

THE STATUTORY PROCESS FOR NEIGHBOURHOOD PLANNING: A GUIDE FOR THE COUNCIL AND ITS COMMUNITIES (APRIL 2012)

Relevant Government Acts and Regulations:

Localism Act 2012 –

<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

Town and Country Planning Act 1990 (TCPA / 1990 Act) –

<http://www.legislation.gov.uk/ukpga/1990/8/contents>

Planning and Compulsory Purchase Act 2004 (PCPA / 2004 Act) –

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

The Neighbourhood Planning (General) Regulations 2012 –

<http://www.legislation.gov.uk/uksi/2012/637/contents/made>

Introduction:

This guide has been produced by Mole Valley District Council to aid its understanding and that of its communities, of the processes and requirements of the above acts and regulations, in relation to neighbourhood planning (specifically Neighbourhood Development Plans (NDPs)).

It draws together the relevant sections and regulations of the above documents into one succinct guide.

The guide covers the designation of a neighbourhood area and forum and the consultation that must be undertaken when preparing the Plan. It does not outline the process for the examination and referenda as further regulations are to be published outlining the details of these processes.

This guide has not been validated by CLG or PINS – it is purely the understanding of Officers at Mole Valley District Council.

The Designation Processes:

The Regulations set out two designation processes:

- Neighbourhood Areas (Part 2 of the Regulations).
- Neighbourhood Forums (Part 3 of the Regulations).

Part 2 - Neighbourhood Areas

Application for the designation of a neighbourhood area

[Regulation 5 \(1\)](#) – where a relevant body submits an area application to the local planning authority it must include:

- a map which identifies the area to which the area application relates,
- a statement explaining why this area is considered appropriate to be designated as a neighbourhood area.
- a statement that the organisation or body making the area application is a relevant body for the purpose of [Section 61G](#) of the 1990.

Relevant Body:

[Section 61G \(2\)](#) of the TCPA / 1990 Act as amended by paragraph 2 of Schedule 9 of the Localism Act.

A 'relevant body' is a parish council, or an organisation or body which is, or is capable of being, designated as a neighbourhood forum (on the assumption that, for this purpose, the specified area is designated as a neighbourhood area).

Neighbourhood Areas – Parish Council's and Neighbourhood Forums

[Section 61F](#) of the TCPA / 1990 Act as amended by paragraphs 1-2 and 4 of Schedule 9 of the Localism Act.

[Section 61F](#)

- (1) – a parish council are authorised to act in relation to a neighbourhood area if that area consists of or includes the whole or any part of the area of the council.
- (2) – if that neighbourhood area also includes the whole or any part of the area of another parish council, the parish council is authorised for the purpose to act in relation to the neighbourhood area only if the other parish council have given their consent.
- (4) – an organisation or body may be designated for a neighbourhood area only if that area does not consist of or include the whole or any part of the area of a parish council.

Part 3 – Neighbourhood Forums

Application for the designation of a neighbourhood forum

Neighbourhood Forums are only required in areas which are not covered by a Parish Council.

Regulation 8 – where an organisation or body submits a neighbourhood forum application to the local planning authority it must include:

- the name of the proposed neighbourhood forum.
- a copy of the written constitution of the proposed neighbourhood forum.
- the name of the relevant neighbourhood area to which the application relates and a map which identifies the area.
- the contact details¹ of at least one member of the proposed neighbourhood forum to be made public
- a written statement which explains how the proposed neighbourhood forum meets the conditions contained in [Section 61F\(5\)](#) (authorisation to act in relation of neighbourhood areas) of the 1990 Act.

Conditions of a Neighbourhood Forum

[Section 61F \(5\) of the TCPA / 1990 Act \(authorisation to act in relation of neighbourhood areas\) as to be amended by Schedule 9 of the Localism Act:](#)

A local planning authority may designate an organisation or body as a neighbourhood forum if the authority is satisfied that it meets the following conditions:

- a. the organisation or body is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area).
- b. its membership is open to:
 - individuals who live in the neighbourhood area concerned.
 - individuals who work there (whether for business carried on there or otherwise)
 - individuals who are elected members of a county council, district council or London borough council any whose area falls within the neighbourhood area concerned.

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¹ Name, address, telephone number and email are recommended.

- c. its membership includes a minimum of 21 individuals each of whom:
 - lives in the neighbourhood area concerned.
 - works there (whether for business carried on there or otherwise).
 - is an elected member of a county council, district council or London borough council any whose area falls within the neighbourhood area concerned.
- d. it has a written constitution.
- e. such other conditions as may be prescribed.

