



Witchford Neighbourhood Plan  
Submission Version Representations  
(Regulation 16) - November 2019

# Representations

---

1. These representations are prepared and submitted by Cerda Planning Ltd on behalf of Catesby Strategic Land Ltd (“Catesby”) who have an interest in land north of Main Street, Witchford and who are seeking to bring forward a development of 44 dwellings.
2. Catesby have previously engaged in the Witchford Neighbourhood Plan (“WNP”), which included submitting representations to the previous draft version of the Neighbourhood Plan in July 2019 at the Regulation 14 stage.
3. Whilst Catesby supports the vision of the plan, this submission highlights a number of significant concerns it has in relation to the submission version of the WNP and requests that these matters are addressed prior to examination by the examiner.

## The Basic Conditions

4. For a Neighbourhood Plan to proceed to a referendum, the draft plan must meet certain basic conditions. These basic conditions are set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended), which provide:

*A draft order meets the basic conditions if –*

- *having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order*
- *having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order*
- *having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order*
- *the making of the order contributes to the achievement of sustainable development*
- *the making of the order 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)*

# Representations

---

- *the making of the order does not breach, and is otherwise compatible with, EU obligations, and*
  - *prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.*
5. Where an examiner concludes that there has been a failure to comply with any of the basic conditions, then they must refuse to approve the plan for referendum, save for modifications which ensure that the basic conditions are met:  
*“10(4) The report may not recommend that [a plan] (with or without modifications) is submitted to a referendum if the examiner considers that the order does not— (a) meet the basic conditions mentioned in paragraph 8(2)”...*

## Concerns with the WNP:

### Policy WNP SS1

6. The withdrawn emerging East Cambs Local Plan had indicated that Witchford is suitably placed to accommodate significant growth and this appears not to have been a consideration through the preparation of the WNP.
7. Despite numerous objections to Policy WNP SS1 (set out below) from representations made to the draft Regulation 14 stage of the plan, the policy wording remains exactly the same as proposed previously and it is considered that the objections made have not been resolved.

#### **Policy WNP SS1 A spatial strategy for Witchford**

**Development proposals which accord with the site allocations WNP H1, WNP H2 and WNP H3 shown on Map 5 will be supported. In addition, other proposals within Witchford’s development envelope, which is defined on Policy Map 6 will be supported provided they accord with other provisions in the Development Plan. Outside the development envelope, development will be restricted to:**

- **rural exception housing on the edge of the**

# Representations

---

**village where such schemes accord with Policy WNP H2 of this plan;**

- **appropriate employment development at the Sedgeway Business Park where such schemes accord with Policy WNP – E2 of this plan; and**
- **development for agriculture, horticulture, outdoor recreation and other uses that need to be located in the countryside.**

**The allocated sites will deliver approximately 330 homes during the plan period 2019 to 2031.**

8. Whilst it is recognised that the withdrawn emerging Local Plan presently has no status, it was prepared at the time using an evidence base that, whilst now out-of-date, supersedes the even older and dated evidence base that formed the current 2015 Local Plan.
9. This evidence base from the emerging Local Plan suggested a much higher housing requirement for the district than the level of housing planned for within the 2015 Local Plan. However, given the Local Plan Inspector's conclusions during the examination of the emerging Local Plan and the District Council's response to withdraw the emerging Local Plan entirely, the evidence base that the Local Plan relied on is now out-of-date.
10. It appears that the WNP has been drafted on the basis of that out-of-date evidence and now the WNP is being retro-fitted to have general conformity with an even more out-of-date evidence base that underpins the 2015 Local Plan.
11. It is considered that the WNP fails basic condition (e) as it is not in general conformity with the strategic policies contained within the development plan for the area – namely the 2015 Local Plan – as these strategic policies are acknowledged by the District Council to be out-of-date and do not meet the housing requirements of the district as a whole.
12. Furthermore, it is well established that any NDP which sets a cap or limit on development will not satisfy the requirement in basic condition (a) to have regard to the NPPF and nor will it contribute to sustainable development under basic condition (d) (see *Woodcock Holdings v SSCLG* [2015] EWHC 1173 (Admin)).

