

# Local Plans: An Outside-In View

**Keith Holland**

## Introduction

The aim of this paper is to provide a personal view of how certain aspects of the development plan system are working in England. Apologies to those who work in Scotland, Northern Ireland and Wales but my experience is essentially English and I only have a slight knowledge of planning in the other parts of the UK. There are, of course, similarities and I hope that I may have something useful to say that is relevant to all the planning regimes. I am also very aware that there are things that you do that we in England could learn from. In Wales, for example, there are very sensible arrangements for Joint Housing Land Availability Studies. In Scotland and Northern Ireland strategic planning is dealt with better than it is in England.

This paper is largely based on my experience of working within the Planning Inspectorate for 20 years and recently from assisting a number of local authorities with their plan making. It has also drawn from my experience of working with the Lord Taylor group on the Planning Policy Guidance and with the Local Plans Expert Group. Clearly this paper cannot deal with the large number of issues that arise in plan making. What it tries to do is to concentrate on a few of the most significant issues, largely related to housing, that have arisen in recent years.

The paper concentrates on two broad related areas, first localism and neighbourhood planning, and secondly housing issues including the Duty to Cooperate and strategic planning.

## Localism and Neighbourhood Planning

In the planning field localism is seen by the government as being delivered by abandoning strategic regional plans and by the introduction of neighbourhood plans. The introduction to the National Planning Policy Framework (“NPPF”) claims that it provides “a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities”.

The importance attached to neighbourhood plans was reflected in the Written Statement to Parliament by Nick Boles, then the Minister for Planning and Housing, in which he said that “the coalition government is committed to devolving down power to local communities, not just to local councils but further down to local neighbourhoods, parishes and local residents”.<sup>1</sup> The statement changed the criteria for recovering decisions on planning appeals in a way that clearly signalled the intention of the government of the day to pay particular attention to the role of neighbourhood plans. More recently, in a debate relating to the Housing and Planning Bill, Brandon Lewis then the Minister for Housing and Planning promised to work with colleagues “to ensure that we give these neighbourhood plans the confidence and primacy that the government always intended for them”.<sup>2</sup> I do not know if the minister meant that the status of neighbourhood plans will be enhanced in the future but that would appear to be the case. If so, presumably it will be through the Neighbourhood Planning and Infrastructure Bill announced in the spring 2016 Queens Speech.

Neighbourhood plans are already important. They can set policies for the determination of planning applications. They are able to allocate land for development.<sup>3</sup> They can be prepared even in the absence of an up-to-date district development plan.<sup>4</sup> They can take precedence over non-strategic policies in a local

<sup>1</sup> Written Parliamentary Statement Neighbourhood Planning, 10 July 2014.

<sup>2</sup> Debate in House of Commons, 9 May 2016.

<sup>3</sup> *R. (on the application of Larkfleet Homes Ltd) v Rutland CC* [2015] EWCA Civ 597.

<sup>4</sup> *DBW Trading Ltd v Cheshire West and Chester BC* [2014] EWHC 4323 (Admin) and *R. (on the application of Gladman Developments Ltd) v Aylesbury Vale DC* [2014] EWHC (Admin).

plan. Neighbourhood planning also allows communities to prepare Neighbourhood Development Orders and Community Right to Build Orders.

Notwithstanding their importance, the examination of neighbourhood plans is far less rigorous than is the case with local plans. Neighbourhood plans are not tested for soundness, there is no automatic right to be heard at neighbourhood plan examinations and the role of the examiner is closely prescribed in para.8(1) of Sch.4B of the Town and Country Planning Act 1990. As has been made clear by Mr Justice Holgate in the *Sayers Common* case the “requirements of soundness contained in paragraph 182 of the NPPF do not apply to the neighbourhood plan. Accordingly there is no need to consider whether a neighbourhood plan is based upon a strategy prepared to meet objectively assessed development and infrastructure requirements, or whether it represents the most appropriate strategy considered against reasonable alternatives and is based upon proportionate evidence”.<sup>5</sup> The examiner must consider only whether the neighbourhood plan meets the Basic Conditions set out in the Localism Act 2011 Sch.10 (inserted as Sch.4B in the Town and Country Planning Act 1990). Hence a neighbourhood plan examination tests whether the plan:

- has had appropriate regard to national policy and Secretary of State guidance;
- is in general conformity with strategic elements of the adopted local plan;
- contributes towards sustainable development ;
- is compatible with EU obligations; and
- meets any prescribed conditions (essentially is the regulatory process in order).