A local planning authority must in determining whether to designate an organisation or body as a neighbourhood forum for a neighbourhood area, have regard to the desirability of designating an organisation or body:

- which has secured (or taken reasonable steps to attempt to secure) that its membership includes at least one individual who lives in the neighbourhood area; works in the neighbourhood area; is an elected member for the neighbourhood area.
- whose membership is drawn from different places in the neighbourhood area concerned and from different section of the community in that area.
- whose purpose reflects (in general terms) the character of that area.

The Council's Role & Responsibility in the Designation Process

On receiving an application for the designation of an area

Regulation 6:

As soon as possible after receiving an area application from a relevant body, a local planning authority must publicise the following on their 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 application relates:

- a copy of the area application.
- details of how to make representations.
- the date by which those representations must be received, being not less than 6 weeks from the date on which the area application is first publicised.

On receiving an application for the designation of a neighbourhood forum

Regulation 9:

As soon as possible after receiving a neighbourhood forum application, which the local planning authority do not decline to consider under Regulation 11², a local authority must publish the following on their website and in such other manner as they consider is likely to bring the application to the attention of people who live, work or carry on business in the area to which the application relates:

- a copy of the application.
- a statement that if a designation is made no other organisation or body may be designated for that neighbourhood area until that designation expires or is withdrawn.
- details of how to make representation.
- the date by which those representations must be received, being not less than 6 weeks from the date on which the application is first publicised.

Publicising a designation of a neighbourhood area

Regulation 7:

(1) As soon as possible after designating a neighbourhood area, a local planning authority must publish the following on their website and in such a 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 –

- the name of the neighbourhood area
- a map which identifies the area
- the name of the relevant body who applied for the designation.

OR

(2) As soon as possible after deciding to refuse to designate a neighbourhood area, a local planning authority must publish the following on their website and in such a manner as they consider is likely to bring the refusal to the attention of people who live, work or carry on business in the neighbourhood area –

- a document setting out the decision and a statement of their reasons for making that decision (“the decision document”).
- details of where and when the decision document may be inspected.

² [Regulation 11](#) - Where a neighbourhood forum has been designated in relation to a neighbourhood area, and that designation has not expired or been withdrawn, a local planning authority may decline to consider any neighbourhood forum application made in relation to that neighbourhood area.

Publicising a designation of a neighbourhood forum

Regulation 10

(1) As soon as possible after designating a neighbourhood forum, a local planning authority must publish the following on their website and in such a 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 –

- the name of the neighbourhood forum
- a copy of the written constitution of the forum
- the name of the neighbourhood area to which the designation relates
- contact details for at least one member of the neighbourhood forum

OR

(2) As soon as possible after deciding to refuse to designate a neighbourhood forum, a local planning authority must publish the following on their website and in such a manner as they consider is likely to bring the refusal to the attention of people who live, work or carry on business in the neighbourhood area –

- a statement setting out the decision and their reasons for making that decision (“the refusal statement”)
- details of where and when the refusal statement may be inspected.

Other points for the District Council & its Communities to consider

Neighbourhood Areas:

Section 61F (11) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

Each local planning authority must make such arrangements as they consider appropriate for making people aware as to the times when organisations or bodies could make applications to be designated as neighbourhood forums for neighbourhood areas.

Regulation 5(2):

The local authority may decline to consider an area application if the relevant body (Parish Council or a Neighbourhood Forum (group or organisation capable of being a neighbourhood Forum)) has already made an area application and a decision has not yet been made on that application.

Section 61F (7)(b) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

The local authority may designate only one organisation or body as a neighbourhood forum for each neighbourhood area.

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Section 61F (4) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

In determining an application the authority must have regard to

- (a) the desirability of designating the whole of the area of a parish council as a neighbourhood area, and
- (b) the desirability of maintaining the existing boundaries of areas already designated as neighbourhood areas.

Section 61F (5) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

If –

- (a) a valid application is made to the authority,
- (b) some or all of the specified area has not been designated as a neighbourhood area, and
- (c) the authority refuses the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area

the authority must exercise their power of designation so as to ensure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas.

Section 61F (6) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

The authority may, in determining any application, modify designations already made; but if a modification relates to any extent to the area of a parish council, the modification may be made only with the council's consent.

Section 61F (7) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

The areas designated as neighbourhood areas must not overlap with each other.

Section 61F (8) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

A local planning authority must publish a map setting out the areas that are for the time being designated as neighbourhood areas.

Neighbourhood Forums:

Section 61F (8)(a) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

A designation (of a forum) ceases to have effect at the end of the period of **5 years** beginning with the day on which it is made but without affecting the validity of any proposal for a neighbourhood development order/plan made before the end of that period.

Section 61F (8)(b) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

In the case of the designation of an unincorporated association, is not to be affected merely because of a change in the membership of the association.

