

Can neighbourhood plans be overturned?

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Alex Ground looks at a range of challenges to neighbourhood plans

Neighbourhood plans were envisaged as providing communities with power over the location of new housing, shops and offices. However, they are facing an increasing number of legal challenges as communities endeavour to use them to resist speculative development, in the absence of a 5-year housing land supply and the [National Planning Policy Framework](#) (NPPF)'s presumption in favour of sustainable development.

A number of judicial review challenges have been made by developers to neighbourhood plans that have been adopted. This article looks at a range of these challenges. Where they failed, the neighbourhood plan became the main reason for the refusal of a planning application.

Premature plans

A couple of challenges have been made on the grounds of neighbourhood plans' prematurity. [Tattenhall Neighbourhood Plan](#) was judicially reviewed on the basis that it brought forward policies before the local plan had been examined and adopted. It was concluded that, while a local plan must be consistent with national policy, neighbourhood plans just need to meet basic conditions, and the examiner has the discretion to determine whether or not it should proceed, having regard to national policy and guidance.

Larkfleet Homes Ltd, meanwhile, sought a judicial review of Rutland County Council's decision to allow [Uppingham Neighbourhood Plan](#) to proceed to referendum, asserting that a site allocation policy could only be prepared as a local development plan document by the authority. However, it was concluded that neighbourhood plans are able to allocate sites for development.

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Another neighbourhood plan, for the parish of Slaugham in West Sussex, was, in the first instance, successfully challenged by a developer as it was held not to meet the basic conditions on the strength of a flawed strategic environment assessment (SEA), which did not comply with EU requirements.

Three site allocations were also identified as not necessarily deliverable. If there is a procedural error in relation to SEA or site deliverability, representations may be made to ensure that it is not approved, or to challenge if it is.

However, once these points were rectified, the developer failed in its second challenge, on the grounds that there was a housing allocation shortfall in the wider district, a conflict with national planning policies and a flawed scoring system; the court held that there was sufficient housing land allocation to satisfy the draft local plan provision and rejected the other grounds as without merit. This demonstrates that it is very difficult to challenge a neighbourhood plan successfully on anything other than procedural irregularities.

Appeal decisions

However, focusing resources on an actual application and any subsequent appeal may be more likely to succeed, given some recent appeal decisions. Permission for 120 units in Mid Sussex was refused in September 2014 by the Secretary of State for Communities and Local Government on the basis that they conflicted with a draft neighbourhood plan. But this decision was later overturned in a High Court challenge, and the re-determination is currently awaited.

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Last November, developers took further hope when the Secretary of State recovered an appeal for 39 homes in Northamptonshire (appeal ref. 2221102) and granted it on the basis that, while the proposal conflicted with the draft neighbourhood plan ? the site was outside the limits of development and not allocated ? this was insufficient to outweigh the lack of a 5-year housing land supply.

In January, the Secretary of State also approved 110 units in Ringmer, East Sussex (appeal ref. 3001077), where the draft neighbourhood plan had allocated the site for fewer units. Developers are advised to seek sites where no neighbourhood plan has been started, or to try to get allocated in a plan. But you should not underestimate how quickly some neighbourhood plans have been prepared, and this can change the risk profile of an application considerably.

Failing that, making robust objections to a draft neighbourhood plan while trying to push through your application may also lead to a grant of permission, provided all other technical aspects of the application are satisfied.

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Further information

Alex acted for Woodcock Holdings in [Woodcock Holdings v Secretary of State for Communities and Local Government](#) [2015]

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