



# Neighbourhood Planning Independent Examiner Referral Service

## Guidance to service users and examiners

1st Edition, March 2018



## Contents

Acknowledgements	7
Introduction	8
Flowchart mapping the Neighbourhood Planning Examination Process	10
Glossary of terms	19
Part One – Guidance to Community Groups	25
1. The purpose of an independent examination of a neighbourhood plan	25
2. The difference between neighbourhood plan examinations and local plan examinations	25
3. The principles which underscore an independent examination	26
Pre-submission	26
4. Health checks – reviewing a neighbourhood plan before it is submitted formally to an independent examiner.	26
Appointing the examiner	27
5. How an independent examiner is appointed	27
6. When the independent examiner is appointed	28
Submission of the plan and preparation for the examination	29
7. Checks the qualifying body should make prior to submitting the plan to the local planning authority	29
8. Documents which must be submitted to the local planning authority	29
Examination	30
9. Timescales for the examination process	30
10. What an independent examiner does when first appointed	30
Evidence gathering	30
Fundamental flaws	31
11. How interested parties can make their views known to the examiner	31
12. Late representations	32
13. Examiner visit(s) to the neighbourhood area	32
14. Matters raised by an independent examiner during an examination	32
15. Suspending an examination	33
16. Dealing with allegations of misconduct	33
17. The hearing as part of the examination process	34
18. Organising a hearing	34
Further information submitted after a hearing	35
The independent examiner's report	35
20. The opportunity to check facts	35
21. What is included in the examiner's report	35
22. Opportunities to comment on the examiner's report	36
23. When the report is received by the local planning authority and the qualifying body	36
24. When a local planning authority/qualifying body doesn't accept the independent examiner's recommended modification(s)	36
Part Two - Guidance to Neighbourhood Plan Examiners	37
Neighbourhood Plan Health Checks	37

1. Introduction	37
2. Undertaking a Health Check	37
3. The Health Check and the Appointed Examiner	38
Examination Overview and Guiding Principles	39
4. Overview	39
5. Guiding Principles	39
6. Examiner Action on Appointment	40
7. Early Assessment for Fatal Flaws	42
8. Preliminary Matters to be Communicated	43
(i) Handling Representations	43
Late representations	44
(ii) Whether the Written Representations procedure will include a Hearing	44
(iii) Examination Timetable	45
(iv) Process Related Questions	45
Site visits	45
Unaccompanied	46
Insurance	46
9. Approach to the Examination Assessment	46
How to deal with evidence	47
Evidence of fact and evidence of opinion	47
First-hand evidence or hearsay	47
Standard of Proof	47
Disadvantaged witnesses	47
Documentary evidence	48
Materiality	48
Evidence criticising the other side	49
Proportionality	49
Fairness and evidence	49
10. Written Clarification	49
Provisional Views and Fundamental Concerns	50
11. Public Hearing	50
Overview	50
Preparation	51
Good practice on the day	52
Post hearings	53
Changes to the Plan and Unresolved Issues	53
12. Changes to the Plan	53
Examiner's Approach to Modifications (including Deletions)	53
13. Unresolved Issues	54
Exploratory meetings	54
Suspension of the examination	55
14. The Examiner's Report	56
Format	56
Style	56

Structure	56
Statutory information	57
Basic conditions	57
15. Issue of report	58
Accuracy	58
Draft Report Fact Check	58
16. Examination (Review) of an 'Issue'	58
Annex 1 - Neighbourhood plan health check template	62
Annex 2: Scope of a Neighbourhood Plan Examination – Summary of the Legal Requirements	65
Annex 3: Indicative Examination Timetables	68

## Acknowledgements

NPIERS would like to thank for the following for their contributions to this guidance note:

Christopher Lockhart-Mummery, QC (Examiner and Chair of Working Party)  
Lee Armitage (Intelligent Plans and Examinations (IPE) Ltd)  
Andrew Ashcroft (Examiner)  
Martin Burns (RICS)  
Janet Cheesley (Examiner)  
Christopher Collison (Examiner)  
Hannah Lambert (RICS)  
Tony Mulhall (RICS)  
Ann Skippers (Examiner)  
Brian Whiteley (Royal Town Planning Institute)  
John Wilkinson (Locality)

This process was overseen by the Ministry for Housing, Communities and Local Government (MHCLG).

## Introduction

Neighbourhood planning was introduced with the Localism Act 2011. Since then, over 2000 communities across the country have taken up the opportunity to prepare neighbourhood plans. These plans enable communities to put in place a vision and policies for future local development.

As more communities get involved in it, neighbourhood planning is evolving. Practical advice and information is becoming increasingly important. This is especially the case in respect of the process, required under the Act, for examining neighbourhood plans.

This Guidance includes information, which is relevant to everyone who gets involved in neighbourhood plan examinations.

It will help community groups to submit well-prepared plans to independent examiners. The aim is to ensure plans are likely to pass independent examinations, and reduce the risk of them needing any modifications.

It will help planning professionals who take on appointments as independent examiners to examine plans in a correct and consistent manner. The aim is to ensure independent examinations result in reports that are clear and easy to understand, and prevent unnecessary challenges.

This Guidance is divided into two parts, each of which is aimed at two defined audiences.

**Part One** of the Guidance has been written to inform and help community groups.

The purpose of Part One is to ensure community groups remain connected to the neighbourhood planning process, after their plans are submitted for independent examination.

The Guidance encourages ongoing engagement between communities, local authorities and independent examiners during this crucial period. The Guidance helps communities to understand the extent of the independent examiner's role and duties. It also provides recommendations to communities on steps they should take to test their plans, before they are submitted for independent examination.

**Part Two** of the Guidance is more technical, and has been written to inform and help independent examiners.

The key objectives of Part Two are to:

1. Encourage independent examiners to be consistent in the way undertake their roles and
2. Ensure independent examiners' reports have a uniform structure, and are easily understood by everyone who is involved in the neighbourhood plan examinations

This Guidance has been prepared by a working party set up by the Neighbourhood Planning Independent Examiner Referral Service (NPIERS).

The working party is chaired by a senior planning Barrister. It includes experienced examiners and representatives from the Royal Institution of Chartered Surveyors (RICS), the Royal Town Planning Institute (RTPI) and Intelligent Plans and Examinations (IPE).

---

The preparation of the Guidance has been monitored and supported by the Ministry for Housing, Communities and Local Government (MHCLG).

The members of the working party are:

- Christopher Lockhart-Mummery, QC (Examiner and Chair)
- Lee Armitage (IPE)
- Andrew Ashcroft (Examiner)
- Martin Burns (RICS)
- Janet Cheesley (Examiner)
- Christopher Collison (Examiner)
- Hannah Lambert (RICS)
- Tony Mulhall (RICS)
- Ann Skippers (Examiner)
- Brian Whiteley (RTPI)

## Flowchart mapping the Neighbourhood Planning Examination Process

Who is responsible?	Stage	Neighbourhood Plan Regulations (2012) cross-references / Other notes
Qualifying Body	<b>Pre-Submission</b>	
	<b>Health Check of the draft plan</b>	A Health Check is undertaken ahead of the examination stage in order to assess whether or not the draft plan is likely to meet the legal requirements as set out within the Localism Act (primarily the basic conditions).  A health check has proven time and again to be a critical factor in ensuring a successful outcome at examination. QB's are able (and recommended) to have their draft plan reviewed well before it is finalised and ready for submission. A health check can be carried out before or after the Regulation 14 stage.
	<b>Publication of draft plan</b>	<b>Regulation 14</b>  Publication must be for minimum period of six weeks
Qualifying Body	<b>Submission</b>	<b>Regulation 15</b>
	<b>Draft plan submitted by QB to LPA with accompanying documents</b>	Documents to be submitted: <ul style="list-style-type: none"> <li>• Submission version of the draft plan;</li> <li>• Plan of the neighbourhood area;</li> <li>• Documentation relating to Strategic Environmental Assessment/Habitats Regulation Assessment;</li> <li>• Consultation Statement;</li> <li>• Basic Conditions Statement;</li> <li>• Evidence Base</li> </ul>

Who is responsible?	Stage	Neighbourhood Plan Regulations (2012) cross-references / Other notes
Local Planning Authority	<b>LPA checks documents for compliance with legislation and regulations</b>	LPA may contact the QB regarding any missing documents or further information required.
Local Planning Authority	<b>LPA organises appointment of an independent Examiner with agreement of QB</b>	The Examiner is paid for and appointed by the LPA. However, the appointment must be with the agreement of the QB. They essentially have the power to veto any appointment proposed by the LPA if they are not happy.  The Planning Act sets out the criteria for an individual to qualify to be able to examine a neighbourhood plan. The criteria are as follows: <ul style="list-style-type: none"> <li>• Must be independent from both the QB and LPA</li> <li>• Must have appropriate qualifications and experience</li> <li>• Cannot have an interest in any of the land to be covered by the plan (i.e. the Neighbourhood Area).</li> </ul>

Who is responsible?	Stage	Neighbourhood Plan Regulations (2012) cross-references / Other notes
Local Planning Authority & Qualifying Body	LPA publishes draft plan and documents for Consultation - to give anyone interested in the plan an opportunity to make representations before the Examination.	<p><b>Regulation 16</b></p> <p>Publication must be for minimum period of six weeks.</p> <p>LPA will also notify anyone referred to in the consultation statement.</p> <p><b>Regulation 17</b></p> <p>After the consultation period, LPA collates the responses and sends these plus the submitted plan &amp; accompanying documents to the Examiner.</p>
Examiner	<p><b>EXAMINATION STARTS</b></p> <p><b>Examiner decides:</b></p> <ul style="list-style-type: none"> <li>• if exploratory meeting necessary</li> <li>• if QB needs to respond to consultation responses</li> <li>• if clarification needed on documents or evidence submitted</li> </ul>	<p>The examination of the plan formally begins once the Examiner has been appointed and receives the draft plan and accompanying documents.</p> <p>In very limited circumstances, the Examiner may convene an exploratory meeting to clarify certain issues. If such a meeting is held, it will be in public.</p>

Who is responsible?	Stage	Neighbourhood Plan Regulations (2012) cross-references / Other notes
Examiner	<ul style="list-style-type: none"> <li>• if examination can be based on written submissions alone</li> <li>• if hearing(s) necessary as well for the examination - and the format this / these will take</li> <li>• what the timetable will be</li> <li>• to hold any site visit(s)</li> </ul>	<p>Examiner will normally give participants at least 21 days' prior notification ahead of any hearing – and normally this will be held in the plan area.</p> <p>Normally site visits by an Examiner will be unaccompanied.</p> <p>The default process for the examination of a draft plan is through written representations. Essentially this means the Examiner will carry out their assessment of the plan before issuing a written report.</p> <p>The Act does allow for a public hearing to be held but this is at the discretion of the Examiner. The Act states that a Public Hearing could be held in two specific circumstances, namely:</p> <ul style="list-style-type: none"> <li>• Where the Examiner considers an oral representation is necessary to ensure adequate examination of a particular issue; or</li> <li>• To allow a person(s) a fair chance to put a case</li> </ul> <p>Given the level of statutory consultation a plan has to go through it is unlikely that an individual will be able to claim</p>

Who is responsible?	Stage	Neighbourhood Plan Regulations (2012) cross-references / Other notes
Examiner		<p>that they have not had a fair chance put their views forward. However, an Examiner may wish to call a hearing in order to assess a particular issue in more detail. This may be because they have received conflicting information in terms of the draft plan's compliance with the basic conditions.</p> <p>It is unlikely the majority of examinations will include a hearing (for the reasons outlined above). If a Hearing is held, all questioning will be led by the Examiner who will also decide who will be able to speak and on what matters. As such there will be no cross examination of speakers by third parties.</p> <p>Examiner may undertake any further necessary site visit(s).</p>
Examiner	<p><b>Examination Report written by Examiner</b></p> <p><b>The Examination Report will assess whether or not the draft plan meets the basic conditions and other statutory requirements.</b></p> <p><b>EXAMINATION CLOSES</b></p>	<p>The Examiner will also consider:</p> <ul style="list-style-type: none"> <li>The appropriate process where proposed recommended modifications amount to a significant change to the Plan</li> <li>Whether or not the referendum area should be extended. The default position is for the Referendum to cover the neighbourhood plan area alone. Only in exceptional circumstances will an Examiner recommend that the referendum area should be extended beyond its boundaries.</li> </ul>

Who is responsible?	Stage	Neighbourhood Plan Regulations (2012) cross-references / Other notes
Local Planning Authority & Qualifying Body	<b>Examination Report issued by the Examiner to LPA and QB for fact checking</b>	No further representations can be made at this stage – it is simply a short period set aside to correct any factual errors in the draft Report.
Local Planning Authority	<b>LPA &amp; QB publish Examination Report - LPA decides whether it accepts the Examination Report in full or in part – e.g. regarding any proposed modifications and whether/when to hold a Referendum</b>	<p>The Examiner will issue their Report to both the LPA and QB who in turn have to publicise it.</p> <p>The Report will explain Examiner's reasons for recommending the plan can:</p> <ul style="list-style-type: none"> <li>(a) go forward to a Referendum unchanged</li> <li>(b) go forward to a Referendum with Modifications or</li> <li>(c) not go forward.</li> </ul> <p><b>***LAST POINT AT WHICH PLAN CAN BE WITHDRAWN BY THE QB***</b></p> <p><b>Regulation 18</b></p> <p>The LPA publish a report of its decisions following considering the Examiner's Report. If the LPA propose making a decision different to the Examiner, it must publish a report and</p>

Who is responsible?	Stage	Neighbourhood Plan Regulations (2012) cross-references / Other notes
Local Planning Authority	<p><b>Referendum – LPA organises, holds and pays for a referendum on the post-Examination version of the Neighbourhood Plan</b></p> <p><b>The Neighbourhood Plan is formally “Made” – at a full Council meeting the LPA will formally make the Neighbourhood Plan part of its development plan and use it from then on for making decisions on planning applications together with its Local Plan.</b></p>	<p>invite further representations – possibly requiring a second Examination.</p> <p>Providing more than 50% of those taking part in the Referendum vote in favour of the plan being made part of the development plan for the local area, the LPA must proceed to make the plan part of its development plan.</p> <p><b>Regulations 19 &amp; 20</b></p> <p>The LPA publishes details of the plan and notifies the QB and anyone known to have an interest in it.</p>

## Glossary of terms

### ADOPTION

The final stage of putting a Local Plan in place (a Neighbourhood Plan is “made”, see below). Adoption requires confirmation by a full meeting of the local planning authority. After adoption, the authority will primarily base all its decisions on planning applications on the current Local Plan, together with any Neighbourhood Plan. Inspectors on planning appeals will act likewise.

