

## A Guide for Councils: Meeting your authority's legal requirements for Neighbourhood Development Plans

### Introduction

Under the Town and Country Planning Act 1990 (as amended), the Council has a statutory duty to assist communities in the preparation of neighbourhood development plans and orders and to take plans through a process of examination and referendum. The Localism Act 2011 (Part 6 chapter 3) sets out the LPA responsibilities as:

- Designating a forum
- Designating the area of the NDP
- Advising or assisting communities in the preparation of a neighbourhood plan
- Checking a submitted plan meets the legal requirements
- Arranging for the independent examination of the plan
- Determining whether the neighbourhood plan meets the basic conditions and other legal requirements
- Subject to the results of the referendum/s bringing the plan into force

In addition legislation sets out who the relevant councils are with responsibility for arranging the referendums.

1990 Act Schedule 4B para 3 states:

"A local planning authority must give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for NDPs in relation to neighbourhood areas within their area". This applies to NDP's through S38A of the Planning and Compulsory Purchase Act 2004. There is no requirement to give financial assistance.

This guide sets out the legal responsibilities and timeframes for the Council's work on NDP's. It provides references back to the relevant acts and regulations. For further information on Neighbourhood Planning and process refer to the online guidance at <http://planningguidance.planningportal.gov.uk>.

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## Notes on this guide

*Text that appears in italics is for information rather than requiring action by the Council.*

\*Throughout the text below unless stated otherwise the term 'publicise' means to place on the website and publicise through other means in order to bring it to the attention of people who live, work or carry out business in the neighbourhood area.

'Convention rights' has the same meaning as the Human Rights Act 1998.

Unless otherwise stated the regulation references are to the Neighbourhood Planning (General) Regulations 2012 {as amended by The Neighbourhood Planning (General) (Amendment) Regulations 2015}.

Abbreviations used in this guide:

LPA	Local Planning Authority
NDP	Neighbourhood Development Plan
PPG	Planning Practice Guidance (the online tool at <a href="http://planningguidance.planningportal.gov.uk">http://planningguidance.planningportal.gov.uk</a> )

## Designation of a Neighbourhood Area

Stage	Description	Relevant legislation and regulations
<b>Definition of a neighbourhood area</b>	<i>An area that is designated by the LPA as a neighbourhood area when a parish council or a group capable of becoming a Neighbourhood Forum has applied</i>	1990 Act 61G (1) (2)
<b>Information on receipt of area application for a NDP</b>	The information that should be submitted to the LPA is: 1. A map identifying the area 2. Statement explaining why it is considered an appropriate	Regulation 5 1990 Act 61G (2) b.

	<p>neighbourhood area</p> <p>3. Statement that the organisation making the application is a relevant body.</p> <p>If the application does not contain this information it should be returned.</p> <p><i>NB the LPA can decline to consider an area application if the body has already made an area application and is awaiting a decision upon it. Care needs to be taken for application made by potential Neighbourhood Forums that there is a reasonable chance that they can become a Neighbourhood Forum.</i></p>	
<b>Determining the application criteria for a neighbourhood area</b>	<p>The LPA should be sure that parish council applications cover part or all of the parish and that neighbourhood forum applications do not cover a parished area.</p> <p>In determining the application, the LPA must consider:</p> <ol style="list-style-type: none"> <li>1. how desirable it is to designate the whole of the parish area as a neighbourhood area, and</li> <li>2. how desirable it is to maintain the existing boundaries of areas already designated as neighbourhood areas (as areas designated as neighbourhood areas must not overlap), as well as</li> <li>3. whether they should designate the area as a business area.</li> </ol>	<p>1990 Act 61G (3)</p> <p>(4)</p> <p>(7) 61H (1)</p>
<b>Publicising the application for the area NDP</b>	<p>The LPA should, as soon as possible after receipt of the application for area designation, publicise* the application on its website and in such other manner as they consider is likely to bring the area application to the attention of people who live, work or carry on business in the area to which the applications relates and invite representations. The information to be</p>	Regulation 6 and 6A

	<p>publicised is:</p> <ol style="list-style-type: none"> <li>1. a copy of the area application</li> <li>2. details of how to make representations</li> <li>3. details of the deadline for representations to be not less than 4 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council and not less than 6 weeks in all other cases. Timings start from the date on which the area application is first publicised.</li> </ol>	
<b>Prescribed date for determination of an area application</b>	<p>The LPA must determine the application within the following timescales from the date immediately after that on which the application is first publicised:</p> <ol style="list-style-type: none"> <li>(a) 20 weeks in a case where the area to which the application relates falls within the areas of two or more local planning authorities;</li> <li>(b) 8 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council,;</li> <li>(c) 13 weeks in all other cases.</li> </ol>	Regulation 6A
<b>Designation as a business area</b>	If the LPA considers that the area is wholly or predominantly business in nature it should be designated as a business area.	1990 Act 61G & H
<b>Modification of an existing neighbourhood area</b>	<p>The LPA can modify the boundary of an existing neighbourhood area. If this relates to a parished area only this must be with the parish councils' consent.</p> <p>In making a modification the LPA must consider whether they should designate the area as a business area.</p>	1990 Act 61G (6) 61H (2)