As at September 2016 only five neighbourhood plans (out of 280 examined) had failed to meet the Basic Conditions. Slaugham Neighbourhood Plan failed on the grounds of an inadequate environmental assessment and insufficient evidence for the housing site allocations. Cotom Park Neighbourhood Plan did not meet the statutory requirements as it dealt with matters that are the responsibility of the highways authority not the planning authority. Storrington, Sullington and Washington Neighbourhood Plan was rejected on the grounds that the site allocations did not qualify as locations for sustainable development and that the methodology for selecting development sites was unclear and inconsistent. Berinsfield Neighbourhood plan was rejected because it did not have adequate regard to national policies particularly in relation to the green belt, did not promote sustainable development and was not in conformity with the strategic policies of the local plan. In the case of the Wantage Neighbourhood Plan the examiner concluded that the plan was overly focussed on protecting features of the area without in some instances being able to justify the protection. Furthermore the plan proposed very limited opportunities for housing and did not allocate any housing sites. This failure coupled with the extensive protectionist policies led the examiner to conclude that the plan failed to promote sustainable development.

As Saira Kabir Sheik QC noted at the 2015 Joint Planning Law Conference, Oxford, the courts have generally been respectful of the localism agenda and neighbourhood plans. She anticipated further litigation in this area but there has been relatively little by way of help from the courts in the last 12 months. One interesting case involves the decision of a local authority to disagree with the neighbourhood plan examiner’s recommendation that a nightclub should be removed from the neighbourhood plan as a protected community facility. Mr Justice Holgate concluded that the local planning authority had misunderstood the basis for the examiner’s decision and had also misunderstood para.8(2) (e) of Sch.4B of the Town and Country Planning Act 1990.<sup>6</sup> The significance of this judgement is that an error in law in respect of the decision to send for referendum will invalidate the referendum and hence the referendum decision itself should ordinarily be quashed.

<sup>5</sup> *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government and Mid Sussex DC* [2015] EWHC 1173 (Admin).

<sup>6</sup> *R. (on the application of Maynard) v Chiltern DC* [2015] EWHC 3817 (Admin).

Generally the weight given to neighbourhood plans by the Secretary of State in appeal decisions is substantial. Even when the neighbourhood plan has not been adopted and there is no five year supply of housing land the Secretary of State has been prepared to give substantial weight to an emerging neighbourhood plan. In the *Sayers Common* case the Secretary of State made his position clear, he rejected the appeal inspector's recommendation that permission be granted and gave the emerging neighbourhood plan significant weight as he wished "to give local people an opportunity to ensure they got the right types of development for their community while also planning positively to support strategic development needs". While the Secretary of State's decision was comprehensively quashed by the court, on the grounds that it failed to identify the conflict with the neighbourhood plan and failed to adequately take into account the NPPF, it does reflect the importance that the government attaches to neighbourhood plans. Recently this appeal was re-determined and it is not surprising that the Secretary of State has again rejected the proposal.

One of the expressed purposes of the Neighbourhood Planning and Infrastructure Bill is to support the government's ambition to deliver one million new homes by 2020. It is debateable how effective the support of neighbourhood planning will be given that neighbourhood plans do not have to be based on a strategy to meet objectively assessed needs. The strategic requirement for meeting identified needs is the responsibility of the local plan and the neighbourhood plan is then tied into this through the requirement that neighbourhood plans must be in general conformity with the strategic elements of the adopted local plan. However, a weakness is that a neighbourhood plan can be produced and adopted (made) even in the absence of an up-to date local plan.

There are instances where neighbourhood plans that include provision for housing have been produced in advance of an up-to-date local plan and where the neighbourhood plan is consequently based on an out-of-date assessment of housing need. The theory is that the adopted neighbourhood plan will then be revised if subsequently an up-to-date local plan is produced which results in higher need figures. In practice the problem may well be that the group that produced the original neighbourhood plan no longer exist or may be unwilling to revise the adopted neighbourhood plan. Presumably in these circumstances the neighbourhood plan will be given little weight in decision making either at the council level or on appeal. One has to question what the impact of such a situation will be on the concept of localism and the public confidence in neighbourhood planning.

The impact of neighbourhood planning thus far on the delivery of an increased supply of housing is mixed. There are examples of where neighbourhood planning has positively promoted housing development, often in situations where there is an appreciation that a degree of new housing is needed to help maintain the vitality of settlements and provide housing opportunities for local residents and their families. There are also instances of where neighbourhood plans are seen as a way of restricting housing development. Woodcote Neighbourhood Plan is an interesting example of both the good and the bad in neighbourhood planning. In 2008, 70% of the residents opposed further housing in Woodcote in a survey relating to a proposed parish plan. By 2013, perceptions had changed and the neighbourhood plan notes that "Woodcote needs more young people and families for the community to retain its age balance but the current shortage of affordable housing denies young people and families the opportunity to live in the village where they grew up". The neighbourhood plan took the positive approach of identifying land for 76 new dwellings. The bad is represented by the attempt in the submitted plan to restrict the number of new dwellings to the set figure of 76. The examiner rejected this maximum number approach as being fundamentally in conflict with the NPPF and hence the plan as made does not contain a maximum figure.

