FARNHAM NEIGHBOURHOOD PLAN

OPINION

INTRODUCTION

1. I have been asked to advise the Farnham Town Council with regard to its proposed Neighbourhood Plan ("the FNP"), which has been submitted to the local planning authority (Waverley Borough Council) and publicised in accordance with the Neighbourhood Planning (General) Regulations 2012 ("the Regulations"), and is due to be examined at a hearing on 25 November 2016.

2. In particular, I have been asked for my views on a legal opinion, dated 16 November 2016, by Mr Rupert Warren QC, which has been submitted to the Examiner on behalf of three objectors (Bewley Homes Ltd, Catesby Property Group and Wates Developments Ltd), in which Mr Warren concludes that the FNP does not meet basic conditions (a), (e) and (f) as set out in para 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as inserted by the Localism Act 2011).

LEGAL FRAMEWORK

3. The essential legal requirements are set out at paragraphs 8-9 of Mr Warren's Advice. The principles which Mr Warren derives from the case-law at para 10 of his Advice are now well-established (see, for example, the helpful summary by Holgate J in ***R (Crownhall Estates) v. Chichester District Council*** **[2016] EWHC 73 (Admin)**) and are not contentious. In the circumstances, I do not repeat those matters here.

ANALYSIS

Basic Condition (a): National Policy

4. Basic condition (a) is that:

> "having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order."

5. Mr Warren's reasons for concluding that the FNP does not meet basic condition (a) are set out at paras 21-22 of his Advice, as follows:

> "21 … The FNP does not accord with the emerging Waverley LP because it allocates too few houses; I have seen and accept some of the criticisms of the land supply calculation contained in the FNP, which seems markedly to over-predict the housing supply (see for instance the representations by Judith Ashton Associates on behalf of A2 Dominion, at paragraphs 1.8 to 1.13, and those by Gladman at pages 4 to 6).
>
> 22. In my view, it is not sufficient for the Town Council to say that further allocations might be made by Waverley DC in due course which would 'cure' any issue with the undersupply in the FNP. So comprehensive and holistic is the FNP strategy, coming with a new BUAB, that it seems to me that it runs the obvious risk of prejudicing the outcome of the Waverley plan by permitting sites which are contrary to the adopted plan, and also restricting permission on sites which are more sustainable. I note that Waverley have themselves made this point, by reference to the Gap policy which the FNP seeks to include."

6. I make the following points about this analysis:

   a. It presupposes that, in order to satisfy basic condition (a), the FNP must be consistent with the emerging plan. However, as a matter of law, that is simply wrong. The requirement of general conformity applies only to the existing, adopted development plan. There is no equivalent requirement in relation to an emerging Local Plan. Hence, in ***R (BDW Trading Limited) v. Cheshire West Council*** **[2014] EWHC 1470**, Supperstone J said (@ para 81):[1]

   > "Whether or not there was any tension between one policy in the Neighbourhood Plan and one element of the eventual emerging Plan <u>was not a matter for the Examiner to determine</u>"

   A similar point was made in ***Crownhall*** where, @ para 63 Holgate J. agreed with the Examiner's conclusion that:

[1] see also ***Crownhall Estates* @ 29(ii)**

"it was not the role of the examination to consider whether the LNP would be inconsistent with the local plan if by the time of its future adoption it were to be amended to accommodate further growth …"

Mr Warren records these principles at paras 10(4) and (6) of his Advice, but then fails to apply them in his reasoning at para 21.

b. It is no answer to the above to try and side-step the absence of an obligation to comply with the emerging Local Plan by referring to those parts of the NPPF which direct local planning authorities to seek to meet the OAN. Paras 14, 47 and 156 to 159 of the NPPF are directed at the preparation of Local Plans, and do not apply to the preparation of a neighbourhood plan. Consequently, where the examination of a neighbourhood plan precedes the adoption of a local plan, there is no requirement to consider whether it has been based upon a strategy to meet the OAN: see ***Crownhall Estates*** @ para 29(v). Mr Warren refers to, and appears to accept this principle at para 10(4) of his Advice. Further (as Mr Warren recognises in paras 10(2) and (3)) the requirement in basic condition (a) is simply to "have regard" to national policies,[2] and examination of the neighbourhood plan does not require an assessment of whether it is "sound". Once again, although these principles are recognised by Mr Warren, they do not appear to have been applied in the analysis in para 21 of his Advice.