<b>Publicising a designation of a neighbourhood area</b>	If the LPA approves the application it should publicise* on its website its decision and: 1. the name of the neighbourhood area 2. a map identifying the area 3. the name of the parish council or neighbourhood forum who applied for the designation.  <i>Refusals should be based on planning reasons or the validity of the application.</i>	Regulation 7
<b>Refusal of a proposal for a neighbourhood area</b>	If the LPA refuses the application for a neighbourhood area then it must publicise on its website* : 1. the decision and statement of reasons for making decision (called a 'decision document') 2. the details of where and when the decision document can be inspected.	Regulation 7 1990 Act 61G (9)
<b>Refusal of a proposal for a neighbourhood area because the area is not considered appropriate</b>	If a valid application is made, and some or all of the specified area proposed is not designated as a neighbourhood area and the refusal is because the LPA considers that the area isn't suitable, then the LPA must ensure that some or all of the area specified in the original application forms part of one or more areas designated or to be designated as neighbourhood areas.	1990 Act 61G (5)
<b>Designation of cross local authority boundary neighbourhood areas</b>	The powers of designation and modification must be exercised by all the relevant authorities when the area proposed crosses local authority boundaries.	1990 Act 61I
<b>Keeping a map of neighbourhood areas</b>	The LPA must publish a map setting out the current neighbourhood areas designated, and indicate those which are business areas.	1990 Act 61G (8) 61H

<h2 style="text-align: center;">Set up of a Neighbourhood Forum (only applies to non parished areas)</h2>		
<b>Body proposing a NDP</b>	<p>A '<i>qualifying body</i>' is a parish council or in a non parished area a designated neighbourhood forum</p> <p><i>In the case of a parish council if the neighbourhood area covers whole or part of a parish council then only the parish council can act</i></p>	2004 P & C Act s38A (1)  1990 Act 61F(1) (2)
<b>Publicity about the right to make applications for neighbourhood forum designation</b>	<p>The LPA must make people aware of the right to make applications for a neighbourhood forum designation in a way the LPA considers appropriate.</p> <p><i>The forum application should be publicised in such a way that people are able to comment on the proposals.</i></p>	1990Act 61F (11)
<b>Receipt of a neighbourhood forum application+</b>	<p>The application received by the LPA should include:</p> <ol style="list-style-type: none"> <li>1. Name of the proposed neighbourhood forum</li> <li>2. Copy of its written constitution</li> <li>3. Name of the neighbourhood area to which application relates and a map which identifies the area.</li> <li>4. Contact details of at least one member that can be made public</li> <li>5. Statement explaining how the proposed forum meets the following conditions:</li> </ol>	Regulation 8. 61F 1990 Act (5)
	<ol style="list-style-type: none"> <li>a. Is established to promote or improve the social, economic and environmental well being of an area that consists of or includes the neighbourhood area for the NDP ( this can also relate to businesses)</li> <li>b. Has 21 individual members and membership is open to the following groups :</li> </ol>	1990 Act 61F (5 - 7)

	<ul style="list-style-type: none"> <li>○ people living in the area</li> <li>○ People who work there</li> <li>○ County council, district or London borough councillors for the area</li> </ul> <p>b. Has a written constitution.</p> <p>If the application does not contain this information it should be returned.</p>	
<b>Publicising the application to become a forum</b>	The LPA should publicise* on its website the application for the forum along with a statement that once a neighbourhood forum has been designated for the area another cannot be designated for the area until the existing expires or is withdrawn. Explain that the period for invitation of representations on the application is 6 weeks and details of how to make a representation should be published along with the deadline for receipt of representations.	Regulation 9
<b>The designation criteria for a neighbourhood forum</b>	<p>The LPA may designate the forum if they are satisfied that the organisation or body meets the conditions set (see 'Receipt of an application to become a neighbourhood forum+')</p> <p>In deciding on designation the LPA:</p> <ol style="list-style-type: none"> <li>1. must have regard to the desirability of designating the forum organisation or body:           <ol style="list-style-type: none"> <li>a. that has taken reasonable steps to secure membership that includes at least one person from each of the three membership groups identified,</li> <li>b. that has membership drawn from different places in the area and different sections of the community in the area, and</li> <li>c. whose purpose reflects the character of the area.</li> </ol> </li> </ol>	1990 Act 61 F (6)  (7)

	<p>2. must designate only one organisation or body as a neighbourhood forum for a neighbourhood area, and only if the body has applied to do so, and only where the area does not include part or all of a parish.</p> <p><i>Authorities may like to have regard to the designation criteria prior to publicising the application and, where necessary encourage applicants to provide evidence to demonstrate that they have made steps to meet the conditions of (7)</i></p>	(4)
<b>Publicising the designation of a neighbourhood forum</b>	<p>When a decision has been made on designation, the LPA should publicise on its website and in such other manner as they consider is likely to bring the designation to the attention of people who live, work or carry on business in the neighbourhood area:</p> <ol style="list-style-type: none"> <li>1. the name of the forum</li> <li>2. a copy of the written constitution</li> <li>3. the name of the area to which the designation relates</li> <li>4. contact details of at least one member of the forum.</li> </ol>	Regulation 10
<b>Refusing to designate a forum</b>	If the LPA decides to refuse to designate the forum then a statement should be produced setting out the reasons for making that decision. This is called a 'refusal statement' and details of where and when the refusal statement can be inspected should be publicised on its website.	1990 Act 61F (7) (d) Regulation 10
<b>Receiving multiple applications for neighbourhood forums in an area</b>	Where a Neighbourhood Forum has been designated, and that designation has not been expired or been withdrawn then the LPA may decline to consider additional applications for Neighbourhood Forums in relation to that Neighbourhood Area.	Regulation 11 1990 Act S61F (9)
<b>The withdrawal of a forum</b>	The LPA can withdraw a neighbourhood forum designation when	Regulation 12