### AFFORDABLE HOUSING

Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices.

Affordable housing should include provisions that properties remain at an affordable price for future eligible households. Alternatively, the subsidy may be recycled for alternative affordable housing provision. This is normally arranged following negotiations between developers of larger housing schemes and the local planning authority.

### APPEAL

The process by which a planning applicant can challenge a planning decision, which has been refused or had conditions imposed.

### BASIC CONDITIONS

A set of conditions, set out in statute, that a draft neighbourhood plan or Order must meet if it is to proceed to referendum. A Neighbourhood Plan Examiner tests a proposed neighbourhood plan to judge whether it meets the basic conditions, and whether it can be submitted to a Referendum by a local planning authority. An Examiner needs to be satisfied that a plan’s policies and proposals:

- Are appropriate having regard to national planning policies and advice.
- Contribute to the achievement of sustainable development.
- Generally, conform with the strategic policies contained in the local plan for the area.
- Do not breach, and are compatible with, EU obligations – principally under the SEA Directive (2001/42/EC) – i.e. that the plan as a whole has been adequately assessed regarding any environmental impacts.
- Are not likely to have a significant effect on a European site for the conservation of habitats and species or a European offshore marine site.

An Examiner must also consider whether the plan is compatible with Convention rights contained in the Human Rights Act 1998.

### BROWNFIELD LAND

An area of land or premises that has been previously used, but has subsequently become vacant, derelict or contaminated. This term derives from its opposite i.e. undeveloped or

‘greenfield’ land.

### COMMUNITY

A group of people who hold something in common. E.g. people who share a common place, such as: an individual neighbourhood, or have a common interest, identity or need. In neighbourhood planning a community can be described as all those involved in, or thinking about, producing a Neighbourhood Plan.

### COMMUNITY ENGAGEMENT AND INVOLVEMENT

Refers to active involvement of the local community in decisions that are made regarding their neighbourhood.

### COMPULSORY PURCHASE

The mandatory purchase of a house, or other property, by a local authority or government department for public use, or to make way for development, regardless of whether, or not, the owner wishes to sell.

### CONDITIONS

All planning permissions are granted with conditions attached.

Conditions usually focus on prior approval of external materials, landscaping and boundary schemes and other aspects of a project too detailed to be included in the planning application. Conditions might require additional approvals for specific parts of a proposed development (such as the colour of materials) or they might restrict the use of a site (for example limiting operating hours).

All planning permissions require the permitted development to be started by a certain date (usually three years from the permission).

### CONSULTATION

The action or process of formally discussing a proposed neighbourhood plan. Consultation provides members of a local community with an opportunity to understand and comment on the contents of a neighbourhood plan. Once a plan has been prepared, a formal round of public consultation is required within the community. This should last for at least 6 weeks.

### DEVELOPMENT

Legal definition is “the carrying out of building, mining, engineering or other operations in, on, under or over land, or the making of any material change in the use of any buildings or other land.”

### EUROPEAN SITES

Sites which are special areas of conservation; or areas of community importance; or sites

hosting a priority natural habitat type or species such as protected wild birds. European Sites are defined in the Conservation of Habitats and Species Regulations 2010 or European offshore marine sites (as defined in the Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007.

## EXAMINATION REPORT

After formal examination of a plan, an independent Examiner is required to produce a report for the local planning authority. Having considered the Basic Conditions, other statutory requirements and Human Rights, the Examiner can make one of the following recommendations:

- that the plan proceeds to a referendum as submitted;
- the plan is first modified to meet Basic Conditions and then the modified version proceeds to referendum; or
- the plan does not proceed to referendum.

If an Examiner determines either of the first two recommendations is appropriate, s/he must also consider whether the Referendum area should be extended.

## EXCLUDED DEVELOPMENT

Development involving a county matter, waste development, EIA Annex 1 development, and major infrastructure projects.

## EXPLORATORY MEETING

A meeting held at the initiative of the Examiner to enable clarification of any issues. The meeting could be held, as appropriate and necessary, at any stage of the Examination. The meeting must be held in public.

## FUNDAMENTAL FLAW

Something basic that is wrong - at any stage of an Examination, an Examiner may find that a plan fails to meet one or more of the Basic Conditions, or some other legal requirement, that cannot be remedied by a suitable modification and then go forward to the Referendum stage. This would be a fundamental flaw. It means the plan will require further preparatory work, perhaps involving a redrafting of the plan and fresh public consultations, prior to its re-submission for examination.

## GREEN BELT

An area of open land around a city or town, designated as green belt in the development plan, on which building is severely restricted.

## GREENFIELD SITE

Land where there has been no previous development, which can be in an urban or rural area

either used for agriculture or landscape design, or left to evolve naturally.

## HABITATS REGULATIONS

UK Regulations derived from European law which are designed to protect conservation areas and wild life habitats

## HEALTH CHECK

A Neighbourhood Plan Examiner's preliminary assessment of a draft plan. It will usually be undertaken by a person who is qualified as a Neighbourhood Plan Examiner, but will not be the person who eventually examines the plan. The purpose of a health check is to establish whether the Neighbourhood Plan is likely, or not, to comply with the Basic Conditions tests and other legal requirements, and thus pass formal examination. A health check might highlight any necessary changes required before a plan is submitted for Examination.

## HEARING

During an Examination, an Examiner will call a public hearing if he/she decides that a hearing is necessary to ensure adequate examination of issues, or so that a person has a fair opportunity to put a case.

## INDEPENDENT EXAMINATION

An examination of a proposed Neighbourhood Plan, carried out by a qualified and independent person. The purpose of an examination is limited to determining whether a Neighbourhood Plan meets the basic conditions, and other statutory requirements, or not.

## INDEPENDENT EXAMINER

A person who has necessary experience and qualifications to be appointed by the local planning authority, in consultation with the Qualifying Body to carry out an examination of a draft Neighbourhood Plan.

## INQUIRY

A hearing by a Planning Inspector into a planning matter such as a Local Plan or appeal.

## LEGISLATION

Laws made by Parliament, which are categorised as "primary legislation" (Acts) and "secondary legislation" (regulations and statutory instruments).

## LOCAL DEVELOPMENT FRAMEWORK (LDF) – see Local Plan. LOCAL PLAN

The plan for the future development of a local area, drawn up by a local planning authority in consultation with the community. In law, this is described as the development plan documents

adopted under the Planning and Compulsory Purchase Act 2004. A Local Plan will be comprised of a collection of documents prepared by a local planning authority for the use and development of land, and for changes to the transport system.

### LOCAL PLANNING AUTHORITY (LPA)

A local authority or council that is empowered by law to exercise town planning functions for a particular area of the United Kingdom. An LPA is responsible for formulating planning policies and controlling development. It includes a district council, metropolitan council, a county council, a unitary authority or national park authority.

### MAKING (of a Neighbourhood Plan)

Once the examination process is complete, and the Plan has passed referendum, the Plan is “made” by the LPA. This step is the equivalent to the adoption of a Local Plan. Making the Plan requires confirmation by a full meeting of the LPA. (The Plan formally becomes part of the overall development plan when it has passed the referendum).

### MINISTRY OF HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

The government department that has responsibility for housing, communities, planning, local government and related functions.

### MODIFICATIONS

Any changes considered necessary by an independent Examiner in order for a draft Neighbourhood Plan to meet the Basic Conditions, or other legal requirements before it can go forward to the Referendum stage.

### NEIGHBOURHOOD AREA

The designated local area in which a Neighbourhood Plan, or Neighbourhood Development Order, can be introduced.

### NEIGHBOURHOOD DEVELOPMENT ORDER (NDO)

An order introduced by a parish or town council, or a neighbourhood forum, as part of the Neighbourhood Planning process. An NDO can grant planning permission for specified developments in a neighbourhood area. Once established there would be no need for anyone to apply to the council for planning permission, if it is for the type of development covered by the order.

### NEIGHBOURHOOD PLAN

A planning document created by a parish or town council or a neighbourhood forum, which sets out vision for a neighbourhood area, and contains policies for the development and use of land in the area. A Neighbourhood Plan must be subjected to an independent examination to confirm that it meets legal requirements, and then to a local referendum. If approved by a majority vote of the local community, a Neighbourhood Plan will then form part of the relevant

Local Authority’s development plan.

### NEIGHBOURHOOD FORUM

A community group that is designated to take forward Neighbourhood Planning in an area without a parish. It is the role of the relevant Local Planning Authority to agree who should be the neighbourhood forum for a neighbourhood area. There can only be one Neighbourhood Forum in an area.

### NEIGHBOURHOOD PLANNING

A community-initiated process, by which people get together through a local forum or parish or town council to produce a plan for their neighbourhood. The Plan sets out policies and proposals for the development they wish to see in their area.

### NEIGHBOURHOOD PLANNING REGULATIONS

Three sets of regulations were published by the Government in 2012, 2016 and 2017 which set out the procedural requirements and steps involved for preparing Neighbourhood Plans. Of particular importance are:

- REGULATION 14 – sets out the requirement for a Qualifying Body to publish its draft plan for public consultation ahead of its submission to the local planning authority.
- REGULATION 15 - sets out requirements for the information a Qualifying Body must present to the local planning authority alongside its draft Neighbourhood Plan when this is submitted. This information includes: a map of the area covered by the plan; a Consultation Statement; a statement on how the plan meets the Basic Conditions; any necessary strategic environmental assessment, or evidence why one is not required.
- REGULATION 16 – sets out the requirements for a local planning authority regarding the publication of a draft plan for public consultation prior to its submission for Examination.
- REGULATION 17 –sets out the documents which the local planning authority must submit to the Examiner.

### PARISH COUNCIL

The lowermost local government tier in England, which is responsible for an area known as a civil parish. A parish council serving a small town may be called a town council. Most parish councils are small, with around 80% representing populations of less than 2,500. Individually, or in groupings, they can form “Qualifying Bodies”, and prepare Neighbourhood Plans and orders for their areas

### POLICY

A concise statement of the principles that a particular kind of development proposal should satisfy in order to obtain planning permission.

### PLANNING PERMISSION

Formal approval, granted by a council, allowing a proposed development to proceed.

## QUALIFYING BODY

A parish/town council or neighbourhood forum, which can initiate the process of Neighbourhood Planning.

## REFERENDUM

A general vote by the eligible population of an electoral area on a single political question, which has been referred to them for a direct decision. In Neighbourhood Planning, the electorate in a designated Neighbourhood Plan area vote on whether to accept the draft plan. A plan will be made (equivalent to adopted) if more than 50% of votes are in favour.

## REPRESENTATIONS

Formal statements made to communicate an opinion or register a protest. During their preparation, draft Neighbourhood Plans must be published for public consultation (for a minimum period of six weeks) by the Qualifying Body before Submission, and by the local planning authority after Submission and prior to Examination. Any member of the public, amenity group, other organisation or interested parties can submit a representation in support or objecting to all / part of a plan during these periods - relating to land use matters.

## STAKEHOLDERS

People who have an interest in an organisation or process, including residents, business owners and government.

## STATEMENT OF COMMUNITY INVOLVEMENT

A formal statement of the process of community consultation undertaken in the preparation of a statutory plan.

## STRATEGIC ENVIRONMENTAL IMPACT ASSESSMENT

An assessment process intended to ensure that environmental and possibly other sustainability aspects are considered effectively in policy, plan and programme making. Environmental assessment as applied to policies, plans and programmes. Has been in place since the European SEA directive (2001/42/EC).

## STATUTORY REQUIREMENT

A matter that is required by virtue of law enacted by Parliament. There are statutory requirements that an Examiner must consider when examining a Neighbourhood Plan.

## TOWN AND COUNTRY PLANNING ACT 1990

The main planning legislation for England and Wales

## Part One – Guidance to Community Groups

### 1. The purpose of an independent examination of a neighbourhood plan

1.1.1. The sole purpose of an independent examination is to assess whether a draft neighbourhood plan meets certain basic conditions<sup>1</sup> and requirements set out in statute.

1.1.2. An examination is undertaken by an impartial examiner whose decision is independent of the local planning authority (LPA) and the qualifying body, which is the body which initiates and prepares a neighbourhood plan. As well as being independent, the examiner must have appropriate qualifications and experience.

1.1.3. Cooperative working between the local planning authority and qualifying body throughout the plan preparation process is important. In many of the neighbourhood plans completed to date, continuing collaboration and openness have helped to ensure successful outcomes to independent examinations.

### 2. The difference between neighbourhood plan examinations and local plan examinations

1.2.1. A local plan is drawn up by a local planning authority. It is a plan for the development of all areas covered by the LPA.

A neighbourhood plan relates to a designated area, and is prepared by a qualifying body.

1.2.2. An examination of a local plan is a thorough, wide-ranging test as to whether it is positively prepared, justified, effective and consistent with national planning policy.

1.2.3. A neighbourhood plan examination considers only whether the plan meets specific basic conditions. The independent examination will consider the proportionate and robust evidence, which supports the choices made in the plan, quickly and efficiently.

A neighbourhood plan examination should not be looked at as being just the same as a local plan examination; it is usually shorter and less wide-ranging in scope than a local plan examination. The subject matter an independent examiner scrutinises is limited.

An independent examiner will not consider the 'soundness' of the neighbourhood plan<sup>2</sup>. An independent examiner will not produce an alternative plan. However, an independent examiner can recommend modifications to a neighbourhood plan which, if undertaken, will change a plan so that it meets the basic conditions and/or other statutory requirements.

In summary, a neighbourhood plan examination will not involve inquiries into matters which are

<sup>1</sup> The basic conditions are:

Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan.

The making of the neighbourhood plan contributes to the achievement of sustainable development.

The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).

The making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations. Prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

<sup>2</sup> See the Planning Practice Guidance, reference ID: 41-055-20140306 and paragraph 29 of the judgment in R (Crownhall Estates Ltd) v Chichester DC [2016] EWHC 73 (Admin).

not relevant to a plan's ability to meet the basic conditions.

### 3. The principles which underscore an independent examination

#### 1.3.1. Transparency and fairness are central features of an independent examination.

All documents should be made available for public inspection. If an independent examiner requires a hearing, it will be held in public.

