

## Note on NDP policies

This note has been prepared as some indication of how policies should be framed and what limitation on policies might be found in the local plan – where one exists.

1. The basic legal principle is that decisions must be made in accordance with the development plan unless material considerations indicate otherwise. (s38(6)). This means that the policies themselves can be as prescriptive or prohibitive as is necessary to know whether a proposal does or does not accord with it. Importantly the law requires ‘other material considerations’ to be taken into account.
2. Para 154 of the NPPF states that, “Local Plans should be aspirational but realistic. They should address the spatial implications of economic, social and environmental change. Local Plans should set out the opportunities for development and clear policies on what will and what will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.”

Para 151 states that, “Local Plans must be prepared with the objective of contributing to the achievement of sustainable development (s39(2) of the Planning and Compulsory Purchase Act). To this end, they should be consistent with the principles and policies set out in this Framework including the presumption in favour of sustainable development. Para 15 states...”All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.” An inspector, faced with a development proposing residential development to Code for Sustainable Homes Level 4 found that it would not meet the Bruntland definition included at para 5 of the NPPF as it would not “consume its own smoke”. Other inspectors (actually decisions issued by the Secretary of State) have come to other conclusions – including an acceptance of CSH 3 or CSH 4 or just relying on the Building Regulations. The inclusion of a condition in respect of the CSH (or for on site generation of heat/power) depended to some extent on whether there was a policy in the development plan, but in a case where the need for a condition was disputed, an inspector thought that CSH 4 was justified by the need for sustainable development to meet the presumption in the NPPF.

3. There are some interesting aspects to the Report of the inspector of the Lynton and Lynmouth Neighbourhood Plan. He was concerned about some of the housing policies and held a ‘Clarification meeting’ to understand whether the NDP would be in general conformity with the Local Plan (in that case the plan for the national park). This is an opportunity to revise policies. The inspector then identified an important feature of the criteria based

policies: “ 35. Nearly all the policies contain criteria against which proposals for development are to be assessed. There is nothing in principle wrong with that – indeed, it is how numerous planning policies are framed. But most of the policies as drafted are imprecise because they typically have a list of criteria (arranged as bullet points) without making clear whether, in order to be acceptable under the plan, a development proposal would have to meet all of the criteria or only one, or perhaps some but not all. Thus the policies would not provide clear guidance for developers seeking planning permission or planning officers considering a planning application. The imprecision would also be likely to cause unproductive argument between parties involved in planning appeals. 36. In brief, these policies do not accord with the national guidance which I have quoted in paragraph 4. Nor could I tell how the criteria tests were intended to be applied without asking those involved in preparing the plan. 37. For many of the policies, where there are several criteria, sufficient clarity can be achieved by inserting punctuation and either the word “and” or the word “or” to show whether the criteria are meant to be applied all together (inclusively) or as alternatives (exclusively). A greater amount of re-drafting is needed for a few...” This indicates that an inspector can make amendments that clarify without changing the main purpose of policies.

4. The inspector then considered another aspect of framing policies, “ 43. ... There was general agreement that policy statements to the effect that some types of development were “not supported” by the plan would be unsuitably weak or neutral, and that clearer statements should be made using words such as “resisted”, or “not acceptable” or “will not be permitted”. This last phrase is frequently used in the local plan and I think is the clearest. Statements expressing support are reasonably clear; it is “non-support” which appears neutral. I have considered suggesting “will not normally be permitted”, but have decided against, as even without the word “normally”, it is possible to allow exceptions to policies.” Incidentally, due to the location in the national park, the NDP specifies a maximum of 90sq m for owner occupied housing.

5. The inspector of the Tattenhall NDP made some other interesting findings. Representations had been received – from landowners and housebuilders – objecting to a policy requiring individual developments within or immediately adjacent to the built-up part of Tattenhall village to be limited to up 30 homes. He dealt with the alleged economic impacts and then, “With regards the suggestion that the 30 threshold is arbitrary, with no evidence base, I am mindful that Policy 1 has been determined by the Parish Council and Steering Group further to a comprehensive and open consultation process (outlined above). There is nothing to suggest that developers and housebuilders were prevented from engaging in this process....Importantly, I consider the proposal to limit individual developments to 30 homes to be distinctive to Tattenhall and District. It is a *ground-breaking policy*. It provides a tangible example of how neighbourhood planning can empower local people to shape their own surroundings. In so doing, it meets with one of the core land-use planning principles of the Framework.” Incidentally, this was a case where the local plan had not been adopted and the inspector decided that the NDP could not be found to be not conforming to a plan that did not exist.

