

# The relevance of neighbourhood plans to planning applications and appeals

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# Topics Covered



- The “norm” – neighbourhood plans as part of the development plan
- Housing policies, presumptions and priority: Crane
- The NPPF and emerging neighbourhood plans: Woodcock

# The starting point: s. 38 of the Planning and Compulsory Purchase Act 2004



*(2) For the purposes of any area in Greater London the development plan is–*

*(a) the spatial development strategy,*

*(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area, and*

*(c) the neighbourhood development plans which have been made in relation to that area.*

*(3) For the purposes of any other area in England the development plan is–*

*(a) the regional strategy for the region in which the area is situated (if there is a regional strategy for that region), and*

*(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area, and*

*(c) the neighbourhood development plans which have been made in relation to that area.*

*(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be).*

*(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*



- Neighbourhood plans thus:
  - form part of the development plan for the relevant area: s. 38(3)(c)
  - Attract “statutory priority”: s. 38(6); City of Edinburgh
  - Override earlier strategic policies with which they conflict: s. 38(5)
  - Override non-strategic local plan policies: NPPF para 185
- Emerging neighbourhood plans can also carry weight as a material consideration, just like any other emerging local plan: NPPF para 216



The starting point: ***permission follows the plan***

# Housing policies: neighbourhood plans and the NPPF



- NPPF para 49:

*Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites*

- Application of this presumption has given rise to two significant recent cases...

## Crane v SSCLG [2015] EWHC 425 (Admin)



- Important case on interactions of neighbourhood plans, core strategies, and the NPPF



## Crane: the facts

- Mr Crane owned a plot of land, for which he applied for permission for, *inter alia*, 111 dwellings
- Mr Crane's site was not allocated for housing in the neighbourhood plan
- Housing land supply for the area: 4.1 years
- Core strategy therefore out of date, as was the neighbourhood plan
- Inspector recommended allowing appeal, on basis of NPPF para 14 presumption in favour of sustainable development
- But...

- SoS recovered the appeal, and dismissed it
- Essence of his disagreement with the Inspector was the weight to be given to the out-of-date neighbourhood plan
- SoS granted “*very substantial negative weight*” to the conflict, notwithstanding the lack of 5yhls, and notwithstanding the fact that the neighbourhood plan was out of date

## The challenge

- Ground 2 of the statutory challenge: can the SoS give significant weight to an out-of-date neighbourhood plan in this way?
- Per Lindblom J: yes
- The NPPF does not displace the s. 38(6) statutory priority of the neighbourhood plan (para 62)
- NPPF paras 14 and 49 are silent on weight (para 71)
- NPPF para 6 indicates that “sustainable development” policies are comprised of the NPPF as a whole ... including NPPF paras 184 and 198 (para 73)

*74 I do not accept the proposition that, in a case where relevant policies for the supply of housing are out of date, the weighing of “any adverse impacts” against “the benefits” under paragraph 14 should proceed – as Mr Hill put it in paragraph 71 of his skeleton argument – “on the basis that the development plan components have been assessed, put to one side, and the balancing act takes place purely within the text of [the NPPF] as a whole”. Paragraph 14 of the NPPF does not say that where “relevant policies” in the development plan are out of date, the plan must therefore be ignored. It does not prevent a decision-maker from giving as much weight as he judges to be right to a proposal's conflict with the strategy in the plan, or, in the case of a neighbourhood plan, the “vision” (as it is described in paragraph 183). It does not remove the general presumption in paragraph 198 against planning permission being granted for development which is in conflict with a neighbourhood plan that has come into effect. These are all matters for the decision-maker's judgment, within Wednesbury bounds.*

## Crane: implications

- Neighbourhood plans play a role in planning applications and appeals at three stages:
  - As part of the development plan (s. 38(6))
  - For the purposes of identifying 5yhls (NPPF para 49)
  - As a sustainable development consideration (NPPF para 14)
- Neighbourhood plan policies can be weighty, and even determinative, even if the plan is out of date, via any of the above mechanisms
- *Quaere* how these principles will apply outside of the residential development context.