All parties must be treated fairly and equally. Everyone who has an interest in a neighbourhood plan should be able to make their views known.

#### 1.3.2. An independent examiner must be unbiased. Before being appointed, an independent examiner is required to confirm that they:

- are independent of the qualifying body and the local planning authority.
- do not have any interest in land affected by the neighbourhood plan.
- do not have any conflicts of interest (e.g. the independent examiner does not have a financial or other interest in the outcome of the examination).

Sometimes a possible conflict of interest will only become apparent after the examination has commenced. For this reason, an independent examiner should keep matters under review throughout the examination process. An independent examiner must disclose anything arising during an examination, which may affect their continuing independence.

#### 1.3.3. It is important that all matters relating to the examination process are carried out in an open and transparent manner. The local planning authority should ensure it maintains a dedicated website that includes all documentation relating to the examination (except perhaps purely contractual and inconsequential administrative papers). The website should be regularly updated<sup>3</sup>.

#### 1.3.4. The neighbourhood plan will have been submitted to the local planning authority before the independent examination begins. Even so, the independent examiner should be alert to the fact that those involved with the qualifying body will retain a strong sense of ownership of the plan. The independent examiner should ensure they are regularly briefed on all matters relating to the independent examination.

#### 1.3.5. More detailed guidance on fairness and transparency is set out in Part Two.

## Pre-submission

### 4. Health checks – reviewing a neighbourhood plan before it is submitted formally to an independent examiner.

#### 1.4.1. Those involved with a qualifying body may be confident a neighbourhood plan meets the basic conditions and other legal requirements. Even so, they should think carefully about having the plan appraised before submitting it to formal examination.

A qualifying body can choose to submit its draft plan to a “health check”. This can be carried out by a qualified neighbourhood plan independent examiner, who will not be the same person

<sup>3</sup> As recommended by the High Court in *Legard v Royal Borough of Kensington and Chelsea* [2018] EWHC 32, paras 161,179.

who will ultimately examine the plan.

A health check provides an objective assessment of whether, or not, a draft plan is likely to meet the legal requirements set out in the Localism Act (primarily, the basic conditions). It will inform a qualifying body as to whether a plan is adequately supported by evidence, and whether it contains clear land use policies. A health check can also provide recommendations on what, if anything, needs to be changed to help the draft plan pass the formal independent examination.

A health check examination is not as comprehensive as a full independent examination. Its purpose is to spotlight issues that may delay or lead to rejection of the plan at examination. A health check will recommend solutions to potential problems.

Allocating an amount of plan preparation finances to fund a health check can be a sound investment. It can make the formal independent examination more efficient and speedy. Qualifying bodies are able (and recommended) to have their plan reviewed well before it is finalised and ready for submission to independent examination.

#### 1.4.2. A health check can identify whether any part of a draft plan should be amended before it is submitted to independent examination. A failure to undertake a health check can increase the likelihood of an independent examiner requiring modifications to a plan. In some cases, an independent examiner may recommend that a plan should not proceed to referendum. A health check can go a long way to avoid this.

#### 1.4.3. Note: health checks have proven to be critical factors in ensuring successful outcomes in independent examinations. However, they cannot provide a 100% guarantee of success. When a draft plan is submitted to examination, the independent examiner will scrutinise the plan in detail. They will undertake a site visit, and may hold a public hearing. The independent examiner may ultimately reach different conclusions to that of the health check.

#### 1.4.4. The Neighbourhood Planning Independent Examiner Referral Service (NPIERS) offers health checks to those involved in preparing neighbourhood plans. Health checks are offered as part of the Government's technical support programme, or as a service paid for directly by local planning authorities or neighbourhood planning groups. Other organisations also offer health check services. When using an organisation other than NPIERS, it is advisable for those preparing plans to make their own checks to ensure the person undertaking the health check is independent and competent.

It would not be appropriate for a person who has carried out a health check to act as the independent examiner on the same plan.

## Appointing the examiner

### 5. How an independent examiner is appointed

#### 1.5.1. The independent examiner is paid for and appointed by the local planning authority. However, the appointment must be made with the consent of the qualifying body. This means the qualifying body can veto any appointment proposed by the local planning authority, if they are not happy.

When seeking consent to an appointment, the local planning authority should advise the

qualifying body of potential independent examiners it is considering, and reasons for selecting them.

The Planning Act sets out the criteria for a person to qualify to be able to examine neighbourhood plans. An independent examiner must:

- Be a person who is independent of the local planning authority and the qualifying body
- Have appropriate qualifications and experience
- Not have an interest in any land affected by the plan (i.e. the Neighbourhood Area)

1.5.2. Independent and qualified examiners can be found through NPIERS.

NPIERS has established a rigorous accreditation and quality assurance process. NPIERS ensures planning professionals are trained and qualified to act as independent examiner and that they comply with this guidance.

A local planning authority can source an independent examiner through another body, other than NPIERS, or appoint someone directly.

In all cases, the examiner will enter into a contract with the local planning authority. The contract and related professional indemnity cover will be appropriate to the limited nature of the examination task. Standard Council construction-related contracts will not be appropriate. A model contract suitable for the appointment of an independent examiner is available from NPIERS.

1.5.3. An independent examiner, whether appointed through NPIERS, by another body or directly by a local planning authority, must verify they are independent and have no conflicts of interest.

## 6. When the independent examiner is appointed

1.6.1. An independent examiner may be appointed following the submission of the plan to the local planning authority, and before the period for representations (Regulation 16).

The timing of the appointment will be a matter of judgment for the local planning authority. In most cases, the appointment will be made once the plan has been submitted for examination. This ensures the independent examiner can commence the independent examination soon after the six-week period for representations has closed. This gives clarity and certainty to all parties concerned.

1.6.2 The examination formally commences once the independent examiner has been appointed, and has received the documents that are required to be submitted to them.

The date of commencement of the examination should be publicised on the local authority website. Any interested parties are advised to regularly check the local authority's website for up to date information.

## Submission of the plan and preparation for the examination

### 7. Checks the qualifying body should make prior to submitting the plan to the local planning authority

1.7.1. A qualifying body should check that the policies in the plan are precise, and provide a basis for decision-making on planning applications. This is a key area where the local planning authority can help.

Policies should generally be positive, rather than negative. Policies must be justified. Evidence to inform the policies should be proportionate to the issues.

It is not necessary to repeat national or local strategic policies. This does not add value.

Non-land use matters (perhaps referred to as community aspirations or community actions) can be included in a neighbourhood plan. They should be separately identified.

Policies should not relate to excluded development (as defined in the Town and Country Planning Act 1990, section 61K).

1.7.2. Plans should be supported by clear mapping, including:

Accurate delineation of the boundaries of the plan

The general location of the plan area within the area of the local planning authority

The boundaries of any site allocations, and designations made in the plan (preferably including street names).

1.7.3. It is important that a qualifying body, together with the local planning authority, spends time checking the policies in the plan. An independent examiner can decide that a plan is so fundamentally flawed that modifications cannot be made to enable it to meet the basic conditions. In which case, the independent examiner will recommend the plan does not proceed to a referendum.

### 8. Documents which must be submitted to the local planning authority

1.8.1. The qualifying body must submit:

- The Plan Document
- A Basic Conditions Statement
- A Consultation Statement

and (if not included in the above documents):

- A map showing the designated plan area
- A full Strategic Environmental Assessment (SEA) report (or a statement of reasons why a report is not required)

In accordance with the Habitats Regulations, it is also necessary to demonstrate that the neighbourhood plan either alone, or in combination with other plans and programmes, is unlikely to have a significant effect on any European Sites. It can assist to state the locations of the nearest European Sites.

A qualifying body will need to submit any additional background evidence relied upon to

support the plan (including evidence of compliance with human rights requirements).

## Examination

### 9. Timescales for the examination process

1.9.1. The time it takes for an independent examination to be completed depends on the scale and nature of the plan. It is also affected by the quantity and significance of representations received by the independent examiner.

1.9.2. Most examinations take between 5 to 10 days of an independent examiner's time. These are not usually consecutive working days. Most examinations are spread over several weeks. An indicative timetable is contained at [Annex 3](#).

### 10. What an independent examiner does when first appointed

The examination of a plan formally begins once the independent examiner has been appointed and receives the draft plan and accompanying documents.

1.10.1. The independent examiner will initially identify the key contacts. The principal contact will be with the local planning authority. However, the qualifying body should be copied into communications between the independent examiner and local planning authority (all except contractual arrangements for the independent examiner, and trivial administrative matters).

1.10.2. Shortly after commencing the examination, the independent examiner will inform the local planning authority and the qualifying body how they intend to conduct the examination.

The independent examiner will send a letter explaining the process, and respond in writing to queries about the procedure that are raised at this stage.

The independent examiner decides:

- If an exploratory meeting is necessary
- If the qualifying body needs to respond to consultation responses
- If clarification is needed on documents or evidence submitted
- If the examination can be undertaken using written submissions alone
- What the likely timetable for the examination will be
- Whether to undertake any site visit(s)

At an early stage, an independent examiner may feel able to express a view as to whether a hearing might be necessary. This will be reviewed as the examination proceeds.

#### Evidence gathering

1.10.3. The independent examiner will ensure they have access to all the necessary and relevant documents. The local planning authority will ensure all plan documents and representations are published on the local planning authority website. Any health check which has previously been undertaken may be made available to the independent examiner.

1.10.4. The independent examiner will inform the local planning authority and the qualifying body of the likely timetable for the examination. This information should be made available on

the local planning authority website.

#### Fundamental flaws

1.10.5. The independent examiner will initially undertake a high-level assessment of the plan documents. If there is an obvious and potentially fatal flaw, the independent examiner will write to alert the local planning authority and qualifying body.

While matters raised by an independent examiner can often be dealt with through correspondence, an exploratory meeting may be helpful. (An exploratory meeting is defined in the glossary).

The purpose of the meeting would be to:

- Consider the independent examiner's concern
- Clarify the scale of the issue
- Discuss options on how to proceed

The meeting must be held in public and a note should be published on the local planning authority website.

### 11. How interested parties can make their views known to the examiner

Interested parties have two opportunities to make their views known.

1.11.1. First: they can submit comments to the qualifying body on the pre-submission draft plan during an initial period of not less than six weeks (Regulation 14). A summary of any comments, and how the qualifying body has considered them, is provided to the independent examiner in a consultation statement.

1.11.2. Second: the local planning authority will publish the draft plan and documents for consultation. The local planning authority is responsible for publicising this opportunity. This will give anyone interested in the plan a minimum of six weeks to make representations to the independent examiner, before the examination takes place. (Regulation 16).

All representations properly submitted within the period for making representations (including any made by the qualifying body and the local planning authority) should be publicised. Representations should be posted on the local planning authority's website. They should also be provided to the independent examiner by the local planning authority.

1.11.3. The independent examiner will consider all representations submitted during the advertised (Regulation 16) period in preparing the report of examination. Representations may include matters that prompt the independent examiner to seek a clarification from the qualifying body or the local planning authority.

1.11.4. The qualifying body will normally be given the opportunity to comment on the representations made by other parties at this stage. Ideally, the qualifying body should make its comments known within two weeks of the close of the Regulation 16 stage. This may be particularly important where the matters concerned have not been raised at the Regulation 14 stage. The opportunity for the qualifying body to comment on representations could be incorporated within an independent examiner's clarification note. The clarification process is

described later in this Guidance in [1.14.3-4](#).

1.11.5. Additional material should not be put forward, unless it has been requested by the examiner or a participant, such as a qualifying body. Any additional written material produced in response to a specific request from an examiner will be published on the local planning authority website. The date for submission of responses to an issue will normally be the same for all parties. This helps to avoid situations where parties submit a succession of arguments to points made by others (rather than focusing on responding to what the independent examiner has asked for).

## 12. Late representations

1.12.1. Whether late representations can be made will be a matter of judgment. As part of the Regulation 16 process, the local planning authority will decide whether to accept a late representation.

Once the plan, with the representations, has been submitted to the independent examiner, it will be a matter for them to decide whether to accept any late representations.

The general rule is that late representations will not be considered, other than in exceptional circumstances. Examples include:

- A change in policy
- A change in legislation
- The handing down of a relevant judgment
- A relevant factual development (such as the grant of a substantial planning permission).

There may, however, be opportunities during the examination for comments to be made at the request of the independent examiner, e.g. during a hearing (if one is held).

## 13. Examiner visit(s) to the neighbourhood area

1.13.1. Independent examiners should always visit the relevant neighbourhood area. The independent examiner will usually be unaccompanied during a visit to the plan area.

1.13.2. If the independent examiner cannot see all they wish to see from a public viewpoint, it may be necessary to conduct an accompanied site visit. A representative of a relevant landowner, and representatives of the qualifying body and local planning authority will be invited to attend.

A site visit will help the independent examiner understand the nature of the plan and give them a better appreciation of representations. The site visit may help the independent examiner identify issues that need further clarification. It will also help the independent examiner decide if a hearing is necessary.

During the site visit the independent examiner will not invite, or allow for, representations to be made.

## 14. Matters raised by an independent examiner during an examination

1.14.1. An independent examiner will rely on submissions made, and will not accept additional

evidence or representations other than in exceptional circumstances. It is the responsibility of the qualifying body to ensure all evidence relied on to justify the policies has been provided. This is done when the plan is submitted to the local planning authority. It includes evidence submitted within the plan, or as supporting evidence.

1.14.2. Many neighbourhood plans can be satisfactorily examined using only the submitted documents, the supporting evidence, and the representations received. In more complex cases, the independent examiner may need to explore some matters in greater detail, or seek clarification on elements of the plan.

1.14.3. Having considered the plan documents, representations and other evidence the independent examiner may need to clarify some points. This could, for example, relate to the status of a planning application, or where evidence to support a policy approach is to be found. Clarification can only relate to evidence that already exists and cannot amount to the submission of new evidence. A point of clarification will normally be dealt with through an exchange of correspondence with both the local planning authority and the qualifying body. It will usually be concluded quickly. The note seeking clarification, and responses, should be published on the local planning authority web site. The independent examiner may then update the indicative timetable for the examination, and highlight key stages and decision points.

1.14.4. In rare circumstances, an independent examiner will call an exploratory meeting to clarify matters that have not been answered through correspondence. An exploratory meeting enables an independent examiner to convene a discussion with identified participants about a concern with the plan. This is useful where the issues to be explored may not fall within the very specific legal reasons for convening a public hearing, which are to ensure there is adequate examination of an issue, and/or that a person has a fair chance to put a case.