Newport Pagnell Neighbourhood Plan is another example of a neighbourhood plan with a positive outcome. In comparison with the Milton Keynes Core Strategy requirement the Newport Pagnell Town Council roughly doubled the number of new homes to be planned for by expanding a strategic reserve

site. The justification was to support a new primary school and other infrastructure including medical facilities.

On the less positive side, a worrying factor relates to the delivery of additional housing where the local plan is relying on neighbourhood plans to deliver a relatively significant amount of housing. The Horsham District Planning Framework was found sound on the basis of a number of neighbourhood plans delivering around 100 new houses per annum over 15 years. In Horsham, a total of 23 parishes outside of the South Downs National Park and one Neighbourhood Development Plan Area have been designated to produce neighbourhood plans. By June 2016 only two of these had been made (Nuthurst and Henfield) and the Henfield Neighbourhood Plan is subject to a judicial review. As at May 2016 within the adopted neighbourhood plan areas in Horsham planning permission existed for 13 dwellings in Nuthurst and none in Henfield. The Horsham Council's annualised housing trajectory predicts no completions in neighbourhood plan areas until 2016/17 when 10 are expected. Between 2017/2018 and 2019/2020 the expectation is for 60 completions per annum then rising to 130pa to 2022/2023 and 140 to 2025/2026. Given that the need for housing is acute today and the government's one million homes by 2020 ambition, one must question the utility of heavily backloaded delivery from neighbourhood plans, many of which are not yet adopted. Significantly the Horsham Council is alert to the problem and as a contingency is considering preparing an additional housing site allocations development plan document. If that proves to be the case one wonders how long it will take to prepare and adopt such a document and consequently how effective it will be in delivering the homes that are needed in the short term.

In Torbay, the local planning authority hoped to restrict its local plan to high level strategic matters, including identifying the quantum of housing development needed, but to leave the allocation of housing sites to three neighbourhood plans that together covered the whole district. The hope was that the neighbourhood plans would come forward at the same time as the local plan.

In the event this hope was not realised. The proposed neighbourhood plans were not progressed as quickly as the local plan and the three neighbourhood forums appeared at the local plan examination seeking a very significant reduction in the quantum of development being proposed in the local plan. The council argued that the local plan should aim to provide 400–500 additional dwellings per annum. The neighbourhood forums argued for 150–200. Clearly this called into question the delivery of the council's housing strategy and it would have been very straightforward to have found the Torbay Plan unsound because it would not be effective. However, a more positive outcome was sought. The solution arrived at allowed the local plan to be found sound whilst leaving the neighbourhood plans with a significant role. The main modifications required the overall quantum for development for each neighbourhood plan area to be set in the local plan based on an objective assessment of housing need and the strategic approach favoured by the council. Because the neighbourhood plans had not been prepared in parallel with the local plan and could therefore not deliver housing allocations for the short term, the council was required to identify a five-year supply of deliverable housing sites to avoid a hiatus in the delivery of housing. The neighbourhood forums were given a very tight deadline for producing neighbourhood plans for the medium/long term based on the quantum of housing development set in the Torbay Local Plan. The Torbay Council was required to commit itself to prepare housing site allocation development plans if the neighbourhood plans failed to materialise within the prescribed timescale.

This approach has only been partially successful. The neighbourhood forums have not met the deadline but have made some progress. The Torbay Council is still hoping that the forums will produce plans that provide for the appropriate quantum of development but are uncertain about whether or not this will be the case, particularly in relation to the forum that is required to plan for the largest amount of new housing. The council is therefore now actively considering what steps it needs to take if these neighbourhood plans are not submitted very shortly. As with Horsham it must be doubtful whether the authority will take action that will quickly enough compensate should the neighbourhood plan process fail to deliver.

Experience to date shows that while initially there may be great enthusiasm, actually getting neighbourhood plans prepared and adopted takes a great deal of commitment and work. As at mid-2016, while there were about 1900 designated neighbourhood plan areas in England, only just over 10% of plans had reached the referendum stage or been adopted. It is expected that the rate of neighbourhood plan adoption will increase but, even so, it is very unlikely that neighbourhood plans will significantly boost the supply on new housing in the period up to 2020. I believe that it would be unwise to find a local plan sound on the basis of ambitious housing delivery targets from neighbourhood plans that are not yet adopted.

