

Neighbourhood Planning  
Guidance Note 15

# Planning and other legislation

July 2013 - Revised June 2015



When preparing your Neighbourhood Development Plan there are many planning policy documents and legislation and regulations at both a national and international level that needs to be considered and complied with. This guidance note will provide a summary of the relevant legislation and regulations.

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## Introduction

Your Neighbourhood Development Plan will reflect the needs, aspirations and priorities of your community. However, in developing your plan it will be necessary for you to be aware of certain legislation and policy. These may well influence your conclusions, policies and proposals.

This note contains a summary of the most pertinent parts of both the national and international legislative and policy frameworks.

## National Planning Policy Framework (NPPF)

The NPPF, which was published in March 2012, sets out the national planning policy of the Government and provides the context within which all other planning policy documents should be prepared and by which individual planning applications should be determined.

In developing your Neighbourhood Development Plan both the national and international legislative and policy frameworks should be taken into account. Ultimately your Plan will need to be in general conformity with the NPPF.

The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles, which will need to be considered within your Neighbourhood Development Plan as follows:

- **An economic role** - contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and co-ordinating development requirements; including the provision of local infrastructure and supporting new business start ups.
- **A social role** - supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of

present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well being increasing independence and reducing social isolation.

- **An environmental role** - contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, build to the highest possible standard and mitigate and adapt to climate change including moving to a low carbon economy

Neighbourhood Development Plans which can demonstrate these three 'dimensions' have been integrated into their plan will be robust and prove they are striving for sustainable development in their Neighbourhood Area. The presumption in favour of sustainable development should be at the heart of every plan.

Applying the presumption in favour of sustainable development, the NPPF explains that this will have an impact upon "how communities engage in neighbourhood planning". This means Neighbourhood Development Plans should:

- Support the strategic development needs set out in the Herefordshire Local Plan - Core Strategy, including policies for housing and economic development;
- Plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Herefordshire Local Plan - Core Strategy; and
- Identify opportunities to use Neighbourhood Development Orders (NDOs) to enable developments that are consistent with their Neighbourhood Development Plan to proceed.

### 12 core planning principles

The NPPF sets out 12 core planning principles which "should underpin both plan-making and decision-taking." These stipulate that planning should:

- Be led by Local Plans and Neighbourhood Development Plans which set out a vision for the future of the area and provide a practical

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framework within which decisions on planning applications can be made efficiently;

- Emphasise enhancing and improving the places in which people live their lives;
- Drive sustainable development to deliver homes, business and industrial units, infrastructure and support local vitality, objectively identifying local need and setting out a clear strategy for allocating land;
- Seek to secure a high-quality of design and a good standard of amenity for occupants;
- Protect the diversity of different areas of England, and recognising the *“intrinsic character and beauty of the countryside”*;
- Support the transition to a low-carbon future, take account of flood risk or drought and encourage the re-use of existing and renewable resources;
- Help conserve and enhance the natural environment and reduce pollution, allocating land of *“lesser environmental value”*;
- Encourage the re-use of land that has been previously developed (brownfield land);
- Promote mixed use developments, encouraging multiple benefits from urban and rural land;
- Conserve heritage assets *“in a manner appropriate to their significance”*;
- Manage development to make full use of walking, cycling and public transport;
- Take account of local strategies to improve health, social, and cultural wellbeing.

The Examiner will be looking for the evidence that your plan has sought to address these core principles within your policies.

Additional information on the topics covered within the NPPF, will be detailed in the relevant guidance note for that specific area, for example: affordable housing.

## Planning Practice Guidance

In March 2014, a new planning practice guidance web-based resource was published by Government, in order to provide users of the planning system with accessible and up-to-date guidance. This guidance was previously set within a range of separate documents and which were only updated periodically, leaving the onus on individuals to make sure that they were still relevant in the context of legislative changes and any new policies.

The Planning Practice Guidance therefore provides a one-stop shop for people seeking further advice in respect of Government policy on the operation of the planning system.

Importantly, the Planning Practice Guidance includes a section on Neighbourhood Planning and elaborates on relevant sections of the NPPF. It is regularly updated to reflect the latest industry developments, including changes to legislation and regulations, as well as new guidance.

## Planning Policy for Traveller Sites

In March 2012, national planning policy for traveller sites was published and the above should be read in conjunction with the NPPF and Planning Practice Guidance.

Further guidance on the theme of allocating sites for housing is contained in Guidance Note 21, but your Neighbourhood Development Plan should establish whether there is any housing need within the Neighbourhood Area and seek appropriate pitches and provision.

## Herefordshire Gypsy & Travellers' DPD

The council has produced a Travellers' Sites Document as part of its Local Plan. The main aim of the document is to address the accommodation needs of the Traveller community for the next 15 years. It will look at the allocation of specific sites for pitches for the first 5 years and identification of broad locations of search for the next 10 years.

The first stage of preparation involved consulting on an Issues and Option document regarding the provision of Travellers Sites in the county. The consultation ran in the latter part of 2014, the next

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stage of the process will be the preparation of a Preferred Options consultation document.