6. In the case of Upper Eden the inspector recited the importance to have regard to the principle of , “general conformity with local strategic policies and plans and to have regard to national policies and guidance. These are important principles and there is no relevant case law at this point given the early stages of neighbourhood planning nationally. It is clear to me that the reasoning behind the use of the concept of general conformity is to allow a degree of flexibility in drawing up neighbourhood plans and proposals. Without such a concept drawing up a neighbourhood plan to reflect local priorities and conditions would be a futile exercise. The inspector was clearly concerned about one policy saying that, “...it is clear that this draft policy stretches the bounds of general conformity but in my view not beyond what is reasonable.” The inspector had no problem with a policy specifying “monitoring and development rates” that would seem to allow for phasing policies 3riticized by KM and MW.

**In summary**, I believe that the priority is for the Drayton 2020 and the PC to come to some agreement as to what is needed to ensure that development meets the presumption in favour of sustainable development (NB the HPG was the result of some detailed consideration by the Sustainability Working Group). The next job is to ensure that the meaning of the policies themselves is clear (with justification and explanation included in the supporting text).

The reference to the need for policy being ‘in lights’ arose from the Vale planning committee granting planning permission for an amended plan showing two large houses instead of the 4 smaller ones that has permission on the site. The relevant part of the adopted Local Plan says (with emphasis added), “The Vale’s smaller villages in policy H12 below have a lower order of services and facilities, and therefore a greater dependence on the private motor car, than those included in policy H11 above. **For these reasons housing development will be limited to schemes for no more than four small dwellings.** In the context of this policy schemes **may** include dwellings which are not overly large of up to three bedrooms where this is consistent with the objective of widening housing opportunity and choice....”

**POLICY H12**

**WITHIN THE BUILT-UP AREAS OF THE VILLAGES LISTED BELOW, NEW HOUSING DEVELOPMENT WILL BE LIMITED TO SITES SUITABLE FOR NOT MORE THAN FOUR SMALL DWELLINGS,...**”

The committee accepted the advice of the two senior planning officers that the “may” in the explanatory text removed the ground for refusing the two 4 bedroomed dwellings. Whilst it could reasonably be argued that the policy did actually limit any development to small dwellings – otherwise why have the policy? – the lesson is clear that all NDP policies should be trialled/ tested for any ambiguities and loopholes.

At the same committee meeting neither the officers nor the members could be persuaded that part of its consideration should include a determination as to whether the development being proposed benefited from the presumption in favour of sustainable development (see NPPF para 14).

In Canada, France, Germany and the US, self or custom build delivers in excess of 40% of the housing output – in others such as Austria it is up to 80% of homes. To be fair to the Government they have said a great deal about promoting self-build and have even set-up a welcome fund to help budding self-builders.

Grant Shapps even promised a “self-build revolution” and pledged to “double the self-build sector.” The National Planning Policy Framework requires local authorities to assess the demand for self build in their jurisdiction and make provision for it in their local plans. We believe they should get on and do it and the next Labour Government will ask every local authority in the country to create a new waiting list for those that want to register their interest in a custom-build, co-operative build or community land trust plot (Emma Reynolds MP Shadow Housing Minister to NHBC 2013 01 13)

Daniel Scharf 2013 10 07

Daniel Scharf  
Drayton

Drayton Parish Councillors  
C/O David Perrow  
Clerk to Drayton Parish Council

2013 12 31

Dear Councillor

### **Drayton Neighbourhood Development Plan**

I understand that the PC scheduled for 6 January 2014 will be asked to adopt a 'consultation draft' of the NDP for submission to the VWHDC. Although I have seen an earlier draft and also the minutes of meeting of the Steering Group when the views of the PC were considered, the Draft plan that PC will be considering on 6 January has not been made available to the public. To that extent I am 'shooting in the dark' but would ask all councillors to take the following points into account when considering whether the Draft is in a form that they would want to go forward.

**1. Sustainable development.** Is the Draft materially different from development plans that have promoted development that is proving to be so unsustainable? Is there any meaningful reference to the Climate Change Act 2008 and how the policies relating to housing, energy, transport or food in the Draft would contribute to the Fourth Carbon Budget – remembering that this Budget emphasises the importance of early emissions reductions. If such policies are absent, how would the NDP meet the 'basic conditions' of '1...having regard to the NPPF' and the golden thread of sustainable development that must run through plan or '4...contributing to the achievement of sustainable development.'?