<b>designation</b>	<p>requested by that neighbourhood forum. If this happens the LPA must publish a statement setting out details of the withdrawal called a 'withdrawal statement' and details of where and when the withdrawal statement can be inspected should be published on its website.</p> <p>The LPA can also withdraw the designation if it considers the forum is no longer meeting the conditions of approval for designation or any other criteria which the authority were required to have regard in making the designation. Reasons for this decision must be given.</p>	1990 Act 61F (9)
<b>Forum designation expiry</b>	<p>The forum designation expires five years from the day on which it was made, but this doesn't affect the validity of any proposal for a NDP made before the end of the period. A change in membership doesn't trigger expiry of a designation unless the forum is a company.</p>	1990 Act 61F (8)

## The process of producing a Neighbourhood Development Plan

NB; the parish or forum will produce its proposals, but this should be supported by the Council in its role to advise and assist.

<b>Definition of a NDP</b>	<p><i>"A plan which sets out policies (however expressed) in relation to the development use and of land in the whole or any part of a particular neighbourhood area specified in the plan"</i></p>	2004 P & CP Act as amended by Localism Act Section 38 A (2)
<b>Body proposing a NDP</b>	<p><i>Should be a parish council or neighbourhood forum. ('qualifying body')</i></p> <p><i>In the case of a parish council if the neighbourhood area covers whole or part of another parish council then the proposing parish council can only act with the permission of the other parish council</i></p>	As above and 1990 Act schedule 4B as it applies- 61F (2)
<b>Scope of NDP provisions</b>	1. <i>The NDP must specify the period for which it is to have effect</i>	2004 Act s 38B (1 &

	<p><i>2. It cannot include provision about development that is 'excluded development'</i></p> <p><i>3. It cannot relate to more than one neighbourhood area or repeat an existing planning permission</i></p>	2) (4)
<b>Definition of 'excluded development'</b>	<p>a) <i>Is a 'county matter' (schedule 1 of 1990 ACT) i.e. relating to minerals</i></p> <p>b) <i>Any operation or class of operation relating to waste development Development that falls within Annex 1 to Council Directive 85/337/EEC i.e. Oil refineries, power stations, radioactive waste disposal, iron and steel smelting, asbestos operations, chemical installations, motorways, airports, ports and toxic and dangerous waste disposal.</i></p> <p>c) <i>Development consisting wholly or partly of a national infrastructure project</i></p>	1990 Act 61K And Schedule 1
<b>Pre submission consultation and publicity by the parish council/neighbourhood forum of the proposed Neighbourhood Development Plan (NDP)</b>		
<b>Consultation by the parish council or neighbourhood forum</b>	<p><i>Before submission to the LPA the qualifying body should:</i></p> <p><i>1. publicise (but this does not have to be on a web site) in a way that is likely to bring to the attention of people who live work or carry on business in the area details of :</i></p> <p><i>a. the proposals,</i></p>	Regulation 14

	<p><i>b. when and where they can be inspected,</i>  <i>c. how to make representations, and</i>  <i>d. the deadline for making representations – not less than 6 weeks from first publicised</i></p> <p><i>2. consult any consultation body listed in Note 1 below whose interests they consider may be affected by the proposals for a NDP.</i></p> <p><i>3. send a copy of the NDP to the LPA.</i></p>	
<b>Conflict between policy in the NDP and the rest of the NDP</b>	If there are conflicting statements or information within the plan the conflict must be resolved in favour of the policy in the plan.	2004 Act s38B (3)

## Receipt of a draft NDP by the LPA

<b>Receipt of draft NDP by the LPA</b>	The draft plan should include: <ol style="list-style-type: none"> <li>1. a map or statement identifying the area to which the plan relates,</li> <li>2. the consultation statement - which contains details of those consulted, how they were consulted, summarises the main issues and concerns raised and how these have been considered, and where relevant addressed in the proposed NDP,</li> <li>3. the proposed NDP,</li> </ol>	Regulation 15
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	<p>4. a statement explaining how the NDP meets the 'basic conditions' ie requirements of para 8 schedule 4B to the 1990 Act (see note 2 below)</p> <p>5. One of the following a) a statement of reasons for a determination under regulation 9(1) of the Environmental Assessment of Plans and Programmes Regulations 2004 that the proposal is unlikely to have significant environmental effects OR b) an environmental report in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004</p> <p>6. Where appropriate, the information to enable appropriate environmental assessments if required e.g. that will enable the LPA to make an assessment under the Conservation of Habitats and Species Regulations 2010 where the plan proposal is likely to have significant effects on a European site or European offshore marine site or the Environmental Assessment of Plans and Programmes Regulations 2004. .</p>	<p>(Introduced by The Neighbourhood Planning (General) (Amendment) Regulations 2015)</p> <p>The Conservation of Habitats and Species Regulations 2010 as amended by Schedule 2 of the Neighbourhood Planning (General Regulations) 2012. i.e Regs 102 and 102A</p>
	<p><i>It is the qualifying body's responsibility to undertake any necessary environmental assessments but the LPAs responsibility to engage with the statutory consultees (see PPG "How do you know if a draft neighbourhood plan might have significant environmental effects? ID-11-028-20150209). Although the LPAs duty to <u>formally</u> check the need for them and their fitness does not arise until after the examination, (as part of the consideration of meeting the basic conditions), where a neighbourhood plan requires a strategic environmental assessment, work on this should start well before the draft neighbourhood plan is submitted to the local planning authority. This is so that the processes can be integrated, and to</i></p>	