## Localism Act 2011

The Localism Act (2011) contains a number of proposals that gives local authorities new freedoms and flexibility. It also passes significant new rights direct to communities and individuals for the first time, making it easier for them to get things done and achieve their ambitions for the place where they live. This includes the following initiatives:

- Community Right to Challenge (CRtC)
- Community Right to Bid (assets of community value) (CRtBid)

The Localism Act also contains provisions to make the planning system clearer, more democratic, and more effective. In doing this it:

- Places significantly more influence in the hands of local people over issues that make a big difference to their lives;
- Provides appropriate support and recognition to communities who welcome new development;
- Reduces red tape, making it easier for authorities to get on with the job of working with local people to draw up a vision for their area's future;
- Reinforces the democratic nature of the planning system - passing power from bodies not directly answerable to the public, to democratically accountable ministers.

This includes the introduction of the following initiatives:

- Neighbourhood Planning; and
- Community Right to Build (CRtB).

## The Neighbourhood Planning (General) Regulations 2012

In order to exercise the powers laid out in the Localism Act (2011), the Neighbourhood Planning (General) Regulations came into force on 6<sup>th</sup> April 2012. These Regulations (as amended) detail the requirements for the Local Authority, parish

councils and community groups for undertaking Neighbourhood Development Plans, Community Right to Build Orders and Neighbourhood Development Orders.

Further details of the provisions of the Neighbourhood Planning (General) Regulations 2012 (as amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015) can be found in Guidance Note 4: A guide to procedures.

## Town and Country Planning

Town and Country Planning is the land use planning system which Government has used to balance economic development and environmental quality. The Town and Country Planning Act 1947 created the framework for this system, which has essentially remained the same since. Current planning legislation for England and Wales is consolidated in the Town and Country Planning Act 1990 (TCPA 1990). This Act regulates Town and Country Planning in England and Wales.

Under the 1990 Act (as amended), Herefordshire Council has a statutory duty to assist parish councils with the preparation of their Neighbourhood Development Plans and Neighbourhood Development Orders and take plans through a process of examination and referendum.

The Localism Act (2011) (Part 6 chapter 3) sets out the LPA responsibilities as:

- Designating the area of the NDP;
- 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 referendums.

1990 Act Schedule 4B para 3 states:

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“A 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 NDPs in relation to neighbourhood areas within their area”. This applies to NDP’s through S38A of the Planning and Compulsory Purchase Act (2004). There is no requirement to give financial assistance.

A subordinate legislation stemming from The 1990 Act is The Town and Country Planning (General Permitted Development) Order 1995.

## **The Town and Country Planning (General Permitted Development) Order, 1995 (General Permitted Development Order) (GPDO)**

### **What is “permitted development”?**

Not all building work requires planning permission. Permitted development is the minor alterations that can be undertaken without the need to apply for planning permission. Permitted development rights have existed for many years and provide freedom for householders, businesses and farmers to make improvements or alterations to their homes without needing planning permission - removing the cost and time delay of doing so. There are clear limits and conditions as to what is/is not permitted development. These limits are not intended to prevent people building extensions and outbuildings but ensure that they are built in a way that does not impact significantly on others.

Individual circumstances may vary from what is covered by Permitted Development Rights. Covenants preventing certain alterations may be in place, with listed buildings, conservation areas and national parks often having tighter regulations. Of particular note for Herefordshire Council are a more restrictive set of permitted development rights for Conservation Areas and Areas of Outstanding Natural Beauty.

### **How can I get information on the current regulations?**

There can be amendments made to the GPDO each year as new regulations are enforced. To ensure the most up to date regulations are adhered to it would be worth looking on the interactive householders guide on the Planning

Portal website. Where it details the various permitted developments and also the limits and conditions associated with each topic.

Picture 1 at the end of this document shows the interactive house which is available on the Planning Portal website, you can work your way around the house by clicking on an item, for example; the garage; side extension or windows, this will provide you with details of what would be classed as permitted development and what limits and conditions need to be considered, see picture 2.

The policies within your Neighbourhood Development Plan would not be able to override or restrict the existing permitted development rights.

## **Human Rights Act 1998**

Human Rights Legislation exists to safeguard everyone’s rights in the UK and expand our awareness of the basic values and standards we share. Anyone in the UK for any reason has fundamental rights which government and public authorities are legally bound to respect.

Human rights are based on principles of equality, dignity and respect. They require a balance to be struck between the rights of an individual and the rights of others or the wider community.

The Act is made up of a series of short Articles; each Article is a short statement defining a right or freedom, together with any exceptions. Public authorities have a duty to treat people in accordance with the Convention Rights. The information below explains in more detail the most relevant Articles for your Neighbourhood Development Plan within the Act:

### **Article 8 - Right to respect for private and family life**

This Right states that everyone has the right to respect for their private and family life, their home and correspondence. People have the right to live their own life and have personal privacy.

