

Neighbourhood Planning Regulations Consultation 2011

Questionnaire

About you

i) Your details:

Name: Stephen Russell
Position: Policy and Public Affairs Officer
Name of organisation: The Landscape Institute
(if applicable):
Address: Charles Darwin House
12, Roger Street,
London WC1N 2JU
Email: stephenr@landscapeinstitute.org.uk
Telephone number: 0207 7685 2649

ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

iii) Please tick the box which best describes you or your organisation:

Other

Professional Institute

(iv) Please tick the one box which best describes which viewpoint you are representing:

Rural

Urban

The LI response has been compiled by members who are involved in neighbourhood planning in both rural and urban areas.

1. The Landscape Institute

The Landscape Institute (LI) is the royal chartered body for landscape architects. As a professional organisation and educational charity, we work to protect, conserve and enhance the natural and built environment for the public benefit. We accredit university courses and promote professional development to ensure that landscape architects deliver the highest standards of practice. We work with government to improve the planning, design and management of urban and rural landscape. Through our advocacy programmes and support to our members we champion landscape, and the landscape profession, in order to inspire great places where people want to live, work and visit.

The LI's membership currently stands at approximately 6,000 landscape planners, designers, managers and scientists, all of whom often work at the landscape-scale and have a significant interest in both the intrinsic value of nature in addition to the economic and social benefits to be gained through the protection and enhancement of ecosystem services.

The LI is particularly concerned that neighbourhood planning will embrace a green infrastructure approach that conforms with the European Landscape Convention (ELC), so that bigger picture and strategic interventions that benefit sustainability overall can be encompassed in any neighbourhood plans.

Question 1:

Do you agree that the proposed approach is workable and proportionate, and strikes the right balance between standardising the approach for neighbourhood planning and providing for local flexibility on:

a) designating neighbourhood areas

Agree

The Landscape Institute agrees that the local authority should make the decision as to whether or not a particular neighbourhood area is suitable for designation. To reassure local residents that the neighbourhood planning process is intended to be community-led, the local authority should be required, as part of the formal designation, to set out and publicise its own procedures for making key decisions throughout the process.

The Landscape Institute agrees that in parished areas, a town or parish council is normally the right lead organisation. However a town or parish boundary may not be the logical boundary for a neighbourhood plan as often these administrative boundaries divide places that form communities and/or divide important landscape or green infrastructure functions. Parish and town boundaries do not correspond with landscape designations or character areas, thus requiring a collaborative approach to strategic and local green infrastructure provision. This is especially important because of the benefits of multifunctional open space and the importance of strategic linkages for landscape, biodiversity and transport reasons. For this reason we believe that in agreeing a designation of a neighbourhood plan area, a local authority should at the same time direct the neighbourhood forum / relevant body to the relevant green infrastructure strategy for the area in order that the neighbourhood forum is fully acquainted with the bigger picture requirements for an area in respect of its green infrastructure. There may be other functional areas where a "greater than local" perspective is an intrinsic part of the considerations for any planned development and should be notified to the neighbourhood forum at the time of designating the neighbourhood area. This does mean all local authorities should have a green infrastructure strategy (which may be in association with neighbouring authorities) that is sufficiently detailed and easily understood such that a neighbourhood forum can understand what green infrastructure assets it has in its area, what functions it performs, what increased functionality is desirable and what green infrastructure interventions are required.

The Landscape Institute considers it essential that the duties under the European Landscape Convention (ELC) can be met. In particular *"to integrate landscape into its regional and town planning policies and in its cultural, environmental, agricultural, social and economic policies, as well as in any other policies with possible direct or indirect impact on landscape."* This will apply equally in rural and urban areas.

For this and the reasons cited above the Landscape Institute considers it important that any development proposals contained in a neighbourhood plan are accompanied by a landscape impact and mitigation statement, which is proportionate to the quantum of development proposed. (We also refer to this below under d). "preparing the neighbourhood plan".