Neighbourhood Forums – Withdrawal of Designation:

Section 61F (9) of the TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:

A local planning authority may withdraw an organisation or body's designation as a neighbourhood forum if they consider that the organisation or body is no longer meeting:

- (a) the conditions by reference to which it was designated, or
- (b) any other criteria to which the authority were required to have regard in making the designation.

and where an organisation or body's designation is withdrawn, the authority must give reasons to the organisation or body.

Regulation 12 – voluntary withdrawal of designation

- (1) Where a neighbourhood forum gives notice to a local planning authority that it no longer wishes to be designated as the neighbourhood forum for a neighbourhood area, the local authority must withdraw the designation of the neighbourhood forum.
- (2) As soon as possible after withdrawing the designation of a neighbourhood forum under [Section 61F\(9\)](#) of the TCPA / 1990 Act, a local planning authority must publish on their website and in such other manner as they consider likely to bring the withdrawal of the designation to the attention of people who live, work or carry on business in the neighbourhood area:
 - (a) a statement setting out the details of the withdrawal ("the withdrawal statement") and
 - (b) details of where and when the withdrawal statement may be inspected.

The Regulations / Acts do not state how the Council should designate a neighbourhood forum or area i.e. whether by delegated officer, a meeting of the Full Council or via the Council's Executive. This is for local planning authorities to decide.

Preparing a Neighbourhood Development Plans

Consultation & Preparation

Regulation 14:

Before submitting a plan proposal to the local planning authority the neighbourhood forum/parish council:

- (a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry one business in the neighbourhood area:
 - details of the proposals for a neighbourhood development plan
 - details of where and when the proposals for a neighbourhood development plan may be inspected;
 - details of how to make representations; and
 - the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first published.
- (b) must consult any consultation body referred to in [para. 1 of Schedule 1](#) whose interests the qualifying body considers may be affected by the proposals for a neighbourhood development plan;
- (c) send copies of the proposals for a neighbourhood development plan to the local planning authority.

Neighbourhood Planning Regulations – [para. 1 of Schedule 1](#)

Statutory Consultee:

- A local planning authority, county council or parish council any part of whose area is in or adjoins the area of the local planning authority.
- The Coal Authority
- The Homes and Communities Agency
- Natural England
- The Environment Agency
- The Historic Buildings and Monuments Commission for England (known as English Heritage).
- Network Rail Infrastructure Limited
- The Highways Agency.
- The Marine Management Organisation
- Any person whom the electronic communications code applies.
- Any person who owns or controls electronic communications apparatus situated in any part of the area of the local planning authority.
- Any one the following persons who exercise function in any part of the relevant neighbourhood area –
 - a. a Primary Care Trust
 - b. a person to whom a licence has been granted under section 6(1)(b) and (c) of the Electricity Act 1989 (licences authorising supply, etc)(a);
 - c. a person to whom a licence has been granted under section 7(2) of the Gas Act 1986 (licensing of gas transporters)(b);
 - d. a sewerage undertaker;
 - e. a water undertaker:

- voluntary bodies some or all of whose activities benefit all or any part of the relevant neighbourhood area;
- bodies which represent the interests of different racial, ethnic or national groups in the neighbourhood area;
- bodies which represent the interests of different religious groups in the neighbourhood area;
- bodies which represent the interests of persons carrying out business in the neighbourhood area; and
- bodies which represent the interests of disabled persons in the neighbourhood area.

What the Plan must included

[Section 38B \(1\)](#) of the *TCPA / 1990 Act as to be amended by Schedule 9 of the Localism Act:*

A neighbourhood development plan—

- must specify the period for which it is to have effect, and
- may not include provision about development that is excluded development e.g. matters relating to waste or nationally significant infrastructure projects.

Submitting the Proposal to the Local Authority

Regulation 15

Where a qualifying body submits a plan proposal to the local planning authority, it must include—

- a map or statement which identifies the area to which the proposed neighbourhood development plan relates;
- a consultation statement;
- the proposed neighbourhood development plan; and
- a statement explaining how the proposed neighbourhood development plan meets the requirements of [paragraph 8 of Schedule 4B to the 1990 Act](#).

In this regulation “consultation statement” means a document which—

- contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- explains how they were consulted;
- summarises the main issues and concerns raised by the persons consulted; and
- describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.

The requirements of [paragraph 8 of Schedule 4B of the 1990 Act](#)

Paragraph 8 of Schedule 4B of the 1990 Act is to be replaced by Schedule 10 (Part 2) of the Localism Act. This states:

8(2) – a draft 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.
- (b) the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority.
- (c) the making of the plan does not breach, and is otherwise compatible with, EU obligations, and
- (d) prescribed conditions are met in relations to the plan and prescribed matters have been complied with in connection with the proposal for the plan.