A consideration that does not seem to have been thought about in any detail is how neighbourhood plans are going to be kept up-to-date once adopted. One can readily imagine a situation where a neighbourhood forum finds it very difficult to maintain the level of commitment and interest that will be required if neighbourhood plans are going to be adequately monitored and reviewed.

In summary, it is clear that neighbourhood planning is an important element in the delivery of the localism agenda but that significant problems can be caused where neighbourhood plans are produced in advance of local plans. Getting from the designation of a neighbourhood plan area to an adopted plan is in most instances taking a considerable amount of time. Potential problems exist where local plans are relying on neighbourhood plans to deliver relatively significant amounts of housing. In this context particular care needs to be taken in situations where neighbourhood plans are still being prepared as experience shows that significant delays are not uncommon. Given the weight being attached to neighbourhood planning by the Secretary of State, the development industry is likely to be wary of challenging refusals of planning permission based on a neighbourhood plan, even in situations where the neighbourhood plan is not yet adopted. We can expect the notion of giving primacy to neighbourhood plans to lead to some interesting legal arguments, especially given the relatively ‘light touch’ nature of neighbourhood plan examinations.

## Housing Issues and Strategic Planning

Objectively assessing housing need was identified by the Local Plans Expert Group as a key barrier to plan progression and at the heart of why plan preparation is difficult and slow<sup>7</sup>. Related to this is the issue of the Duty to Cooperate because problems with the Duty very largely relate to meeting housing needs within a Strategic Housing Market Area (“SHMA”).

Significant problems for authorities relate to the difficulty of defining SHMAs and a lack of guidance on the methodology to be used for assessing housing need within a housing market area. The Expert Group report notes that the production of Strategic Housing Market Assessments “has become overly politicised and has also become an industry in itself for consultants, whilst being one of the largest costs for authorities and the source of greatest concern, risk and uncertainty”.<sup>8</sup> The Expert Group therefore sensibly recommended the adoption of a simplified standard approach based on a common methodology. It is not proposed in this paper to deal with the technicalities of defining housing market areas and assessing housing need as that is a complex subject in itself. As might be expected, there has been some robust criticism of the suggested methodology but it will be interesting to see if any significantly better approach can be devised by anyone else.

What is clear is that local planning authorities have, in some cases painfully, learnt that they need to produce robust evidence of housing need and if possible plan to meet the need. Even three years after the NPPF was published nearly half of the plans examined in that year required an uplift in housing numbers before they could be found sound. However, most authorities have now grasped the need to adopt a two-step approach to establishing their housing requirement figure, the first step is to quantify objectively

<sup>7</sup> Paragraph 3.1, Local Plans Expert Group Report, April 2016.

<sup>8</sup> Paragraph 3.19, Local Plans Report to Government, April 2016.

the need for housing and then, as a second step, to establish the requirement figure that will go into the plan in the light of considerations like the environmental constraints that exist in the area. A major advantage of this approach is that it enables the authority to establish whether a gap exists between need and the proposed requirement figure and then, if necessary, to review the application of the constraints that have been taken into account. The Planning Policy Guidance should be revised to bring out this advantage much more clearly.

Most authorities have also learnt that they need to take a mature and responsible attitude to the Duty to Cooperate, even though it is not a duty to agree. Previously there were examples of authorities that believed that it was sufficient to simply have discussions with others in their housing market area. So, for example, one had authorities like Mid Sussex complaining to the Inspectorate that the Duty does not require any particular substantive outcome to be achieved.<sup>9</sup> The inspector had concluded that although there was some co-operation between the council and nearby planning authorities following the submission of the plan, these meetings were held too late and the outcomes had not “been embedded as an integral element in the plan making process”.<sup>10</sup>

Another example is Aylesbury Vale DC which sought to update its Strategic Housing Market Assessment through what was termed a Validation Study. However, the other authorities in the housing market area complained that they had been treated essentially as consultees and had not been actively or directly involved in the work. The inspector concluded that AVDC had “not engaged constructively, actively and on an ongoing basis and that this has undermined the effectiveness of plan preparation in dealing with key strategic issues”.<sup>11</sup> It is significant and encouraging that AVDC has recognised that it is well placed to play a strategic role in planning for housing in the SHMA. AVDC have now engaged actively with other authorities in the housing market area and have produced a consultation draft of its plan that provides for around 10,000 homes over and above its own requirements. These additional homes are to help meet the needs of authorities in Southern Buckinghamshire that are constrained by the green belt and the Chilterns Area of Outstanding Natural Beauty.