An exploratory meeting will take place in public and be subject to requirements about proper notice and publication of outcome, as though it were a hearing. The independent examiner will decide if a party, in addition to the qualifying body and local planning authority, may participate in discussions. Paragraph 2.13. of Part Two provides further Guidance.

## 15. Suspending an examination

1.15.1. In some circumstances, it may be appropriate to suspend an examination. Such circumstances include where an independent examiner considers that a previous stage or stages in the production of the plan have not been correctly followed in accordance with the regulations.

The independent examiner may suggest that the relevant stage(s) is undertaken again. A qualifying body can avoid the inevitable delay a suspension will cause by ensuring they follow the procedures as set out in the Regulations. It is likely that in normal circumstances, this situation will not occur, as local planning authorities will usually undertake the checks required by the Regulations.

## 16. Dealing with allegations of misconduct

1.16.1 There may be instances where an independent examiner is alerted to allegations of misconduct arising during the production of a plan. For example, someone may make an allegation about a conflict of interest within the qualifying body.

An independent examiner has no authority to consider such allegations of misconduct. Such matters should be dealt with through internal complaints handling procedures of the qualifying body or local planning authority.

## 17. The hearing as part of the examination process

1.17.1. The primary purpose of an independent examination for an independent examiner to assess a neighbourhood plan against the basic conditions and other requirements. The default position for the examination of neighbourhood plans is through written representations.

An independent examiner will normally have all the necessary information to carry out a full and robust examination based on the written evidence. This will be supplemented by a visit to the plan area.

In practice, most examinations can be undertaken without the need for a public hearing.

1.17.2. There are two circumstances where an independent examiner must call a hearing:

- The first is where it is necessary to ensure adequate examination of an issue.
- The second is where it is necessary to allow a representor to have a fair chance to put a case orally.

There can often be an overlap between these two circumstances. It is for the independent examiner alone to decide whether a hearing is necessary.

## 18. Organising a hearing

1.18.1. A public hearing is required only where an independent examiner considers it necessary.

A hearing will not consider the entire submitted plan. It is not open for all parties to contribute. If an independent examiner decided to hold a public hearing, they will:

- Agree a date for the hearing with the principal parties
- Give a minimum of 21 days' notice (excluding Bank and Public Holidays) in which the local planning authority must advertise the event.

The independent examiner decides the specific issues that will be discussed at a hearing, and who can participate.

1.18.2. The local planning authority and the qualifying body have the right to contribute at a hearing.

Where a hearing is held to give a person the fair chance to put a case, that person is entitled to contribute.

Others may be invited to participate in the hearing, at the discretion of the independent examiner. Participants will not necessarily include all parties that have submitted representations.

The independent examiner will invite parties they consider will help them get to the heart

of issues, which have given rise to the need for a hearing. Where several individual representors are making the same point, the independent examiner may invite them to appoint a spokesperson. A hearing is held in public. Wherever possible, it should be held in the neighbourhood area.

1.18.3. The independent examiner will determine:

- The format for the hearing
- The ability, or otherwise, of participating parties to ask questions of other parties
- Whether opening and closing statements will be allowed

1.18.4. A hearing provides an opportunity for an independent examiner to test information that has already been submitted. A hearing does not allow for the submission of new information, unless it is specifically requested by the independent examiner.

## Further information submitted after a hearing

1.19.1. Key issues will normally be adequately addressed at a hearing. However, an independent examiner may invite participants at a hearing to submit further information within an agreed period. That information will be made available on the local planning authority website.

## The independent examiner's report

### 20. The opportunity to check facts

1.20.1. An independent examiner will send a draft of their report to the qualifying body and local planning authority. This gives them an opportunity to check whether there are any factual errors. This is not an opportunity for any further representations to be made.

### 21. What is included in the examiner's report

1.21.1. The independent examiner will recommend one of the following:

- The neighbourhood plan, with or without modification, is submitted to a referendum
- The neighbourhood plan does not proceed to a referendum because it does not meet the legal requirements

1.21.2. If the recommendation is to proceed to referendum, the independent examiner will also make a recommendation on whether the referendum should extend beyond the plan area.

1.21.3. Apart from correcting errors, modifications will only be recommended by an independent examiner where they are necessary to enable the plan to meet the basic conditions, and other statutory requirements.

1.21.4. The independent examiner's report will address each policy of the plan in turn. If the examiner finds that a policy does not meet the basic conditions or other legal requirements, they will recommend modifications. If no modifications are possible, as a last resort, the independent examiner may recommend deletion of that policy or part(s) of it.

1.21.5. The report will clearly set out:

- The extent to which the plan meets the basic conditions,
- Any recommended modifications to the plan, which are required to remedy any policies that do not do so.

Whilst the independent examiner will carefully consider all representations, the report will not address each representation in turn. In some cases, the independent examiner may choose to draw attention to comments made in a particular representation. This may be to add context to observations made in the report in general, and to any recommended modifications.

## 22. Opportunities to comment on the examiner's report

1.22.1. Independent examiners will not normally engage in a dialogue with parties on recommended modifications.

Where a modification requires a significant change, an independent examiner will consider the appropriate process through which this can be managed. Further guidance on this is in Part Two.

## 23. When the report is received by the local planning authority and the qualifying body

1.23.1. The independent examiner's report will be sent to the local planning authority and the qualifying body, and will be published on the local planning authority website.

1.23.2. The local planning authority must decide what action to take in response to each of the independent examiner's recommendations (if any).

The local planning authority retains responsibility for determining the extent to which a neighbourhood plan meets the basic conditions. The local planning authority decides whether it will proceed to referendum, with or without modification.

## 24. When a local planning authority/qualifying body doesn't accept the independent examiner's recommended modification(s)

1.24.1. A local planning authority must consider what action to take in response to the recommendations of an independent examiner.

If the local planning authority decides to deviate from an independent examiner's recommendations, e.g. because of

- New evidence
- A new fact
- A different view about a fact,

the local planning authority must invite representations and may refer the issue to independent examination.

Advice on such an examination is provided at [Part Two Paragraph 2.16](#). The qualifying body has a right to withdraw the neighbourhood plan proposal at any time before the local planning authority decides on the independent examiner's recommendations.

## Part Two - Guidance to Neighbourhood Plan Examiners

### Neighbourhood Plan Health Checks

#### 1. Introduction

2.1.1. As an independent examiner, you may be asked to undertake a 'health check', to assess whether a draft neighbourhood plan meets the basic conditions and other legal requirements. The health check will be an independent desk-based review, which will aim to help both the qualifying body and the local planning authority to recognise any matters that may result in either delay or failure of the neighbourhood plan at the independent examination.

2.1.2. It is a source of considerable frustration where a neighbourhood plan comes to examination which contains issues which could have been identified and potentially remedied through a health check at a much earlier stage in the draft plan's preparation. From the qualifying body's point of view, acting on the recommendations emerging from a health check will increase the likelihood of a positive experience at examination, as well lessening the burden on the examiner to seek to remedy problems through extensive plan modifications.

2.1.3. Your approach to a health check is to effectively consider the application of the requirements of the formal examination process, but it will by virtue of the stage reached be less detailed than the formal examination stage. It will not be possible to take account of any representations resulting from the post-submission consultation (Regulation 16<sup>4</sup>) and may not necessarily include all the background documentation.

2.1.4. Whilst the health check is a non-statutory document and has no formal status, be aware your health check may be placed in the public domain by the qualifying body and in due course provided to the appointed examiner, as part of the background evidence to support the plan.

2.1.5. Where you decide to undertake a health check, you should bear in mind this will preclude you from subsequently undertaking the independent examination of the plan.

#### 2. Undertaking a Health Check

2.2.1. As with a neighbourhood plan examination appointment, you should review whether you are independent and confirm that you do not have any interest in land affected by the plan.

You should also review whether you hold appropriate qualifications and experience, establishing whether any specialist knowledge may be required. For example, a town centre neighbourhood business plan is likely to benefit from appraisal by a retail specialist.

2.2.2. Typically, a health check is undertaken after the Regulation 14 consultation (there is no bar to an earlier health check), prior to submission of the plan to the local planning authority (Regulation 15). Ideally, as a minimum, the following documents will be provided:

- The draft Neighbourhood Development Plan
- The Basic Conditions Statement;
- The Consultation Statement; and

<sup>4</sup> The Neighbourhood Planning (General) Regulations 2012 (as amended).

- The Strategic Environmental Assessment screening opinion, and if required, the environmental report.

2.2.3. In practice, you may find that there is some variance in the extent of the supporting documentation provided. As such, you will need to caveat your assessment where you do not have sight of a key document that is intended to be submitted with the plan to the local planning authority, and in turn to the examiner.

2.2.4. Your appraisal should be critical and rigorous, albeit it is not a full examination of the draft plan. You should focus on highlighting any shortcomings and areas of vulnerability in relation to the plan's compliance with the procedure requirements and the basic conditions. In doing so you may provide valuable insights (from your experience as an examiner), suggest areas where further work is required and offer potential remedies for any shortcomings. The qualifying body may also wish to raise specific plan issues for you to focus on. It is considered good practice to seek to accommodate such requests, where practicable.

2.2.5. It is also prudent to consider whether there are any broader, additional matters likely to affect the plan. Whilst you cannot always pre-empt such matters, you should have a wider awareness in relation to possible national policy changes, legislative change or adoption of a new local plan for the area before the neighbourhood plan reaches examination. Similarly, it is prudent to check the plan against current, relevant case law and lessons from neighbourhood plans that have failed at examination.

2.2.6. Nonetheless, there will be matters that are outside your control that may necessitate changes to the plan between the health check and examination. As previously noted, the local planning authority's assessment of the plan once submitted and the Regulation 16 consultation responses will not be available to you at this stage.

2.2.7. The health check, much like the examination, requires the exercise of your planning judgment, particularly in relation to compliance with the basic conditions. However procedural issues such as whether the Regulation 14 consultation was run for no less than 6 weeks and whether the plan prepared is coterminous with the designated neighbourhood area are questions of fact. It will reflect very poorly if a health check fails to pick up on procedural compliance points where it involves an assessment of purely factual matters.

2.2.8. After conducting the health check the qualifying body may come back to you for further minor clarification on points in your health check, which is to be considered a reasonable request. However, your role in undertaking the health check is not to rewrite the plan, so there can be no expectation of your ongoing support in advising on the plan (unless instructed formally and separately to do so).

### 3. The Health Check and the Appointed Examiner

2.3.1. The health check may be a useful document for the examiner should the qualifying body wish to provide it as part of the evidence base. However, it will be for the appointed examiner to come to their own conclusions on the examination matters and the appointed examiner is in no way bound by your assessment. In any event, the plan being examined is often a revised version to the version that was subject to a health check, particularly where the qualifying body has sought to address issues arising out of your health check. Also, the examiner may well have additional evidence not available at the health check stage and must take that evidence into account.

2.3.2. A suggested, advisory 'Neighbourhood Plan Health Check Template' is provided at [Annex 1](#) to guide you through the sort of issues that may be covered as part of the exercise, but this should not be considered as prescriptive.

## Examination Overview and Guiding Principles

### 4. Overview

2.4.1. An examiner's role is limited to testing whether or not a draft neighbourhood plan meets the basic conditions and other matters set out in Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended). The basic conditions are legal tests as opposed to the policy tests that are applied to the examination of a Local Plan. The matters the examiner considers are narrowly drawn and it is well established that the neighbourhood plan examination is not a mini Local Plan examination. There is no consideration of 'soundness' of the neighbourhood plan<sup>5</sup>. [Annex 2](#) sets out the extent of the legal matters the examiner must consider in examining a neighbourhood plan.

2.4.2. As such it is important that examination procedures are appropriate and proportionate and within the remit of a narrowly focused and 'light touch' approach. As an examiner, you will need to align this with ensuring the examination is robust, proceeds on the basis of reliable evidence, is able to stand up to scrutiny and conducted with a view to minimising the risk of legal challenge.

2.4.3. This section of the Guidance is confined to the handling of the examination i.e. the process of examining the plan and does not seek to provide guidance on the considerations around the qualitative (including planning) judgment exercised in the assessment of the plan against the legal requirements, including the basic conditions.

2.4.4. In terms of the process, there are minimal procedural requirements around how the examination should be conducted, relating principally to the limited circumstances in which a hearing may be held and the scope of the examiner's report. This provides some considerable flexibility to examiners, albeit this can give rise to variances in approaches.

2.4.5. The Guidance aims to set out best practice around conducting examinations, recognising there is a balance to be struck between the desirability of examiners following a consistent approach, with the discretion an examiner may wish to exercise to ensure the smooth running of any given examination and its particular circumstances.

### 5. Guiding Principles

2.5.1. The examination will be a key milestone in the progressing of the neighbourhood plan, and reaching this stage will represent the investment of a significant amount of time and effort principally by the qualifying body, as well as the local planning authority. Whilst it will be the local planning authority that submits the plan for examination, it is particularly important to bear in mind that the qualifying body will retain a strong sense of ownership of the plan.

2.5.2. Qualifying bodies may well be apprehensive about the examination process, in part due to their relative lack of involvement and control once the plan has been submitted to the local planning authority. In view of this, it is important to keep the qualifying body, as well

<sup>5</sup> See the Planning Practice Guidance, reference ID: 41-055-20140306 and paragraph 29 of the judgment in R (Crownhall Estates Ltd) v Chichester DC [2016] EWHC 73 (Admin).

as the local planning authority, well briefed on all matters which relate to progressing the independent examination. It is in your interests, as well as those involved, that you secure good communications at the outset and that the expectations of the respective parties involved are wholly clear.

