



Department for
Communities and
Local Government

Technical consultation on implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill



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Scope of the consultation

Topic of this consultation:	Neighbourhood planning
Scope of this consultation:	This consultation seeks views on detailed regulations to implement the neighbourhood planning provisions in the Neighbourhood Planning Bill.
Geographical scope:	These proposals relate to England only.
Impact assessment:	We expect these proposals to have a minimal impact on business and civil society organisations. This consultation seeks views on any potential implications of our proposals on local planning authorities, neighbourhood planning groups and others.

Basic information

To:	This is a public consultation and anyone with an interest in these proposals may respond.
Body responsible for the consultation:	The Department for Communities and Local Government is responsible for the policy and the consultation exercise.
Duration:	This consultation will run for six weeks. It will begin on 7 September 2016 and end at midnight 19 October 2016.
Enquiries:	decentralisation@communities.gsi.gov.uk
How to respond:	Our preference is to receive responses via a tailored online form available here: https://www.surveymonkey.co.uk/r/HMQ2RVL Alternatively you can email your response to the questions to: decentralisation@communities.gsi.gov.uk . Or write to: Neighbourhood Planning team Department for Communities and Local Government

	<p>3NE Fry Building 2 Marsham Street London SW1P 4DF</p> <p>When you reply please confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> - your name - your position (if applicable) - the name of organisation (if applicable) - an address (including post code) - an email address, and - a contact telephone number.
After the consultation:	A summary of responses to the consultation will be published within 12 weeks of the end of the consultation period.
Getting to this stage:	<p>The Localism Act 2011 can be viewed at: http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted</p> <p>The Neighbourhood Planning (General) Regulations 2012 can be viewed at: http://www.legislation.gov.uk/ukpga/2011/20/contents.</p> <p>The National Planning Policy Framework and planning practice guidance can be viewed at: http://planningguidance.planningportal.gov.uk/.</p> <p>The Housing and Planning Act 2016 can be viewed at: http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted</p> <p>The summary of consultation responses for the neighbourhood planning elements of the February 2016 technical planning consultation on implementation of planning changes can be viewed here: https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation</p>
Previous engagement:	Stakeholder engagement was carried out during July and August 2016 including round table discussions on the proposed measures in the Neighbourhood Planning Bill.

Background

1. The Localism Act 2011 gave communities direct power to shape the development and growth of their local area through a neighbourhood plan or to grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders. As of summer 2016, around 2,000 communities across England have taken up their new neighbourhood planning powers. There have been over 200 neighbourhood planning referendums, all of which have been successful, with an average yes vote of 89%. We would like to see many more communities make use of their neighbourhood planning powers.
2. Through neighbourhood planning and active participation at an early stage in other plan-making processes, communities have both a voice in decisions and a choice about development in their area. They are likely to then become the proponents – rather than the opponents – of appropriate growth.¹
3. The Government made a 2015 manifesto commitment to *“encourage communities engaged in neighbourhood planning to complete the process and to assist others to draw up their own plans”*.
4. The Housing and Planning Act 2016 introduced a range of measures to speed up and simplify the neighbourhood planning process and give more power to neighbourhood forums. Building on those reforms, the 2016 Queen’s Speech set out how new legislation would be introduced to further strengthen neighbourhood planning.

¹ 42% of people said they would be more supportive if local people *“...had a say in proposed developments in the neighbourhood...”* (British Social Attitudes Survey, 2014).

Introduction

5. The Neighbourhood Planning Bill contains provisions intended to strengthen neighbourhood planning. It does this by ensuring that planning decision-makers take account of well-advanced neighbourhood plans and by giving neighbourhood plans full force as soon as they have passed referendum. It introduces a proportionate process for modifying neighbourhood plans or Orders and facilitates the modification of neighbourhood areas where a neighbourhood plan has already been made in relation to that area. The Bill also makes the duty on local planning authorities to support neighbourhood planning groups more transparent and improves community involvement in the early stages of plan-making by a local planning authority.
6. Some of the new provisions include powers for the Government to make secondary legislation setting out more detailed matters to implement these reforms in full. This consultation seeks views on the proposed content of regulations made under those powers.
7. We propose that regulations would cover three matters:
 - The detailed procedures for modifying neighbourhood plans and Orders
 - The examination of a neighbourhood plan proposal where a neighbourhood area has been modified and a neighbourhood plan has already been made in relation to that area
 - A requirement for local planning authorities to review their Statements of Community Involvement at regular intervals.