It is not clear if the local authority can "say no" if two proposed neighbourhood areas leave a sliver of land uncovered by a plan or if it can direct a neighbourhood area to be extended. The Landscape Institute considers this should be covered by the Regulations and/or guidance.

The Landscape Institute is very concerned about how neighbourhoods will be designated in unparished urban areas. The complexities of how a neighbourhood works and the linkages with adjacent areas and those further afield is very complicated and those complexities and the way in which those other communities that will be influenced by the neighbourhood plan are identified and consulted will be crucially important, but potentially beyond the resources and possibly capabilities of those leading neighbourhood fora. Small open spaces, ginnels, networks etc are essential to the

working and permeability of communities and places. Functional minutiae will be important and those who can identify them need to be part of the process.

b) designating neighbourhood forums

Disagree

The Landscape Institute considers that the local authority is the appropriate body to make the final decision as to whether or not a particular group should be designated as a neighbourhood forum. We accept that it may not be necessary at this stage to include all the provisions of the Localism Act 2011 in these Regulations. However, in order to inform prospective forum members, it would be helpful for the Regulations to outline the criteria for designation.

It is not clear from the description if the local authority can say no to a parish council if it considers the parish council to be “too small or not representative enough”. The Institute considers the Regulations should clarify this.

The Landscape Institute considers that guidance will be necessary on good practice for the written constitution of the proposed neighbourhood forum. This should include items such as composition of steering and/or stakeholder groups for neighbourhood fora. Content and good practice for the constitutions may be gleaned from some of the Frontrunners that we understand have been adopting a workshop approach for market towns, where some have included the adjacent parishes and one at least has not. From the landscape (and many other perspectives), the Landscape Institute strongly urges close working with neighbouring parishes will be necessary.

c) Community Right to Build organisations

Strongly disagree

The Landscape Institute considers there is insufficient information on composition and inadequate controls to ensure small, special interest groups, aided by developers cannot over-rule the views of the wider local community.

What is the definition of “related” (13. (b) (vi)? Blood relative and immediate family member – or a wider definition?

d) preparing the neighbourhood plan

Strongly disagree

The Institute does not disagree with the fundamental principle of neighbourhood planning, which is said to be (purpose of consultation) that “neighbourhood planning should be community-led with the community being in the driving seat of the process but with the local planning authority making necessary decisions at key stages”.

However, we consider that it is unfortunate that the draft Regulations do not provide any explanation of the legal requirements under extant planning legislation for an adopted Local Plan to make a positive contribution towards sustainable development. For example, community representatives may not be aware that they will be required to consult with a wide range of statutory and local organisations and to take account of all the representations received. The Regulations should also make it clear that a neighbourhood plan must comply with national planning policies and guidance relating to matters such as conservation areas, listed buildings, Green Belt, flood risk areas, designated wildlife protection areas, Tree Preservation Orders etc. It must also be in line with the strategic vision of the local authority and consistent with the adopted policies of the development plan.

The draft Regulations do not clarify what happens if a neighbourhood plan is developed prior to a local authority adopting its Local Plan. Does the Local Plan take account of the neighbourhood

plan? If changes are then required to the neighbourhood plan because the Local Plan takes precedence who pays for these changes and how are they consulted upon and endorsed?

In particular we strongly disagree that the consultation should not “cover any provisions in respect of the requirements that are needed to ensure compatibility with EU obligations, for example the Strategic Environment Assessment, the Environmental Impact Assessment or the Habitats Directives”. If local communities are to lead the process of plan making, it is essential that they are properly informed as to the obligations and legal requirements, as well as the benefits, of preparing a local neighbourhood plan.

We appreciate the neighbourhood plan can be less detailed than the neighbourhood development order because the latter is effectively giving planning permission. The Landscape Institute still considers that environmental / green infrastructure assets and interventions should be identified in the neighbourhood plan. The Institute feels very strongly that multifunctional green infrastructure cannot be delivered without an overall commitment to a strategic plan because the connections are as important as the areas of open space. These points are as important to the vision of the place as those listed such as where the houses/businesses might be located and what the buildings should look like.

We consider there should be some mechanism for design review input to the neighbourhood plan, especially if the plans are to cover the aesthetics of buildings. This should be covered in the Regulations.

We disagree with the light touch approach to consultation. Simply saying something should be brought to the attention of people living and working in the area is insufficient. There need to be checks in place to ensure that local authorities are reaching communities and not just placing information on web sites and assuming local people will look for information. It needs to be much more directed and in some areas will need to be by post, rather than electronic means.

e) preparing the neighbourhood development order

Strongly disagree

As above (d) we consider that the draft Regulations should provide a clear explanation of the legal requirements under extant planning legislation, development plan policies and guidance for an adopted neighbourhood development order, which is effectively a grant of full planning permission, to make a positive contribution towards sustainable development.

We consider there must be some mechanism for design review input to the neighbourhood development order, especially as parish councillors potentially with little or no design expertise could then be armed with making the planning permission decisions. This should be covered in the Regulations.

When a development order is to be prepared, the Institute considers this should include a green infrastructure and landscape assessment with mitigation proposals. It may also need to cover details such as materials and construction types. The Institute is concerned to ensure that the neighbourhood planning process and development management through neighbourhood development orders does not compromise the quality of place, which is part of the whole sustainable development approach. The development orders may well need to request that certain parts of developments are subject to conditions. The way this can work should be explained in the Regulations. The way that applications can be varied should also be set out.

f) preparing the Community Right to Build order

Strongly disagree

The contents of the Localism Act 2011, Schedule 11 Neighbourhood planning: community right to

build orders, which is to be inserted as Schedule 4C to the Town and Country Planning Act 1990 Section 61Q, is extremely complicated and confusing. If the purpose of the Regulations is to make the legislation understandable and workable to the residents of a neighbourhood, and to encourage them to use the new right to build powers, then they should provide a clear explanation of the process.

g) Community Right to Build disapplication of enfranchisement

Strongly disagree

As above (f) this wording is completely opaque and incomprehensible. If the purpose of the Regulations is to make the legislation understandable and workable to the residents of a neighbourhood, and to encourage them to use the new right to build powers, then they should provide a clear explanation of the process.

h) independent examination

Strongly agree

The Landscape Institute agrees that local planning authorities have extensive experience of organising independent examinations for local plans, and holding public hearings, are best placed to appoint an independent person with appropriate qualifications and experience, and should be allowed to decide for themselves how to undertake this activity. However there may be cost efficiencies in local authorities working together in this regard.

i) referendum

Neither disagree nor agree

In principle, the Institute agrees that the community should have the final say on whether a neighbourhood plan or neighbourhood development order or a Community Right to Build order should come into force in their area. The Localism Act advises that if the plan is approved by more than half of those who vote, then the referendum will bring it into force. To ensure that a vociferous minority does not over-rule a silent majority, we consider that a referendum should fail unless the total number of votes cast is equivalent to at least 25% of the registered electors in the neighbourhood plan area (or an extended area for referendum purposes when used).

The Regulations do not appear to set out under what circumstances the referendum area will be extended beyond the boundaries of the neighbourhood plan area. There are many reasons why this might be the case (schools, businesses, open space provision etc). However it will be helpful to avoid challenges of process if there is clearer guidance on when this might occur.

j) making the order or plan

Agree

The Landscape Institute supports the proposed Regulatory process, in particular where it requires extensive public consultation and the publication of a consultation statement. We consider that an order or plan should not be made unless and until everyone within the neighbourhood area has been made aware of the plan process, actively and repeatedly invited to contribute to that process, and their concerns fully addressed by the proposals. The local authority can only be reassured that effective public engagement has taken place by a Regulatory requirement, as drafted, to summarise the main issues raised by the local community and to explain how these have been addressed, taken into account and incorporated into the proposal.

k) revoking or modifying the plan

Disagree

The Regulations do not explain which body, and in what circumstances, will be entitled to revoke or

modify a plan. If the purpose of the Regulations is to make the legislation understandable and workable to the residents of a neighbourhood, and to encourage them to use the local new planning powers, then they should provide a clear explanation of the process.