2.5.3. The following Guiding Principles aim to provide a broad reference framework for conducting the examination. Examiners should:

- be alert to the cost of examinations accruing at a day rate and work as efficiently as possible. Seek early identification of any patently fundamental and terminal failings in the plan, that might vitiate the desirability of progressing the examination any further;
- be open and transparent for the duration of the examination, ensuring all relevant correspondence and dates/events are made publicly available on the local planning authority's website<sup>6</sup>. All examination correspondence to the local planning authority should be copied to the qualifying body<sup>7</sup>;
- communicate early on in the examination the key milestones including the anticipated examination timetable and whether the examination will be conducted by way of solely written representations or written representations with a hearing;
- establish whether any examination process matters require clarification. In most cases, any process questions raised by participants should be capable of clarification by exchange of correspondence;
- where requesting clarification, utilise written correspondence to clarify/resolve issues where practicable. As provided in the legislation, treat hearings as an exceptional procedure;
- recommend modifications in the following (and no other) circumstances: (a) to secure that the draft plan meets the basic conditions; (b) to secure that it is compatible with Convention rights; (c) to secure that it complies with the provision made by or under the Planning and Compulsory Purchase Act 2004 Sections 61E (2), 61J and 61L; (d) to specify a period under Section 61L (2) (b) or (5) and (e) for the purpose of correcting errors;
- where a policy does not meet the basic conditions, consider modifying the policy rather than deleting it. Where this may necessitate a significant change, you may need to refer back to the local planning authority and qualifying body (see section 12);
- where deleting policies and text relating to non-land use matters, consider whether these can be set out in a non-statutory annex to the plan dealing with 'Wider Community Aspirations'<sup>8</sup>;
- a report failing a neighbourhood plan should not come as a surprise to the qualifying body and local planning authority. Early actions including exchange(s) of correspondence (and/or an exploratory meeting) should precede such a finding; and
- reports should be clear and concise, referencing all policies contained in the plan. The report should be provided to both the local planning authority and qualifying body in draft to allow for a 'fact checking' process, prior to final issue.

2.5.4. The detailed application of these Guiding Principles and associated examination matters is explored in more detail in the succeeding sections of this Guidance.

## 6. Examiner Action on Appointment

2.6.1. The examination formally commences once the examiner has been appointed and has received the documents that are required to be submitted to them. The date of commencement

<sup>6</sup> As recommended by the High Court in *Legard v Royal Borough of Kensington and Chelsea* [2018] EWHC 32, paras 161,179.

<sup>7</sup> This need not include the contractual matters relating to the provision of the examiner.

<sup>8</sup> See the Planning Practice Guidance, reference ID: 41-004-20140306.

of the examination should be publicised on the local authority website. Any interested parties are advised to regularly check the local authority's website for up to date information.

2.6.2. Ensure any Code of Professional Conduct requirements of your professional bodies are met. These will often include matters relating to contracts and terms of business which in turn will refer to professional indemnity insurance. You should also consider public liability insurance matters.

2.6.3. Confirm the name and contact details of the primary local planning authority contact officer and enquire whether there are any planned absences of that officer during the anticipated examination period. Obtain details of an alternative contact to be used in case of unanticipated absence of the primary contact. You should also establish who is the nominated contact in the qualifying body and agree that the local planning authority officer will undertake to copy them into all examination correspondence (aside from contractual matters). Alternatively, you may wish to copy them in directly.

2.6.4. Agree means of communication with the primary contact officer and confirm whether documents are to be sent to you in electronic or hard copy form. You should specify which of the key documents are to be supplied additionally in hard copy. Where practicable, you should seek to work electronically and keep requests for hard copy documents to a minimum.

2.6.5. Confirm a schedule of documents you require including the:

- Submission version of the draft Neighbourhood Development Plan;
- Documentation relating to Strategic Environmental Assessment/Habitats Regulation Assessment;
- Consultation Statement;
- Basic Conditions Statement;
- Evidence documents; and
- Regulation 16 consultation responses.

Request confirmation of the Development Plan and any emerging Development Plan and where these can be viewed. It will usually be of great assistance to the examiner for the local planning authority to identify which Development Plan policies it considers to be "strategic", and this information (if not already clear within the Development Plan) can be requested.

2.6.6. Confirm with the local planning authority that all examination documentation is available on the website and that further documentation produced through the course of the examination will similarly be added in a timely manner. Whilst there is no legal requirement for the local planning authority to publish the Regulation 16 responses, it may be a requirement in the local planning authority's Statement of Community Involvement. In any event, it is considered good practice for local planning authorities to publish the Regulation 16 consultation responses in the interests of openness and transparency.

2.6.7. Where the period for representations has not closed it may, depending on your working preferences, be helpful to have these passed to you as and when they are submitted. Once the consultation period has closed, ensure you have any outstanding representations. Having looked at all documents, including the representations, check that there are no conflicts of interest that would call into question your independent status.

2.6.8. Given the presumption is that hearings will only be held exceptionally, it will be the

documents provided to you on submission of the plan to you that will provide the basis to demonstrate that the draft neighbourhood plan meets the legal requirements, so it is in your interests to establish that the submission material provided is comprehensive and complete.

## 7. Early Assessment for Fatal Flaws

2.7.1. Once you are content that the submission material is complete, it is prudent to do an initial high-level assessment of the relevant documentation, prior to probing into the detail. You are solely responsible for the examination and you should not assume anything is in order simply because certain checks will have been carried out by the local planning authority to its satisfaction<sup>9</sup>. Likewise, do not simply rely on the findings of a prior health check which has been carried out by another examiner.

2.7.2. Whilst in the vast majority of cases it will be wholly premature to come to any conclusions on the plan at this stage, if there is a very patent and potentially fatal flaw it is in everyone's interests that an early alert is raised by the examiner. The initial checks made in this early assessment may also mitigate unnecessary time and cost expended on the examination.

2.7.3. This early window to raise issues is inevitably limited, in the absence of an opportunity to have given the necessary full and proper consideration to the draft neighbourhood plan and supporting evidence (including the representations). There is no general expectation that you will set out a provisional view of the plan and to do so may risk opening yourself up to potential challenge if you are seen to arrive at conclusions without adequate examination. Nonetheless, there are issues that may be revealed through an initial check, which are most likely to be related to procedural matters, in the main, rather than substantive issues pertaining to the plan meeting the basic conditions.

2.7.4. Issues for early identification potentially include:

- obvious errors relating to procedural compliance: e.g. flawed designation of the area or the forum (if applicable), or a failure related to the consultation requirements under Regulations 14 or 16; or
- a clear incompatibility with EU obligations: e.g. absence of a Strategic Environmental Assessment (or Habitat Regulations Assessment) Report where screening has clearly indicated the need to produce the necessary comprehensive statutory appraisal;
- Where there is an SEA, making sure that it complies with the relevant legal requirements (including, in particular, the assessment of reasonable alternatives<sup>10</sup>);
- a failure to specify a period under the Planning and Compulsory Purchase Act 2004 Section 61L (2); or
- a policy that deals with excluded development.

2.7.5. Your concerns should be communicated in writing to the qualifying body and local planning authority at the earliest opportunity and a copy of the examiner's letter placed on the local authority's website. However, depending on the nature and scale of the issue, there may be a number of options moving forward:

- the convening of an early exploratory meeting to discuss the issue. This affords you some flexibility to hold a public meeting to enable clarification of any issues of concern (at any

<sup>9</sup> See Paragraph 6(2) and (3) of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

<sup>10</sup> The process may be legally defective where reasonable alternatives have not been assessed in a robust, evidence-based, manner: R (Stonegate Homes Ltd) v Horsham DC [2016] EWHC 25 12 (Admin). For further advice on additional SEA work, see 2.13.10 below.

stage of the examination), which need not necessarily fall within the defined circumstances where a hearing must be held;

- the suspension of the examination, if the examiner, qualifying body and local planning authority agree that there is a reasonable prospect and opportunity to undertake remedial work whilst placing the examination on hold; or
- In extremis, after considering the above options, the shortcoming may be terminal and point to the examiner being unable to recommend that the plan proceed to a referendum.

2.7.6. Section 13 below outlines the exploratory meeting and suspension procedures. As noted above, in most cases you will identify the issues (fatal, significant or otherwise), through a thorough assessment of the draft neighbourhood plan and supporting evidence as set out in Section 13.

## 8. Preliminary Matters to be Communicated

2.8.1. There are a number of matters that you should seek to clarify as a first priority in the examination process, which will also serve as a marker to the qualifying body and local authority that the examination is being progressed. It is preferable to do this in writing, in an initial procedural letter(s) confirming:

- (i) Any matters relating to the handling of the representations (e.g. late representations);
- (ii) A preliminary view as to whether the examination is to be solely by way of written representations or written representations with a hearing;
- (iii) The anticipated examination timetable (or revisions to the contractually agreed timetable); and
- (iv) that anyone who is unclear at this stage may ask you, the examiner, any relevant process related questions. Such questions are most helpfully dealt with by the examiner providing a clear written response. Points (i) – (iv) are considered in detail below.

### (i) Handling Representations

2.8.2. Confirm that you have received copies of all the representations made during the consultation period, which must be at least 6 weeks. Some local authorities are producing standard response forms, others are not.

2.8.3. The qualifying body will normally be given the opportunity to comment on the representations of other parties and its views are ideally provided within two weeks of the close of the Regulation 16 stage. However, if the qualifying body has not commented and wishes to once the examination has commenced a clear deadline will need to be set to avoid unnecessary delay to the examination. Equally, you may find it helpful to your consideration of examination issues to initiate the request that the qualifying body provide its comments on matters raised in the consultation responses, where none have been provided.

2.8.4. Some local authorities are helpfully providing a summary of any representations received, and given this is a statutory requirement on the local planning authority (later in the process where the local planning authority resolves to put the plan to a referendum<sup>11</sup>), there will be a considerable benefit to all parties with an interest in the plan if a local planning authority is minded to do this summary at an earlier stage i.e. on conclusion of the Regulation 16 consultation. However, whilst this can be very useful, it is important that you consider fully each original and individual representation.

<sup>11</sup> Reg 4(3)(b)(iii) of the Neighbourhood Planning (Referendums) Regulations 2012 requires the local planning authority to publish a summary of the representations considered by the examiner under Paragraph 9 of Schedule

## Late representations

2.8.5. From time to time a representation may be submitted after the consultation period has ended. Late representations should not be accepted unless there are exceptional circumstances for doing so. The circumstances in which this may be acceptable are where there has been a material change in circumstances. These might include the publication of new legislation or Guidance, a change in the status of a document the representation has relied on or a judgment from a Court case that has been handed down.

2.8.6. Submission of new evidence should be by exception. Where anyone wishes to introduce new evidence, they should fully justify the reason for doing so and, in the case of substantial documents, indicate which part of the document to be introduced is relevant and why. Consideration should be given to whether the qualifying body or local planning authority or any other party then need to have the opportunity to respond to this new evidence.

2.8.7. In some cases, interested parties may try and contact the examiner direct via email or telephone (or seek the examiner out at a site visit). This is particularly true for consultants appointed as examiners, whose contact details may be widely available. It is important that the examiner maintains an independent stance and is not open to accusations of bias and refers such approaches to the local planning authority to deal with. A record of any such direct approaches should be maintained.

2.8.8. It is important that the overarching principles of the independence of the examiner and fairness to all those participating are maintained together with the transparency and openness of the examination.

### (ii) Whether the Written Representations procedure will include a Hearing

2.8.9. Neighbourhood plan hearings are distinctive to neighbourhood plans. Be aware of the relevant legislation<sup>12</sup>.

2.8.10. Confirm whether or not a hearing will be necessary. As noted, hearings are the exception rather than the rule. If you choose to hold a hearing, be absolutely clear in your own mind as to why you are doing so. If at this stage it appears a hearing will not be necessary, it is nonetheless prudent to reserve the ability to call a hearing at any time. This will enable you to cater for any latent, problematic issues arising or unexpected changes of circumstance, prior to issue of your report on the examination.

2.8.11. Neighbourhood plan hearings must be held when the examiner considers it necessary to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case. The phrase “when the examiner considers it necessary” is of fundamental importance. A hearing is held at your discretion.

2.8.12. Do not hold a hearing because someone has requested the opportunity to speak. Only hold a hearing because it meets either or both of the reasons set out in legislation and shown above.

<sup>12</sup> 4B to the Town and Country Planning Act 1990 (as amended) i.e. the Regulation 16 representations.  
12 Paragraph 9 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

### (iii) Examination Timetable

2.8.13. Advise the local planning authority of your anticipated number of days to be worked and timeframe to completion of the examination. If these matters were included in the work contract documentation relating to the proposed examiner days to be worked and examination timetable, a variation may be necessary.

2.8.14. Timings of the start to end (duration) of the examination will be specific to the plan in question, particularly having regard to its complexity (scale and nature) and the significance of representations made. Whilst it is not always possible to give a firm indication of the likely timeframe, Tables 1 and 2 in [Annex 3](#) seek to provide a starting point for assessing the duration of an examination solely by way of written representations or by written representations to include a hearing. The priority for the examiner should be to ensure that the examination is thorough and complete, and this may require an extension to the advertised duration.

### (iv) Process Related Questions

2.8.15. In most instances, the qualifying body are unlikely to have had any experience of a neighbourhood plan examination, and it may also be the case of the local planning authority that the plan is the first neighbourhood plan in their administrative area to reach examination stage. As such you should not assume that the qualifying body, local planning authority or any other parties with an interest in the plan are necessarily familiar with the process.

2.8.16. You should advise the qualifying body and local planning authority that anyone who is unclear at this stage may ask you, the examiner, any relevant process-related questions. This is not an open and additional opportunity for parties to raise substantive plan-related issues, submit further representations or evidence, or put forward requests about their preferred format for the examination. It is simply to clarify the examination process, and may be particularly beneficial to anyone who is unfamiliar with the process. Part One of this Guidance is intended to provide helpful instruction to interested parties in this regard, and should mitigate, in the main part, the need for specific questions to be raised with the examiner.

2.8.17. You may at this stage wish to raise your own procedural issues if you are minded to hold a public hearing. The detailed considerations around holding hearings are set out below in Section 11.

2.8.18. As always, in the interests of transparency, any written exchange between interested parties and the examiner should be placed on the local planning authority’s website.

### Site visits

2.8.19. Early physical appraisal of the plan area will bring a key local and contextual element to your examination. It is considered standard practice for the examiner to visit the plan area, to familiarise yourself with it, and visit any relevant sites referenced in the plan and evidential documents. It will assist your assessment of the basic conditions and enhance your understanding of the issues identified in the representations.

2.8.20. The timing of the visit is likely to be most beneficial if it is scheduled to take place after the examiner has had an initial opportunity to read the plan and related documents, including the representations. Indicating a week within which the site visit will take place

(preferable to announcing a precise date) also serves as a marker to the local planning authority and qualifying body that the examiner is progressing the examination.

### Unaccompanied

2.8.21. The visit to the neighbourhood plan area should be on an unaccompanied basis. If an examiner were to be seen visiting the area with one or more parties, this would at the very least challenge the perception of independence. Offers of lifts, or to be guided, or of hospitality should be declined.

2.8.22. If you are approached by any party whilst visiting an area, you should explain your role and the purpose of the visit. If necessary you should explain that you will not hear representations nor discuss the merits of the neighbourhood plan.

2.8.23. It will generally be possible to view all that needs to be seen from public highway or other locations open to the general public. If it is essential to enter private land then the local planning authority should be requested to obtain permission from the owners. If permission is not given the land will have to be viewed from a public highway or place. If permission is obtained then an accompanied visit will have to be arranged.

2.8.24. Be aware that circumstances could arise where a neighbourhood plan hearing may be adjourned to visit sites or areas where a matter under consideration would benefit from further visual clarification. Where this occurs, it should be conducted as an accompanied visit.

2.8.25. Accompanied visits should be carefully conducted so that the examiner is not accused of bias to any of the parties involved. The visiting group should include representatives of relevant different viewpoints. At no time should any discussion of the merits of the neighbourhood plan take place nor should any representations be permitted. An accompanied visit is not an opportunity for lobbying, public address, or submission of new information. It will normally be concerned with factual clarification, for example locations and boundaries. The examiner should not express opinions. Even comments on the landscape could be interpreted as comment on the appropriateness of the plan. If a disorganised or belligerent group of third parties are present the visit should be abandoned and re-scheduled.

2.8.26. Reference to a visit to the neighbourhood plan area or sites should be included in your examination report.

### Insurance

2.8.27. At all times during visits to areas and sites examiners should ensure any necessary insurance cover is in place and they have regard to their own personal safety wearing protective/visibility clothing and footwear, and being able to be traced.

## 9. Approach to the Examination Assessment

2.9.1. In assessing the neighbourhood plan, the representations and other documentation submitted, you will be dealing with evidence. You will have a significant volume of material to consider on which you will be making judgments in relation to whether the plan meets the basic conditions and other legal requirements.

### How to deal with evidence

2.9.2. Evidence comes in many forms. It may be written, photographic, a map or other picture or by word of mouth. It may be first-hand or recounting what someone else has said. It may deal with facts that have been seen, heard or otherwise experienced, or it may be a judgment based on expertise. Whatever it is, it, along with your professional judgment, will form an essential basis for the decisions that you reach.

### Evidence of fact and evidence of opinion

2.9.3. Anybody may give evidence of a fact known to them, e.g. "I have often seen this field flooded". Whether opinion evidence is of value depends upon who gives it. An expert may give evidence in respect of matters within their expertise. Often experts will be people with a relevant qualification, but this is not always the case. An enthusiastic amateur may have considerable knowledge about, e.g. local wildlife or local history, and can be treated as an expert. Caution is required when doing this, but there will be cases where the amateur expert's evidence is impressive and persuades you of a particular fact. There is nothing wrong with acting on this. On the other hand, opinions that are not based on any expertise are of no value: e.g. an assertion by a resident with no expertise, "I think that the new housing will cause a dangerous increase in traffic". Of course, even wholly non-expert comments may justify enquiring into an issue, if, in the judgment of the examiner, they might turn out to be true.

2.9.4. Law is not evidence. If there is a recent court decision or amendment to a statutory provision that makes new law on a relevant point this must be borne in mind, even if it arrives after the deadline for submitting evidence.

### First-hand evidence or hearsay

2.9.5. There is no rule against hearsay, that is evidence based on what another has said. Indeed, in some cases, hearsay is inevitable: e.g. "The village church was built in 1273". Where hearsay is based on a document that is likely to have been thoroughly researched or produced pursuant to a legal duty or with legal safeguards (e.g. a Land Registry official copy), it may carry considerable weight. Hearsay based on what somebody has said, who is not taking part in the examination, may however be unreliable, so that caution is required. Caution is also required where it is not clear whether something is hearsay. A hundred people may write letters saying that a piece of land flooded 50 years ago, but their basis for doing so may be an assertion from a single person who may have confused the land with somewhere else.

### Standard of Proof

2.9.6. You make your determinations on the basis of the civil standard of proof, that is on the balance of probabilities. You should ask yourself whether something is likely or unlikely, but not whether it is certain, whether you are sure or whether it is proved beyond reasonable doubt. Rejecting evidence because you cannot be certain that it is right would be applying the wrong standard of proof and might well lead to a successful legal challenge.

### Disadvantaged witnesses

2.9.7. A potential witness may be disadvantaged by reason of illiteracy, lack of English or disability. Treating such witnesses with consideration is always important. It is especially so, where they represent one side of a dispute and the other side would otherwise have

an advantage over them. Lack of literacy, whether total or partial, may be a reason to have a hearing (e.g. where a group of Travellers of limited literacy want to expand a site or where a group of non-British ancestry with limited English want a place of worship, and the neighbourhood plan contains policies that would prevent this.). The critical question is likely to be: can the disadvantaged group put forward relevant evidence without disadvantage if there is no hearing?

#### Documentary evidence

2.9.8. Apart from word-of-mouth evidence at a hearing and the evidence that you observe on a site visit, all your evidence will be contained in documents. Documents includes, not only written paper documents, but also maps, photographs, e-mails, tape recordings, video recordings and any other formal recording of facts.

2.9.9 Care should be taken when dealing with suggestions that sound or video recordings should be considered at a hearing. Often, they add little to the other evidence, but can be time consuming and result in a need for their retention in case their content was ever an issue.

2.9.10. Where a conflict of evidence arises in the papers you are considering, you will need to consider whether it could affect the result. If it could not, you do not need to determine it and unless the answer is absolutely clear, it is often better not to do so. Of course, if it is a lay person misunderstanding terminology (e.g. thinking that Green Belt is synonymous with greenfield), there is no problem.

2.9.11. If a determination of the conflict could affect the result, you will need to consider whether it can be dealt with on the papers before you. Sometimes the answer will be clear: distances can be calculated from maps; designations seen on the Local Plan Policies Map, etc. If not, you will need to consider more thoroughly whether the difference would affect the result of the examination. If it would, a hearing may be necessary. The hearing (or relevant part of the hearing) should focus on the matter that needs to be resolved and you should make clear in advance what this is. Further Guidance on the hearing procedure is set out in Section 11.

2.9.12. In assessing evidence, it often helps to consider whether the witnesses are using a reasoned approach or are making assertions that have no reasoned basis.

#### Materiality

2.9.13. In general, anything that relates to the use and development of land is capable of being material. To be material to the examination it has to relate to a relevant issue.

2.9.14. The neighbourhood plan must be compatible with the Convention rights contained in the European Convention of Human Rights and in those of its Protocols that the UK has ratified<sup>13</sup>. This means that human rights will be material where they relate to an issue that you are considering.

2.9.15. Personal circumstances that are neither land-use planning matters, nor human rights, may occasionally be material in town and country planning. Those most often occur in development management and enforcement and in general are unlikely to occur in plan-making. The most likely area where this will occur is in respect of accommodation for Gypsies

<sup>13</sup> This is the combined effect of the Town and Country Planning Act 1990 Schedule 4B, Paragraphs 8(6) and 10(3)(b) and of the Human Rights Act 1998.

and Travellers. A policy to protect small businesses might also involve consideration of personal circumstances.

2.9.16. Some matters are immaterial. Assertions that government policy is wrong (e.g. “The Government may say global warming is happening, but it isn’t”) are immaterial. You are not there to assess or to rewrite government policy. Assertions based on the perceived general characteristics of a racial, ethnic or religious group, or other stereotyping are immaterial<sup>14</sup>.

#### Evidence criticising the other side

2.9.17. On occasions, participants may produce evidence that criticises the other side. Of course, a developer has an interest in building and a community will often have an interest in keeping its green fields, but it is unlikely to help and may hinder if these points are emphasised. Evidence that criticises the persons involved is seldom helpful. Although it is often best to discourage this strongly, an open mind should be kept. For example, it may help to know that an apparently neutral participant has some interest in the matter.

#### Proportionality

2.9.18. Producing evidence can be a time-consuming and expensive process for the party concerned. You may have seen a major inquiry where every possible piece of evidence has been given and examined in detailed. That does not mean that such an approach is appropriate to a typical neighbourhood plan. Where small-scale and modest development is involved a degree of detail and expenditure that is commensurate to the level of development is often appropriate. It cannot have been Parliament’s intention that parish councils, neighbourhood forums and small builders should spend disproportionate sums. You should be wary of submissions that evidence is inadequate because its extent does not match that of a major inquiry, unless the subject matter is equivalent to a major inquiry. The critical question is likely to be: “Is it sufficient to deal with the matter in hand in a way that is fair to each side to the dispute?”. Fairness includes not only accuracy, but also affordability. On the other hand, where substantial development involving hundreds of houses is involved, perhaps in the case of a town council or a parish that has to meet part of the needs of an adjoining city, a more thorough approach will be needed.

#### Fairness and evidence

2.9.19 If you are going to rely on a piece of evidence in your conclusions, it is important that those affected have had a chance to comment on it. If you see something on a site visit which constitutes a new point, fairness may well require you to put your provisional view on that point to the participants.

#### 10. Written Clarification

2.10.1 Once you have had an opportunity to fully consider the draft neighbourhood plan, the representations and other evidence, you may be satisfied that you have a sufficient basis to come to conclusions on compliance with the basic conditions and other legal requirements. However, you may find that you need to seek further clarification, such as requesting that the qualifying body specifically points you to where the relevant evidence provides support to a particular approach put forward in the plan. Exceptionally, you may need to seek, through the local planning authority only, clarification on a purely factual matter from a representor (e.g. whether a developer claims that it has implemented a planning permission).

<sup>14</sup> Smith v. First Secretary of State and Mid-Bedfordshire District Council [2005] EWCA Civ 859.

2.10.2. This does not mean that you should need to convene a hearing session. A practical route is to prepare a letter comprising a note setting out your questions and points that need further clarification. It could cover clarification of factual matters such as the status of a planning application within the plan area; it could request further (existing) information that has been produced to underpin the identification of the proposed local green spaces or bring into question the adequacy of a key evidential document, such as the Strategic Environmental Assessment Report (where one is required). Equally a written Parliamentary Statement outlining a relevant change in government policy or adoption of a new Local Plan could trigger the need to seek further comments and/or information.

2.10.3. You should set a timescale for receipt of the further information. Typically, 2 weeks will suffice, subject to the scale and extent of the questions you raise. You should ensure that you make clear that you will take into account the responses in preparing your examination report and request that your note and the responses are published on the local authority's website.

2.10.4. In instances where you can obtain the clarification you require through an exchange of correspondence, this is to be considered preferable to convening a hearing, which will add to the length of the examination and costs incurred.

#### Provisional Views and Fundamental Concerns

2.10.5. As previously noted in [Paragraph 2.7.2](#) above, there is no general expectation that you will provide a provisional view on the draft neighbourhood plan unless you have identified a potentially fatal flaw through the initial high-level checks that you have carried out on submission of the plan for examination. However, the same principles apply where, through your fuller consideration of the plan, you have identified very fundamental concerns about the likelihood of the plan failing to comply with the basic conditions and other legal requirements.

2.10.6. Where you have fundamental concerns, these should be brought to the attention of the qualifying body and local planning authority in a written note at the first available opportunity following your detailed assessment, which has revealed the issue(s). The qualifying body and local authority should be invited to comment on your concerns, and if appropriate be provided (subject to the nature of the failing) with an opportunity to:

- submit further written clarification to demonstrate legal compliance;
- request an exploratory meeting; and/or.
- ask for the examination to be suspended to do further work or rectify an omission.

For further information on the scope of exploratory meetings and suspension, see [Section 13](#) below.

2.10.7. Having regard to the Guiding Principles, a report failing a neighbourhood plan should not come as a surprise to the qualifying body and the local planning authority. Early action, initially an exchange of correspondence, should precede such a finding.

## 11. Public Hearing

### Overview

2.11.1. There will be instances where you have resolved that it is necessary for a neighbourhood plan hearing to be held in order to ensure the adequate examination of an

issue, or to ensure that a person has a fair chance to put a case. However, this will always be at your discretion.

2.11.2. As noted above, in preference to convening a hearing, you should give consideration to whether any relevant matters can be clarified through the exchange of correspondence where practicable. Nonetheless there will be examinations where your judgment indicates that a hearing is most appropriate.

### Preparation

2.11.3. The following points set out the practical considerations and actions necessary to put in place a public hearing:

- Ensure good communication with the nominated local planning authority officer – they will be a focal point for organisations.
- Once you have formally confirmed that a hearing will take place, provide the local planning authority with a notice. There is no statutory notice period for the holding of a hearing but you should provide at least 21 days public notice (excluding Bank and Public holidays). This should confirm that a hearing will take place and provide the time, the date and the location. Provide the local planning authority with a list of invitees. The local planning authority will contact the invitees. You should also provide the local planning authority with an invitation letter. This will provide the time, date and location information. It is helpful for invitees if it also provides some indication of the Agenda and Guidance on, for example, who can attend; who will be able to speak and whether opening (and/or closing) statements will be allowed.
- Provide the local planning authority with a finalised agenda and ensure that invitees have seen the agenda in good time before the hearing commences. The agenda can be as brief or as detailed as you like. It is a good idea to set out the general areas of discussion and establish whether invitees will be limited to specific discussions or will be free to contribute throughout. This may be different for different invitees (e.g. the qualifying body might be invited to contribute on every matter).
- Where the issues to be discussed involve participants with opposing viewpoints, it may be helpful to ask them to produce a statement of common ground. Whilst not always successful, this may assist in encouraging the parties to focus on an agreed way forward. You should set a deadline for receipt of the statement and ensure that it is made available to all participants in advance of the hearing, as well as being placed on the local planning authority's website.
- If possible, the hearing should be held in, or very close to the neighbourhood plan area.
- The local planning authority should ensure the venue should be large enough and secure for seating and table space for invitees and for the examiner (generally no less than 10 spaces, preferably up to 20). Not all invitees need to be sat at the table at all times (unless the examiner requires it), so you may be able to operate a system of rotation based on the participants required for each issue being discussed.
- The venue should be capable of providing public seating for a reasonable number of people. It is not uncommon for audiences to number over 100 people. However, this can be balanced against holding the hearing locally. There is no need to seek to require a seat in the audience for everyone – if people know the venue, a 'first come first served approach' is reasonable. Just make sure the hearing is not in a small room with only a few seats available for the public.
- If possible, arrange for microphones. Members of the public should be able to hear everything. Some invitees will be quietly spoken and you don't want constant complaints

- from people “unable to hear at the back.”
- The venue should be accessible to disabled persons.