There are other examples of good practice. Joint plan making has occurred in a number of places including West Northamptonshire, the Black Country, Nottinghamshire and Gloucestershire. In many areas including Warwickshire, Hampshire and Oxfordshire authorities are cooperating in relation to evidence gathering and making assessments of development requirements, although this positive cooperation does not always follow through into the plan making stage.

While positive cooperation is very welcome, there can be little doubt that the Duty to Cooperate is not an adequate substitute for proper strategic planning at the regional level. In the absence of robust strategic planning significant problems are left unresolved. In the South East there is currently no solution to the problem of accommodating London’s housing needs or the needs of a number of south coast authorities who have the sea on one side and a national park on the other. On the same theme we have the Birmingham situation where the inspector concluded that the City needed 89,000 additional dwellings over the plan period but that the housing land supply provides for only around 51,800 dwellings. There is no agreement with the neighbouring authorities to secure additional provision in their areas to meet the shortfall in Birmingham.

The failure to plan for all of the housing need in an SHMA raises the issue of finding plans sound subject to early review. Not surprisingly this is a notion that holds a great deal of appeal to plan making authorities. It is also an approach that the Government is keen on wherever possible in the interests of getting plans in place.<sup>12</sup> On the other hand a purist view might be that if a plan needs to be reviewed at an early stage it cannot be sound. Mr Justice Lindblom’s (as he was then) judgement in the *Dacorum* case is particularly

<sup>9</sup> Letter dated 18 February 2014 from the Leader of Mid Sussex District Council to the Chief Executive of the Planning Inspectorate.

<sup>10</sup> Letter date 2 December 2013 from the Inspector to the Council.

<sup>11</sup> Letter dated 7 January 2014 to the Council.

<sup>12</sup> Written Statement by Brandon Lewis to Parliament 21 July 2015.

helpful in this regard.<sup>13</sup> In preliminary conclusions the inspector found that the Dacorum Core Strategy as submitted was unsound largely on the basis of insufficient evidence about housing need and how much of the need could be met. At the examination the possible solution of an early review was challenged by Grand Union Investments Ltd on the grounds that the inspector had no power to find a fundamentally unsound plan “sound” on the basis of an agreement by the LPA to a recommendation of an early review. The inspector rejected this argument and found the plan sound subject to an early review.

In the High Court for the claimant Mr Katkowski QC argued that the core strategy could not be made sound simply by grafting into it a commitment to doing work that was a prerequisite to its soundness. For the council, Mr Martin Kingston QC argued that the inspector had taken a pragmatic view based on the fact that any shortfall in its allocation of land for housing was not going to cause problems until later in the plan period. Mr Justice Lindblom found that the inspector’s solution, an early review of the plan, was a satisfactory remedy and a solution proportionate to the problem.

It is important to note the circumstances in this case that influenced the approach taken by the inspector. He concluded that the core strategy would provide a sound basis for planning in the short to medium term. During this time, particularly in the next three years, there would be a general over-supply of housing and so the review would be addressing the likely shortfall towards the end of the plan period. He noted that the housing shortfall was modest and that the council had already begun work on the partial review of the core strategy, including a comprehensive review of the green belt in its area. In other words there were good reasons why an early review solution was acceptable in this instance. Clearly the early review approach does not provide an easy “get out of jail card” for authorities who wish to avoid making difficult decisions.

There appears to be disquiet in some quarters that the Inspectorate is being too lenient by finding plans sound subject to review when there are significant problems that really should result in the plan being found unsound. On the other hand the government has stressed the value of the early review approach. In a letter to the Inspectorate last year the Secretary of State drew attention to the importance of inspectors working pragmatically with councils and said that he intended to “clarify how early review may be used as a way of ensuring that a local plan is not unnecessarily delayed by seeking to resolve matters which are not critical to the plan’s soundness or legal compliance as a whole”.<sup>14</sup>

In the case of Maldon District, where the inspector took a strong line, the Secretary of State did not support the inspector.<sup>15</sup> In that case the inspector had reached an interim view that the housing policies, specifically the provision for travellers, in the submitted Maldon Plan were unsound. The inspector found that “Because I do not have a reliable, up-to-date and robust evidence base I have no justification or basis for recommending any main modifications which might set out pitch number requirements or site allocations. Suspending the examination, either in whole or in part, for long periods of time whilst the council attempted to resolve the soundness failures in policy H6 would be contrary to government planning policies on housing need in the NPPF and the PPTS (Planning Policy for Traveller Sites), and the Inspectorate’s *Procedure Practice* for examinations”.<sup>16</sup> The Secretary of State disagreed, describing the inspector’s approach as disproportionate because he had not examined the whole plan. The Secretary of State decided that the council should be given the opportunity to try to remedy the problems identified. The Secretary of State has directed that the plan should now be submitted to him for approval and he has appointed a new Inspector to carry out the examination of the plan.