	<p><i>allow the assessment process to inform the choices being made in the plan. (See PPG "When should a plan maker start producing a strategic environmental assessment? ID-11-029-20150209). The LPA should therefore support the qualifying body at an early stage in this respect and avoid the need to make representations during consultation on the draft plan. Indeed, the PPG notes that the LPA should have a process in place to provide a screening opinion in relation to the SEA Directive. See "How do you know if a draft neighbourhood plan might have significant environmental effects?" (ID 11-028-20150209)</i></p> <p><i>In its 'advise and assist' role the LPA may choose to help the qualifying body to undertake environmental assessments.</i></p>	
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## The LPA's assessment of the proposed neighbourhood plan

<b>Reasons for a LPA declining to consider the proposal for the NDP</b>	<p>The LPA can <b>decline to consider</b> a plan proposal if it is a repeat, and notify the body of that fact and their reasons for declining. To qualify as a 'repeat' proposal:</p> <ol style="list-style-type: none"> <li>1. the authority has refused the same or similar proposal within the previous 2 years, <b>or</b></li> <li>2. a referendum relating to a proposal that is the same as or similar has been held and 50% or less than 50% of those voting voted in favour <b>and</b></li> <li>3. the LPA considers no significant change in national policy and advice in SoS guidance of relevance to the proposal, or the strategic policies of the development plan for the area of the authority have occurred since the refusal or referendum.</li> </ol>	1990 Act Schedule 4B para 5  And Regulation 18
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<b>Criteria that the LPA must consider when assessing a neighbourhood plan</b>	<p>The LPA must consider:</p> <ol style="list-style-type: none"> <li>1. whether the parish council or neighbourhood forum is authorised to act (see 'determining the application criteria for a neighbourhood forum'),</li> <li>2. whether the proposal and accompanying documents             <ol style="list-style-type: none"> <li>a. comply with the rules for submission to the LPA (see 'receipt of an NDP by the LPA'), and</li> <li>b. meet the 'definition of an NDP' and</li> <li>c. meet the 'scope of NDP provisions', and</li> </ol> </li> <li>3. whether the parish council or neighbourhood forum has undertaken the correct procedures in relation to consultation and publicity (see 'pre submission consultation by the parish council or neighbourhood forum')</li> </ol>	1990 Act Schedule 4B para 6  38 A and B
<b>LPA decision grounds for refusal</b>	The LPA can refuse to take forward a plan proposal if any of the criteria above do not apply	1990 Act Schedule 4B Para 6 (4) (b)
<b>Notification of the LPA's decision</b>	The LPA must notify the parish council or neighbourhood forum whether or not they are satisfied that the proposal complies with the criteria for a neighbourhood plan. Where it is not satisfied the LPA can refuse and must notify them of the reasons. It must also publicise its decision in a 'decision statement'.	1990 Act Schedule 4B para 6 (4) Regulation 19.
<b>Publicising the NDP proposal</b>	<p>The LPA is required to publicise on its website* :</p> <ol style="list-style-type: none"> <li>1. the details of the plan,</li> <li>2. where and when it can be inspected,</li> <li>3. how to make representations on the plan proposals,</li> <li>4. that a representation can include a request to be notified of the LPA decision on the plan proposal, and</li> <li>5. the deadline for receipt of the proposals (this must be not less than</li> </ol>	Regulation 16

	<p>6 weeks from the first day the proposed plan is publicised).</p> <p>The LPA is required to notify the bodies referred to in the neighbourhood forum or parish councils' consultation statement that the plan has been received as soon as possible.</p>	
<b>Appointment of examiner</b>	<p>The LPA must consider whether the submitted draft neighbourhood plan meets the requirements set out in the 1990 Act and notify the qualifying body as to whether or not they are satisfied (see above section on criteria). Once satisfied the LPA appoints an independent examiner with the consent of the parish council or designated neighbourhood forum submitting the plan. (If there is no agreement the Secretary of State can appoint).</p> <p><i>N.B The Council is responsible for paying the costs of the examination so it is in the Council's interests to ensure that the proposed plan meets the requirements.</i></p>	1990 Act Schedule 4B para 6

### LPA submits plan for examination

<b>LPA submits plan for examination</b>	The LPA submits the plan to the independent examiner for examination as soon as possible after receipt with any representations and any other documents submitted with the plan. This should include:	Regulation 17 Regulation 102A Conservation of Habitats and Species
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	<ol style="list-style-type: none"> <li>1. Map or statement identifying the area to which the plan relates</li> <li>2. Consultation statement</li> <li>3. The proposed plan</li> <li>4. The qualifying bodies statement as to how the plan meets the basic conditions of Schedule 4B to the 1990 Act (including compliance with national policy, how it contributes to sustainable development, general conformity with the strategic policy of the development plan for the area, compatibility with EU obligations)</li> <li>5. The SEA of the plan if required for that plan</li> <li>6. A Habitat Regulations Assessment (where appropriate)</li> <li>7. Any other relevant evidence</li> <li>8. Any other document submitted to the LPA by the qualifying body in relation to the draft plan</li> <li>9. A copy of any representations received in response to the draft plan</li> </ol>	Regulations 2010.
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## Examination of NDP