I) parish councils deciding conditions

Strongly disagree

The Landscape Institute agrees that most Town and Parish Councils have long experience of working with and representing their communities in the planning process. However, many are too small or too unrepresentative of the wide range of interests within the local community to make sound legal decisions within the scope of extant planning law.

Question 2:

Our proposition is that where possible referendums should be combined with other elections that are within three months (before or after) of the date the referendum could be held. We would welcome your views on whether this should be a longer period, for example six months.

Three months

Six months

A different period

3 months after.

Explanation/Comment:

We can see that the organising of referenda could become a resourcing issue for local authorities, so if it were possible to combine a referendum with a local election, efficiencies could be achieved. However we do not see how a referendum could be brought forward if the neighbourhood documents were not ready. Therefore we can only see this being valid if there is an election planned within 3 months of the referendum date. There will still be complications where referendum areas are different from election boundaries.

Question 3:

The Bill is introducing a range of new community rights alongside neighbourhood planning – for example the Community Right to Buy and the Right to Challenge. To help communities make the most of this opportunity, we are considering what support measures could be made available. We are looking at how we could support people in communities, as well as local authorities, other public bodies, and private businesses to understand what each right can and cannot do, how they can be used together, and what further support could be made available for groups wanting to use them. We would welcome your views on what support could usefully be provided and what form that support should take.

Explanation/Comment:

Definitive simple explanation, training and case studies would be useful forms of support. Guidance may well be needed.

Question 4:

Do you have any other comments on the proposals?

(Please begin with relevant regulation number and continue on a separate page if necessary)

Additional comments:

1. The neighbourhood planning puts some considerable onus on the local planning authorities to assist with the process of plan making and agreeing. This gives us concern in resource-constrained times and we feel there should be some guidance on what a local community can expect. Expectations from community groups may be far greater than is realistic. Having said

that, experience has shown, (CABE's rural masterplanning work and others) that independent facilitation can be extremely useful in removing barriers and suspicion. The Landscape Institute considers independent facilitation for neighbourhood plans will be invaluable in some cases; but who will pay for this? In certain cases a developer may, but will this then be seen as independent? Will the local authority have the resources to pay for this? Can some of the funding referred to be allocated to this activity?

2. There will be neighbourhood plans developed in areas where the landscape and green infrastructure baseline information and aspirations/necessary interventions are not set out in relevant strategies. In these cases, the Landscape Institute considers there will be a need for some landscape input to inform the neighbourhood plan-making process that covers a wider spatial area than just that covered by the neighbourhood plan. There will be questions as to how these will be funded and again, we suggest some of the £50million allocated is set aside for this and/or for helping local authorities establish their up-to-date green infrastructure and open space strategies.
3. Schedule 12, sub-section 17 of Part 2 of the Localism Bill excludes Neighbourhood Development Orders from the Duty, under S197 of the 1990 Town and Country Planning Act, when granting planning permission, to make appropriate provision for the preservation and planting of trees. The Landscape Institute has already expressed its opposition to the exclusion of this duty on neighbourhood forums. Of even more importance, however, it is unclear whether a NDO, in granting permission for development, would over-ride existing legal protection of trees included in a Tree Preservation Order or located within a Conservation Area. In the absence of guidance, the implementation of development under an approved NDO could be used to remove any protected trees, whether on or near to a development site, that could be a constraint on the development proposals. The Regulations should clarify the status of protected trees that may be affected by development proposals and confirm that all trees affected by proposals should be treated as material considerations.