# Representations

---

13. The starting point is paragraph 11 of the NPPF which sets out the presumption in favour of sustainable development. This states that for plan making:
  - plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;
  - strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:
    - ⇒ the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area 6; or
    - ⇒ any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
14. Paragraph 11 refers specifically to 'positively seek opportunities to meet the development needs of their area' and 'be sufficiently flexible to adapt to rapid change'. These requirements apply to NDPs in equal measure.
15. There are a number of policies in the NPPF which emphasise the need to identify and meet housing need. Paragraph 29 sets out that: 'neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.'
16. Paragraph 65 of the NPPF sets out that strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations. Once the strategic policies have been adopted, these figures should not need retesting at the neighbourhood plan examination, unless there has been a significant change

# Representations

---

in circumstances that affects the requirement.

17. Paragraph 66 continues to state that where it is not possible to provide a requirement figure for a neighbourhood area, the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body. This figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.
18. The District Council has provided a housing requirement figure to the WNP of 252 dwellings. It is understood that this figure was based on the evidence base of the emerging Local Plan which has now been withdrawn. Unfortunately, the Basic Conditions Statement submitted as part of the evidence base by the Parish Council does not state how this figure has been arrived at or whether it is based on an actual local assessment of housing need and in the district wide context of an absence of a five year housing land supply. The District Council's Housing Land Supply Position Statement at June 2019 states that the annual requirement is 575 dpa, with a backlog of 2,501 dwellings, with a 20% buffer of 1,075 totalling 6,451 dwellings between 2019 and 2024 or an annual district wide requirement of 1,290. This is more than double the underlying annual need of 575 per year, and around quadruple recent average past delivery.
19. Given the significant deficit in the five year supply position and lack of up-to-date strategic housing policies, it is considered that this is a significant change in circumstances that affects this requirement as per paragraph 65 of the NPPF. As such the housing requirement figure requires testing at the neighbourhood plan examination.
20. Policy WNP SS1 as drafted seeks to allocate 330 dwellings – a 31% increase over the 252 dwellings – however, if the housing requirement figure is wrong or out-of-date, it may well be that the WNP is not meeting the housing requirement overall across the district and further allocations may be required.
21. Policy WNP SS1 as it is worded presently places a cap on new development that is not part of an allocation as it restricts housing to rural exception sites or in-fill within the development envelope, of which there are few opportunities

# Representations

---

to deliver meaningful growth. New housing development outside of the development envelope, that is not a rural exception site, would automatically conflict with Policy WNP SS1. The effect of this is that the WNP only plans for 330 dwellings over the plan period. Any additional residential development, even if it were in a sustainable location, would be contrary to the WNP. This approach is contrary to national planning policy and would not contribute to sustainable development for the reasons set out above. Therefore as drafted Policy WNP SS1 does not comply with the basic conditions (a) and (d) and it would be unlawful to make the WNP in its current form.

22. It is considered that a modification should be made to the policy to allow for the presumption in favour of sustainable development. This would enable the WNP to be flexible in its operation and would ensure that if the proposed allocated sites stalled, or failed to deliver the required level of housing, the policy would still be supportive of sustainable development in the village.
23. In situations such as the present scenario where the District Council cannot demonstrate a five year supply of deliverable housing sites due to a failure of the strategic policies of the Local Plan, the WNP could still be used as a positive plan making tool to manage development against the presumption in favour of sustainable development without Policy WNP SS1 becoming out-of-date or being based on an out-of-date housing requirement.
24. The issue with Policy WNP SS1 and the WNP as a whole is compounded as the plan is proceeding in the absence of an up-to-date, NPPF compliant Local Plan which identifies the objectively assessed need for housing in the area and the WNP has failed to carry out its own assessment of need.
25. Given the withdrawn emerging Local Plan, the Witchford WNP is proceeding in advance of an up-to-date Local Plan. The overall assessment of housing and the requirement across each settlement of the district has not been advanced strategically and following the independent examination of the now withdrawn Local Plan it is clear that the spatial distribution of growth is likely to change and the housing target will increase in sustainable settlements such as Witchford. Despite this uncertainty, the WNP relies on an out-dated lower level of housing need, with no assessment of its

# Representations

---

own to determine whether it does in fact meet the need for housing. The imposed cap on development would prevent any further development outside of the existing settlement boundary beyond the 330 dwellings allocated over the plan period which is unlawful.

26. In *Woodcock Holdings v SSCLG* [2015] EWHC 1173 (Admin) it was held that the need for flexibility in neighbourhood plan housing supply policies ‘has all the more force’ in a situation where a neighbourhood plan is proceeding in advance of an up-to-date NPPF compliant plan (para 127). Furthermore, by applying a cap on development in the absence of an assessment of local housing need, the draft WNP would fail to comply with the guidance on neighbourhood plans.
27. For all the above reasons, it is considered that Policy WNP SS1 is contrary to basis conditions (a), (d) and (e) and the plan cannot proceed to referendum in its current form.

## Strategic Environmental Assessment

28. For the WNP to be found in conformity with basic condition (f), it is essential to ensure that the WNP is able to meet the legal requirements in respect of a Strategic Environmental Assessment (“SEA”) as set out in European Directive 2001/42/EC (“the SEA Directive”). The SEA Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”). Neighbourhood plans fall within regulation 5(4) of the SEA Regulations as they set the framework for future development consent of projects.
29. In April 2019 the Council prepared the Strategic Environmental Assessment and Habitat Regulation Assessment Screening Report (“the Screening Report”) to determine whether a full SEA and / or Habitats Regulation Assessment (“HRA”) was required. The outcome of this screening was that “the Neighbourhood Plan does not seek to increase the overall quantum of growth beyond that which has already been permitted through the planning system. The effects of this growth have therefore been considered during the application stage for each of the respective sites. Other policies generally accord with the adopted Local Plan, the



# Representations

---

potential environmental effects of which were duly assessed through the plan-making process.” Further it was considered that preparing evidence bespoke to the WNP would be disproportionate and would result in unnecessary duplication.

30. The District Council produced the “Strategic Environmental Assessment Determination Statement” (“the Determination Statement”) on 2 October 2019. This confirmed what had been concluded in the Screening Report that: “it is not likely that significant environmental effects will arise from the implementation of the Witchford Neighbourhood plan and therefore Strategic Environmental Assessment is not required.”
31. The three sites which are proposed in the WNP are as follows:
  - WNP WFDH 1 – Land at the north of Field End for the residential development of up to 168 homes, permitted pursuant to two applications.
  - WNP WFDH 2 – Land at Common Road for the residential development of 116 homes.
  - WNP WFDH 3 – Land south of Main Street for the development of 46 homes.
32. All three proposed allocations appear to now benefit from extant planning permissions and in the case of WFDH 1 and WFDH 3 it is understood that development has already been commenced. All three allocations are included in the Council’s latest Housing Land Supply report (dated June 2019).
33. It is considered that these sites are not suitable as allocations that aim to meet an identified future housing need and nor is it agreed that the existence of extant planning permissions remove the need to undertake an SEA.
34. Paragraph 044 Reference ID:41-044-20190509 of the PPG states that “Neighbourhood Plans should not re-allocate sites that are already allocated through these strategic plans”. Not only were the proposed “allocations” made at a time when they were included as allocations in the emerging Local Plan, but the sites now appear to all have the benefit of planning permission. The guidance is therefore even more relevant to the present situation of seeking to make allocations of sites that national planning practice guidance considers should not

# Representations

---

be identified as allocations at all.

35. The WNP does not make any new housing allocations and replicates the existing housing permissions in Witchford that were part of the now withdrawn Local Plan allocations). In the circumstances the Council needs to clarify whether, for the purposes of SEA, the WNP sets the framework for future development consent of projects or not.
36. As set out above, the WNP does not consider the actual housing need of the parish or reflect the wider housing requirement within the district where at present the Council cannot currently demonstrate a five year supply of housing land. As of June 2019 the district housing land supply is only 3.7years (including the three “allocated” sites). It is not the correct approach that the only proposed allocations in the draft WNP are three sites which already have planning permission yet the WNP purports to allocate housing sites to accommodate future housing needs for the parish.
37. The “allocations” must be suitable to meet the needs of the parish and they must be in accordance with the SEA Regulations, in that they are not likely to give rise to any significant environmental effects. The Council, in their Determination Statement, rely on the fact that the environmental impacts of the three sites would have been considered at planning application stage and therefore it goes beyond what is required by the SEA Regulations, to consider again whether the development would result in any environmental impacts.
38. Of the three allocated sites WFDH 1 and WFDH 3 were both screened by the Council and an ES was found not be required. Both sites were screened on the basis of a screening request from the applicant’s agent which had no supporting expert reports and in both cases because of the Council’s determination there was no further consideration of the environmental impacts of the sites. WFDH 2 was not screened at all.
39. It is considered that this is not sufficient to reach a conclusion that an SEA is not required as part of the WNP on this basis. A specific approach should have been carried out in respect of the WNP to make sure that the WNP as a whole was adequately screened in terms of its environmental impact. Furthermore individual projects are governed by EIA requests

# Representations

---

not by SEA requests. The District Council should assess the likely significant environmental effects of the Plan as a whole and do so in light of the comments below about potential impacts on European designated sites which may be adversely affected by the proposals set out in the WNP. As a result of this failing, the WNP does not meet the basic condition (f) and is therefore unlawful until this is rectified.

## Assessment of Reasonable Alternatives

40. If the requirement for an SEA is established there is a requirement to assess reasonable alternatives by virtue of regulation 12(2) of the SEA Regulations which provides:

“(2) The report shall identify, describe and evaluate the likely significant effects on the environment of –

- implementing the plan or programme; and
- reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.”

41. This requirement has been subject to a significant amount of litigation. The relevant principles were summarised by Hickinbottom J in R (RLT Built Environment Ltd) v Cornwall Council [2016] EWHC 2817 (Admin) at paragraph 40 and which in summary include the following:

- ensuring that potentially environmentally preferable options which attain policy objectives are not discarded as a result of an earlier strategic decision;
- a focus on the authorities “preferred plan” along with “reasonable alternatives” which are identified, described and evaluated in the SEA and it is noted that without this there cannot be a proper environmental evaluation of the preferred plan;
- Article 5(1) refers to “reasonable alternatives taking into account the objectives... of the plan or programme”, there is therefore a judgement to be made as to which alternatives should be considered based on whether they achieve the objectives of the plan. There may be cases where there are no alternatives to those proposed and as such nothing further needs to be

# Representations

---

considered.

42. As further noted by the Court of Appeal in *Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government* [2015] EWCA Civ 681:

*“In Heard v Broadland District Council...at paragraphs 66-71, Ouseley J held that where a preferred option – in that case, a preferred option for the location of development – emerges in the course of the plan-making process, the reasons for selecting it must be given. He held that the failure to give reasons for the selection of the preferred option was in reality a failure to give reasons why no other alternative sites were selected for assessment or comparable assessment at the relevant stage, and that this represented a breach of the SEA Directive on its express terms. He also held that although there is a case for the examination of the preferred option in greater detail, the aim of the Directive is more obviously met by, and it is best interpreted as requiring, an equal examination of the alternatives which it is reasonable to select for examination alongside whatever may be the preferred option.”*

43. *Ashdown Forest* also establishes that “where the authority judges there to be reasonable alternatives it is necessary for it to carry out an evaluation of their likely significant effects on the environment, in accordance with regulation 12(2) and paragraph 8 of Schedule 2... In order to make a lawful assessment... the authority does at least have to apply its mind to the question.”
44. Finally, Ouseley J stated at paragraph 66 in *Heard v Broadland* that only an “obvious non-starter” is exempt from the requirement to be assessed as a reasonable alternative.”
45. Given that the Council concluded in the Screening Report, and confirmed in the Determination Statement that there was no requirement to carry out an SEA because there were no likely significant environmental effects no “reasonable alternatives” were considered, it is evident that there is a fundamental flaw in the Screening Report and the Determination Statement and in fact the three sites should be re-assessed alongside the WNP as a whole to determine what, if any, environmental impacts arise as a result of the WNP. Until this is done it is not reasonable to reach a

# Representations

---

conclusion that the WNP has no likely significant effects. Once the environmental impacts of the WNP have been considered, and if it is concluded that an SEA is required then this will need to take into account “reasonable alternatives” to the three sites proposed in the WNP of which Catesby’s site should be included.

## Conclusion

46. For the reasons set out above Catesby maintain that there are legal shortcomings in the preparation of the draft WNP and in particular in relation to the requirements of paragraph 8(2)(f) of Schedule 4B of the 1990 Act. These matters should be addressed prior to examination of the WNP.
47. It is contended that the approach to the allocation of housing within the WNP is flawed and results in a plan that will not meet the objectively assessed needs of the parish or towards the wider district. The evidence base, SEA and approach towards considering alternative sites needs to be reconsidered and to include Catesby’s site at land north of Main Street.
48. We respectfully request that the plan be put on hold and reconsidered prior to examination taking place with a further consultation in due course. Alternatively if the plan proceeds to examination we reserve the right to participate and reiterate and make our concerns known at oral hearing to the Examiner that affect the basis of the WNP as it is presently drafted.