

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990

LAND AT ALLENBY ROAD, SOUTHWELL

AND THE SOUTHWELL NEIGHBOURHOOD PLAN REVIEW

OPINION

Introduction

1. I am instructed to advise Richborough Estates Ltd (“Richborough”), through their instructed planning consultants, Fisher German LLP, in respect of Land at Allenby Road, Southwell and the Southwell Neighbourhood Plan Review (“the Review NP”), which is intended to replace the current made Neighbourhood Plan (“the Current NP”).
2. I have been asked to advise on four matters:
 - (1) Whether the Review NP contains “allocations” to meet its housing requirement for the purposes of NPPF (2024), paragraph 14 and 69-70;
 - (2) In the light of (1), whether the Review NP meets the basic conditions under paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (“TCPA”);
 - (3) The consequences of (1) and (2) for the examination, in the context of the recommendations available under paragraph 10 of Schedule 4B TCPA;
 - (4) The need for the examination to be conducted by way of an oral hearing.
3. I understand that this Opinion will be attached to the Regulation 16 representations, to be considered alongside submissions by Fisher German.

Factual Background

4. The relevant plan-making history for the Southwell neighborhood area extends back some 14 years to the adoption of the Core Strategy in March 2011. The following is a summary of the key stages.

The Local Plan – Development Plan Documents

Core Strategy (March 2011)

5. The Newark and Sherwood Core Strategy was adopted in March 2011. This was a pre-NPPF era plan, adopted in the context of the East Midlands Regional Plan (Regional Spatial Strategy) (12 March 2009) which had required the District Council to plan for 14,800 dwellings over the Plan period (2006-2026), 740 dwellings per annum, with a lower figure to reflect completions and commitments. The Core Strategy was reviewed and replaced by the Amended Core Strategy in March 2019 (as set out below).

The Allocations and Development Management DPD (A&DMDPD) (July 2013)

6. The Allocations and Development Management DPD (A&DMDPD) was adopted in July 2013, and directed 425 dwellings to Southwell between 2006-2026 in accordance with the 2011 Core Strategy. The A&DMDPD allocated 7 housing sites and 1 mixed use site for a total of 298 dwellings, in Allocations So/Ho/1 to So/Ho/7 and So/MU/1.

Amended Core Strategy (March 2019)

7. The Amended Core Strategy was adopted in March 2019. This contained a housing requirement of 9,080 dwellings over an extended Plan period (2013-2033), equating to 454 dpa. Discounting completions and commitments, this figure was reduced to 8,806 dwellings.
8. The Amended Core Strategy has not been reviewed within the past 5 years, as required by Regulation 10A of The Town and Country Planning (Local Planning)

(England) Regulations 2012 and the NPPF (notably NPPF (2024) paragraph 78 and predecessor provisions).

The Amended Allocations and Development Management DPD (Submitted January 2024)

9. The Amended Allocations and Development Management DPD (AA&DMDPD) was submitted for examination on 18 January 2024. The examination hearing Sessions were completed in November 2024. Like the Amended Core Strategy, the AA&DMDPD Plan period has been rolled forward 7 years, 2013-2033.
10. The AA&DMDPD refers Southwell covering 3% growth, equating to 264 dwellings (120 residual) between 2013-2033. The AA&DMDPD further records that So/Ho/1, 3, 6 have been completed and So/Ho/2, 4 and 5, 7 remain for completion, with So/MU/1 deleted. No additional allocations have been made from the extant AA&DMDPD.

NPPF Local Housing Need and Future Plan Review

11. The requirement for Newark and Sherwood from the updated Standard Method is now 730 dwellings per annum (compared to 454 dwellings under the 2019 Amended Core Strategy). The Council accept that they will need to use the updated Local Housing Need figure following adoption, i.e. the AA&DMDPD automatically become out of date at the point of adoption, for the purposes of NPPF 11d. The Council's Housing Land Supply Position (January 2025) uses the updated LHN of 707 dwellings per annum and records a supply figure of just 3.43 years.
12. At the AA&DMDPD examination, the Council conceded they would need to expedite a full Plan review immediately following adoption. The Council have published an updated Local Development Scheme (December 2024) which confirms anticipated adoption of this new document in January 2028.

The Southwell Neighbourhood Plan

The Current NP

13. The Southwell Neighbourhood Plan (the Current NP) was made in October 2016 and covers the Plan period 2015 to 2026.
14. The Current NP was prepared and adopted prior to the changes to the current NPPF paragraph 14, and therefore was never expressly prepared to meet its requirements.
15. Chapter 11 is entitled “Site-Specific Policies” and contains:

Policy SS4 - Land East Of Kirklington Road (So/Ho/4)

Policy SS5 - Lower Kirklington Road (So/Ho/5)

Policy SS7 - Southwell Depot (So/Ho/7)

16. The supporting text explains at [11.1]

“The following policies deal in turn with specific sites as allocated within the NSDC A&DM DPD. The A&DM DPD site specific policies are shown, and they are supplemented by additional Neighbourhood Plan requirements, reflecting detailed local circumstances, which are in italics.”

17. The Current NP therefore makes clear that it is only the A&DM DPD (2013) that has allocated the sites.
18. The Examiner’s Report (dated March 2016) also noted:

*177. The Site Specific Policies are policies for specific sites **allocated in the A&DM DPD**. The A&DM DPD was adopted in 2013 and as such was required to follow the approach of the presumption in favour of sustainable development outlined in the NPPF of the previous year. Whilst the legal requirements for the examination of a local plan differ from those for a neighbourhood plan examination, the site specific policies in the A&DM DPD have already been examined in the context of the presumption in favour of sustainable development.*

*178. The site specific policies in the Neighbourhood Plan are those in the A&DM DPD supplemented by additional policy clearly identified in italics. I have not come across this approach before in my examination of neighbourhood plans. I understand the intention of the additions is to reflect detailed local circumstances. **I must make it abundantly***

clear that it is only necessary in these circumstances for me to be examining the policy wording in italics

19. The Examiner therefore did not examine the allocations against the basic conditions, and focused simply on the minor additions.
20. The Current NPPF is now over 5 years old and therefore NPPF 14 is no longer engaged.

The Review NP

21. The Review NP was subject to a consultation under Regulation 14 from 25 July to 26 September 2023. The Review NP was submitted during December 2024 and the current Regulation 16 consultation ends on 19 February 2025.
22. The Review NP does not contain a housing requirement. It merely states at paragraph 2.9: *“The total numbers of dwellings provided for on the sites allocated in the N&SDC Allocations DPD in 2013 and the Southwell Neighbourhood Plan in 2016 amounted to 285. Of these 203 had been completed by 2022. Several ‘windfall’ sites have also been developed, delivering a further 15 to 20 dwellings.”* There is no evidence that the NP Steering Group have contacted the LPA to confirm their housing requirement under NPPF (2023) paragraph 66 or 67, or any of the relevant PPG provisions most notably PPG 41-009, 41-101 and 41-102. There is no reference to such an exercise in either the text of the plan itself, or the basic conditions statement or in any other document.
23. The text continues to contain Policies SS4 (So/Ho/4 - Land East of Kirklington Road), SS5 (So/Ho/5 Land off Lower Kirklington Road) and SS6 (So/Ho/7) Southwell Depot). Paragraph 11.1 also remains materially unchanged: *“The following policies deal in turn with specific sites as allocated within the NSDC A&DM DPD....”*
24. On page 109, the Glossary defines “Allocated Site” as *“Allocated sites are identified within the NSDC Allocations and Development Management DPD (2013) which have been set aside for specific uses to meet the targets for the delivery of housing and / or employment.”*

Q1: Does the Review NP contain “allocations” to meet its housing requirement for the purposes of NPPF (2024), paragraph 14 and 69-70

25. If the Review NP were to be statutorily “made” (i.e. adopted), it would be applied in the context of the current NPPF (2024), paragraph 14, which provides:

14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:

a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and

b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement (see paragraphs 69-70);

26. NPPF 14 is a decision-taking test, which will be applied (where relevant) by the LPA or an Inspector at appeal in future decisions within the plan area. Nevertheless, it is important as part of the examination of the Neighbourhood Plan to confirm the content of the Plan and what has and has not been done as part of its preparation.
27. A Neighbourhood Plan which is making clear expressly that it is not seeking to comply with NPPF 14, should make this clear on the face of the plan to ensure that the document can be applied correctly.
28. Basic condition (a) requires assessment as to whether it is appropriate to make the plan, “hav[ing] regard to national policies and advice contained in guidance issued by the Secretary of State” This requires the Examiner to take into account the NPPF, the Written Ministerial Statements and the PPG (especially the Chapter on Neighbourhood Plans).
29. NPPF (2024) 239 provides:

239. For neighbourhood plans, the policies in this Framework will apply for the purpose of preparing neighbourhood plans from 12 March 2025 unless a neighbourhood plan proposal has been submitted to the local planning authority under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended) on or before the 12 March 2025.

30. Notwithstanding NPPF (2024) 239, there has been no change in the text of NPPF (2023) paragraph 14 (retained as NPPF (2024) paragraph 14), NPPF (2023) paragraph 67 (now NPPF (2024) paragraph 69) and NPPF (2023) paragraph 68 (now NPPF (2024) paragraph 70).

31. NPPF (2023) 67 and 68 provide:

67. Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure investment. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations. Once the strategic policies have been adopted, these figures should not need re-testing at the neighbourhood plan examination, unless there has been a significant change in circumstances that affects the requirement.

68. Where it is not possible to provide a requirement figure for a neighbourhood area, the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body. This figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.

32. Under NPPF (2023) 13, a Neighbourhood Plan must “support the delivery of strategic policies contained in local plans ... and should shape and direct development that is **outside** of these strategic policies.”

33. NPPF (2023) 29 then makes clear:

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.

34. Most of the PPG provisions that support the NPPF text were introduced several years after the Current NP's examination ended in March 2016. As the update note records:

9 May 2019

Amended paragraphs 001-009, 012, 023-26, 036, 044, 045, 070, 072, 073, 075-077, 079, 081-084, 086, 096-099. Added new paragraphs 100-106. Moved paragraphs 007, 008, 082, 083, 096-099 to new Decision-taking section.

35. NPPF 67 and 68 are supported by PPG 41-009, 41-101 and 41-102 (all amended or updated in May 2019), each of which encourage the LPA and the qualifying body to communicate and agree a figure:

41-009: Strategic policies should set out a housing requirement figure for designated neighbourhood areas from their overall housing requirement (paragraph 65 of the revised National Planning Policy Framework). Where this is not possible the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body, which will need to be tested at the neighbourhood plan examination. Neighbourhood plans should consider providing indicative delivery timetables, and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new local plan.

41-101: The National Planning Policy Framework expects most strategic policy-making authorities to set housing requirement figures for designated neighbourhood areas as part of their strategic policies. While there is no set method for doing this, the general policy making process already undertaken by local authorities can continue to be used to direct development requirements and balance needs and protections by taking into consideration relevant policies such as the spatial strategy, evidence such as the Housing and economic land availability assessment, and the characteristics of the neighbourhood area, including its population and role in providing services. ...

41-102: “Where an indicative housing requirement figure is requested by a neighbourhood planning body, the local planning authority can follow a similar process to that for providing a housing requirement figure. They can use the authority’s local housing need as a starting point, taking into consideration relevant policies such as an existing or emerging spatial strategy, alongside the characteristics of the neighbourhood plan area.”

Proactive engagement with neighbourhood plan-making bodies is important as part of this process, in order for them to understand how the figures are reached. This is important to avoid disagreements at neighbourhood plan or local plan examinations, and minimise the risk of neighbourhood plan figures being superseded when new strategic policies are adopted.”

36. Where a qualifying body has been provided with a housing requirement, then PPG 41-103 provides that qualifying bodies should either meet or exceed it:

“Where neighbourhood planning bodies have decided to make provision for housing in their plan, the housing requirement figure and its origin are expected to be set out in the neighbourhood plan as a basis for their housing policies and any allocations that they wish to make.

Neighbourhood planning bodies are encouraged to plan to meet their housing requirement, and where possible to exceed it. A sustainable choice of sites to accommodate housing will provide flexibility if circumstances change, and allows plans to remain up to date over a longer time scale. ...

When strategic housing policies are being updated, neighbourhood planning bodies may wish to consider whether it is an appropriate time to review and update their neighbourhood plan as well. This should be in light of the local planning authority’s reasons for updating, and any up-to-date evidence that has become available which may affect the continuing relevance of the policies set out in the neighbourhood plan.”

37. PPG 41-044 then expressly limits the approach to allocation, requiring neighbourhood plans to make new allocations:

*“A neighbourhood plan can allocate additional sites to those in a local plan (or spatial development strategy) where this is supported by evidence to demonstrate need above that identified in the local plan or spatial development strategy. **Neighbourhood plans should not re-allocate sites that are already allocated through these strategic plans.***

38. PPG 41-098 provides for a specific pathway to making an allocation, both in terms of procedure and the eventual text:

“Where a neighbourhood planning body intends to allocate sites for development, it will need to carry out an appraisal of options and an assessment of individual sites against clearly identified criteria.

Guidance on general principles for assessing sites and on viability can provide the framework for the assessment of sites. The neighbourhood planning toolkit on site assessments may also be used. A strategic environmental assessment may be required if the plan is likely to have a significant effect on the environment. A neighbourhood planning body is strongly encouraged to consider the environmental implications of its proposals at an early stage, and to seek the advice of the local planning authority.

The site being allocated should be shown on the policies map with a clear site boundary drawn on an Ordnance Survey base map. A policy in the plan will need to set out the proposed land uses on the site, an indication of the quantum of development appropriate for the site and any appropriate design principles that the community wishes to establish.”

Analysis

39. There are at least four reasons why the Review NP does not (and could not after it was made) contain allocations to meet the neighbourhood plan's housing requirement for the purposes of NPPF (2024) 14.

(1) No Housing Requirement

40. First, the Neighbourhood Plan Steering Group have not identified their housing requirement for the purposes of NPPF (2023) 67 and 68. The adopted development plan also does not contain a relevant, up-to-date strategic figure. There has also been a significant change in circumstances given that the NPPF and LHN was 12 December 2024 prior to the plan's submission. This is not a matter that can be addressed retrospectively consistent with PPG 41-009, 41-101 and 41-102.

(2) No Allocations

41. Second, and in any event, the Neighbourhood Plan does not contain any allocations, as defined in NPPF 41-098. Policies SS4, SS5 and SS7 do not set out new boundaries, or any new quantum of development. Importantly, these are expressly prohibited from being treated as allocations by PPG 41-044 which makes clear:

"Neighbourhood plans should not re-allocate sites that are already allocated through these strategic plans."

(3) Allocations in Separate Document

42. Third, the Neighbourhood Plan itself confirms that the sites have been allocated through a separate DPD, see notably [11.1] and the Glossary definition of "Allocated Sites)".

(4) No Site Appraisal or Assessment Work

43. Fourth, the Neighbourhood Plan has not carried out any evidential work to identify new allocations, notably "*an appraisal of options and an assessment of individual sites against clearly identified criteria*" for the purposes of PPG 41-044. As the Fisher German

representations observe, this has led to the inclusion of references to two sites that are not deliverable (SS5 and SS7).

44. The Submission version [11.1] and the Glossary definition of “allocated site” also make clear that the plan does not allocate any sites.

Summary

45. For all these reasons, the submission version of the Review NP is not a document that could ever qualify under NPPF 14, even with modifications to its text.
46. Had the authors wished to do allocate sites, then a wholly different approach would need to be taken, with an entirely new evidence base. This is not a matter that can be carried out post-submission.
47. Irrespective of this issue (Q1), it is clear that the plan cannot proceed and should be refused (see Q2).

Q2: In the light of (1), does the Review NP meet the basic conditions under paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990?

48. As Fisher German representations identify, at the heart of this neighbourhood plan are two very serious flaws with the approach to housing, which mean that it does not meet the basic conditions (most notably (a) and (d)).