#### Good practice on the day

2.11.4. You should arrive at the hearing with a detailed knowledge about the neighbourhood plan and be absolutely clear in your mind what you wish to achieve from the hearing. You are likely to be well into the examination process and may even have a ‘skeleton’ draft of the examiner’s report, with gaps for the key topics related to the hearing.

2.11.5. You should be familiar with all of the documentation. Make sure you have a hard copy of the neighbourhood plan and any other relevant material to hand.

- Start promptly.
- Go through housekeeping – fire exits and mobile phones.
- Set out how the hearing will run.
- Most attendees (invitees and audience) will not have attended a neighbourhood plan hearing before. It is a good idea to briefly establish that neighbourhood plan hearings are different from examinations in public for Local Plans, inquiries, public meetings and so on.
- In so doing, it is helpful for attendees to understand that the neighbourhood plan is only being examined against the basic conditions and other legal requirements. Confirm what the basic conditions are.
- Make it clear that it is not the role of the examination to test the soundness of the plan, or to look at other material considerations, but to check whether the plan meets the basic conditions.
- Make sure that invitees are clear on how the hearing will run. Make sure that you are familiar with the legislation with regard to hearings – this may influence whether you intend there to be any scope for questioning, debate or even cross-examination (in most cases, this will be a wholly disproportionate procedure for a neighbourhood plan hearing).
- Let people know that all documentation is taken as read.
- Maintain complete control over the hearing. The hearing is “for the examiner.” Do not allow individual invitees to turn the hearing to their own agenda. Be fair, but be firm.
- Recognise that some parties, particularly plan-makers, may have no professional knowledge or experience of public hearings. They may be facing consultants or barristers with significant experience. You are responsible for ensuring balance.
- Make sure that you cover all of the topics/questions that you need to.
- Try to be warm, inclusive and help people to relax and enjoy the day. Don’t forget that the audience is likely to comprise people passionate about the neighbourhood plan – make sure that they can hear everything and be conscious of their need to eat, drink and go to the toilet (have breaks at least every two hours).
- Take your own notes. These are a personal aide-memoire and need not be published.
- If there are controversial issues, you may wish the local planning authority/qualifying body to provide a note-taker as well.
- There may be a request to record proceedings. It is suggested that, in the interest of openness, you agree to any such request.

2.11.6. You should aim to ensure that the key issues which are the subject of discussion are adequately addressed at the hearing. If you are not able to elicit all the information you require, you may request that further, clarificatory, written submissions are sent to you in follow up on one or more of the issues discussed. You should set a deadline for production and receipt of this additional work. In most cases, the work will be clarificatory and two weeks (excluding

Bank and Public holidays) is likely to be sufficient.

#### Post hearings

2.11.7 No further material should be submitted to you at this stage unless you have specifically requested it. Where you have indicated that material is to be submitted to you after the hearing by an agreed deadline, you should ensure that upon receipt it is placed on the local planning authority’s website.

## Changes to the Plan and Unresolved Issues

### 12. Changes to the Plan

2.12.1. Where there are issues of non-compliance with the basic conditions and other legal requirements, you will seek to resolve these through recommending modifications. The scope of the modifications the examiner may make is set out in Paragraph 10(3)(e) of Schedule 4B to Town and Country Planning Act 1990 (as amended).

2.12.2. Experience has shown that where a local planning authority does not accept all the examiner’s proposed modifications, this usually centres on a disagreement over the particular form of wording for a modified policy or a proposed policy deletion. Modifications are a key output from your examination that will be subjected to very close scrutiny.

#### Examiner’s Approach to Modifications (including Deletions)

2.12.3. It is likely, in most cases, that in order to recommend that the draft neighbourhood plan can proceed to referendum, you will need to make modifications. Modifications will only be recommended by the examiner to make the plan compliant with the basic conditions and other legal requirements, and to correct errors. They may also be made to achieve clarity<sup>15</sup>. Your modifications will alter the wording in a policy and/or the text of the plan and you should provide the exact replacement wording for the revised policy and supporting text.

2.12.4. You may, on occasion, need to delete wording, including potentially an entire plan policy and/or section of text. Where a policy does not meet the basic conditions or other legal requirement, you should first consider modifying the policy rather than deleting it. The plan will have gone through extensive community engagement in being prepared, and where the aims of the plan can be retained this will be preferable.

2.12.5. Where a policy concerns a non-land use matter, advice in the Planning Practice Guidance states “Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”<sup>16</sup> As such, when considering the deletion of any non-land use matters from the plan, consider if you can make a modification to place the relevant proposed actions in a non-statutory annex to the plan, dealing with ‘Wider Community Aspirations’.

2.12.6. Examiners will not generally refer back to parties on these detailed revisions. But where the modification may necessitate a change which in the opinion of an examiner would be significant, there is a reasonable expectation that a description of the intended modification

<sup>15</sup> Regard should be had to advice in the Planning Practice Guidance, reference ID: 41-041-20140306.

<sup>16</sup> See footnote 4.

will be publicised on the local planning authority's website, seeking comments, prior to recommending the change. Significant changes may typically require further work to be undertaken, particularly in relation to Strategic Environmental Assessment.

2.12.7. What constitutes a significant change will be for you to determine in the context of the particular plan being examined. Significant changes can lead to concerns over community ownership of the plan, as extensive modifications may mean it effectively becomes a very different plan to the draft submitted for examination, and may not necessarily represent the intentions of the community. As well as the plan's preparation process being undermined, the qualifying body may take a view that it does not wish to support the plan when it proceeds to referendum. So, in making significant changes, you should ensure that you are not rewriting the plan.

2.12.8. It follows that there will be circumstances where you may have to consider recommending that the plan cannot be reasonably modified to comply with all the legal requirements and, therefore, should not proceed to referendum. However, prior to reaching this conclusion, you should consider whether the unresolved issues might be considered and addressed through an exploratory meeting and/or the suspension mechanism.

### 13. Unresolved Issues

#### Exploratory meetings

2.13.1. Where there is a fundamental issue that potentially may jeopardise the success of the plan at examination, the examiner may convene an exploratory meeting. An exploratory meeting should always be preceded by the examiner initially writing to the qualifying body and local planning authority to explain the matters of concern. In contrast to a hearing, an exploratory meeting provides the flexibility for the examiner to convene a discussion with identified participants about the plan, where this may not fall necessarily within the very specific statutory reasons for convening a hearing session. In line with the Guiding Principles set out in paragraph 2.5.3 of this Guidance, no qualifying body should receive a report that their plan has failed without having some opportunity to engage with the examiner, either through written correspondence and/or an exploratory meeting.

2.13.2. An exploratory meeting will provide an opportunity to consider an issue and scope whether there is any viable remedy, exploring all the options. It is a particularly helpful route to pursue where you are effectively at an impasse, when the exchange of written correspondence has not resolved the issue.

2.13.3. As previously noted, an exploratory meeting could potentially take place at the beginning of the examination process, as a consequence of a possibly fatal issue being revealed in your initial, high level, assessment of the plan. However, in most cases it is more likely to occur once you have undertaken a full and considered assessment of the plan and the evidence.

2.13.4. An exploratory meeting will result in delay of the examination and you should therefore carefully consider the potential outcomes of such a meeting. If you are absolutely clear that the issue being considered is fatal to the successful examination of the plan, an exploratory meeting will not justify the time and cost that will be incurred and will create a false expectation in relation to what can be reasonably achieved.

2.13.5. Where you seek to convene an exploratory meeting, this, like a hearing session, will be organised through working with the local planning authority on the detailed arrangements. Whilst an exploratory meeting is a non-statutory procedural mechanism, it is prudent to follow broadly similar practical arrangements to the scheduling of a hearing session:

- Explain in a written note that an exploratory meeting is being convened and the reasons why. An agenda should be provided. These documents should be placed on the local planning authority's website along with a notice of the date, time and venue set for the exploratory meeting. It is in everyone's interest that the meeting is held as soon as is practicable: the very nature of the meeting may give rise to some anxiety in the community. Under these circumstances, two weeks' notice may be sufficient, unless a relevant party can demonstrate that they will be substantially prejudiced.
- Arrange for the meeting to be convened in public and involve the qualifying body and local planning authority as participants. You may also wish to invite participation from any other party that has made representations which go to the core of your concerns.
- At the meeting, you will explain the issues; explore whether these can feasibly be addressed and determine, in practical terms, how that can be achieved. You should be clear in your own mind that an exploratory meeting is very different to the statutory purpose of a neighbourhood plan hearing session (where you are ensuring adequate examination of an issue or that a person has a fair chance to put a case).
- A written record of the meeting should be produced and made available on the local authority's website.

2.13.6. The exploratory meeting, in the best-case scenario, may in itself provide the necessary clarification and lead to resolution of the issue. Alternatively, it may reveal that nothing further can reasonably be done that will prevent the plan failing the basic conditions or other legal requirements. In certain circumstances, it may be that further remedial work can be undertaken, subject to the examiner, qualifying body and local planning authority agreeing that there is a reasonable prospect of remedying the plan's shortcomings by placing the examination on hold i.e. suspending the examination.

#### Suspension of the examination

2.13.7. The examiner may suggest a suspension or a request may be made to them by the qualifying body or local planning authority. This may occur after the exchange of correspondence, or after the exploratory meeting, where one has been held.

2.13.8. Suspension is likely to be most relevant to rectifying a procedural failing rather than a basic condition compliance issue. However, even a procedural failing may be better dealt with by withdrawing the plan and going back to the point of the plan's preparation (including consultation or submission to the local planning authority) where the failure occurred.

2.13.9. If the suspension relates to a policy's basic condition compliance, be clear what the purpose of the suspension is e.g. to gather more evidence, propose a different approach etc. As previously noted in the approach to examiner modifications, there is a danger of undermining the submitted plan and engagement to date, as well as the Strategic Environmental Assessment work already undertaken.

2.13.10. Where the additional work actually relates to undertaking further Strategic Environmental Assessment Screening or Report production, care should be taken to ensure that such work is not simply 'retrofitted' to support the content of the draft plan being examined.

2.13.11. The length of suspension is at the discretion of the examiner. If you agree to a suspension, you should ensure the qualifying body and local planning authority are clear about the scope of the additional work being undertaken and the necessary outputs. You should set a realistic timescale for the work and request progress updates.

2.13.12. Following the suspension period, the aim is to be in a position to make the necessary modifications to the plan and recommend it proceeds to a referendum. However, there can be no guarantee. Accordingly, the suspension mechanism is an exceptional procedure, to be employed only through due consideration and with caution.

## 14. The Examiner's Report

2.14.1. The key to a good report is that it must leave the reader in no doubt as to why your recommendations have been made. Therefore, the three things to always bear in mind are accuracy, clarity and simplicity.

2.14.2. Whilst it is important that reasons are given for any modifications you are recommending, these can be succinct.

### Format

2.14.3. Your practice/consultancy logo can be included on the front cover of the report, if you so wish. Care should, however, be taken that any logo added is appropriate.

2.14.4. Think about the font selected and its size and make sure the report is easily readable both in paper form and online. It is useful to add page numbers to the report and paragraph numbers to ensure that specific content in the report can be easily referenced. It will also assist you, if you need to cross refer content within your report.

### Style

2.14.5. This is your independent report and it is likely to be scrutinised by a number of different people with differing levels of knowledge about planning and the plan being examined. This means:

- That as well as substance, the report should be written well, in an objective or detached way.
- The report should be written in plain English and readily understandable. Use 'neutral' rather than flowery language wherever possible. Avoid the use of jargon and slang. Avoid repetition. Do not summarise or translate legal requirements into other language.
- You should seek to be tactful and mindful that the plan has been prepared by the qualifying body: avoid criticising the parties or the nature and characteristics of the area. Avoid giving information about individuals unless this is necessary.
- If it is necessary to refer to any measurements, use metric.

### Structure

2.14.6. A summary of your conclusions should be included at the beginning of the report. If the plan allocates sites or addresses housing need, then the summary should contain the level it is seeking to address and whether this has been met, and the number of site allocations and associated number of dwellings. A contents page with appropriate headings and page numbers as necessary can usefully be included.

2.14.7. The report then might contain the following sections:

- Sections which briefly explain what the report is about; your appointment and your independence and appropriateness for the role; the role of the examiner and the options open to the examiner; information about the status of the qualifying body,
- This section should set out the key factual information, namely: which local planning authority/ies area the plan covers, the neighbourhood plan period and area, the site visit arrangements and whether a hearing was held or not – in other words the examination process and any other matters of procedure or matters which arose during the course of the examination.
- Section that sets out the basic conditions.
- Section on the background documents or evidence that you have considered during the examination (this could also take the form of a later section or appendix if you prefer).
- Section that deals with the consultation and engagement undertaken.
- Section that goes through each section of the plan and each policy. Ensure that how you set out any modifications is clear and where you propose changing the wording of policies this is also clear. For example, some examiners use bold text to highlight a modification and use bold italic text for proposed new wording.
- Conclusion about whether the plan should proceed to a referendum and on the referendum area.
- A list of abbreviations.

### Statutory information

2.14.8. The following information must be included in the report:

- Your confirmation that you are independent of the qualifying body and local planning authority; that you have no interest in any of the land affected by the plan and that you have appropriate experience and expertise to undertake the examination.
- Your assessment as to whether the plan meets the basic conditions.
- You are also required to check:
  - That the plan has been prepared and submitted by a qualifying body;
  - The plan has been prepared for an area that has been properly designated for that purpose and does not relate to more than one area;
  - The plan specifies a time period;
  - The adequacy of consultation; and
  - The plan does not relate to any excluded development.
- You must make one of three recommendations; either that the plan can proceed to referendum as it meets all the necessary legal requirements; it can proceed to referendum subject to modification or that it should not proceed to referendum because it does not meet the necessary requirements.
- If you recommend the plan proceeds to referendum, you must consider and make a recommendation about whether the referendum should be extended beyond the neighbourhood area.

### Basic conditions

2.14.9. Explain what the basic conditions are. As previously noted, these are set out in legislation in Paragraph 8 (2) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) with a further basic condition set out in the Neighbourhood Planning (General) Regulations 2012 (as amended)<sup>17</sup>.

<sup>17</sup> See Annex 2 of this guidance.