Publicising a Plan Proposal [Regulation 16](#) –

It is the duty of the Council to publicise the submitted proposal/plan in a manner which is likely to bring it to the attention of people who live, work or carry out business in the neighbourhood plan area.

The Council must publicise the following on its website:

- details of the plan proposal;
- details of where and when the plan proposal may be inspected;
- details of how to make representations;
- a statement that any representations may include a request to be notified of the local planning authority's decision under [regulation 19](#)³ in relation to the neighbourhood development plan; and
- the date by which those representations must be received, being not less than 6 weeks from the date on which the plan proposal is first publicised; and

The Council must also notify any consultation body which is referred to in the consultation statement submitted in accordance with regulation 15, that the plan proposal has been received.

NOTE:

CLG have stated that the Council is simply to act as a 'post box' for responses and to just collate these and send them to the suitably appointed person examining the plan. It is not expected that they respond to queries or questions.

There is concern that this final stage will give the impression that it is a 'council document/consultation' rather than being community led. Could this be overcome with joint logos on letters?

Also there is no clarity in the regulations whether the representations can be shared with the Forum and give them the opportunity to make minor modifications to the Plan prior to examination. This would be in a similar fashion to the Council process of preparing a DPD.

³ Regulation 19 'Decision on a Plan Proposal' – whether the Plan is to be 'made' by the Local Plan Authority.

Independent Examination & Referendum

The independent examination into the plan or order is an important element in the process and so is set out in detail in the Localism Act. Extensive further regulation is, therefore, unnecessary.

Details from the Localism Act – Schedule 10 ‘Process for making of Neighbourhood Development Orders’ of the Localism Bill will be inserted as Schedule 4B to the Town and County Planning Act 1990.

Paragraph 7:

If the Council is satisfied that the Neighbourhood Forum/Plan meets the required basic conditions/legal obligation etc. it must submit the Plan and any prescribed supporting documents for examination.

The Council must make arrangements for the examination of the document as they see appropriate in connection with the holding of the examination. This could include a Programme Officer.

The authority may appoint a person to carry out the examination but only if the Neighbourhood Forum consents to the appointment. If not, this will be decided by the Secretary of State.

The person appointed must be someone who, in the opinion of the person making the appointment -

- is independent of the qualifying body and the authority,
- is not an employee of the Crown or of an authority with local government functions,
- does not have an interest in any land that may be affected by the draft plan
- has appropriate qualifications and experience.

The examiner must consider:

- whether the draft neighbourhood development plan meets the basic conditions
- whether the draft order complies with the provision made by or under sections 61E(2), 61H and 61J,
- whether any period specified under section 61J(2)(b)61J(2)(b) or (5) is appropriate,
- whether the area for any referendum should extend beyond the neighbourhood area to which the draft order relates, and
- such other matters as may be prescribed.

The general rule is that the examination of the issues by the examiner is to take the form of the consideration of written representations.

But the examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue at the hearing—

- in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case, or
- in such other cases as may be prescribed.

The following persons are entitled to make oral representations about the issue at the hearing—

- the qualifying body,
- the local planning authority,
- where the hearing is held to give a person a fair chance to put a case, that person, and
- such other persons as may be prescribed.

The hearing must be in public.

It is for the examiner to decide how the hearing is to be conducted, including—

- whether a person making oral representations may be questioned by another person and, if so, the matters to which the questioning may relate, and
- the amount of time for the making of a person's oral representations or for any questioning by another person.

In making decisions about the questioning of a person's oral representations by another, the examiner must apply the principle that the questioning should be done by the examiner except where the examiner considers that questioning by another is necessary to ensure—

- adequate examination of a particular issue, or
- a person has a fair chance to put a case.

NOTE:

This document needs to be updated to include details of the examination and referendum process as outlined in the Localism Act.

Additional Information from the Localism Act:

SCHEDULE 9 - NEIGHBOURHOOD PLANNING / PART 2 - NEIGHBOURHOOD DEVELOPMENT PLANS

“38A Meaning of “neighbourhood development plan”

(1) Any qualifying body is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plan.

(2) 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.

(3) Schedule 4B to the principal Act, which makes provision about the process for the making of neighbourhood development orders, including—

- (a) provision for independent examination of orders proposed by qualifying bodies, and
- (b) provision for the holding of referendums on orders proposed by those bodies,

38B Provision that may be made by neighbourhood development plans

(1) A neighbourhood development plan—

- (a) must specify the period for which it is to have effect,
- (b) may not include provision about development that is excluded development, and
- (c) may not relate to more than one neighbourhood area.

(2) Only one neighbourhood development plan may be made for each neighbourhood area.

(3) If to any extent a policy set out in a neighbourhood development plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy.