\\_path=ew%2Fcases%2FEWCA%2FCiv](http://www.bailii.org/cgi-bin/sino_search_1.cgi?method=phrase&query=neighbourhood+plan&results=50&submit=Search&rank=on&callback=on&mask_path=ew%2Fcases%2FEWCA%2FCiv)



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### **Winslow** – <http://www.winslowtowncouncil.gov.uk/town-council/winslow-neighbourhood-plan/>

In December 2014, [the High Court rejected Gladman's judicial review challenge](#) to the Winslow Neighbourhood Plan. The developer had sought to overturn Aylesbury Vale District Council's decision to allow the plan to progress to referendum - which allocates five sites for 455 new homes up to 2031 but did not include their proposal. Gladman made a subsequent appeal against the High Court's decision to the Court of Appeal in March 2015, but withdrew their challenge in April 2015.

### **Daws Hill** – <http://www.wycombe.gov.uk/council-services/planning-and-buildings/planning-news/daws-hill-area.aspx>

Daws Hill Neighbourhood Forum claimed Wycombe District Council had unfairly excluded two major sites for development from their Neighbourhood Plan's designated area. They challenged the District Council's decision firstly via the [High Court](#) and finally at the [Court of Appeal](#). In each case, the District Council's decision was upheld.

### **Truro City Council** – <http://trurokenwynplan.org/>

Truro City Council challenged Cornwall Council in their granting of planning permission in October 2012 for a major mixed-use scheme off the A390. Truro City Council argued their emerging Neighbourhood Plan had not been attributed enough weight, but [the High Court ruled the plan](#) was 'embryonic' and "Nothing had emerged at all. Whilst the issue of prematurity needed to be considered it was not one to which much weight could attach".