c. The argument in para 22 of Mr Warren's Advice (that the FNP might "prejudice" the outcome of the Waverley Local Plan by permitting sites which are contrary to the adopted plan, or by restricting permission on sites which are more sustainable) also flies in the face of the case-law. In particular, this potential problem would arise whenever a neighbourhood plan was brought forward in advance of a Local Plan. If Mr Warren were correct, it would mean that it was impossible to bring forward a neighbourhood plan which precedes the adoption of an up-to-date Local Plan. However, (as Mr Warren acknowledges at para 10(5) of his Advice) it is settled law that a neighbourhood plan may come forward in advance of an up-to-date Local Plan: see ***R (Gladman Developments Ltd) v. Aylesbury Vale DC*** **[2014] EWHC 4323 (Admin)**. Mr Warren's contention that "it is not sufficient … to say that further allocations might be made by Waverley DC in due course which would 'cure' any undersupply in the FNP" overlooks the fact that a very similar argument was specifically rejected by the Court in ***Gladman***, where Lewis J said:

"66. In the event that the local planning authority subsequently makes a development plan that does include strategic policies, that document will be part of the development plan and, as a later policy, will prevail over any inconsistent policies in the earlier neighbourhood development plan: see section 38(5) of the 2004 Act. Furthermore, a local planning authority

[2] para 41-040 of the NPPG is to similar effect: where a neighbourhood plan contains policies relevant to the supply of housing, it should "take account" of the latest and up-to-date evidence of housing need. The FNP clearly "takes account" of the evidence base which underlies the emerging Local Plan.

remains under a duty to keep its development plan documents under review … If it finds, for example, that housing needs in its area are not being met, it should review its development plan documents and any later policies will prevail over the earlier neighbourhood development plan policies.

67. In addition, if a neighbourhood development plan policy becomes out of date that may be a material consideration justifying departure from the policy and the grant of planning permission for a development even though the proposed development would not accord with the neighbourhood development plan policy. That would be a matter for the decision-maker considering an application for planning permission, or an inspector on appeal against a refusal of planning permission, and would depend upon a consideration of all relevant material considerations."

d. When considering whether, "having regard to national policies" it is appropriate to make the FNP, it needs to be remembered that - as a plan which facilitates the development of some 2214 new homes, the FNP is patently not "anti-development". Even if it subsequently becomes necessary to allocate more sites in order to meet a greater need identified in the adopted Local Plan (and this is by no means certain given, for example, the provisions of retained South East Plan Policy NRM6), there are practical solutions whereby the local planning authority in the forthcoming Local Plan Part 2: Non-strategic Policies and Sites and/ or the Town Council through a Neighbourhood Plan Review could if necessary allocate sites. In reality it is likely that both authorities would work co-operatively together (as they have through the development of the FNP) in conjunction with the emerging Local Plan. However, given the number and nature of the challenges the emerging plan faces, the date for adopting the Local Plan is uncertain. The FNP allocates sites which can be brought forward in a plan-led way. In contrast, in the absence of the FNP there would be no allocations which would be capable of meeting those needs. Consequently, the only way that needs could be met throughout this period would be by ad hoc developments brought forward through the development management process. Although this would undoubtedly suit developers whose sites have not been allocated in the FNP, it is the antithesis of the plan-led system which the NPPF so forcefully advocates.

e. sub-paragraphs (b) and (d) above are also relevant to the argument advanced at para 3.4 of Wates' representation, where they refer to the guidance in the NPPG to the effect that "A neighbourhood plan or Order must not constrain the delivery of important national policy objectives", and argue that this must include significantly boosting the supply of housing "as required by paragraph 47 of the NPPF". The advice in para 47 of the NPPF is not directed at qualifying bodies in the preparation of neighbourhood plans. Even if it were, in providing for some 2214 new homes, the FNP is a neighbourhood plan which will support, rather than constrain, the objective of boosting the supply of housing.

7. In my view, these points alone are enough to dispose of a Mr Warren's suggestion that the FNP does not satisfy basic condition (a) because it allocates too few houses, and/or (b) because it may not be consistent with the emerging Waverley Local Plan, as and when the latter is adopted. Mr Warren's conclusions on these points are directly contrary to the case-law which he himself acknowledges.