It will be interesting to see how this action by the Secretary of State influences the approach taken by inspectors examining development plans. The likelihood is that inspectors will be wary of taking the sort of robust approach taken in Maldon. It will also be interesting to see what aspects of a plan are considered

<sup>13</sup> *Grand Union Investments Ltd v Dacorum BC* [2014] EWHC 1894 (Admin).

<sup>14</sup> Letter of 21 July 2015 from The Rt Hon Greg Clark MP to the Chief Executive of the Inspectorate.

<sup>15</sup> Letter dated 6 March 2016 from The Secretary of State to the Chief Executive Maldon District Council.

<sup>16</sup> Maldon District Local Development Plan: Inspector’s Interim Findings: May 2015.

by the Inspectorate and the Secretary of State to be critical to the overall soundness of the plan. Unfortunately the NPPF and the PPG do not provide any clarity on this point and we will have to wait and see how future examinations deal with the question. Some things are clearly critical, the overall quantum of housing required, for example, but it seems that a plan can be found sound even if some of the smaller scale components of the overall housing requirement are not dealt with adequately.

Inspectors examining development plans do usually take a reasonable and pragmatic approach where possible. In 2013 Cherwell for example wished to move forward with its plan at a time when the need for places like Cherwell to assist Oxford City with meeting its needs had not been established. The inspector found the Cherwell plan sound on the basis that the council committed itself to working cooperatively with Oxford CC and other councils in the housing market area to address the issue. In addition Cherwell undertook to review its own housing strategy within two years of adoption in the light of new information coming forward through the production of plans by others in the housing market area.

In contrast in West Oxfordshire the inspector's preliminary findings are that a housing strategy based on an early review is not acceptable because any unmet needs in Oxford City will be known before the West Oxfordshire plan is adopted. However, the inspector examining the Vale of White Horse Local Plan (another Oxfordshire authority) issued an interim finding in June 2016 stating that he is content for unmet needs from other districts, in numerical terms at least, to be provided for in a subsequent development plan document. The Vale inspector accepts that the Oxfordshire Growth Board is likely to have set out a distribution of unmet need between the Oxfordshire districts before the Vale plan is adopted, but he considers that to follow the approach taken by the West Oxfordshire inspector would unacceptably delay the delivery of dwellings on several sites that are likely to help meet some of the unmet need from Oxford City.

The logic applied by the different inspectors is understandable and demonstrates that the Inspectorate is seeking to take a pragmatic approach. However, it also demonstrates how easy it is, taking a superficial view, to allege that the Inspectorate is being inconsistent. The Local Plans Expert Group's recommendation that the Inspectorate be required to produce an annual report dealing with consistency matters would help considerably to overcome this problem.<sup>17</sup>

The Inspectorate's pragmatic approach is also demonstrated in the report of the inspector who recently examined the Birmingham Development Plan. He rejected the argument that for the Birmingham Plan to be found sound it would need to set out where the shortfall in the housing provision in the City to meet Birmingham's needs would be met by reference to specific apportionments in other local planning authority areas. The report notes that "it would be inconsistent with the NPPF's emphasis on the need to have up-to-date plans in place, to delay the adoption of the Birmingham Development Plan ("BDP") until every other relevant council in the HMA had reviewed their local plan to provide for the Birmingham shortfall, a process that could take several years and would delay necessary housing development coming forward within the City itself"<sup>18</sup>

While it is easy for the Secretary of State to demand that inspectors take a flexible approach at examinations, too much pragmatism can compromise the clarity provided by the NPPF. In the case of housing, the NPPF is clear that all housing needs in a SHMA should be quantified and that the authorities in the housing market area should agree, under the terms of the Duty to Cooperate, how the need is to be met. In practice this has in many instances proved to be an impossible demand and demonstrates that the Duty to Cooperate is not an adequate substitute for proper strategic planning. The Local Plans Expert Group has recommended changes to the soundness tests in para.182 of the NPPF to strengthen the Duty to Cooperate requirements.<sup>19</sup> While these are welcome recommendations I consider that even if they are

<sup>17</sup> Local Plans Expert Group Report, Recommendation 30.

<sup>18</sup> Birmingham Development Plan, Inspector's Report, March 2016, para.63.

<sup>19</sup> Local Plans Expert Group, Recommendations 11 and 12.



adopted by the government they will not prove adequate to deal with the problem of meeting housing needs in many SHMAs. The solution to that matter lies in robust regional planning be it “top down” or “bottom up”. A good starting point for a “bottom up” approach would be to look at the arrangements made in the 1980’s by SERPLAN, the London and South East Regional Planning Conference.

On a more optimistic note some hope for strategic planning is contained in the government’s devolution agenda. This involves the transfer of certain powers and responsibilities from national government to individual regions. In the Greater Manchester area the devolution is based on a Greater Manchester Combined Authority involving ten decision making council leaders working with a directly elected mayor. Among other matters the combined authority has more control over local transport, new planning powers to encourage regeneration and development, a £300,000,000 fund for housing and an extra budget to support and develop local businesses.

However, it is doubtful whether devolution as currently implemented will lead us to the sunlit uplands of proper strategic planning on a national scale. The National Audit Office issued a report on English devolution deals in April 2016<sup>20</sup> which noted that while all deals struck include agreement on devolved responsibility for substantial aspects of transport, business support and further education, only some of the deals include housing and planning. The Local Plan Expert Group were rightly concerned about this aspect of the devolution arrangements and one of the recommendations in the Group’s report is that “Government attaches precise conditions to any successful devolution bids requiring a commitment to positively plan to meet objectively assessed housing needs and we further recommend that government should secure a commitment to joint planning across the bid area to that effect as a condition of approval”.<sup>21</sup>

It is worrying that the National Audit Office report notes that “The devolution deals agreed so far involve increasingly complex administration and governance configurations, and there are risks around the alignment with administrative geographical areas for other linked policies” (para.16). It will be important that deals make sense in strategic spatial planning terms. Given the experience with Local Enterprise Partnership areas, which sometimes make little sense in regional planning terms, there is a risk that for some areas there will be a disconnect between regional spatial planning and the devolution agenda.

There is also a significant risk that the notion of devolution will fail in some areas. The government sees devolution as an important part of the localism agenda with the arrangements being locally led. Thus the government has not set out any clear framework for the deals. This had led to difficulties in some areas. The Nottingham and Derby devolution bid originally involved nineteen councils but the agreement has broken down with Bassetlaw announcing that it wishes to join an alternative bid and Erewash and Amber Valley withdrawing their support. The Nottingham Council Leader is reported in the press as saying that the deal cannot now be resurrected while DCLG is saying that it is up to the councils to come up with a credible proposal. In Hampshire in September 2015 a prospectus for discussion with government was produced proposing a devolved authority based on 15 local authorities, 2 local enterprise partnerships and 2 national park authorities. By February 2016 the position had apparently changed with Southampton, Portsmouth, Eastleigh, Gosport, Havant, East Hampshire, and the Isle of White suggesting a Solent group. This idea was not supported by Hampshire County Council. By August 2016 it seems that three competing proposals are being considered for consultation, a Hampshire Unitary Authority, a Solent grouping and a Heart of Hampshire grouping. Given this somewhat confusing picture it is not surprising that the Head of the National Audit Office has said that: “Despite several iterations of deals the government’s approach to English devolution still has the air of charting undiscovered territory. It is in explorer mode, drawing the map as it goes along. Some of the opportunities and obstacles are becoming clearer, but we still do not have a clear view of the landscape or, crucially, an idea of the destination.”<sup>22</sup>

<sup>20</sup> English devolution deals 20 April 2016. Report by the Comptroller and Auditor General.

<sup>21</sup> Local Plans Expert Group Report, para.6.5.

<sup>22</sup> Amyas Morse, Head of National Audit Office, 20 April 2016.

Finally, a few remarks about green belt policy. The NPPF is clear that green belt boundaries, once established, should only be altered in exceptional cases through the preparation or review of a local plan. That is clear but what is less so is what is meant by exceptional circumstances which are, confusingly, in the world of planning jargon not the same as very special circumstances. Very special circumstances refers to considerations that apply when decisions are made at the application or appeal stage about development in the green belt. The guidance is clear that unmet housing need is unlikely to outweigh harm to the green belt in decisions and should not usually be weighed in the balance as a very special circumstance.<sup>23</sup> Exceptional circumstances are not relevant to decisions, they apply to plan making.

Formal government Planning Policy Guidance is silent about whether unmet housing need can be treated as an exceptional circumstance that justifies a review of green belt boundaries in local plans. Logically it is a legitimate exceptional circumstance and it is certainly being treated as such by authorities that are reviewing green belt boundaries in their areas. It is unclear why the government is not willing to provide clarity on this important issue. Perhaps the toxicity of the green belt issue for politicians has something or everything to do with it. What we do have are statements, guidance and directions that confuse rather than clarify the issue. For example there is the 4 October 2014 press release from the Department of Communities and Local Government entitled “Councils must protect our precious green belt land” which quotes Mr Pickles: “This government has been very clear that when planning for new buildings, protecting our precious green belt must be paramount.” The Planning Policy Guidance is no help as it simply says that authorities should through their local plans meet objectively assessed needs unless the adverse impacts would significantly and demonstrably outweigh the benefits. It goes on to refer to specific policies that indicate that development should be restricted, including green belt policy.<sup>24</sup> The recent letter from the Minister of State for Housing and Planning to Birmingham CC directing them not to take any steps in connection with the adoption of the Birmingham Development Plan adds to the confusion.<sup>25</sup> The reason for this direction is given as a request from the Sutton Coldfield Member of Parliament, Mr Andrew Mitchell, “who has expressed concern about a proposal for 6000 new homes on green belt land in Sutton Coldfield known as Langley Sustainable Urban Extension and other matters relating to the plan”.