**2. Requirements on Landowners.** There seems to have been concern about making demands of landowners/developers. The question of viability can be an overarching policy (with the requirement for open-book accounting). An alternative would be to add a viability test as a cautionary suffix to all relevant policies. However, if the NDP does not ask it will definitely not get. What can reasonably be expected in terms the scale of developer contributions will depend on what is necessary, that will in turn depend on what would make the village a location where development could benefit from the NPPF presumption in favour of sustainable development. Unless the NDP challenges the view held by the VWHDC that the village is already a sustainable location (a contradictory position given the acknowledged level of car dependency), it will be constrained in terms of the contributions it could require in terms of land, buildings or funding.

3. **Demand evidenced by the village survey.** On the issue **car clubs**, 40 people supported car sharing and were not asked about car clubs. If other evidence shows that car clubs reduce both car ownership and use, and have significant support in Government policy and are relied on in the Fourth Carbon Budget, they fit squarely in the category of contributing to sustainable development ( a 'basic condition'). With an absence of policies designed to reduce carbon from such a significant sector as transport, it is difficult to see how an NDP could meet the basic conditions. Developer funded car club(s) might also be necessary to avoid adding to the severe congestion levels on the local highway network.

Given the very significant support for **self-building** (and the contribution this can make to sustainable development) it would be surprising if there is not a very strong policy to ensure that this takes place on a substantial scale over the period of the plan. The VWHDC has advised that this cannot be counted towards the affordable housing requirement because of the definition of affordable housing in the NPPF glossary. The fact that this form of housing can represent a discount of up to 30% would seem to be good evidence that an NDP can include self-building in its affordable housing requirements. Para 50 of NPPF requires 'delivery' of choice and it would be a reasonable expectation for the NDP to deliver an increase on the 10% of self-building that has taken place in this country which is being regarded as too low. Similarly, the NDP could state that the any dwellings provided subject to an agricultural occupancy condition at a reduced rent or sale price could be deducted from the affordable housing requirement. (see para below on food).

The village survey revealed substantial support for **cohousing** that is also the most sustainable form of housing in terms of its social, economic and environmental benefits. Whether or not those actually choosing to co-house all come from Drayton, a policy requiring this model of development to be privileged and facilitated (with a cascade in the absence of demand in the next 15 years) could be reasonably expected to meet the 'basic conditions'.

The village survey showed a substantial support for '**growing food locally on a smallholding**'. Given the carbon footprint attributable to the food supply chain (estimated to be between 30% and 50%), and the role that the planning system could play in the supply of both affordable land and housing to provide farming opportunities and local food, it would be surprising if an NDP that omitted such policies could be seen to meet the 'basic conditions'.

The village survey and meetings have provided the evidence of demand for the purposes of drafting NDP policy for the next 15 years (that could also be taken to reflect demand in nearby towns and villages). Advertising for expressions of interest from the area and on particular issues could be part of the implementation of the plan. . In so far as the village survey has identified an expression of public opinion the VWHDC could be expected to keep registers of those keen to self-build, co-house or engage with smallholding. Until then this should be the responsibility of the PC.

**4. Housing provision for elderly and under-occupation.** Dealing effectively with the related issues of under-occupancy (see the 2011 Census) and the ageing population would seem to be the most pressing issue for the NDP. The VWHDC Interim Housing Supply Policy explained that 88 houses would have to be built just to maintain the village population. This evidence justifies policies requiring a very high proportion of smaller dwellings suitable for both the ageing population and, incidentally, small younger households. It is the scarcity of small housing in villages that makes rural housing relatively more expensive. As 90% of people in villages look to move within the village downsizing could be expected to release some larger dwellings to meet some of the other demands identified in the village survey. Smaller (and terraced) housing is also more energy efficient. An NDP that does not include policies designed, over the plan period, to achieve a better balance between the size of households and housing in the village could not reasonably be expected to meet the basic conditions relating to sustainable development.

**5. Permitted development rights.** VWHDC has advised that it would not be legal to remove development rights through the NDP. Clearly permitted development (PD) rights cannot be withdrawn by development plan policies, but a policy based on the needs to both maintain the supply of small dwellings and to protect energy efficiency could justify the use of conditions on permissions removing PD rights. It would also be logical to require both the construction of 'adaptable homes' that are designed to be easily sub-divided and 'consequential improvements' to maintain energy efficiency when planning permission is required for extensions to buildings. Reference to the Committee on Climate Change Report on the Fourth Carbon Budget will show the difficulties being experienced in meeting the targets for carbon reductions from buildings (ie problems with heat pumps and solid walls) implying the need for greater reductions from new and existing dwellings.