# Woodcock Holdings Ltd v SSCLG [2015] EWHC 1153 (Admin)



- Factually similar to Crane
- Claimant was a landowner, with an application to develop, *inter alia*, 120 dwellings in Sayers Common, West Sussex
- Concerned an emerging neighbourhood plan, so s. 38(6) was not at issue
- No objectively-assessed analysis of housing need in the district
- But housing land supply for the relevant area agreed to be c. 2 years

- LPA refused permission; s. 78 appeal recovered by the SoS.
- Inspector recommended the grant of permission, having granted “*relatively limited weight*” to the emerging neighbourhood plan, which was at pre-examination stage
- But...

- SoS dismissed the appeal.
- Sole reason for differing with the inspector was that the proposal conflicted with the emerging neighbourhood plan, and was premature in respect of it
- SoS gave “*considerable weight*” to the emerging neighbourhood plan, and acknowledged that this tipped the balance against the proposal, given the absence of objectively-assessed housing need data



# The challenge



- Four grounds of appeal advanced:
  - Ground 1: the SoS failed to apply NPPF para 216 on the weight to be attached to emerging policy
  - Ground 2: the SoS failed to take into account his own prematurity policy
  - Ground 3: NPPF para 49 was capable of applying to emerging neighbourhood plan policies on housing allocations as well as adopted plan policies
  - Ground 4: properly interpreted, there was no conflict between the proposal and the emerging neighbourhood plan

## The decision

- Holgate J allowed the appeal and quashed the SoS' decision, on all four grounds.
- Grounds 3 and 4 are most relevant to this subject. The judge took them in reverse order

- On ground 4:

*“...the Secretary of State decided to “tip the balance in favour of” the draft proposals in the neighbourhood plan as part of his reasoning for dismissing the appeal, because the District Council had yet to complete an up-to-date objectively assessed analysis of housing needs against which to measure those draft proposals. Although it had been held that a body preparing a neighbourhood plan does not have the function of preparing strategic policies to meet assessed housing needs across a local plan area and need not be concerned with wider issues for the delivery of housing (paragraphs 62 and 63 above), it cannot follow that the absence of any objective assessment of housing needs at the district level could justify increasing the weight to be given to a draft neighbourhood plan. The lack of such an assessment was plainly irrelevant for that purpose.” (para 81)*

- On ground 3, Holgate J noted that the old PPS3 applied to emerging as well as statutory development plan policies (para 94), and that the NPPF was intended to give “*greater, not less, emphasis to meeting housing needs*” (para 95)
- As a result:

*“...it would be inappropriate to treat paragraph 49 as restricting the circumstances in which national policy lends additional support to a housing proposal because of the lack of a 5 year supply of land, to cases where the “relevant policies for the supply of housing” are contained in statutory, but not draft, development plans. Such a change in national policy regarding the importance of maintaining a 5 year supply of housing land would require explicit language to that effect” (para 95)*

- The judge rejected the SoS' argument that NPPF para 49 was limited to statutory policies by virtue of NPPF para 14:

*“...First, paragraph 14 is simply a broad statement of general application. Second, it does not deal specifically with a situation where there is a shortage of housing land. Third, the phrase in paragraph 14 “relevant policies are out-of-date” without more, simply refers to policies which are actually out of date. Fourth, paragraph 49 operates as a deeming provision so as to require housing supply policies to be treated as “out of date” even if that would not otherwise be the case under paragraph 14. Fifth, it follows that paragraph 49 can only be read as extending the ambit of paragraph 14. It has the effect of extending the scope of the presumption in favour of development set out in paragraph 14, (a) so as to apply to draft as well as adopted development plan policies, but (b) only where a 5 year supply of housing land does not exist and (c) solely in relation to “housing supply policies.”*

*Once the correct interaction between paragraphs 14 and 49 is appreciated, in a case where a 5 year supply of housing land does not exist, it does no violence to the language of paragraph 14 to treat the presumption in favour of sustainable development as weighing against housing supply policies, including those which restrain development, whether they are contained in statutory or draft development plans.” (paras 103-104)*

## Woodcock: implications

- The NPPF para 14/49 balancing exercise (as interpreted by Crane) applies to restrictive policies in *emerging* neighbourhood plans. LPAs and inspectors need to be alive to this policy angle if their decisions are to be defensible
- In the residential planning context, the complexities of NPPF application identified in Crane are engaged even at the plan formation stage.
- Crane cuts both ways: the NPPF presumption in favour of sustainable development can weigh *against* restrictive neighbourhood plan policies which are out of date