<b>The LPAs role in examination</b>	The LPA makes the arrangements they consider appropriate to holding the examination.	1990 Act para 7 Schedule 4B
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<b>The examiners role</b>	<p><i>The examiner must <b>only</b> consider:</i></p> <ol style="list-style-type: none"> <li><i>1. whether the draft plan meets the basic conditions see Note 2 &amp; 2b, these include the impact on European sites,</i></li> <li><i>2. whether the draft plan complies with definition of an NDP and the provisions that can be made by a NDP including any time periods specified in the NDP (in short whether the NDP is duly made and appropriate),</i></li> <li><i>3. whether the area for referendum should extend beyond the neighbourhood area, and</i></li> <li><i>4. whether the draft plan is compatible with the Convention rights.</i></li> </ol>	1990 Act para 8 Schedule 4B, 61J and 61L As applied through S38A of 2004 Act Para 1 Schedule 2 of the Neighbourhood Planning (general ) regulations 2012
<b>A suitable examiner</b>	<p>The LPA must be satisfied that the examiner is:</p> <ol style="list-style-type: none"> <li>1. independent of the parish council or neighbourhood forum,</li> <li>2. has no interest in any land that may be affected by the draft plan, and</li> <li>3. has appropriate qualifications and experience.</li> </ol> <p>The examiner can be the employee of another local authority or the secretary of state and undertake the work for payment.</p>	1990 Act para 7 Schedule 4B (6) (7)
<b>The form and conduct of the examination</b>	<p><i>As a general rule examination is by written representations. However, oral representations must be heard, in public, if the examiner considers they are needed to ensure adequate examination of an issue or for a person to have a fair chance to put a case.</i></p> <p><i>If there are oral representations then the following people can speak:</i></p> <ul style="list-style-type: none"> <li>• <i>The parish council or neighbourhood forum</i></li> <li>• <i>The LPA</i></li> </ul>	1990 Act para 9 Schedule 4B

	<ul style="list-style-type: none"> <li>Where the hearing is held to give a person a fair chance to put their case, that person.</li> </ul> <p><i>The examiner decides on the conduct of the hearing including:</i></p> <ul style="list-style-type: none"> <li>Whether the speaker may be questioned and the matters that they can be questioned upon</li> <li>The amount of time given to a person to speak and for questioning.</li> </ul> <p><i>The examiner should undertake the questioning unless s/he considers that questioning by another person is necessary to ensure adequate examination of an issue or for a person to have a fair chance to put a case.</i></p>	(5)
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## The examiners report on a NDP

<b>The contents of the examiners report</b>	<p><i>The examiner must make a report with recommendations, the reasons for them and a summary of findings, <b>only</b> as follows:</i></p> <ol style="list-style-type: none"> <li><i>the report must recommend either:</i> <ol style="list-style-type: none"> <li><i>the draft plan is submitted to referendum,</i></li> <li><i>modifications specified in the examiners report are made and the draft report as modified is submitted to referendum, or</i></li> <li><i>the proposal is refused.</i></li> </ol> </li> <li><i>Modifications can only be those that the examiner thinks are needed to:</i> <ol style="list-style-type: none"> <li><i>make the plan conform to the basic conditions (Note 2 &amp; 2b)</i></li> <li><i>make the plan compatible with the Convention rights</i></li> <li><i>make the plan comply with definition of an NDP and the</i></li> </ol> </li> </ol>	<p>1990 Act para 10 Schedule 4B</p> <p>1990 Act para 8 Schedule 4B, 61J and 61L As applied through S38A of 2004 Act</p>
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	<p><i>provisions that can be made by a NDP or</i></p> <p><i>d. to correct errors.</i></p>	
<b>Recommendation to go to referendum</b>	<p><i>The examiner cannot recommend the plan goes to referendum if it does not meet the basic conditions or comply with the definition of an NDP or the provisions that can be made by a NDP.</i></p> <p><i>If a recommendation to go to a referendum is made it must be accompanied by a recommendation as to whether the area for the referendum should go beyond the neighbourhood, and if so what the extended area should be.</i></p>	1990 Act para 10 (5) Schedule 4B
<b>Parties issued with the examiners report</b>	The LPA, parish council or neighbourhood forum is sent a copy of the examiners report. The LPA is responsible for arranging the publication of the report as soon as possible.	1990 Act para 10 (7 & 8) Schedule 4B

### LPA consideration of examiners' recommendations on NDP

<b>LPA consideration of examiners recommendations</b>	The LPA must consider each of the examiners recommendations and the reasons for them and decide what action to take in response to each. It must also come to a formal view about whether the draft plan meets the basic conditions. If the authority are satisfied that the draft plan meets the basic conditions (Note 2 & 2b), is compatible with the Convention rights, and complies with the definition of an NDP and the provisions that can be made by a NDP or can do so as modified a referendum must be held.	1990 Act schedule 4B para 12, 61J and 61L  para 12 (9)
<b>Action the LPA can take</b>	Once the LPA has considered each of the <b>examiners recommendations</b>	1990 Act schedule 4B