**6. Phasing.** VWHDC has apparently advised that it is not legally possible to specify phasing within a development which is surprising given that Upper Eden NDP has a policy specifying general annualized upper limits for building rates without specifying whether these rates apply to one or different sites. There might be difficulties in drafting policies seeking to control the rate of development, however, the phasing of housing delivery in villages is justified in order to meet local housing needs as a very high proportion of village residents (90%) are likely to be looking to move within the village during the 15 year plan period. This contrasts with the 80% of town dwellers who look to move away. The omission of a phasing policy would allow for all allocated and most suitable sites to be built on in the early years of the plan. A requirement to phase the implementation of large schemes would be reflected in the design of discrete areas.

**7. Solar Farms.** The intention of VWHDC to include a policy on solar farms in their Local Plan should not preclude a NDP policy that contributes to sustainable development, and at a time when applications are being made in advance the Local Plan.

**8. General.** I believe that the NDP should allocate the land between Lockway and the A34 for the football/sports pitches that are required to meet the demand generated by any new housing in the village (the existing facilities are at capacity and using common land). This would make use of the existing building(s) and avoid the need for additional and badly sited facilities (eg Barrow Road). The village is more 'divided' by its length and width than by the north south road, and building at either or both Barrow Road and south of the A34 would exacerbate this. Housing at Manor Farm and south of High Street would be closer to most of the village facilities and other village residents. Work should also be done on the feasibility/viability of a further public building at Manor Farm as well as maintenance of any public open space. Replacement of the Caudwell Day Centre in a more central and accessible position could make an attractive and viable proposition. Given the uncertainty surrounding a number of issues and how these will change over the next 15 years, I would suggest the inclusion of policies that require housing, transport, biodiversity, local facilities and employment, and energy assessments to be submitted with all applications that would be required to show how the concerns and expectations set out in the NDP (eg zero carbon housing, Lifetime Neighbourhoods, low carbon transport, maintaining productivity of agriculture) would be met.

I apologise for this extra reading, especially as I cannot refer to the Draft plan. However, I hope that councilors find these comments useful in their scrutiny of the policies to satisfy themselves that the Draft being presented to the VWHDC would meet the 'basic conditions', as well as their own sense of responsibility for seeing that new developments in the village will make Drayton a more sustainable and attractive place. I would of course welcome any discussion of any or all of these matters before or after the meeting on 6 January.

Yours sincerely

Daniel Scharf

Copy VWHDC



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2013 12 16

Dear Sir or Madam

### **Drayton Neighbourhood Development Plan**

I am looking through the Minutes of a meeting of 13 November 2013 (paragraph nos apply) where Katherine Macdonald was giving advice to those drafting policies for the NDP. I am sure that the PC and neighbourhood planners are very grateful for the help being given by the VWHDC but I wanted to check on some points that seem to have resulted from her advice, including questions of law.

d) Sustainability. Whilst this was a very important theme and concept to include in the NDP, how sustainability is interpreted (as opposed to defined) is still being debated. *Whilst that is true, I cannot see anything in the draft to suggest that development in accordance with the Plan would be materially different from the development carried out in accordance with previous development plans that is proving to be so unsustainable. In fact reference should made here to the Climate Change Act and the need for between 5% and 10% annual carbon emission reductions.*

(f) Conservation Area. Phrase to use is 'Conserve and Enhance' NOT 'Preserve and Enhance' *should be 'or' not 'and'*

(h) Requirements on Landowners. Too many requirements placed on landowners/developers would be interpreted as oppressive and aimed at deterring development, so would not be acceptable under the NPPF. *I do not understand why 'demands ' should be reduced given the ability to include the question of viability as an overarching policy (with the requirement for open-book accounting) or an "other material consideration". Inspector Timothy Jones added viability as a cautionary suffix to all relevant policies? If the NDP does ask it will definitely not get.*

(i) Requirements must be evidenced from the Community Consultation. There was no evidence that car clubs were wanted, so these should not feature in the NDP. There is a danger that exotic and expensive requirements might displace what the community actually wants from planning gains. *Actually 40 people supported car sharing and were not asked about car clubs. If evidence shows that car clubs reduce both car ownership and use, they fit squarely in the category of contributing to sustainable development ( a 'basic condition') that should be the golden thread running through the NDP. These are being described as expensive and exotic without any evidence.*

(j) Solar Farms. These had not featured in Community Consultation. VWHDC will be including a policy on solar farms in their Local Plan. *These do seem to be sufficient reasons to preclude a NDP policy that contributes to sustainable development in advance a local plan that does not yet exist.*

(m) & (n) Self build. There is a standard definition of affordable housing in the NPPF glossary. It cannot include self- build, VWHDC advise. *Annex 2 of the NPPF includes a definition of 'affordable housing', but what would prevent the NDP from stating that the proportion of affordable housing required on any site could be reduced by the number of self-build or self-finish plots being provided, on the basis that this form of housing can represent a discount of up to 30%? Definitions of self-building (eg attempted by Frome NDP) would need to be included in the plan. What is there in the Regulations to prevent the NDP specifying a proportion of self-building on housing sites ?(see para 50 of NPPF requiring 'delivery' of choice). Similarly any dwellings provided subject to an agricultural occupancy condition could be deducted from the affordable housing requirement.*

(p) Policy H4 – Provision for Elderly. Agreed to drop this policy. To be negotiated site by site. Text may say 'positively encourage' instead. *I am not sure what other form of encouragement could be envisaged and assume that this would be explanatory text and not policy.*

(q) Phasing. VWHDC advised that it was not legally possible to specify phasing within a development. *Upper Eden NDP (that I am told by the DCLG is one of its favourites) has a policy specifying general annualized upper limits for building rates. Whilst I don't underestimate the difficulty in drafting policies seeking to control the rate of development I would be interested to have the authority that says phasing policies would be illegal within a development site that could be designed to be completed in discrete stages? Phasing of delivery in villages justified because the very high proportion of village residents likely to be looking to move within the village during the 15 year plan period - a similar proportion of town dwellers looking to move away. It seems that there is no legal difficulty in Phasing between sites?*

(s) Permitted development rights. VWHDC advised that it would not be legal to remove development rights through the NDP. *Clearly permitted development rights cannot be withdrawn by development plan policies, but what is the legal difficulty in a policy explaining the circumstances (ie maintaining small dwellings provided to meet an identified need and energy efficiency) where some PD rights would be removed by a condition on a permission? Incidentally, would there be any legal difficulty in requiring 'adaptable homes' that are designed to be easily sub-divided or requiring 'consequential improvements' to maintain energy efficiency when planning permission is required for extensions to buildings?*

(t) Self-Build/Co-Housing/Smallholdings. The questionnaire responses had indicated some support for these three options to be available in the village, but no one had specifically signed up at the 18/19th Consultation event to take any of these issues forward individually. Action: Richard Williams to organise

a prominent box in the next Drayton Chronicle asking for residents interested in Self-Build/Cohousing/Smallholdings to come forward so that actual demand can be determined and presented as part of the evidence base. *As this is 15 year plan is there any reason why further evidence of village opinion is required on these matters now and not on others. It is also an expression of opinion that would seem to require the VWHDC to establish whether this is representative of the District as a whole and to keep registers of the relevant interest? Would there be any legal obstacle to requiring affordable housing and land for smallholdings through s106?*

I am not saying that these policies should appear in the Plan, but in preparing representations and possible objections, I want to understand the reasoning behind the Plan and ensure that policies that clearly relate to 'sustainable development' are only omitted for good reasons.

Yours sincerely

Daniel Scharf

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**Broughton Astley NDP – referendum copy**

**POLICY P1 – Phasing of development**

- i. The development and construction of sites which bring the most potential benefit in the shortest timescale to the community of Broughton Astley will be supported.
- ii. A logical sequence of phased construction will be monitored by the Steering Group on an annual basis, with its progress assessed to ensure that Broughton Astley is not falling below its allocation of housing.
- iii. The developers of Sites 1 and 2 will be required to work together to ensure that community facilities are provided in accordance with the proposed phasing of construction.

**SUMMARY OF PHASING**

PHASE 1 2014 – 2017 200  
 PHASE 2 2017 – 2019 200  
 PHASE 3 2019 – 2022 100  
 RESERVE SITE 2020 -2023 28  
 TOTAL PROPERTIES 528

The proposed phasing of construction is detailed below:

FACILITIES	PROPERTIES	TIME PERIOD	RUNNING TOTAL
SITE 1 PHASE 1 SUPERMARKET	100	2014 – 2017	100
PHASE 2 LEISURE CENTRE & MEDICAL CENTRE	110	2017 – 2019	210
PHASE 3 RECREATIONAL FACILITIES /PLAY SPAC	100	2019 – 2022	310
SITE 2 PHASE 1 RECREATIONAL SPACE	100	2014 – 2017	410
PHASE 2	90	2017 – 2019	500
SITE 3 RESERVE SITE PLAY SPACE	28	2020 – 2023	528

In monitoring the delivery of the plan the Steering Group will be able to identify where new housing is being constructed; and if development does not happen for any reason, a review of the sites will be triggered, and the reserve site may be considered.