2.14.10. Explain why each modification has been recommended and which basic condition(s) it relates to. Reasoning must be clear and enable the reader to understand why you came to the conclusion you did. So, use your judgment but give clear reasons as to why you exercised it as you did. Even if it is your view that a policy complies with the basic conditions then explain why: it is not sufficient to only state that it does.

## 15. Issue of report

### Accuracy

2.15.1. If at all possible, leave the report to one side for a day or two so that you can proof read it before sending it out. This will minimise the likelihood of the report containing typographical errors and will also mean you can check it makes sense and reads well more easily.

### Draft Report Fact Check

2.15.2. Once you are satisfied with your report, it should be sent to the local planning authority and the qualifying body for a 'fact check'. You should include a note with the draft report making it clear that you will not consider any comments that do not relate to factual errors. Care needs to be taken that this is not seen as an opportunity for further representations to be made<sup>18</sup>.

2.15.3. A period of 1- 2 weeks is generally provided for the authority and qualifying body to comment. It is also helpful to confirm with the local planning authority that it will co-ordinate collation of its comments with those of the qualifying body into a single response.

## 16. Examination (Review) of an 'Issue'

2.16.1. Provision is made in Paragraph 13 of Schedule 4B to the Town and Country Planning Act 1990 (as amended) for the re-examination of an 'issue'.

2.16.2. This may arise following the local planning authority's consideration of the examiner's report. The local planning authority may propose to make a decision which differs from that recommended by the examiner, based on a result of new evidence or a new fact, or a different view taken by the authority to a particular fact. The local planning authority must notify prescribed persons of its proposed decision (and the reason for it) and invite representations. If the local planning authority consider it appropriate, it may also refer the 'issue' to independent examination<sup>19</sup>.

2.16.3. The 'issue' could, for example relate to a proposed alternative modification(s) to that recommended by the examiner, or the rejection of the need for an examiner modification(s) on a particular issue. In practice, this may typically arise as a result of further discussions between the local planning authority and the qualifying body or a change in local or national policy. The examination of the issue may involve the consideration of more than one policy in the plan. However, the issue will not in any circumstances relate to any recommendation in relation to the area in which a referendum is to take place<sup>20</sup>.

2.16.4. The legislation does not provide an indication of whether this examination should

<sup>18</sup> The later stages of the Asfordby NP were quashed by the High Court (by consent) where the examiner received substantial representations at this stage (causing him to reverse his original representation).

<sup>19</sup> See paragraphs 13(1) and 13(2) of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

<sup>20</sup> By virtue of paragraph 13(4) of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

be undertaken by the examiner as previously appointed<sup>21</sup>, or a new examiner. It is generally considered preferable that a new examiner is appointed, to ensure that there can be no perception of bias.

2.16.5. In terms of how the examination is conducted, whilst there is provision to enable the making of regulations to cover an issue based examination<sup>22</sup>, provision has only been made in relation to the decision timetable following the completion of the examination of an issue and the procedure for the Secretary of State's (SoS) intervention<sup>23</sup>. The Planning Practice Guidance similarly only refers to this process with regard to the local planning authority's decision timetable and SoS intervention.

2.16.6. In conducting the examination of the focused issue, you will wish to familiarise yourself with the wider context of the plan as part of your preparation. The local planning authority will need to provide you with the draft plan and background information, including the previous examiner's report, albeit you will carry out your own independent examination of the issue and will not be bound by any previous work of the formerly appointed examiner in relation to the issue being examined. Depending on the circumstances, you may also be provided with new evidence in relation to the issue.

2.16.7. The issue will need to be examined against the requirements in Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended), albeit not all of these might be directly relevant to a focused examination. In particular, the overarching plan requirements of sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 (as amended), where the previous examiner will already have dealt with these in terms of the plan as a whole i.e. the status of the qualifying body, the neighbourhood plan area and the period of the plan. However, the consideration of whether the issue relates to a land use planning matter and is not excluded development may be relevant<sup>24</sup>, as will the requirement to ensure the issue is compatible with the European Convention of Human Rights (and relevant Protocols).

2.16.8. All of the basic conditions are potentially relevant, notwithstanding they refer to the 'plan' rather than the 'issue'. You should also ensure that the local planning authority has complied with the consultation requirements in paragraph 13(1) of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

2.16.9. You will need to consider whether a site visit is necessary, bearing in mind the additional costs this will incur for the local planning authority. However, where you are dealing with an issue concerning, for example, a proposed Local Green Space designation or the extent of the Built-up Area Boundary, a site visit is likely to remain essential.

2.16.10. Where a local planning authority has considered it appropriate to request an examination of an issue, this may be against a backdrop of the additional consultation exercise having divided opinion and given rise to contentious and substantial representations. With this in mind, you should consider whether you will need to call a hearing under the terms of Paragraph 9(2) of Schedule 4B to the Town and Country Planning Act 1990 (as amended). However, it remains the case that a hearing should not be needed in most examinations.

<sup>21</sup> Paragraph 7 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

<sup>22</sup> Paragraph 13(3) of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

<sup>23</sup> The Neighbourhood Planning (General) Regulations 2012 (as amended) provide in Regulation 17A(5)(b)(i) that the local planning authority is required to make a decision on recommendations made under a paragraph 13(2) examination within 56 days of receipt of the examiner's report (see also paragraph 13A of Sch.4B).

Paragraphs 13B and 13C further deal with Secretary of State intervention.

<sup>24</sup> Sections 38A(2) and 38B(1)(b) of the Planning and Compulsory Purchase Act 2004 (as amended).

---

2.16.11. Given the previous examiner's report has been accepted by the Council in so far as it relates to all matters other than the issue, it is not within your remit to revisit other aspects of the plan. However, whilst the scope of the examination is confined to the issue, you will need to consider if there are any consequences arising from the view you take on the issue which may have a direct or cumulative impact on other policies within the plan. You will further need to consider if any consequential amendments are required through modifications.

2.16.12. The good practice set out in this part of the Guidance should be followed in relation to the conduct of the examination and the timely production of a report containing your recommendations. You should ensure that you make a final recommendation as to whether the plan should proceed to referendum, in accordance with the recommendations made in the previous examination, coupled with those that relate to the issue you have examined.

## Annex 1 - Neighbourhood plan health check template



Health Check: Report

Summary of Recommendations

	Criteria	Source	Response/Comments
1.1	Have the necessary statutory requirements been met in terms of the designation of the neighbourhood area?		
1.2	If the area does not have a parish council, have the necessary statutory requirements been met in terms of the designation of the neighbourhood forum?		
1.3	Has the plan been the subject of appropriate pre-submission consultation and publicity, as set out in the legislation, or is this underway?		
1.4	Has there been a programme of community engagement proportionate to the scale and complexity of the plan?		
1.5	Are arrangements in place for an independent examiner to be appointed?		

	Criteria	Source	Response/Comments
1.6	Has a Strategic Environmental Assessment been carried out by the LPA?		
1.7	Has a Habitats Regulations Assessment screening been carried out by the Local Planning Authority?		

Part 2 – Content

	Criteria	Source	Response/Comments
2.1	Are policies appropriately justified with a clear rationale?		
2.2	Is it clear which parts of the draft plan form the 'neighbourhood plan proposal' (i.e. the neighbourhood development plan) under the legislation, subject to the independent examination, and which parts do not form part of the 'plan proposal', and would not be tested by the independent examination?		
2.3	Are there any obvious conflicts with the National Planning Policy Framework?		
2.4	Is there a clear explanation of the ways the plan contributes to the achievement of sustainable development?		

	Criteria	Source	Response/Comments
2.5	Are there any issues around compatibility with human rights or EU obligations?		
2.6	Does the plan avoid dealing with excluded development including nationally significant infrastructure, waste and minerals?		
2.7	Is there consensus between the local planning authority and the qualifying body over whether the plan meets the basic conditions including conformity with strategic development plan policy and, if not, what are the areas of disagreement?		
2.8	Are there any obvious errors in the plan?		
2.9	Are the plan's policies clear and unambiguous and do they reflect the community's aspirations?		

Notes:

Parts 1 and 2 of the template should be completed first. The box should be completed in as concise a way as possible. It should state whether the criterion has been met, with a brief explanation (1-3 sentences, preferably). Any recommendations for action should also be included (1-2 sentences preferable). These actions should also be transferred to the 'Summary of Recommendations' section at the beginning of the report, with criteria in brackets after.

This suggested report is meant to help qualifying bodies by identifying any possible problems so that they can address them prior to submission. It should be written in clear, concise and accessible way. Recommendations should be practical and constructive.

## Annex 2: Scope of a Neighbourhood Plan Examination – Summary of the Legal Requirements

The scope of the legal requirements, including the 'basic conditions' an examiner must consider, is set out in Paragraph 8, Schedule 4B to the Town and Country Planning Act 1990 (as amended) ('the 1990 Act').

**Table 1: Scope of the Examination**

Paragraph 8	(1)		The examiner must consider the following:
		(a)	Whether the draft [neighbourhood development plan*] meets the basic conditions (see sub paragraph (2)) [paragraph 8(2)], *Note: References to the draft 'order' in Paragraph 8 should be read as references to the draft 'neighbourhood development plan' by virtue of s.38A(3) of the Planning and Compulsory Purchase Act 2004 (as amended) ('the 2004 Act').
		(b)	Whether the [draft neighbourhood plan] complies with the provisions made by or under [s.38A and s.38B of the 2004 Act*],  * Note: References in Paragraph 8 (1)(b) to s.61E(2); s.61J and s.61L of the 1990 Act are replaced by s.38A and s.38B for the purposes of neighbourhood development plans by virtue of s.38C(5)(b) of the 2004 Act.  Key provisions under s.38A and s.38B include: s.38A(1) Any qualifying body is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plans.  s.38B(1) A neighbourhood development plan -  (a) must specify the period for which it is to have effect, (b) may not include provisions about development that is excluded development [defined in s.61K of the 1990 Act], and (c) may not relate to more than one neighbourhood area.  s.38B(2) Only one neighbourhood development plan may be made for each neighbourhood area.
		(c)	Disapplied by virtue of s.38C(5)(c) of the 2004 Act,

<b>Paragraph 8</b>	<b>(1)</b>		<b>The examiner must consider the following:</b>
		(d)	Whether the area for any referendum should extend beyond the neighbourhood area to which the draft [neighbourhood development plan] relates, and
		(e)	Such other matters as may be prescribed [in the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the 2012 Regulations')].

**Table 2: The Basic Conditions**

<b>Paragraph 8</b>	<b>(2)</b>		<b>A draft [neighbourhood development plan] meets the basic conditions if -</b>
		(a)	having regard to national policies and advice contained in Guidance issued by the Secretary of State, it is appropriate to make the [neighbourhood development plan],
		(b) & (c)	Do not apply to a neighbourhood development plan by virtue of s.38C(5)(d) of the 2004 Act
		(d)	the making of the [neighbourhood development plan] contributes to the achievement of sustainable development,
		(e)	the making of the [neighbourhood development plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
		(f)	the making of the [neighbourhood development plan] does not breach, and is otherwise compatible with, EU obligations, and
		(g)	prescribed conditions* are met in relation to the [neighbourhood development plan] and prescribed matters have been complied with in connection with the proposal for the [neighbourhood development plan]. *A prescribed condition is provided in Regulation 32 of the 2012 Regulations, which applies the provisions of Schedule 2 (Habitats). This provides, in summary, that the making of the neighbourhood development plan is not likely to have a significant effect on a European site ... or a European off shore marine site (either alone or in combination with other plans or projects).

<b>Paragraph 8</b>	<b>(2)</b>		<b>A draft [neighbourhood development plan] meets the basic conditions if -</b>
<b>Paragraph 8</b>	(6)		The examiner is not to consider any matter that does not fall within sub paragraph (1) [paragraph 8(1)] (apart from considering whether the draft [neighbourhood development plan] is compatible with the Convention rights [contained in the European Convention of Human Rights and in those of its Protocols that the UK has ratified].

## Annex 3: Indicative Examination Timetables

Tables 1 and 2 below provide suggested, indicative timeframes for the conducting of examinations, recognising that timings can be affected significantly by the scale and nature of the plan and the significance of the representations received

The examiner should set out the proposed timetable following the initial appraisal of the plan. In most cases you should be able to take the view that the examination may progress through the written representations procedure without a hearing.

It should be stressed these timings are indicative and may need to be subject to revision, depending on your working practices and the circumstances arising in an examination. Events which might affect adherence to the indicative timetable include:

- where the examiner wishes to seek further clarification on an issue(s) through the exchange of written correspondence with relevant parties during the examination;
- where a referral back to the local planning authority and parties is necessary due to, for example, a substantive change in government policy which is highly pertinent to the content of the plan in question;
- the assessment of whether there is any impact as a result of the adoption of the Local Plan occurring after Regulation 16 consultation has been carried out; or
- there is a need for an exploratory meeting and/or the plan is suspended by the examiner.

Where hearing sessions are needed, the general practice is that a minimum of 21 days notice should be given to participants. A further practical factor will be when and where the local planning authority can secure a suitable room for the event and issue the invitations to the parties.

**Table 1: Examination by Written Representations only**

Stage	Timeline	Activity
1	Week 1	• Complete submission of all plan documentation: commencement of the examination
2	Weeks 2 and 3	• Review of plan, representations and associated documents • Site visit
3	Weeks 4 and 5	• Assessment and drafting of report
4	Week 6	• Issue fact check report to local planning authority and qualifying body: provide 1- 2 weeks to respond
5	Weeks 6 - 8	• Issue Final Report to local planning authority and qualifying body

**Table 2: Examination by Written Representations to include a Hearing**

Stage	Timeline	Activity
1	Week 1	• Complete submission of all plan documentation: commencement of the examination

Stage	Timeline	Activity
2	Weeks 2 and 3	• Review of plan, representations and associated documents • Notification of examination hearing session (21 days notice*) • Site visit
3	Week 6	• Preparation and travel time for hearing session • Hearing session
4	Weeks 7 and 8	• Assessment and drafting of report
5	Week 9	• Issue fact check report to local planning authority and qualifying body: provide 1- 2 weeks to respond
6	Weeks 9 - 11	• Issue Final Report to local planning authority and qualifying body

\*The period of notice for hearing sessions is not prescribed or set out in Secretary of State Guidance. 21 days is typically considered as reasonable and appropriate.



**w: [www.rics.org/npiers](http://www.rics.org/npiers)**

**t: (0)20 7695 1543**

**e: [npiers@rics.org](mailto:npiers@rics.org)**