<b>following consideration of the examiners recommendations</b>	<b>and determined its response It can:</b> <ol style="list-style-type: none"> <li>1. <b>make modifications</b> to correct errors, or to make the plan:           <ol style="list-style-type: none"> <li>a. meet the basic conditions (note 2 and 2b)</li> <li>b. compatible with the Convention rights</li> <li>c. comply with the definition of an NDP and the provisions that can be made by a NDP</li> <li>d. comply with suitable periods for making applications and starting development.</li> </ol> </li> <li>2. <b>extend the area</b> to which the <b>referendum(s)</b> are to take place. If the authority decides to extend the area for referendum it must publish a map for that area.</li> <li>3. decide <b>that they are not satisfied</b> with the plan proposal with respect to meeting basic conditions, compatibility with Convention rights, definition and provisions of the NDP even if modified.</li> </ol>	para 5, 6,10,12  Regulation 18  61J and 61L    1990Act Schedule 4B para 12 (10)
<b>Content of decision</b>	<p>If the LPA is satisfied then it publicises its decision (a decision statement) and moves to a referendum – see ‘decision to take the plan forward’</p> <p>If the LPA is not satisfied, that the plan meets the basic conditions then it must refuse the plan proposal and publicise its decision.</p>	1990 Act Schedule 4B Para 12 (4)  Para 12 (10)
<b>When the LPA proposes to make a decision that differs from the examiners recommendation</b>	<p>....and the reason for the difference is wholly or partly as a result of new evidence or a new fact or a different view taken by the LPA about a particular fact the LPA:</p> <ol style="list-style-type: none"> <li>1. notifies all those identified on the consultation statement of the parish council or neighbourhood forum and invites representations</li> <li>2. may refer the issue to an independent examination if they think it appropriate.</li> </ol> <p>The LPA cannot make a decision that differs from the examiners’</p>	1990 Act schedule 4B para 13   Para 13 (4)

	recommendations about the referendum area.	
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## Publication of the examiners' report and the LPAs decision on NDP

<b>Decision to take the plan forward</b>	As soon as possible after considering the examiners recommendations and deciding to take forward a NDP the LPA must publish its decisions and reasons in a 'decision statement'. Details of where and when the decision statement can be inspected and the examiners report are published. The LPA sends a copy to the parish council or neighbourhood forum and anyone who asked to be notified of the decision.	1990 Act schedule 4B para 12 (11 & 12) Regulations 18 & 19
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## Referendums for a NDP

<b>Responsibility for the residential and business referendums</b>	<i>The relevant district, London Borough, metropolitan borough, district or county council (in relation to an area where there is no district) is responsible for making arrangements for the residential referendum (and additional business referendum if it is a Business Area) to take place for the area where the referendum area and the councils area coincide.</i>	1990 Act Schedule 4B para 14
<b>What are the rules covering the polls?</b>	These are contained in the Neighbourhood Planning (Referendum) Regulations 2012 (as amended by the Neighbourhood Planning (Referendum) (Amendment) Regulations 2013, the Neighbourhood Planning (Prescribed Dates) Regulations 2012 and the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014.	
<b>What the Council has to do</b>	If both residential and business referendums are required they must be held on the same day	Regulation 17 of the Neighbourhood

	<p>In the case where a business referendum is to be held not less than 56 days, and in other cases (i.e. where just a residential referendum will be held) at least 28 days (not including weekends, bank holidays, days of public thanksgiving) before the referendum the proper officer of the Council must ensure the <b>information statement</b> (see below) and <b>specified documents</b> (see below) are published on the website. These documents must also be made available during the <b>referendum period</b> (see below) for inspection at the main offices of the Council, and at least one other premise open to the public in the Council's control considered appropriate by the Council to achieve geographical distribution.</p> <p>Where a business referendum will be held the documents must be available during referendum period in such other manner if any as the proper officer considers necessary to bring them to the attention of persons likely to be entitled to vote in the business referendum.</p> <p>The information statement and specified documents must remain available throughout the period of the referendum in the original form published as far as is reasonably practical.</p> <p><i>The Neighbourhood Planning (Referendums) (Amendment) Regulations 2014 includes template forms for residential neighbourhood planning referendums when held alone or combined with other polls; business neighbourhood planning referendums and invitations to register to vote at business referendums.</i></p>	<p>Planning (Referendums) Regulations 2012- and as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 Regulation 4 the Neighbourhood Planning (Referendums) Regulations 2012- and as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 and the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014</p>
<b>The information statement</b>	<p>The information statement prepared by the Council must include the following information:</p> <ul style="list-style-type: none"> <li>a. that a referendum will be held</li> <li>b. the date of the referendum</li> </ul>	<p>Regulation 4 the Neighbourhood Planning (Referendums)</p>

	<ul style="list-style-type: none"> <li>c. the question to be asked (the question is set out in legislation – see note below)</li> <li>d. a map of the referendum area</li> <li>e. where the referendum area and neighbourhood area are not identical a map of the neighbourhood area</li> <li>f. a description of those entitled to vote in each referendum</li> <li>g. the referendum expenses limit applicable (to both referendums if there are to be a residential and business referendum) and the number of people identified as entitled to vote (in both referendums if there are two) on which the limit was calculated</li> <li>h. that the referendum(s) will be conducted in accordance with procedures similar to those for local government elections, and</li> <li>i. the address and times at which a copy of the specified documents can be inspected.</li> </ul> <p>Schedule 1 of the Regulations sets out the referendum questions. The question for a NDP is: Do you want (insert name of LPA) to use the neighbourhood plan for (insert name of neighbourhood area) to help it decide planning applications in the neighbourhood area?</p>	<p>Regulations 2012 and as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013</p> <p>The Neighbourhood Planning (Referendums) regulations 2012 Schedule 1</p>
<b>The 'specified documents'</b>	<p>The specified documents to be published by the Council on the website (made available for inspection) are:</p> <ul style="list-style-type: none"> <li>a. Draft NDP</li> <li>b. Examiners report</li> <li>c. Summary of representations submitted to examiner</li> <li>d. For a draft NDP a statement that the Council is satisfied that it meets the basic conditions and provisions as they apply</li> <li>e. A statement that sets out general information as to town and country planning (and neighbourhood planning) and the</li> </ul>	<p>Regulation 4 (3) the Neighbourhood Planning (Referendums) Regulations 2012 and as amended by the Neighbourhood Planning (Referendums)</p>

	referendum (prepared having regard to any guidance issued by SoS)	(Amendment) Regulations 2013
<b>Qualifying to vote in a residential referendum</b>	<p><i>Anyone on the prescribed date can vote in a residential referendum if they:</i></p> <ul style="list-style-type: none"> <li>a. <i>are entitled to vote in an election of any ward councillor of the relevant council whose ward is in the referendum area and whose qualifying address for the election is in the referendum area.</i></li> <li>b. <i>In the case of the City of London the person can vote if they are entitled to vote in an Authority election and the persons qualifying address is in the City of London.</i></li> </ul>	1990 Act Schedule 4B para 14 (4- 7)
<b>Qualifying to vote in business referendum</b>	<i>Anyone who is a non domestic ratepayer in the referendum area recorded on the business voting register compiled by the Council using the business rate billing information it holds.</i>	1990 Act Schedule 4B para 15 Regulation 17 the Neighbourhood Planning (Referendums) Regulations 2012 - and as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013
<b>Referendum not arranged by the Council</b>	When a relevant Council is not the LPA the relevant Council and LPA must co-operate in the holding of referendum as follows:	Regulation 16 the Neighbourhood Planning

	<ol style="list-style-type: none"> <li>1. The proper officer of the LPA must inform the proper officer of the Council as soon as they know a referendum is required, provide summary of written representations and information and copies of documents held by the LPA which the proper officer of the relevant Council requires to comply with 'what the Council has to do' namely the 'information statement' and the 'specified documents'.</li> <li>2. Both must respond to each other as soon as possible in relation to requests for information relating to the holding of the referendum.</li> <li>3. The proper officer of the relevant Council must as soon as possible inform the proper officer of the LPA of the results of the referendum.</li> </ol>	(Referendums) Regulations 2012
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## Following the referendums on a NDP

<b>Referendum results</b>	If a referendum results in more than half those voting (i.e 50% plus 1), voting in favour of the proposal the LPA must make the NDP as soon as reasonably practical unless: it considers that this would breach, or be incompatible with any EU obligation or any of the Convention Rights.	2004 Act s38A (4)(6)
<b>Referendum results in business areas</b>	If, in a designated business area, two referendums are held and in one but not the other more than half of those voting have voted in favour of the plan the LPA may, but is not obliged to, make the NDP.	2004 Act s38A (5)
<b>Publication of the decision on the NDP by the LPA</b>	If a referendum is held and there is a vote in favour (50% plus 1) the LPA must publicise their decision and reasons for the decision – called a 'decision statement', and details of where and when it can be inspected. They should send a copy to <ul style="list-style-type: none"> <li>• The parish council or neighbourhood forum as relevant</li> </ul>	2004 Act s 38A (9)(10) Regulation 19

	<ul style="list-style-type: none"> <li>Any person who asked to be notified of the decision</li> </ul>	
<b>Publicising the NDP</b>	<p>As soon as possible the LPA should publish the plan, details of when and where it can be inspected and notify any person who has asked to be notified that it has been made and where and when it may be inspected.</p> <p>It should also publish the environmental report in cases where the plan has been subject to the SEA Directive, inform the consultation bodies of relevant matters including how significant effects will be monitored.</p> <p>Monitoring results should be published in the Councils monitoring report.</p>	Regulation 20  Regulation 16 and 17 of Environmental Assessment of Plans and Programmes Regulations 2004.
<b>Replacing the NDP</b>	<p><i>The relevant parish council or neighbourhood forum can make a proposal for the existing plan to be replaced following the same process as the making of the original.</i></p>	2004 Act s 38 (11)
<b>Modifying or revoking a NDP</b>	<p>If the LPA decides to modify or revoke a plan after it has been made then it must undertake an appropriate assessment of the implications for any European site likely to be significantly affected in view of that sites conservation objectives.</p>	Regulation 102 of the Conservation of Habitats and Species Regulations 2010 and regulation 102A
<b>Modification of a NDP</b>	<p>LPA may modify an NDP to correct errors by replacing it with a new one that contains the modification but only with the permission of the qualifying body if it is still in place.</p> <p>As soon as possible after modifying the LPA publishes 'the modification document' which sets out the details of the modification, and details of where and when it can be inspected.</p> <p>It also informs the parish council or neighbourhood forum and any person the authority previously notified in relation to the making of the plan.</p>	Regulation 30