### **Article 9 - Freedom of thought, conscience and religion**

This Right protects people’s rights in relation to their thoughts and beliefs. You are not permitted

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to interfere with a person's right to hold a particular belief.

### Article 10 - Freedom of expression

This Right states that everyone has the right to express their views and receive opinions without interference from a public authority.

### Article 14 - Prohibition of discrimination

This Right states that discrimination cannot occur on the grounds of particular attributes such as a person's sex, race or religion. It also protects people from discrimination on the grounds of, for example, nationality, disability or marital status. A public authority should ensure policies and decisions do not involve any form of discrimination on any ground.

It will be important to ensure that the Human Rights Act is taken into account both within your policies and the impacts they could have, but also the way in which you consult the community. All sections of the community need to be given the opportunity to be involved within the making of your plan and be given the chance to express their views upon it.

### Habitat Regulations (Conservation of Habitats & Species Regulations 2010)

The Habitats Directive protects habitats and non-avian species of European importance and applies to Special Areas of Conservation (SACs) and the European Directive (79/409/EEC) on the Conservation of Wild Birds (Birds Directive), protects bird species of European importance and applies to Special Protection Areas (SPAs). These are known as the network of Natura 2000 Sites or "European Sites". The UK Government Guidance on Habitats Regulations Assessment (HRA) from the Department of Communities and Local Government (DCLG), August 2006 states that areas designated as globally important wetlands under the Ramsar Convention (1971) should also be given the same level of protection as SAC and SPA designations in the HRA process. Given this, the council collectively refers to SACs, SPAs and Ramsar sites as "European Sites" and acknowledges them as having the same level of protection.

The table below shows where the European sites are within Herefordshire.

SAC	Downton Gorge
SAC	River Clun
SAC	River Wye
SAC	Wye Valley Woodland
There are currently no SPA's or Ramsar sites in Herefordshire	

### What is a Habitats Regulations Assessment?

A Habitats Regulations Assessment is the assessment of the impacts of implementing a plan or policy on a European Site. Its purpose is to consider the impacts of a land use plan against conservation objectives of the site and to ascertain whether it would adversely affect the integrity of the site. Where significant negative effects are identified, alternative options should be examined to avoid any potential damaging effects.

### Why do a Habitats Regulations Assessment?

Carrying out a HRA is not only a statutory duty but is also immensely beneficial to the policy process as it is a means of identifying and addressing early on in the process any adverse effects that draft policies and proposals may have. The HRA requires decisions on the content of the Plan to be based on its findings.

### When do we need a Habitats Regulations Assessment?

HRA needs to be undertaken for any plan which, either alone or in combination, has proposals that could significantly effect the special features of a SPA, SAC or Ramsar site. This could include where there are proposals for development of a site for employment or residential, or a change of use of land from what already occurs there.

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Picture 1



Picture 2

Sponsor this guide:

[View details of this and other commercial opportunities on the Planning Portal](#)

A banner for 'Sponsor our interactive guides' featuring the Planning Portal logo and a button that says 'Click here for further details'.

An interactive guide window titled 'External Walls' is overlaid on the 3D house rendering. The window has a blue header and a white body. It contains the following text:

**External Walls**

**▼ Planning Permission**

You do not need to apply for planning permission for repairs, maintenance or minor improvements, such as painting your house.

If you live in a listed building, you will need listed building consent for any significant works whether internal or external.

If you live in a Conservation Area, a National Park, an Area of Outstanding Natural Beauty or the Broads, you will need to apply for planning permission before cladding the outside of your house with stone, artificial stone, pebble dash, render, timber, plastic or tiles.

[Learn more on the Planning Portal>>](#)

[Learn more about Insulation>>](#)

**▶ Building Regulations**

The window also has a close button (X) in the top right corner. The background shows the 3D house with yellow highlights on the external walls.

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## **Neighbourhood Planning guidance notes available:**

### **Deciding to produce a Neighbourhood Development Plan**

1. Which is the right tool for your parish
2. What is a Neighbourhood Development Plan
3. Getting started
4. A guide to procedures
5. Funding

### **Plan Production**

6. Developing a Vision and Objectives
7. Generating options
8. Writing planning policies
9. Environmental Assessment
10. Evidence base and information requirements
11. Implementation and Monitoring
12. Best practice community engagement techniques
13. Statutory consultees
14. Writing a consultation statement
15. Planning and other legislation
16. Web enabling your plan
17. Using OS based mapping
18. Glossary of planning terms

### **Topics**

19. Sustainable Water Management in Herefordshire
20. Guide to settlement boundaries
21. Guide to site assessment and choosing allocation sites
22. Meeting your housing requirements
23. Conservation issues
24. Recreational areas
25. Renewable energy
26. Transport issues
27. Community Infrastructure Levy

### **Additional Guidance**

28. Setting up a steering group
29. Creating a questionnaire
30. Community facilities
31. Conformity with the Local Plan (Core Strategy)
32. Examinations of Neighbourhood Development Plans
33. Guide to Neighbourhood Development Plan Referendums
34. Tourism
35. Basic Conditions
36. Your plan - Contributing to sustainable development