

RE: THE GILSTON AREA NEIGHBOURHOOD PLAN

ADVICE

1. This Advice has been prepared in response to the Examiner's Note 2 ("EN2") and should be read in conjunction with a note from Urban Silence (the planning consultants for HEGNPG), which I have read and which deals with the planning and policy aspects arising out of comments made in EN2.
2. Parliament, in enacting the Localism Act 2011 and subsequent legislative amendments, has given neighbourhoods the statutory right to prepare a Neighbourhood Plan which, once adopted, becomes part of the statutory development plan for the area covered by the Neighbourhood Plan. In exercise of this right the Gilston Area Neighbourhood Plan ("GANP") has been prepared and submitted for examination by HEGNPG.
3. Since enactment in the Localism Act 2011, the neighbourhood planning regime has been subject to various legislative refinements and is supplemented by a number of relevant subordinate legislative provisions. The current legislative framework is summarised in the Planning Practice Guidance ("PPG"). It is trite law that guidance is merely guidance and must always give way to the wording of the statute which properly represents the will of Parliament. However, taken together, it is clear that the neighbourhood planning system is a flexible one, and the legislation has this flexibility embedded within it so that it is not prescriptive as to content and format. Much is left to guidance which, by its very nature, is general in application and, in any individual case, must be viewed in its proper context. The guidance does not have to be blindly followed. In any event, the guidance on NPs, set out in the PPG, also recognises that no two NPs will be the same. This is clearly demonstrated by the inclusion of various significant elements of discretion – see below, for example, in relation to policies for the provision of transport infrastructure. Furthermore, the GANP has been prepared with the overall legislative objective (as set out in the PPG) firmly in mind:

Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. They are able to choose where they want new homes, shops and offices to be built, have their say on what those new buildings should look like and what infrastructure should be provided, and grant planning permission for the new buildings they want to see go ahead. Neighbourhood planning provides a powerful set of tools for local people to plan for the types of development to meet their community's needs and where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.

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4. Unlike most NPs, the GANP has been prepared for an area that is going to be the subject of significant development over the coming years. This is not a NP planning for a modest expansion of a smallish rural community. It is an almost unique circumstance. It has been prepared after the adoption by EHDC of the East Herts District Plan 2011-2033 which contains specific policies in Chapter 11 for the development of 10,000 new homes (with at least 3,000 being delivered in the Plan period) (see GA1 and GA2). Policy GA1 is four pages in length (on pages 152-156). Furthermore, it ties into DP policy DPS3 (Housing Supply 2011-2033) and is integral to the successful delivery of a sizeable amount of new homes. It follows that the inspector, in examining and reporting on the DP, and EHDC in subsequently adopting it with modifications, had to be satisfied that issues such as the timely delivery of necessary infrastructure had been adequately provided for otherwise the DP would have failed the NPPF test of "soundness" as it would not been effective i.e. deliverable over the plan period.
5. The preliminary discussions between the various Parish Councils that lead to the designation of the neighbourhood area in November 2017, began in early 2016 but the substantive work only began in 2019 after the DP was adopted in the previous October. This is clear from the Consultation Statement (June 2020) – see paragraphs 11 – 20.
6. The GANP therefore flows from the specific DP policies (GA1 and GA2) for the area. It is in general conformity with the DP. It does not seek to limit or otherwise inhibit

development in the area as allocated in the DP or restrict the application of DP policies. In fact, it has been prepared to complement the DP. The GANP, however, is not a district-wide plan – it caters for a defined neighbourhood planning area within, but smaller than, the area covered by the DP. Its relevance, therefore, is confined to its own area. In addition, the statutory duty on decision makers when determining planning applications, set out in section 38(6) of the Planning and Compulsory Purchase Act 2004, is to consider the development plan as a whole and so it follows that, as a matter of law, the decision maker must take into account both the DP and any relevant adopted neighbourhood plan. Thus, the two development plan documents are meant to be complementary.

7. The GANP has been prepared by HEGNPG. In common with other neighbourhood plan groups, those preparing it are volunteers, undertaking a considerable amount of time-consuming work on behalf of their community for which they receive no remuneration and limited financial assistance to obtain appropriate professional advice. It is also noteworthy that HEGNPG have sought to engage with, and have received support from, key stakeholders in the area including EHDC and the owners of the land that the DP has allocated for development. Thus, HEGNPG has followed the advice, advocated in PPG paragraph 048, to involve all relevant public bodies, landowners and the development industry in preparing the GANP. As a result, all have therefore invested considerable time, effort and resources in contributing to the drawing up the GANP.

8. It is as a result of the positive engagement by HEGNPG with all the key stakeholders within the GANP area, that the draft GANP has expanded in volume from the consultation draft to the submission draft. As is clear from the various representations made by these stakeholders, this expansion was driven by the desire of those stakeholders to see further clarity by the inclusion of amendments resulting in additional wording being inserted into the submitted version of the GANP.

9. Many of the statutory consultees also requested the inclusion of very specific points on matters such as the environment, watercourses and heritage. Further, the Harlow and Gilston Garden Town provided text to describe their own guidance for inclusion in the GANP and the Quality Review Panel encouraged yet more detail of their guidance to be included. The submission draft of the GANP addresses and reflects these requests. The Comments Logbook sets out the many suggested changes that arose from the reg. 14 consultation process and a third round of consultation with the developers and EHDC – see the Phase Six Gilston Area Neighbourhood Plan Interim Non-Statutory Consultation on page 31 of the Consultation Statement. This is the natural outcome of a comprehensive process of engagement with key stakeholders as advocated by the PPG.
10. A more recent example of this approach can be seen in the letter dated 11 September 2020 from Town Legal LLP on behalf of the owners of Hunsdon House: “The owners of Hunsdon House welcome the draft Neighbourhood Plan. They are very supportive of the Eastwick & Gilston Parish Council’s and Hunsdon Parish Council’s work, along with the Neighbourhood Planning Group to help secure appropriate local development. Their support is detailed in particular at Section 3 (“Support for the Hunsdon, Eastwick and Gilston Neighbourhood Plan”) of the enclosed Representation. The owners of Hunsdon House also propose as essential some amendments to the draft Neighbourhood Plan. These are detailed at section 4 (“Amendments required to meet the basic conditions”) of the enclosed Representation.”
11. It is in this context that the contents of EN2 must be viewed. The Guidance set out in both the NPPF¹ and the PPG is guidance and it is trite law that policies and guidance must be interpreted in a straightforward way and without undue or elaborate exposition – see *R (Mansell) v Tonbridge BC* [2017] EWCA Civ 1314.

¹ It appears that the reference to paragraphs 12 and 13 should be a reference to paragraphs 15 and 16.

12. The comment in paragraph 11 of EN2 that the CF “did not (any more than the DP) contemplate a NP for the same area” is surprising. It is inconceivable that neither EHDC nor the two landowners were not aware of the existence and role of NPs and so the possibility that area would become the subject of a NP following the adoption of the DP must have been evident to all. Indeed, both EHDC and the landowners have engaged constructively with HEGNPG throughout the process of bringing forward the GANP. It is significant that neither the legislation nor the guidance prevents or limits the ability of the HEGNPG to bring forward the GANP. Were there to be any exceptions to the general power given to communities to shape the development and growth of their area by NPs, Parliament would have set out such exceptions in the authorising legislation. It did not do so. Moreover, some might say that any attempt to interpret the guidance in such a way as to deny a local community to bring forward a NP could be seen as flouting the will of Parliament.

13. It is clear that, when viewed in context, the GANP does fully address and meet the requirements of NPPF paras 15 & 16. Furthermore, in the circumstances when the amendments and additional wording has been included at the suggestion of those key stakeholders for the area, it is as appropriately succinct, concise and precise as it could possibly be for a development plan document catering for the scale of development envisaged in GA1. It can be contrasted, for example, with the CF which, as DP Policy GA1 makes clear, sits outside the development plan. Furthermore, the evidence base for the GANP draws heavily on that which was used to justify the adopted DP. In every sense, the GANP respects and reflects the objective behind the neighbourhood planning regime, as set out in the PPG and quoted in paragraph 3 above.

14. It is also clear from the statutory framework that there is no legislative bar to the GANP being prepared and adopted in its current form. The observation in EN2 that

there is “a positively bewildering array of planning documents...” is unjustified. At one level it is an observation that seems designed to frustrate the exercise by HEGNPG of the rights given to it by Parliament to draw up a NP for its area. It also ignores the context. Furthermore the citing with disapproval of, for example, the Concept Area Framework 2018 (“CF”), is difficult to reconcile with the fact that the CF sits outside the development plan, is not planning policy and thus that criticism (if it is a criticism) should more properly be addressed to the DP. It is submitted that the observations EN2 paragraphs 11-17 are misplaced. It is beyond doubt that the legislative framework for neighbourhood planning permits the GANP to be drawn up against the backdrop of the DP making provision for approximately 10,000 new homes in the area. There is nothing inherently wrong in both law and policy in the GANP drawing on, and repeating aspects of the CF and thereby elevating the status of those aspects to that of development plan policy. After all, it is clear from both section 38(6) of the Planning and Compulsory Purchase Act 2004 and the NPPF that the planning system is a development plan-led system. As matters currently stand, it is the DP and the CF that delegate matters to planning applications whereas the GANP will provide greater clarity and certainty to all concerned be they landowners, developers, the local planning authority and residents. It follows that the comment in paragraph 13 of EN2 that “The landowners are (understandably) keen that the NP should not ‘*pre-empt*’ the development management process” appears to be the antithesis of the required development plan-led approach required by Parliament.

15. It is highly material that, in its submitted form, the DP was considered unsound in relation to community involvement. In paragraph 101 of the DP Inspector’s report, she commented: “While the Plan sets out a range of facilities and development criteria for the Gilston Area, policy GA1 fails to set out how the existing local community would be involved, what the vision is for the area and how the Garden City Principles would be applied and the policy is not sound. Modifications MM/11/01 and MM/11/10 include new criteria to explain how the local community will be engaged. They set out the Garden City principles, including strong vision and leadership, community ownership of assets, healthy

communities, enhancement of the natural environment, good design and integrated sustainable transport. These are all necessary to achieve a long term, sustainable community which meets the needs of both existing and future residents.” The DP therefore was modified accordingly before adoption. The GANP is the statutory embodiment of local community involvement and is fully in accordance with the statutory regime for NPs.

16. It follows that in the context of both DP Policies GA1 and GA2 and their desired objective to bring forward substantial development of 10,000 new homes, the GANP is as concise as is possible. Concision must be seen in context. This is not a NP proposing the development of a small number of homes in a smallish rural community.

17. Similarly, in this context EN2’s third concern regarding infrastructure is both unreasonable and unfounded. The PPG makes clear that:

Should a neighbourhood plan consider infrastructure?

A qualifying body **may** wish to consider what infrastructure needs to be provided in their neighbourhood area from the earliest stages of plan-making (as set out in paragraph 102 of the National Planning Policy Framework) alongside development such as homes, shops or offices. Infrastructure is needed to support development and ensure that a neighbourhood can grow in a sustainable way.

The following **may** be important considerations for a qualifying body to consider when addressing infrastructure in a neighbourhood plan:

- what additional infrastructure **may be needed to enable development proposed in a neighbourhood plan** to be delivered in a sustainable way
- how any additional infrastructure requirements might be delivered
- what impact the infrastructure requirements may have on the viability of a proposal in a draft neighbourhood plan and therefore its delivery
- what are the likely impacts of **proposed site allocation** options or policies on physical infrastructure and on the capacity of existing services, which could help shape decisions on the best site choices

Qualifying bodies should engage infrastructure providers (eg utility companies, transport infrastructure providers and local health commissioners) in this process, advised by the local planning authority.

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(My emphasis)

18. It follows from the wording above, that the inclusion or exclusion of policies governing the provision of infrastructure is a matter for the discretion of those drawing up neighbourhood plans. It is not a mandatory requirement. There is also another important point that must be considered – the GANP does not propose any additional development over and above that proposed in the DP (the provision of approximately 10,000 new homes) which the GANP then takes forward. Furthermore, given the sheer scale (in terms of volume, nature and timescale) of the development within the neighbourhood provided for by DP Policies GA1 and GA2, the role and resources of the HEGNPG and the evidence submitted as part of the DP examination and adoption process, it is wholly unreasonable and inappropriate for it to be suggested that the GANP should set out details of ‘how the provision of infrastructure, and especially transport infrastructure is dealt with in the draft NP’. It is also not the case that the NPPG and PPG “expect” this – it is clear from paragraph 045 that this is not a requirement but a matter for the discretion of those drawing up the neighbourhood plan. Moreover, were the GANP to deal with such matters, as EN2 appears to suggest, it could then have been open to criticism that it was seeking to subvert DP Policy DEL1. The provision within the GANP of policies for the provision of infrastructure would be inappropriate.

19. Finally, reference is made to paragraph 6 of the judgment of the Court of Appeal decision in *R (Lochailort Investments Ltd) v Mendip District Council* [2020] EWCA 1259 Civ where Lewison LJ outlined the general law as follows:

As we have seen, a neighbourhood development plan must have regard to national policies and advice contained in guidance issued by the Secretary of State. A statutory requirement of this kind requires a decision maker not only to take national policies into account but also to observe them and depart from them only if there are clear reasons for doing so: *Carpets of Worth Ltd v Wyre Forest DC* (1991) 62 P & CR 334, 342; *R (Khatun) v Newham LBC* [2004] EWCA Civ 55, [2005] QB 37 at [47]. Accordingly, although, as Holgate J rightly said, an examiner must decide whether it is appropriate for a plan to proceed having regard to national policy, a departure from that policy must be explained.

As discussed above, HEGNPG have followed both the requirements of the statute and the advice set out within the PPG governing the content and preparation of the GANP and is of the opinion that the submission of the draft GANP fully accords with both the legislation and PPG. It is therefore incumbent on the Examiner to fully explain the way in which it is considered that the draft GANP failed to meet these requirements and how there is any conflict with those parts of the PPG set out above. As I have mentioned above, in common with all neighbourhood planning groups, the HEGNPG, has very limited resources. In the circumstances of a NP examination, it would be procedurally unfair for the examiner to spring any further concerns that he may have on HEGNPG at the examination hearing without advance warning and without giving sufficient time for the concerns to be considered by HEGNPG and any response to then be formulated.

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