The Government’s answer is probably that it is for the individual local authorities to decide whether unmet housing need is an exceptional circumstance.<sup>26</sup> This may be fine as a nod in the direction of localism, but it brings with it the problem of piecemeal and uncoordinated green belt reviews by individual authorities. This is the antithesis of good planning. The green belt is a strategic planning tool. Patrick Abercrombie talked about the “great conception of a green belt around London”.<sup>27</sup> Green belt reviews should be undertaken on a much wider than local basis but, in the absence of robust regional planning, this is not happening. In theory it could happen if authorities voluntarily acted in concert under the Duty to Cooperate. As it is proving difficult enough to make the duty effective when dealing with much less contentious issues than the green belt, I do not see the duty as being the means by which proper strategic planning can be applied to the issue of reviewing the green belt.

## Conclusions

This paper is critical of aspects of the development plan system as it is working in England. This is not surprising given that four years after the publication of the NPPF less than 20% of planning authorities had fully up-to-date local plans in the sense that they are both strategic and site specific.

<sup>23</sup> Planning Policy Guidance 06/10/2014, Revision Ref.ID 3 -034-20141006, para.034.

<sup>24</sup> Planning Policy Guidance 06/10/2014, Revision Ref.ID 3-044-20141006, para.044.

<sup>25</sup> Letter to Leader of Birmingham City Council dated 26 May 2016.

<sup>26</sup> See letter from Nick Boles MP to the Chief Executive of the Inspectorate in relation to the Reigate and Banstead Local Plan Report.

<sup>27</sup> Greater London Plan 1944 Report on behalf of the Standing Conference on London Regional Planning.

The government is committed to a plan-led system resting largely on the concept of localism. Looking at the overall picture it seems to me that this has led to disconnections between many aspects of the planning system. The role for planning in the devolution agenda is uncertain. Strategic planning is taking place in some areas but not in others where it is urgently needed. Strategic land use planning is not always a part of the economic and infrastructure planning that is taking place through other means. Local plans are often disconnected from wider strategic issues and the housing needs in housing market areas are not consistently being met by coordinated local plans. Neighbourhood plans, despite the requirement to be in general conformity with local plans, can be based on out-of-date plans and are not connected to the need to meet objectively assessed development requirements. There is a disconnection between the anticipated delivery of housing and reality, particularly where neighbourhood plans are concerned.

Nevertheless there are grounds for some optimism. A comprehensive set of recommendations about how the local plan system can be improved has been proposed by the Local Plans Expert Group. Local planning authorities are now aware of the need to produce robust evidence of development needs in their areas and to beware of attempting to manipulate the evidence. They have grasped the notion of a two-step approach which enables them to take an informed view about the implications of any constraints that they have applied to establish the housing requirement that goes into the plan.

Authorities are increasingly aware of the dangers of seeing the Duty to Cooperate as an inconsequential matter, largely because of the emphasis that the Inspectorate has put on the need for the duty to be applied effectively. Good practice is slowly emerging with examples of authorities working together to agree on the quantum and distribution of housing with SHMAs. A degree of clarity has been provided regarding the use of the early review approach, although there is a danger that the provisions of the NPPF may be undermined if the notion of pragmatism at examinations is taken too far. Neighbourhood planning is helping to promote the concept of localism in planning. There is evidence that neighbourhood planning can encourage a positive view of development but it is very unlikely that neighbourhood plans will make a major contribution to meeting the government's 2020 house building target.

The last few years have been an interesting time for planning. All the indications are that the next few years will be at least as interesting. Although most authorities are likely to have local plans in place, many of these will need to be reviewed. Changes to the NPPF are likely and perhaps devolution will result in at least a degree of strategic planning at a larger than local scale in some parts of the country. Neighbourhood planning is likely to gain in importance, notwithstanding the limited examination process that neighbourhood plans are subject to.

My concluding thought is that it is necessary for the government to recognise that there are limits to what localism and the Duty to Cooperate can achieve. A broader vision operating in a wider landscape is required.