

Town and Country Planning Act 1990
Neighbourhood Planning (General) Regulations 2012

COTON FORWARD NEIGHBOURHOOD PLAN INDEPENDENT EXAMINATION

**A report to Rugby Borough Council
by Christopher Lockhart-Mummery QC, Examiner**

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Summary

The proposal for the Coton Forward Neighbourhood Development Plan 2014-2029 (the “NP”) is recommended to be refused. While parts of the NP comply with the statutory requirements within the remit of this Examination, key parts – Policies 1 and 2 – do not.

They do not comply with the provision of section 38A(2) of the Planning and Compulsory Purchase Act 2004 which provides:

“A “Neighbourhood Development Plan” is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the Plan”.

The policies do not meet Basic Condition (a). That is to say, having regard to national policies and advice contained in guidance issued by the Secretary of State on the matter of delivery of plan proposals, it is not appropriate to make the NP.

Careful consideration has been given as to whether it would be appropriate to recommend the making of Modifications that would secure that the above requirements were met. For reasons given in the report, it is concluded that such a course would not be appropriate.

Introduction

Preliminary

1. I was appointed in November 2014 as the Independent Examiner for the Coton Forward Neighbourhood Development Plan 2014-2029 (the NP). The Plan has been prepared and submitted by the Coton Forward Neighbourhood Forum, the qualifying body, with support from several bodies including the local planning authority, Rugby Borough Council (“the Council”).
2. I confirm that I am independent of the qualifying body and the Council, that I have no interest in any of the land affected by the NP, and that I have appropriate experience and expertise to undertake the examination.
3. I am satisfied that the NP has been prepared for an area that has been properly designated for that purpose and that it does not relate to more than one area.
4. The main documents which I have read or referred to, are as follows:
 - The NP
 - The Basic Conditions Statement October 2014
 - The Consultation Statement
 - The Rugby Core Strategy DPD 2011
 - The Saved Local Plan Policies 2011
 - David Tucker Associates Coton Park, Rugby, Warwickshire, Transport Review
 - The Consultation response of Warwickshire County Council (undated, but apparently issued on 8 December 2014).
 - Other Consultation responses on the submission NP
 - The Consultation response of the Council to the pre-submission Draft.
5. I decided at an early stage that, having regard to the provisions of paragraph 9 of Schedule 4B to the Town and Country Planning Act 1990, the Examination could

properly be considered on the basis of written representations. No party requested otherwise, and as I proceeded nothing caused me to change this view.

Plan Preparation Procedures

6. These are adequately set out in Section A of the NP on page 8, and not repeated here.

Consultation

7. I noted the concerns expressed by some local residents as to the extent of consultation, including the extent to which the Forum is truly representative of the views of residents of Coton Park. I invited and considered a response to these matters by the Chair of the Forum. The primary responsibility for the adequacy of these matters lies with the Council (e.g. Schedule 4B paragraph 6(2)). Having considered the Consultation Statement, I am satisfied that it complies with the requirements of regulation 15 of The Neighbourhood Planning (General) Regulations 2012.

Basic Conditions and other statutory requirements

8. Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990 provides that, in examining a proposed Neighbourhood Plan, the Examiner is to consider the following:

- “(a) whether the draft Neighbourhood [Plan] meets the basic conditions (see sub-paragraph (2)),*
- (b) whether the draft [Plan] complies with the provision made by or under sections 38A and 38B,*
- (d) whether the area for any referendum should extend beyond the neighbourhood area to which the draft [Plan] relates, and*
- (e) such other matters as may be prescribed.*

9. Paragraph 8(2) of Schedule 4B provides that a neighbourhood development plan meets the basic conditions if:

- “(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make [the Plan],*

- (d) *the making of [the Plan] contributes to the achievement of sustainable development,*
- (e) *the making of [the Plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),*
- (f) *the making of [the Plan] does not breach, and is otherwise compatible with, EU obligations, and*
- (g) *prescribed conditions are met in relation to [the Plan] and prescribed matters have been complied with in connection with the proposal for [the Plan]”.*

10. Only one further basic condition has been prescribed under paragraph 8(2)(g), as follows:

“The making of the Neighbourhood Development Plan is not likely to have a significant effect on a European site...or a European Offshore Marine site...(either alone or in combination with other plans or projects)”.

