

# Legal Compliance Checklist: Meeting your authority's legal requirements for Neighbourhood Plans

Under the Town and Country Planning Act 1990 and Planning and Compulsory Purchase Act 2004, the local planning authority has a statutory duty to advise or assist communities in the preparation of neighbourhood development plans and to take plans through a process of independent examination. Local authorities are also responsible for the referendum. The Localism Act 2011 (Part 6 chapter 3) sets out the areas of the LPA responsibilities as:

- designating the area of the NDP
- designating a neighbourhood forum (where relevant)
- 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 Referendum/s.

## Legal Compliance Checklist

The legal compliance checklist summarises the statutory duties placed on local planning authorities in the preparation and making of neighbourhood development plans. For a more detailed summary of the process, please see the detailed 'Guide for Councils: Meeting the requirements of the Legal Process for Neighbourhood Development Plans'.

The following provides a simple checklist to the tasks which need to be completed by the local planning authority. Reference to regulations and schedules, unless otherwise stated, are to the Neighbourhood Planning (General) Regulations 2012. Where relevant references are also included to the Town and Country Planning Act 1990 as amended.

| Task     | Complete<br>(✓)   |
|----------|---|
| <b>1</b> | <b>designating the area of the NDP</b>  |
| A        | When an application for the designation of a neighbourhood area is received, check that the application contains the information listed in Regulation 5 namely: <ol style="list-style-type: none"> <li>1. A map identifying the area</li> <li>2. Statement explaining why it is considered an appropriate neighbourhood area</li> <li>3. Statement that the organisation making the application is a relevant body.</li> </ol> If it doesn't, the application should be returned. |
| B        | Check the relevant body hasn't already submitted an area application that has not yet been determined. If it has, consider whether the application should be declined   |

|   |  |  |
|---|--|--|
| C | <p>If the area application is promoted by a Parish Council, check that the area application either covers part of or the entire parish.</p> <p>If the area application is promoted by a potential neighbourhood forum, check that the area does not cover all or part of a parished area.</p>  |  |
| D | <p>Publicise the application for area designation and invite representations for a period of not less than 6 weeks.</p> <p>The information to be 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 (Regulation 6).</li> </ol> <p>This should be publicised on the website and <u>in such other manner</u> as is considered likely to bring the area application to the attention of people who live, work or carry on business in the area to which the area application relates.</p> |  |
| E | <p>In determining the application the following must be considered:</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 the area should be designated as a business area.</li> </ol> <p>in accordance with Section 61G and H of the TCPA 1990.</p>   |  |
| F | <p>Check if it is necessary to modify an existing neighbourhood area, in accordance with Section 61G and 61H of the TCPA 1990. In making a modification consideration should be given as to whether the area should be designated as a business area</p>   |  |
| G | <p>If the area application is approved the decision must be publicised and the following details provided:</p> <ol style="list-style-type: none"> <li>1. the name of the neighbourhood area</li> <li>2. a map identifying the area</li> <li>3. the name of the parish council or neighbourhood forum who applied for the designation</li> </ol> <p>(Regulation 7)</p>  |  |
| H | <p>If the application is refused it the publication must include:</p> <ol style="list-style-type: none"> <li>1. the decision and statement of reasons (called a decision document)</li> <li>2. the details of where and when the decision document can be inspected)</li> </ol> <p>(Regulation 7).</p>   |  |
| I | <p>A map setting out all the current neighbourhood areas designated must be published and the map should indicate those which are business areas</p>   |  |
| 2 | <p><b>designating a neighbourhood forum (if relevant)</b></p>  |  |
| A | <p>Arrangements must be made to make people aware of the right to make applications to be designated as a neighbourhood forum for a neighbourhood area (1990 Act 61F (11))</p>   |  |
| B | <p>When a neighbourhood forum application is submitted check that the application contains the information listed in Regulation 8. If so, proceed to 2C. If the application does not contain all the information, return the application.</p> <p>The application received 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> </ol>  |  |

|          |   |  |
|----------|---|--|
|          | <p>4. Contact details of at least one member that can be made public</p> <p>5. Statement explaining how the proposed forum meets the following conditions:</p> <p>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)</p> <p>b. Has 21 individual members and membership is open to the following groups :</p> <ul style="list-style-type: none"> <li>o people living in the area</li> <li>o People who work there</li> <li>o County council, district or London borough councillors for the area</li> </ul> <p>c. Has a written constitution.</p> |  |
| C        | <p>The forum application must be publicised and representations invited for a period of not less than 6 weeks and include details of how to respond to the consultation, in accordance with Regulation 9</p> <p>This should be publicised on the website and <u>in such other manner</u> as is considered 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.</p> <p>The publicity should also include 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.</p>                            |  |
| D        | <p>In deciding whether to designate the proposed forum you must be satisfied that the organisation or body meets the conditions set (see 2B above) and: it has taken reasonable steps to secure membership from each of the three groups identified from different places in the neighbourhood area concerned and from different sections of the community; and its purpose reflects the character of the area (Reg 7).</p> <p>Only one organisation or body must be designated as a neighbourhood forum for a neighbourhood area and only where the area does not include a parish.</p>  |  |
| E        | <p>When a decision has been made on designation, the decision should be publicised in accordance with Regulation 9. This should include</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>   |  |
| F        | <p>If it is decided to refuse to designate the forum, a Refusal Statement must be issued setting out the reasons and details published of where and when the statement can be inspected (Regulation 10)</p>   |  |
| G        | <p>A neighbourhood forum designation can be withdrawn when requested by that neighbourhood forum or if is considered that the forum is no longer meeting the conditions of approval. If this happens a 'withdrawal statement' must be published and details of where and when it can be inspected. (Regulation 12 and 1990 Act 61F (9))</p>   |  |
| <b>3</b> | <b>Preparation of the NDP</b>   |  |
| A        | Provide advice or assistance in the preparation of the NDP.   |  |
| <b>4</b> | <b>Receipt and assessment of the draft NDP by the Council</b>   |  |

|          |  |  |
|----------|--|--|
| A        | Check if the draft NDP is a 'repeat' proposal. If so, you can decline to consider the plan 1990 Act Schedule 4B para 5 and regulation 18.  |  |
| B        | <p>Check and confirm that the draft plan meets the criteria in the Localism Act e.g the body submitting it is authorised to act; and that the regulations have been complied with including the minimum 6 week pre-submission consultation</p> <p>Check that the draft plan submitted (regulation15) includes:</p> <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> <li>4. a statement explaining how the NDP meets the 'basic conditions' ie requirements of para 8 schedule 4B to the 1990 Act (:</li> <li>5. Where appropriate includes information to enable appropriate environmental assessments if required e.g, The information that will enable an assessment under the Conservation of Habitats and Species Regulations 2010 or the Environmental Assessment of Plans and Programmes Regulations 2004</li> </ol> |  |
| C        | Notify the parish council or neighbourhood forum whether or not you are satisfied that the relevant documents have been submitted and that the requirements of the legislation and regulations have been met.. If it does not you must give reasons and issue a decision statement, in accordance with Regulation 19 and also Schedule 4B, paragraph 6 (4) (b) and para 8 of the TCPA 1990.  |  |
| D        | <p>If you accept the application then you must publicise the NDP in accordance with Regulation 16 for not less than 6 weeks and invite representations.</p> <p>You must also notify the bodies referred to in the submitted consultation statement</p>   |  |
| <b>5</b> | <b>Examination</b>   |  |
| A        | If satisfied that the plan meets the requirements of the 1990 Act, you must appoint a suitable examiner and agree the appointment with the parish council or designated neighbourhood forum that submitted the plan.   |  |
| B        | Submit the draft NDP, supporting documents and any representations to the Independent Examiner as soon as possible in accordance with Regulation 17 and Regulation 102A of the Conservation and Habitats and Species Regulations 2010.   |  |
| C        | Coordinate the arrangements for the examination in consultation with the Examiner.   |  |
| D        | When the Examiner's Report is received arrange for publication as soon as possible.  |  |
| E        | <p>Consider each of the Examiner's recommendation and decide what action to take in response. (E.g. make modifications to make the plan meet the basis conditions, extend the area for the referendum, decide you are not satisfied with the plan). At this stage you must be satisfied that the draft plan meets the basic conditions, is compatible with the Convention rights and complies with the definition of an NDP and the provisions that can be made by a NDP. as set out in Regulation 15 and Schedule 2, and Section 4B (6) and 8 of the TCPA 1990. The basic conditions are:</p> <ol style="list-style-type: none"> <li>1. Complies with national policy and guidance from SoS</li> <li>2. Contributes to sustainable development</li> </ol>   |  |

|          |   |  |
|----------|---|--|
|          | <p>3. General conformity with the strategic policy of the development plan for the area or any part of that area</p> <p>4. Doesn't breach or is otherwise compatible with EU obligations – this includes the SEA Directive of 2001/42/EC</p> <p>5. 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 &amp;c) regulations 2007 9(e) (either alone or in combination with other plans or projects))”</p>                             |  |
| F        | Consider if the decision proposed differs from the Examiner's recommendations. If so, do it in accordance with Schedule 4B, paragraph 13 of the TCPA 1990.  |  |
| G        | Publicise your decision in a decision statement (reg 18/19) and send a copy to the parish council or neighbourhood forum and anyone who asked to be notified.   |  |
| <b>6</b> | <b>Referendum</b>   |  |
| A        | Liaise with electoral services in the relevant Council to coordinate the Referendum arrangements.   |  |
| B        | It is likely that the planning department will be asked by electoral services to contribute to the drafting of an information statement (Reg 4 of the Neighbourhood Planning (Referendum) Regulations 2012. This must include a statement that sets out general information on town and country planning (and neighbourhood planning).  |  |
| C        | At least 28 days before the referendum electoral services in the relevant Council must publish the information statement and specified documents on the Council website and make it available for inspection at the main offices of the Council and at least one other premises open to the public (Reg 4 of the Neighbourhood Planning (Referendum) Regulations 2012   |  |
| D        | If the Referendum results in a 'yes' vote (i.e 50% plus 1), the decision on the NDP must be publicised and reasons for the decision – called a 'decision statement Reg 18 and 19)). In a designated business area where two referenda are held, if in one but not the other more than half of those voting have voted in favour of the plan a decision must be made as to whether to accept the plan proposal. The decision statement setting out whether the plan proposal is accepted must be publicised (reg 18 and 19). If there is a No vote and the plan proposal is declined the decision statement (reg 18) must be publicised on the website |  |
| E        | As soon as possible after deciding to make the NDP under Section 38A(4) of the 2004 Act the NDP and details of where and when the plan may be inspected must be published on the website (Reg 20)   |  |