8. In any event, Mr Warren's reasoning on basic condition (a) is premised on his view that "the FNP does not accord with the emerging Waverley LP because it allocates too few houses". However, against the assessment in the emerging Waverley Local Plan that there is a need for some 2330 new homes in the Farnham area by 2032, the FNP facilitates the development of some 2214 new homes, to be provided by 2031. Allowing for the fact that it is written for a slightly shorter period, the FNP as drafted is therefore entirely consistent with the emerging Local Plan. In the circumstances, Mr Warren's conclusion is dependent on his clients' criticisms of the land supply calculation.

9. Since Mr Warren does not identify the criticisms with which he agrees,[3] it is not possible for me to comment any further. In any event, in so far as it is necessary or appropriate to do so (see paras 7-8 above) these are not matters of law, but issues of fact and planning judgment for the Examiner to consider, having regard to the evidence and discussion at the hearing. If the criticisms are not accepted, then Mr Warren's conclusion has no foundation in fact or law.

10. Finally, I note that para 3.6 of the Wates representations makes reference to para 41-072 of the NPPG, which advises that:

    > "in order to demonstrate that a draft neighbourhood plan or Order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan guides development to sustainable solutions."

    Wates contend that the quality of the evidence base is therefore important when considering whether a neighbourhood plan complies with the basic conditions.

11. On this issue, I would simply note that para 3.6 of the Wates representation is concerned with basic condition (d). Mr Warren does not refer to basic condition (d) or suggest that it is not met. In any event (and as noted above) the purpose of the examination is not to test the soundness of the neighbourhood plan. In my view, Wates representations seek to take the examination to a level of scrutiny which is neither required nor appropriate.[4]

[3] Mr Warren says that he agrees with "some", from which the logical inference is the he does not agree with all.

[4] This should not be taken as accepting that there is any fault in the evidence base for the FNP. However, that aspect of Wates' objection is not a matter of law, and falls outside the scope of this Opinion.

Basic Condition (e): General Conformity with Strategic Policies of the Local Plan

12. Basic condition (e) is that:

> "the making of the order 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)."

13. In the present case, the "development plan for the area" is found in the saved policies of the Waverley Local Plan 2002 ("the 2002 LP").

14. Mr Warren's reasons for concluding that the FNP does not satisfy basic condition (e) are set out in para 19 of his Advice. In summary, he concludes that the FNP does not accord with strategic policies C2, C4 and C5 of the 2002 LP; that the Built Up Area Boundary proposed by the FNP is inconsistent with the boundaries of the different designations in the 2002 LP[5]; and that whereas the 2002 LP (Aim 1) expresses a policy of restricted growth, the FNP seeks to ensure an adequate supply and mix of housing to meet strategically identified needs.

15. Before turning to the detail of Mr Warren's arguments, I note two preliminary points.

16. First, there is a tension between Mr Warren's advice and the arguments set out in the representations, dated October 2016, by one of his clients (Wates Developments Ltd.). In particular, at paragraph 4.18-19 of the Wates' representations, the authors note that the 2002 LP does not specifically identify which of its policies are "strategic" before going on to refer to the advice in the NPPG that LPAs should set out their strategic policies clearly, and then suggesting that it is "surprising (and worrying) that the basis upon which the FNP has been developed is an assumption as to which policies are strategic and which are not". In contrast, at para 14 of his Advice, Mr Warren has no difficulty in agreeing with the Basic Conditions Statement that Policies C2, C4 and C5 of the 2002 LP are "strategic policies".

17. What the Wates objection overlooks (but Mr Warren clearly understands) is that the 2002 LP was adopted before either the NPPF or the NPPG was in existence, at a time when a clear delineation between strategic and non-strategic policies was not required. In the circumstances, it is hardly surprising that the 2002 LP does not state which of its policies are "strategic". However, the fact that it does not do so does not mean that there are no "strategic policies"[6], nor does it prevent a judgment being made on this issue. The correctness of the judgment set out in the Basic Conditions Statement will be a matter for the Examiner to consider, as a matter of planning judgment, but that is a very different matter from the implication in para 4.19 of the Wates' representation that, in the absence of a list of strategic policies provided by the LPA, a neighbourhood plan cannot progress.

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[5] The adopted Local Plan does not actually define a Built-Up Area Boundary for Farnham.

[6] If it did, then Wates' argument would fall away completely, since the absence of a strategic policy there would be nothing with which the FNP would need to be in "general conformity". As ***Gladman*** establishes, where that is the case, it is possible to bring a neighbourhood plan forward.

18. Second, it will not go unnoticed that Mr Warren's arguments under basic condition (e) run entirely counter to his arguments on basic condition (a). Whereas, in relation to basic condition (a), he suggests that the FNP should not be submitted to a referendum because it allocates too few houses, under basic condition (e) he concludes that the FNP should not be submitted to referendum because, in seeking to meet the needs of the area, it extends[7] the Build-Up Area Boundary beyond the areas where development would have been acceptable under the 2002 LP – i.e. that it provides too much development. On this analysis, it would be impossible to have a neighbourhood plan which precedes the adoption of an up-to-date Local Plan which met both basic conditions (a) and (e). However, it is clear from the NPPG and the case law that a Neighbourhood Plan can precede the adoption of a Local Plan. In my view, in such a circumstance the conclusion that basic conditions (a) and (e) are in fundamental conflict with one another cannot be correct.

19. Turning to the details of Mr Warren's analysis, I observe as follows:

    a. Although Mr Warren's Advice is badged as a legal opinion, it is important to recognise that the question whether one plan is in general conformity with another is not a point of law. As Laws LJ observed in ***Persimmon Homes (Thames Valley) Ltd v. Stevenage Borough Council*** **[2006] 1 WLR 334 @ [29]** (which was concerned with whether a local plan was in "general conformity" with a structure plan) the right interpretation of "general conformity" is a balanced one which (emphasis added):

        "will … allow what may be a considerable degree of movement within the local plan to meet the various and changing contingencies that can arise. In that case the question whether the local plan is in general conformity with the structure plan is likely to admit of more than one reasonable answer, all of them consistent with the proper construction of the statute and of the relevant documents. In those circumstances the answer at length arrived at will be a matter of planning judgment and not of legal reasoning."

    b. The concept of "general conformity" is flexible. In ***Persimmon Homes*** Laws LJ said this (emphasis added):

        "24 … I will deal with the construction of 'general conformity'. The term is nowhere defined in the legislation. The court must therefore apply its ordinary meaning as a matter of language, taking into account, however, the practicalities of planning control which are inherent in the statutory scheme. … The question of construction is essentially as to the flexibility of the requirement of general conformity: is it relatively tight, or relatively loose? …

        25. The practicalities of planning control to which I have referred include two features which between them must surely inform the extent to

[7] see footnote 4

which the general conformity requirement is strict or relaxed. The first feature is that the implementation of planning policies in structure plans and local plans is very likely, in the nature of things, to be subject to long lead-times. The second is that, over such periods of time, the needs and exigencies of good planning are liable to change. The interpretation of the general conformity requirement has to accommodate these factors. In my judgment, they tend to militate in favour of a looser, rather than a tighter approach …

26 … the adjective 'general' is there, as the judge said … 'to introduce a degree of flexibility'.

27 …

28. I acknowledge … that because structure and local plans together form the development plan under the 1990 Act … they must, broadly at least, be consistent; otherwise section 54A of the 1990 Act … would not be workable. I agree … that to read 'general conformity' as simply meaning that the proposals should be 'in character' with the structure plan would be to accept too broad a construction. On the other hand, there are features … the long lead-in times involved, the fact that the exigencies of planning policy may represent a changing picture, and the statutory words themselves. In construing the general conformity requirement the court should, in my judgment, favour a balanced approach by which these different factors can be accommodated. I consider that on its true construction the requirement may allow considerable room for manoeuvre within the local plan in the measures taken to reflect structure plan policy, so as to meet the various and changing contingencies that can arise. In particular … measures may properly be introduced into a local plan to reflect the fact, where it arises, that some aspect of the structure plan is itself subject to review."

c. It is well-established that a neighbourhood plan can be brought forward in advance of an up to date Local Plan: ***BDW***; ***Gladman***. In such a case, it is inevitable that an emerging neighbourhood plan which seeks to achieve sustainable development (and so satisfy basic condition (d))) will push at the boundaries of some of the existing Local Plan policies. Some differences are therefore to be expected.

d. The test is not whether the NP complies with every aspect of the adopted plan, but whether it is in general conformity with the strategic policies. Consequently (and as Mr Warren observes at para 10(6) of his Advice), the question is not whether there is conflict or tension between one policy of a neighbourhood plan and one element of the local plan: the test of general conformity has to be asked by reference to the adopted development plan as a whole. However, paragraph 19 of Mr Warren's

advice refers only to policies C2, C4 and C5 and Aim 1 of the 2002 LP. This is important because:

i. the Basic Conditions Statement concludes that there are around 30 policies of the 2002 LP which, together, express the strategic approach to development, against which the FNP should be assessed. In singling out just 3 of the 30 strategic policies, Mr Warren's analysis fails to consider the Local Plan as a whole.

ii. the 2002 LP has five Aims, the fourth of which is:

> "To make provision for development, infrastructure and services which meet the needs of the local community in an environmentally acceptable way"

Aim 4 is therefore highly relevant when considering the validity of Mr Warren's suggestion[8] that the FNP is contrary to the 2002 LP because it seeks to meet prospective needs for housing and business.

e. In deciding whether there is general conformity with the 2002 LP, one has to remind oneself of what the 2002 LP was intended to do, and in particular the fact that it was only written to meet the needs for the period which ended in 2006. This is particularly relevant to Mr Warren's objection that the FNP is not in general conformity because it defines a new BUAB. However, the boundaries of the various designations in the 2002 LP were drawn up only with the needs of the area to 2006 in mind. There is no necessary or inherent conflict between that approach, (especially when considered against Aim 4) and the FNP's recognition that meeting the needs beyond 2006 will require the boundaries to be reviewed and amended. Put simply, the FNP is addressing a situation and a time-frame which was simply not contemplated by the 2002 LP.

f. The argument at (e) above would have less force if the FNP rejected some of the central pillars on which the 2002 LP was based. However, while the FNP updates the boundaries and precise application of the designations in the 2002 LP, core concepts such as the need to separate distinct areas and settlements from coalescence, and to protect valued landscapes remain.

g. Although the point does not appear to have been argued in any of the cases referred to by Mr Warren, it is noteworthy that other neighbourhood plans have amended BUABs without any legal point being taken: see e.g. ***Stonegate Homes*** **@ paras [38], [43]**.

[8] Advice para 19(2), (4), (5) and (6)

20. The observations in para 19 above are based simply on the established legal principles. However, I note that they are entirely consistent with the advice in the NPPG where, under the heading "Can a Neighbourhood Plan come forward before an up-to-date Local Plan is in place?" para 41-009 states:

    "Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan.

    A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development.

    Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

    - the emerging neighbourhood plan
    - the emerging Local Plan
    - the adopted development plan

    with appropriate regard to national policy and guidance…. "

21. While the NPPG cannot overrule the provisions of the TCPA 1990, the advice in para 41-009 is in my view consistent with what was said in ***Persimmon*** about the flexibility of the test of "general conformity" to accommodate changing circumstances and likely changes to the adopted Local Plan.

22. In summary, I consider the question whether the FNP is in general conformity with the 2002 LP is a much broader one than Mr Warren's analysis of the issues suggests. The basic condition test is whether a Neighbourhood Plan is in general conformity with the strategic policies contained in the Local Plan as a whole. Critically, the answer is not a matter of law, but one of planning judgment, in which the Examiner has "considerable room for manoeuvre". As Laws LJ indicated in ***Persimmon,*** it may well be a question to which there is "more than one reasonable answer". However, provided he directs himself correctly on the legal principles set out at para 10 of Mr Warren's Advice, I can see no reason why, in the exercise of his planning judgment, the Examiner could not lawfully conclude that the FNP is in "general conformity" with the 2002 LP.

Basic Condition (f): SEA

23. Basic condition (f) is that:

> "the making of the order does not breach, and is otherwise compatible with, EU obligations."

24. At para 23 of his Advice, Mr Warren suggests that the FNP fails basic condition (e) because

> "the SEA Directive requires an assessment of reasonable alternatives. There is no assessment of whether a strategy in line with the 2002 LP would be more appropriate, as it would meet the policy objective of additional housing and growth without prejudging large-scale decisions about the location of greenfield sites in Waverley which ought to be dealt with holistically through the forthcoming LP process. As the court stressed in ***RLT Built Environment*** recently, the SEA requirement (and therefore basic condition (f)) is for an assessment of reasonable alternatives in the applicable context. The context here is a forthcoming local plan without much weight at present, and a suite of more restrictive policies dating to 2002. The right balance for the FNP to strike - it must at the very least be admitted as a reasonable alternative – would be to contribute to housing and other needs without doing damage either to the strategic thrust of the adopted plan, or by pre-judging important matters in the emerging plan. The FNP SEA fails to identify that obvious alternative, and as such there has been in my view a failure to accord with a European procedural requirement."

25. I have only three things to say in response to this.

26. Firstly, if para 23 is read together with Mr Warren's arguments on general conformity, Mr Warren must logically be suggesting that the FNP should adhere to the boundaries of the various policy designations in the 2002 LP. Since development within those boundaries is already permitted under the LP policies, this is effectively a "do nothing" scenario. As such, it is difficult to see how he can seriously be suggesting that it is a "reasonable alternative" which the Town Council is <u>required</u> to consider, when (applying his own reasoning at paras 21-22 of his Advice) such a plan would necessarily fail basic condition (a).

27. Secondly, as a matter of fact, the Sustainability Appraisal/SEA for Farnham <u>does</u> consider an approach (Alternative 1.1) under which "housing to meet the strategic housing need of the Borough will need to be directed away from Farnham", and allowance would therefore be made for "very limited additional housing within the Plan area". On the face of it, this would appear to be precisely the sort of approach which Mr Warren is suggesting, in which case it is factually wrong to suggest that it has not been considered.

28. Thirdly, if Mr Warren is not suggesting that the appraisal process should have considered a "do nothing" approach, then the approach he is advocating must lie somewhere between "do nothing" and the balanced approach adopted in the FNP. However, between "do nothing" and the preferred approach, there are myriad variations on the amount of housing that should be provided. It is simply not reasonable or realistic to suggest that it is necessary to assess each and every one of these.

29. In this regard, I note the advice at paragraph: 038-11 of the NPPG (Strategic environmental assessment requirements for neighbourhood plans) which, under the heading ''How should the strategic environmental assessment assess alternatives and identify likely significant effects?'' states:

> ''Reasonable alternatives are the different realistic options considered while developing the policies in the draft plan. They must be sufficiently distinct to highlight the different environmental implications of each so that meaningful comparisons can be made.''

30. The alternatives described in the Sustainability Appraisal clearly illustrate an upper, a middle and a lower strategy. Between the middle and the lower strategies alone, there are over two thousand theoretically possible intermediate points. The Sustainability Appraisal cannot possibly assess them all, nor is there any legal requirement that it should do so. The adequacy of the range which has been assessed is a matter of planning judgment for the Examiner: see ***BDW Trading@*** **para [74]**. In my view, however, the SEA addresses a reasonable spread.

CONCLUSIONS

31. For the reasons set out in detail below, I do not agree with Mr Warren. In my view:

    a. his conclusion on basic condition (a) simply ignore the principles established in the case-law to which he refers in para 10 of his Advice. It is not a valid objection to a neighbourhood plan brought forward in advance of an emerging Local Plan that it may "prejudice" the Local Plan. A neighbourhood plan is not required to meet the needs identified in an emerging but as yet unadopted Local Plan, or to second guess what that emerging Local Plan may require when it is eventually adopted. Nor is a neighbourhood plan required to comply with paras 14, 47 and 156 to 159 of the NPPF. Whether the FNP does in fact underprovide relative to the emerging Local Plan is a question of fact and planning judgment for the Examiner, but even if it were the case that the FNP did not meet the need which has been identified in the emerging Waverley Local Plan, that would not result in a failure to satisfy basic condition (a).

    b. Mr Warren's advice on basic condition (e) presents, as if it were a matter of law, a conclusion which is in fact a matter of planning judgment for the Examiner. Moreover, it is a planning judgment where the Examiner has "considerable room for manoeuvre", having regard not only to the policies of the 2002 LP but also to the "various and changing contingencies that can arise" and to the fact that the Local Plan is itself in the process of being reviewed. Critically, that is a judgment which has to be made by reference to all of the 2002 LP's strategic policies, and not just to the select few referred to in Mr Warren's opinion, having regard also to the fact that those policies were only intended to meet the needs of the area to 2006. In my

view, there is a more than sufficient basis for the Examiner to conclude lawfully that basic condition (e) is satisfied.

c. Mr Warren's conclusion on basic condition (f) appears to be premised on the belief that the Sustainability Appraisal does not consider an approach based on a policy of restraint. If so, that is factually incorrect. If and so far as that is not the case, and Mr Warren is suggesting that the Appraisal should have addressed some other scenario, lying somewhere between "do nothing" and the FNP's preferred approach, the SA/SEA process is not required to consider every conceivable possibility. In considering options which can broadly be described as low, medium, and high growth, the SA/SEA has addressed a reasonable set of alternatives, and nothing more is required for condition (f) to be satisfied.

32. If there are any questions arising from the above, those instructing should not hesitate to contact me.

PAUL BROWN Q.C

22 November 2016

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