Our proposals

Procedure for modifying neighbourhood plans and Orders

8. As neighbourhood planning matures, groups may want to review and update their plans to ensure they are up-to-date and to respond to changing circumstances or community aspirations. Our overarching principle when considering this issue has been to ensure that any process to modify neighbourhood plans or Orders should be proportionate to the changes being proposed. The Bill introduces greater flexibility into the process for updating plans by proposing the introduction of two new modification processes:
 - A local planning authority, with the agreement of the relevant qualifying body, would be able to make minor modifications to a neighbourhood plan or Order at any time without the need for public consultation, examination or referendum (in the same way that the authority can currently correct errors). Minor modifications are those that do not materially affect any planning permission granted by a neighbourhood development order or the policies in a neighbourhood plan.
 - More significant modifications to a neighbourhood plan that are not so significant or substantial as to change the nature of the plan may be made through a streamlined procedure. There would be a stronger expectation that the independent examination will be 'paper based', with hearings only in exceptional circumstances. There would be no referendum, with the examiner's recommendations being binding in most cases. The local planning authority will decide if proposed modifications are appropriate for this process and the examiner will confirm this.
9. Where proposed modifications would change the nature of the plan, the existing process for making a new neighbourhood plan would still be required.
10. The process for making a new neighbourhood plan or Order is set out in Schedule 4B to the Town and Country Planning Act 1990². The Bill inserts a new Schedule into the Planning and Compulsory Purchase Act 2004 setting out the process that must be followed for modifications to a plan that are material but are not so significant or substantial that they change the nature of the plan. This closely replicates the existing procedures for making a new neighbourhood plan (to the point that the plan has completed examination). In both cases, the process is described in detail but there are powers for the Secretary of State to make regulations which set out very detailed matters.

² Schedule 4B was inserted in the Town and Country Planning Act 1990 by Schedule 10 to the Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/10/enacted>). It is applied to neighbourhood development plans by section 38A(3) of the Planning and Compulsory Purchase Act 2004, inserted by Schedule 9 to the Localism Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>).

11. The more detailed matters are set out in the Neighbourhood Planning (General) Regulations 2012, as amended³. These regulations include:

- how a parish council or designated neighbourhood forum must publicise and consult on a new neighbourhood plan or Order proposal before it is submitted to a local planning authority (including giving a minimum of six weeks for representations to be made on the proposal)
- the documents that must be submitted to the local planning authority along with the proposal (including a map, a consultation statement and a statement explaining how the proposal meets the legal tests, commonly referred to as a 'basic conditions' statement)
- a local planning authority's duties to publicise the proposal, including allowing a minimum of six weeks for representations to be made
- the documents that a local planning authority must send to the examiner who is considering the proposal
- the way in which an authority must publicise the report of the independent person who examined the proposal and the authority's decisions, for example its decision that the plan or Order should proceed to referendum
- making sure that once a plan or Order is made, it is published on the authority's website and anyone who asked to be notified is notified.

12. Amendments to these regulations that are due to come into force in October 2016 will also prescribe:

- the date by which a local planning authority must decide what action to take in response to the examiner's recommendations
- where the local planning authority's proposed decision differs from that recommended by the examiner, the persons who must be notified and the date by which representations must be submitted
- the date by which a neighbourhood plan or Order must be made after it has been approved at referendum
- a procedure where the Secretary of State can intervene in the decision to put a plan or Order proposal to referendum.

13. We propose that further amendments are made to the Neighbourhood Planning (General) Regulations 2012 to make identical provision for proposals to modify an existing neighbourhood plan under the streamlined procedure introduced by the Bill. There would be an additional requirement for the local planning authority to submit a copy of the original neighbourhood plan to the examiner, so that the examiner can better understand what modifications are being proposed.