Flawed Approach to Housing Requirement

49. First, there has been no attempt to identify what the Neighbourhood Plan’s housing requirement should be and especially whether more housing is required, to meet the substantial changes in respect of national planning policy in the second half of 2024, culminating in the publication of the NPPF on 12 December 2024.
50. In the new policy era (marked by 2024 WMSs and the new NPPF), there has been no attempt to consider the imperative of boosting housing delivery consistent with NPPF 8(2)(a) and (d).

51. The general tone of [2.9] and certain other supporting text is that the plan's housing need has somehow been settled and does not require any investigation at all. This is plainly wrong, to such an extent that cannot simply be resolved by modification of the supporting text.
52. As Fisher German note, applying an LHN compliant approach to the Plan and reflecting the population proportion (6%), the neighbourhood plan's requirement should be 336-352 dwellings. What has been provided is therefore very seriously short of what is needed.

Policies SS5 and SS7 and Policy HE2

53. Second, at a more site-specific level, Policies SS5 and SS7 appear to be seeking to reinforce failure on the two respective sites. There has been no attempt to assess the sites' deliverability, nor to identify any replacement sites through an organised process in accordance with PPG 41-098.
54. The Fisher German representations also identify significant problems in respect of the current drafting of Policy HE2, notably an attempt to include housing on the So/E/3 site, notwithstanding the area's suitability for employment development. Once again, this reveals the defects in respect of proper site assessment work, which go to the heart of the draft plan.
55. Once this is appreciated, it becomes ever clearer that the Neighbourhood Plan's vision is fundamentally flawed.
56. As the NPIERS Guidance (Glossary of terms, page 20) observes, a fundamental flaw includes:

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 resubmission for examination.

57. Stepping back, this is a plan whose site-specific content and overall approach to housing delivery has what can only be described as very significant defects. In the place of what should have been a rigorous, up-to-date assessment of needs, coupled with site assessment work and fresh allocations – there is a policy void.
58. Policies SS5 and SS7 are wholly ineffective. They give the illusion that development might come forward, at a time when the record since 2013 demonstrates that nothing will in fact proceed.
59. In summary, the plan contains a very fundamental flaw in respect of the plan's approach to housing delivery. The plan has plainly not met the basic conditions, most notably basic conditions (a) and (d).

Q3: What are the consequences of (1) and (2) for the examination, in the context of the recommendations available under paragraph 10 of Schedule 4B TCPA?

60. Under paragraph 10(2) of Schedule 4B, two key options are available: (1) progress to referendum with modifications or (2) refusal:

10(2) The report must recommend either –

(a) that the draft order is submitted to a referendum, or

(b) that modifications specified in the report are made to the draft order and that the draft order as modified is submitted to a referendum, or

(c) that the proposal for the order is refused.

(3) The only modifications that may be recommended are –

(a) modifications that the examiner considers need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),...

(e) modifications for the purpose of correcting errors.

61. The Fisher German representations make clear that the deletion of Policies SS5 and SS7 would be required to meet the basic conditions, given the significant challenges to delivery. Policy HE2 would also require significant modification.

62. In all the circumstances, the deletions and modifications required are of such a scale that the real question is now whether the plan should proceed at all.
63. On a straightforward application of basic conditions (a) and (d), it is not appropriate for this plan to proceed, when so much has been left undone through the preparatory phase. The better approach by far would be to refuse the proposal and require the neighbourhood plan preparation to begin afresh.
64. For the reasons identified above, this would have no effect on NPPF (2024) 14 as the plan does not qualify anyway, and it would have no impact on the AA&DMDPD allocations, which are not proceeding at the present time in any event.

4) Examination Hearing

65. Paragraph 9(2) of Schedule 4B provides that a hearing and oral representations will appropriate in the following circumstances:

(2) But the examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue at the hearing –

(a) in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case, or

(b) in such other cases as may be prescribed.

66. This is a case with some legal and policy complexity. The Neighbourhood Plan Steering Group have, in effect, sought to continue to take an approach that the original Examiner had not encountered before in 2016 and is now plainly out of step with PPG 41-044 in seeking to duplicate text in both plans.
67. A half-day hearing, either in person or by video, would allow for all stakeholders to make submissions on the legislation, the policy and the overall approach, allowing adequate examination of the issues and a fair chance to put their case.

JAMES CORBET BURCHER

No5 Chambers

18 February 2025