<b>Revocation of a NDP</b>	<p>The SoS may revoke a NDP or a LPA may revoke with permission of SoS. Reasons must accompany revocation.</p> <p>As soon as possible after revoking the NDP the LPA must publish 'the revocation document' which sets out a statement of the revocation and the reasons for it, details of where and when it can be inspected.</p> <p>It also informs the parish council or neighbourhood forum and any person the authority previously notified in relation to the making of the plan together with any person it considers necessary to bring the revocation to the attention of who live, work or carry out business in the area.</p> <p>It removes the plan from its website and any other place it was available for inspection.</p>	<p>2004 Act s38C (2)</p> <p>Regulation 31</p>
<b>Legal challenge to NDP</b>		
<b>Reasons for legal challenge to NDP</b>	<p><i>A legal challenge can be made in relation to:</i></p> <p><i>1. a LPA declining to make an NDP if an applicable referendum resulted in over half of those voting (50% plus 1) in favour, as soon as reasonably practical. The LPA is not to be subject to the duty if they consider that the making of the plan would breach, or otherwise be incompatible with any EU obligation or any of the Convention rights within the meaning of the Human Rights Act 1998.</i></p> <p><i>only if proceedings are brought by a claim for Judicial Review within 6 weeks of the day on which the decision is published.</i></p> <p><i>2. The consideration of inspectors recommendations and decisions made</i></p>	<p>2004 Act s38C (2) (4)</p>

	<p><i>upon them</i></p> <p><i>only if proceedings are brought by a claim for Judicial Review within 6 weeks of the day on which the decision is published.</i></p> <p><i>3. The conduct of the referendum</i></p> <p><i>Only if the proceedings are bought by a claim for judicial review and this is filed within 6 weeks beginning the day on which the results are published.</i></p>	
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#### Note 1

The Neighbourhood Planning (General) Regulations 2012 Schedule 1

**Consultation bodies that the Parish Council or Neighbourhood Forum should consult:**

- In a London Borough, the Mayor of London
- A LPA, county council or parish council any part of whose area is in or adjoins the area of the LPA
- The Coal Authority
- The Homes and Communities Agency
- Natural England
- The Environment Agency
- English Heritage
- Network Rail Infrastructure Limited
- The Highways Agency
- The Marine Management Organisation
- Any person to whom the electronic communications code applies, or who owns or controls electronic communications apparatus situated in any part of the area of the LPA
- Where they exist a Primary Care Trust, licensee under the Electricity Act 1989, Licensee of the Gas Act 1986, sewerage undertaker and water undertaker

- Voluntary bodies whose activities benefit all or part of the neighbourhood area
- Bodies representing the interests of different racial, ethnic or national groups in the neighbourhood area
- Bodies representing the interests of different religious groups in the neighbourhood area and
- Bodies representing the interests of disabled people in the neighbourhood area.

## Note 2

**The basic conditions to be met by a draft NDP are set out para 8 (1) (a) (2) of Schedule 4B to the Town and Country Planning Act 1990 (inserted by the Localism Act 2011)**

1. Has regard to national policy and guidance from SoS
2. Contributes to sustainable development
3. General conformity with the strategic policy of the development plan for the area or any part of that area
4. Doesn't breach or is otherwise compatible with EU obligations – this includes the SEA Directive of 2001/42/EC

**Note 2b** an NDP does not need to comply with the following conditions (which apply to NDO's)

1. Doesn't damage a LB or setting or any features of architectural or historic interest it possesses – if the order grants permission for development that affects the building or its setting
2. Doesn't damage character or appearance of a conservation area – if the order grants planning permission for development in relation to buildings or other land in the area

but does need to comply with:

Regulation 32 of The Neighbourhood Planning (General) Regulations 2012 as follows:

"The making of the NDP is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species regulations 2010(d) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats &c) regulations 2007 9(e) (either alone or in combination with other plans or projects)"

This requirement originates from The Environmental Assessment of Plans and Programmes Regulations 2004.

## References

### The Acts

For NDP – look to the provisions of Part 2 of Schedule 9 of the Localism Act 2011 as it amends the Planning and Compulsory Purchase Act 2004 adding section 38A -38C but note that Part 1 of the Schedule 9 also applies subject to modifications and Schedule 4B to the Town and Country Planning Act 1990

Also Schedule 12 consequential amendments to the 1990 Act and 2004 Act.

### Regulations

Regulations that apply to NDP are found in the Town and Country Planning England, The Neighbourhood Planning (General) Regulations 2012; The Neighbourhood Planning (Referendums) Regulations 2012; The Neighbourhood Planning (Prescribed Dates) Regulations 2012; The Neighbourhood Planning (Referendums) (Amendment) Regulations 2013; The Neighbourhood Planning (Referendums) (Amendment) Regulations 2014; The Neighbourhood Planning (General) (Amendment) Regulations 2015; Re The Conservation of Habitats and Species Regulations 2010; The Neighbourhood Planning (Referendums) (Amendment) Regulations 2013; The Town and Country Planning (Environmental Impact Assessment) Regulations 2011.