³ <http://www.legislation.gov.uk/uksi/2012/637/contents/made>. Amendments have been made by the Neighbourhood Planning (General) (Amendment) Regulations 2015. (<http://www.legislation.gov.uk/uksi/2015/20/contents/made>). Further amendments will be made by new regulations that come into force on 1 October 2016.

14. Aligning the regulations in this way would ensure consistency between the process for making a new neighbourhood plan and the process for modifying an existing plan, which will be of benefit to existing users of the neighbourhood planning system. Importantly, it would ensure that, in cases where the local planning authority or the examiner consider that the proposed modifications are too significant or substantial for the streamlined procedure, the plan as proposed to be modified can be examined as a new plan without having to repeat the consultation that has already been undertaken.

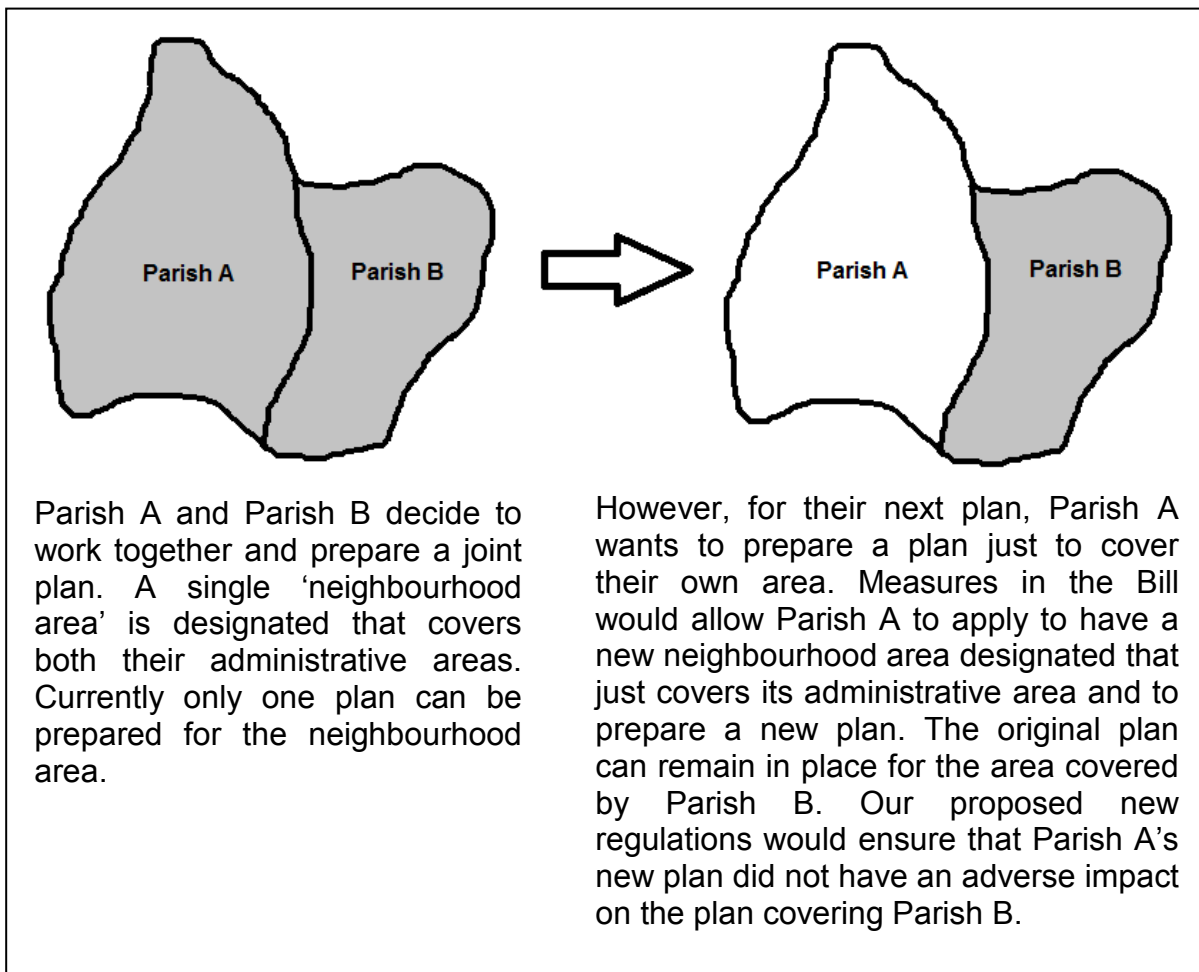
Question 1 – Do you agree that regulations setting out the detail of the process for modifying an existing neighbourhood plan should replicate as far as possible the existing regulations for making a new plan?