11. It may be noted that a proposed plan must meet all of the basic conditions specified in paragraph 8(2), if it is to be submitted to a referendum, not just some of them.

Policy

12. In carrying out the examination of the NP, and deciding whether to recommend that it should be submitted to a referendum, I am required to have regard to national policies and advice contained in guidance issued by the Secretary of State (basic condition (a)).
13. The most significant national policies relevant to planning matters are set out in the National Planning Policy Framework (“the NPPF”). This was issued in March 2012, and replaced almost all of the Planning Policy Guidance notes and Planning Policy Statements (PPGs and PPSs) that were extant at that time.
14. Key paragraphs that refer to plan-making, including neighbourhood plans, are paragraphs 15, 16, 17 and 183. More generally, the NPPF sets out a number of policies relating to a wide range of issues, including in particular transport, housing, design, climate change, the natural environment, and the historic environment. I have had regard to these where appropriate in carrying out the examination.

Planning Practice Guidance

15. More detailed guidance and advice, expanding on the general policies in the NPPF, has been available since March 2014 as Planning Practice Guidance (“PPG”).
16. In particular, the PPG contains the following guidance:

“What should a Neighbourhood Plan address?”

A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (see section 38(6) of the Planning and Compulsory Purchase Act 2004).

Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.

How should the policies in a Neighbourhood Plan be drafted?

A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared”.

17. A policy that is not “clear and unambiguous” is thus not in accordance with the basic conditions.

Sustainable development

18. In carrying out the examination of the NP, I am required to consider whether the making of it would contribute to the achievement of sustainable development (basic condition (d)).
19. Paragraph 6 of the NPPF states that, in effect, the whole of the NPPF constitutes the Government's view of what sustainable development means in practice. Paragraph 7 states that there are three dimensions to sustainable development: economic, social and environmental.

The Development Plan

20. In carrying out the examination of the NP, I am required to consider whether it is in general conformity with the strategic policies contained in the development plan for the area (basic condition (e)).

The SEA Directive

21. In carrying out the examination of the NP, I am required to consider whether the making of the plan is in general conformity with "EU obligations" (basic condition (f)). The principal relevant EU obligation is under the SEA Directive (2001/42/EC). That has been transposed into UK domestic law through the Environmental Assessment of Plans and Programmes Regulations 2004.

Other statutory requirements

22. In addition to the basic conditions, I am also required to consider whether the NP complies with the provision made by or under sections 38A and 38B of the 2004 Act. A number of provisions have been made by or under those sections, as follows:
 - in sections 38A and 38B themselves;
 - in Schedule 4B to the 1990 Act (introduced by section 38A(3)); and
 - in the 2012 Regulations (made under sections 38A(7) and 38B(4)).

23. First, a Neighbourhood Development Plan is to be a plan that sets out policies for the development and use of land in the whole or part of the area in question. This is a fundamental provision, as a plan that contains other types of policies may be a worthwhile and commendable document, but it is not a “neighbourhood development plan” within the terms of the relevant legislation.
24. A Neighbourhood Plan can allocate sites for development.
25. Secondly, a Neighbourhood Development Plan:
 - must specify the period for which it is to have effect;
 - may not include provisions relating to “excluded development” – principally minerals, waste disposal and nationally significant infrastructure projects; and
 - may not relate to more than one neighbourhood area.
26. Thirdly, the planning authority is not obliged to submit a plan to a referendum if it breaches any EU obligation or any rights under the Human Rights Convention.

The NP

27. After introductory sections, the NP contains:
 - In Section C, a description of the main characteristics of Coton Park.
 - In Section D, the Neighbourhood Area Map (an OS street plan would have been a desirable addition).
 - In Section E, a description of Community Engagement.
 - In Section F, Key Issues identified as:
 - lack of opportunities for on-street parking
 - poor traffic movement through and within the development
 - lack of educational provision in the immediate area
 - lack of green space provision, especially the need for a new play area
 - the need for a community centre
 - lack of health facilities in the immediate area.
 - In Section G, Vision and Objectives the latter being:

- To better manage traffic movements through and within the development (to be achieved through Policies 1 and 2).
- To promote social interaction, and the health and well-being of the community (to be achieved through Policies 3 and 4).

28. The NP proposes, in section H, four Policies:

Policy 1 - **Improving the Three Roundabouts on Coton Park**, proposes junction improvements at the roundabouts at Coton Park Drive/Stonechat Road, Stonechat Road/Crackthorne Drive and Longstork Road/Tuthill Furlong.

Policy 2 - **Coton Park's Identity as a Residential Area**, proposes gateway features and signage at specified locations, the introduction of street furniture, and a "stronger visual and functional link between the residential development and the retail area".

Policy 3 - **Coton Park Community Centre** proposes the allocation of land between Coton Park Drive and Lancut Hill for a community centre.

Policy 4 - **Coton Park's Local Green Spaces** proposes the designation of five areas as such.

29. Section I sets out five Projects, the creation of communal parking facilities, the creation of a two-way access road from the eastern end of Central Park Drive, road markings on Coton Park Development, other traffic management measures and community focus – allotments and community gardens.

Findings of the Examination

30. I deal first with the statutory requirements within my remit which I find are met by the NP.
31. As to basic condition (d), sustainable development, I have considered the relevant section of the Basic Conditions Statement (pages 14-16). For the reasons given there, I find no reason to doubt that this condition would be met by the NP.
32. As to basic condition (e), conformity with the development plan, I have considered the relevant section of the Basic Conditions Statement (pages 8-13). For the reasons given there, I find that this condition is met.
33. As to basic condition (f), EU obligations, I have considered the relevant section of the Basic Conditions Statement (page 16). For the reasons given there, I find that this condition is met.
34. As to basic condition (g), this condition is met.
35. As to the SEA Directive, the Council issued a screening opinion to the effect that there would not be likely to be any significant environmental effects arising from the NP. SEA is therefore not required.
36. The NP meets the requirements specified at paragraph 25 above. (Had I recommended that the NP proceed to referendum, I would have recommended that the Plan Period be aligned with that of the Core Strategy, 2014-2026).
37. As to Policy 3 – Coton Park Community Centre, I find that (on balance) this meets the statutory requirements. This is despite my having some concern (see paragraph 47(3) below) as to the lack of stated evidence as to its deliverability.
38. As to Policy 4 – Coton Park’s Local Green Spaces, I find that this policy likewise meets the statutory requirements, and is justified. The designations would comply with the tests in paragraph 77 of the NPPF, although had I recommended Modifications (see below) I would have recommended that the fenced-off section of

site 1 (under the pylons) and the “wildlife” section of site 2 could also be justified for their “richness of wildlife” attributes.

39. I now turn to the respects in which I find the NP does not accord with the statutory requirements within my remit.
40. I have set out above the requirements of section 38A(2) above. **Policy 1** is not a policy for “the development and use of land”. It requires that specified junction improvements “will be undertaken”. All the proposed works, with the exception of the Longstork Road/Tuthill Furlong junction, are within the highway, and are the responsibility of Warwickshire County Council as highway authority. The Longstork Road/Tuthill Furlong junction is apparently in the control of the original housebuilder. None of the indicated works constitute development requiring planning permission. The fulfilment of the policy would be entirely within the hands of the highway authority or the developer.
41. Further, the policy does not, in my opinion, meet basic condition (a). National policy and guidance is consistent with section 38A. Thus paragraph 17 of the NPPF advises that neighbourhood plans “should provide a practical framework within which decisions on planning applications can be made...”. Paragraph 183 advises that neighbourhood plans can set planning policies “to determine decisions on planning applications”. Paragraphs 184-185 are to the same effect. The passage from PPG quoted at paragraph 14 above likewise makes the link between policies in a neighbourhood plan and the determination of planning applications.
42. National guidance is also clear to the effect that the principal purpose of development plans is the delivery of sustainable development. Paragraph 183 is again clear:

“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need...”
43. Not only are the terms of Policy 1 outside the control of the local planning authority, the highway authority have expressed “a number of concerns” in relation to the

proposals of the policy. They state that the overall development was designed to encourage drivers to keep speeds at low levels. They express concern that the proposals would allow speeds to increase; introducing a central feature on the two smaller roundabouts could increase risk to drivers negotiating the roundabout due to reduced visibility; they express concern as to the deliverability of the proposals having regard to the feasibility and costs of relocating utilities and services; one of the roundabouts has not been adopted and is therefore under the ownership of a developer.

44. **Policy 2** raises, in my opinion, the same objections as those set out in relation to Policy 1. The actions called for under this Policy are largely (if not wholly) to take place on highway land, and are thus largely (if not wholly) not development requiring planning permission. Their delivery will be largely (if not wholly) within the hands of the highway authority.

I have an additional concern as to this Policy (which would not, if taken by itself, have defeated the Policy). I referred above to the requirement of national policy that policies be “clear and unambiguous...precise”. I find that items 2 and 4, in particular, of this Policy do not comply with this requirement. “Key locations” are not defined. The intention of “a stronger visual and functional link between the residential development and the retail area” does not meet the above requirement.

45. I therefore find that key aspects of the NP do not meet the requirements of section 38A(2) and basic condition (a).

Possible Modifications

46. I have the power to recommend that Modifications be made to the NP to secure that it meets the basic conditions and to secure that it complies with section 38A.
47. I have considered very carefully whether such a recommendation(s) should be made. I have reluctantly concluded that it should not. My reasons are:

- (1) I have concluded that Policies 1 and 2 do not comply with the statutory requirements. These policies are not readily or appropriately excisable from the NP. They are central to the NP. Page 18 states that the claimed deficiencies of the roundabouts constitute “the crux of the problem and one of the main motivations to prepare the neighbourhood plan”.
- (2) The Modifications that would be necessary to secure compliance with the statutory requirements would necessitate a substantial re-writing of the NP, an exercise not generally appropriate for Modifications.
- (3) “Modification” of the NP by deletion of Policies 1 and 2 would leave Policies 3 and 4. A relevant consideration is whether these surviving Policies are, in their substance, necessary for inclusion in this NP. So far as Policy 3 is concerned, the Council own the relevant land and “have agreed in principle to the site being used for the community centre”. This Policy does not, therefore, seem to be essential (though I note that the Council, in responding to the Pre-Submission Draft of the NP, drew attention to Saved Local Plan and NPPF policies which are protective of open space). Further, the supplementary text offers no assurance that the Policy is deliverable. So far as Policy 4 is concerned, the majority of these proposed Local Green Spaces are owned by the Council, and Saved Local Plan Policies and the NPPF would, in principle, resist their loss as open space.
- (4) The contemplated “Modification” would also leave the Projects in Section I. These are, in accordance with PPG, not formally part of the NP and are listed separately. Having said that, similar concerns as explained above arise in relation to the position of the highway authority. In relation to Project 1, all the land is highway land, and, in the absence of drawings, the County Council have been unable to express a view on this Project. In relation to Project 2, this lies outside the area of the NP, on land controlled by the housebuilder currently promoting further residential development to the east. The NP provides

no evidence that it would be deliverable. The County Council have been unable to express a view as to Project 3. I make no comment in relation to Projects 4 and 5.

Conclusion

48. The Forum have put truly commendable effort into the NP which undoubtedly seeks to achieve the Vision and Objectives set out in Section G.
49. However, I find that key parts of the NP do not satisfy the statutory requirements, and that it would not be appropriate to recommend Modifications to secure compliance.

Recommendation

50. I therefore recommend, in accordance with paragraph 10(2)(c) of Schedule 4B that the proposal for the NP be refused.

Christopher Lockhart-Mummery QC

16 January 2015