Modifying designated neighbourhood areas where a neighbourhood plan has already been made in relation to that area

15. When a parish council or neighbourhood forum would like to start preparing a neighbourhood plan or Order for their area they must first ask the local planning authority to designate a “neighbourhood area” that their policies will cover. This area will often be the whole of a parish or a group of parishes that have agreed to co-operate, or an area that follows existing electoral wards or other established boundaries.
16. Over time circumstances may change: parish or ward boundaries may be re-drawn; existing neighbourhood planning groups may wish to plan together in future; or parishes that have previously co-operated on a joint plan or Order may want to take a different approach in the future. We are aware that some neighbourhood planning bodies that have already prepared plans would like to make changes to their neighbourhood area so that in future they can prepare a new neighbourhood plan or Order for the amended area.
17. Existing legislation makes it difficult to amend an existing neighbourhood area to accommodate these changing circumstances where a neighbourhood plan is already in place for the current neighbourhood area. This is because a neighbourhood plan must only relate to a single neighbourhood area and no more than one plan can be made for each area. The current rules are intended to avoid confusion and potential conflict between plans, and make it clear what policies apply to a specific area. But the practical effect is that it may not be possible to make a new neighbourhood plan for an amended neighbourhood area without first revoking the whole of the existing plan. This would leave the community without a plan, until a new plan is prepared and in force.

18. The Bill addresses this by allowing for an existing neighbourhood plan to remain in force, even where the boundaries of the neighbourhood area for which it was made are amended or a new neighbourhood area is created. The existing plan would continue to guide planning applications while a new plan for the new or modified neighbourhood area is being prepared. When that new plan is approved at referendum, it would replace the existing plan – but only in relation to the new neighbourhood area. The existing plan would continue to be in force outside the new or modified neighbourhood area. An example is shown at figure 1 below.

Figure 1: Proposal to facilitate the modification of neighbourhood areas where a neighbourhood plan or Order has already been made in relation to that area



19. The reforms in the Bill will enable neighbourhood planning groups to seek to change their neighbourhood area in response to changing circumstances. But they will also ensure that communities outside the new or amended neighbourhood area continue to benefit from the policies in the existing plan.

20. There may be circumstances where the making of a new neighbourhood plan may have such a detrimental impact on an existing plan that it should not be made, or the proposals should be significantly modified before the plan is made. We therefore propose that when a neighbourhood plan proposal for a new or amended neighbourhood area is examined, the person appointed to examine the plan must consider the consequences for any existing plan.
21. When considering the content of a neighbourhood plan proposal, an independent examiner cannot consider any matter other than the legal tests that a plan must meet: these include a set of 'basic conditions' that a plan must meet⁴. While we consider that the existing basic conditions may be sufficiently broad to enable an examiner to consider the implications of a plan proposal for existing plans, we wish to put this beyond doubt.
22. Therefore, we propose to prescribe in regulations an additional 'basic condition' that the plan proposal must meet. This would require an examiner to consider whether the plan proposal would have any adverse consequences on an existing plan and, if so, what measures would mitigate the effects. We would expect any significant environmental effects of the new plan to continue to be assessed as part of the strategic environmental assessment process.

Question 2– Do you agree that a new basic condition is needed to ensure that a neighbourhood plan proposal does not adversely affect any existing plan that remains in place, in areas where neighbourhood area boundaries have changed?

Reviewing Statements of Community Involvement at regular intervals

23. Local planning authorities are required to produce a statement of community involvement.⁵ The purpose of this document is to set out the authority's policy on involving its community and others in aspects of planning such as preparing Local Plans and deciding planning applications.

⁴ These are at paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990. Guidance is available at: <http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>.

⁵ <http://www.legislation.gov.uk/ukpga/2004/5/section/18>

24. While local planning authorities prepare a statement of community involvement, the performance of authorities in keeping them up-to-date is more variable. Initial research⁶ shows that around a quarter of local planning authorities' statements of community involvement were last updated before 2012, prior to the current regulations on preparing Local Plans. The Bill remedies this by introducing a power for the Secretary of State to make provision in regulations requiring local planning authorities to review their statement of community involvement at such times as may be prescribed. Following a review, local planning authorities must consider whether to revise their statement of community involvement, and if they decide not to, they must publish their reasons for considering that no revisions are necessary. Bearing in mind the existing policy expectation for local planning authorities to review their Local Plans every five years, we propose to introduce regulations that specify that statements of community involvement should be reviewed at least every five years.
25. Many authorities already include some information on neighbourhood planning on their website. We believe it makes sense to use the statement of community involvement to also set out, in one place, a local planning authority's policies for giving advice or assistance to support neighbourhood planning groups⁷. The Bill sets out a new requirement for local planning authorities to publish their policies for giving advice or assistance to groups preparing or updating neighbourhood plans in their statement of community involvement. The Bill also requires local planning authorities to set out in their statement of community involvement, their policies for involving interested parties in the preliminary stages of plan-making⁸.
26. We propose setting in regulations an initial deadline of 12 months following Royal Assent of the Bill for authorities to comply with these new requirements to include in their statements their policies on advice or assistance to groups preparing or updating neighbourhood plans and their policies for involving interested parties in the preliminary stages of plan-making.

Question 3 – Do you agree that local planning authorities should review (and if necessary update) their statement of community involvement at least every five years? If not, what alternative do you propose?

⁶ Internal DCLG research (July 2016) looked at the dates of statements of community involvement published on each of 338 Local Planning Authority (LPA) websites. A smaller sample of 36 LPA statements of community involvement were examined thoroughly to establish what information was published in them, and their websites were checked to see where any additional information on neighbourhood planning was located.

⁷ Paragraph 3 of Schedule 4B to the Town and Country Planning Act 1990 sets out that 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 neighbourhood development orders in relation to neighbourhood areas within their area.

⁸ Specifically requirements under sections 13 and 15 of the Planning and Compulsory Purchase Act 2004.

Question 4 - Do you agree that local planning authorities should include their policies on providing advice or assistance to groups preparing neighbourhood plans and their policies for involving interested parties in the preliminary stages of plan-making in their statements of community of involvement within 12 months of Royal Assent to the Bill? If not, what alternative do you propose?

Future of neighbourhood planning

27. We are always interested to hear further thoughts on how neighbourhood planning can be further improved and strengthened.

Question 5 - Do you have any other suggestions for further strengthening neighbourhood planning?

Public Sector Equality Duty

28. The proposals covered in this consultation have been assessed by reference to the public sector equality duty contained in the Equality Act 2010. The overall aim of these proposals is to strengthen the neighbourhood planning system and ensure it is supporting the delivery of new homes that the country needs. None of the proposals are specifically aimed at persons with a protected characteristic and we have not identified any adverse equalities impacts.

29. We do not envisage a significant differential impact of any of these proposals on protected groups (those who share a “protected characteristic”; namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity).

30. There is limited data available about the involvement of protected groups in the neighbourhood planning process. We are keen to hear about any potential impact these new proposals may have on those with a protected characteristic, together with any supporting evidence and suggestions for any appropriate mitigation which can assist us in the future.

Question 6 - Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter? Is there anything that could be done to mitigate any impacts identified?

Financial considerations

31. The Department is committed to meeting the costs of any new burdens on local authorities that result from their statutory obligations under neighbourhood planning. We do not consider that the proposals covered in this consultation would have significant financial impacts on local planning authorities, business, neighbourhood planning groups or on civil society organisations. However we are keen to hear your views.

Question 7 - Do you have any views about the potential positive or negative financial implications on local planning authorities, neighbourhood planning groups, or others, of our proposed changes? What evidence do you have on this matter? Is there anything that could be done to mitigate any costs identified?

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact:

decentralisation@communities.gsi.gov.uk