

**Rescission of Decision – Neighbourhood Planning**

(1) Decision to be Rescinded – Preparation of Neighbourhood Plan

We the undersigned request the Parish Council considers rescinding its decision made on 7 November 2013 (Minute No 150 – Neighbourhood Planning) in accordance with Standing Order No. 10.

“**RESOLVED:** That no action be taken to prepare a Neighbourhood Plan.”

(2) Summary of Reasons for the Proposed Rescission

There are five reasons for review of the decision; (1) reforms to the planning system subsequent to the decision; (2) the status of Cheshire East Local Plan in light of an emerging lack of a 5 year housing supply in Cheshire East coupled with Nantwich and its environs being already close to meeting a revised Local Plan housing requirement; (3) clarification of the heightened planning status of Neighbourhood Plans from the Parliamentary Under Secretary of State for Planning and Development; (4) clarification of the nature of challenges to emerging Neighbourhood Plans within Cheshire; and (5) availability from February 2014 of funding and direct support for development of Neighbourhood Plans.

Details of the reasons for review of the decision are appended below (pages 2-5).

(3) Alternative Motion

We propose the following decision to replace the resolution in Minute No 150 -

“That the Parish Council establishes a Working Party to initiate the preparation of a Neighbourhood Plan.”

Signed by: Councillors Matthew Theobald, John Davenport and Martin Malbon  
Dated: 24<sup>th</sup> January, 2014

## Reasons for the proposed rescission

### Introduction

The Localism Act 2011 placed a legal duty on local planning authorities (e.g. Cheshire East Council) to support and advise parish councils that want to do neighbourhood planning.

Local Councils can use the neighbourhood planning powers to establish general planning policies for the development and use of land in a neighbourhood. Neighbourhood Development Plans (also referred to as Neighbourhood Plans) do not take effect unless there is a majority of support in a referendum of the neighbourhood.

### 1. Planning system changes

New reforms to the planning system were revealed by a senior advisor to the government in January 2014. The same advisor described the changes as being a "physical harm" inflicted on the countryside, whilst the Planning Minister describes the reforms as "significantly cut[ting] the burdens" of planning applications and "save the industry precious time and money".

#### 1.1 Discharge of planning conditions

One of the most significant measures gives developers new powers to ignore LPAs and push ahead with new housing. The new powers relate to applications being automatically approved if councils "fail to discharge" a planning condition "in time". In the professional opinion of Richard Blyth (head of policy at the Royal Town and Planning Institute, this policy alone will mean developers "can hold everybody to ransom". The Local Government Association view the use of planning conditions as "vital", helping "protect communities from unwanted developments".<sup>1</sup>

#### 1.2 Environmental Impact Assessments

A second significant change will remove the need for environmental impact assessments (EIA) for many proposed developments on green field sites. EIAs examine the impact of a proposed development on the landscape, animals, flora and fauna, where appropriate suggesting mitigations for the environmental damage. Currently, an EIA is required for any proposal greater than one acre in size. The government proposes to raise the threshold to a "significantly higher level".<sup>2</sup>

Also of note is the Government's stated intention to "publish significantly reduced planning guidance", although no timetable has yet been published.<sup>3</sup>

#### 1.3 Affordable housing

Section 106 agreements (made under section 106 of the Town and Country Planning Act 1990, as amended), are agreements between the developer and Local Planning Authority (LPA) to address concerns the LPA may have about meeting the cost of providing new infrastructure or about the impact on the local area.

New legislation has been introduced, in the Growth and Infrastructure Act 2013, that allows a developer to ask the LPA to modify a S106 agreement, where development becomes "unviable" due to S106 conditions relating to affordable housing – either to modify, change the number of affordable houses or even remove the condition entirely. If the LPA does not agree to the modification, the developer can appeal to the Planning Inspectorate.<sup>4</sup>

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<sup>1</sup> "Government takes 'nuclear option' with new planning laws", The Telegraph, 13 January 2014

<sup>2</sup> "EIA thresholds to be relaxed to speed up planning system", RIBA, 16 January 2014

<sup>3</sup> "Planning reform proposals", Standard Note SN/SC/6418, House of Commons Library, 21 January 2014

<sup>4</sup> "Planning for housing" Standard Note SN/SC/3741, House of Commons Library, 11 December 2013

#### 1.4 Moving determination of applications away from the LPA

Where an LPA has a track record of “consistently poor performance in the speed or quality of its decisions”<sup>5</sup>, the Secretary of State intends to allow the Planning Inspectorate to determine “major” planning applications.

It should be noted that “consistently poor” is defined as 40% of decisions made by a LPA, this includes non-determinations such as those occurring throughout 2012 and 2013 within Cheshire East.

## 2. Local Plans

Since the introduction of the National Planning Policy Framework (NPPF), there has been a shift, in appeal decisions, towards using the Sedgefield method of calculating housing supply. The Sedgefield method ensures any current housing shortfall is made up quickly, rather than averaged out over a much longer time frame.<sup>6</sup> Cheshire East Council utilised the Liverpool method to calculate a 5 year housing supply. The Liverpool method averages out any housing shortfall over the life of the plan (i.e. until 2030).

Recent planning appeals for Cheshire East have determined that the council does not have a 5 year housing supply. The emerging Local Plan is already changing to recover the shortfall over a much shorter time scale, as evidenced by the most recent version of the Cheshire East Core Strategy increasing the housing requirement for Nantwich and its environs by 350 to 1,850. Planning applications currently going through the system would, if granted, mean that the already higher target would be met by 2015, some 15 years ahead of the Core Strategy time frame. Professional opinion holds that the Local Plan is at the very least 12 months away from moving towards ratification, with the next version of the Local Plan perhaps reaching public review at some point in 2014. We should also be mindful that the Local Plan may subsequently be challenged by housing developers.

Housing developers are already seeking to build more houses than previously defined in developments approved during 2013;

- (1) The developer planning to build phase 2 of Stapeley Water Gardens has publicly stated plans to seek permission for an additional 50 homes (bringing the total to 200),
- (2) The developer planning to build housing off Queens Drive in Nantwich is seeking approval for a further 95 homes on land adjacent to the approved site.

## 3. Neighbourhood Plans planning weight

The planning status of Neighbourhood Plans was emphasised by Nick Boles MP (Parliamentary Under Secretary of State for Planning and Development), during a meeting on 7<sup>th</sup> October 2013, attended by representatives of several Local Councils in Cheshire.

Mr Boles stated that “*once a neighbourhood plan has passed a referendum it has statutory weight so it is of equal legal force with anything in the local plan. That is a really significant thing because it means decisions will be made according to local people.*”<sup>7</sup>

Mr Boles has also told MPs that planning applications that run the risk of undermining a plan could be refused where a neighbourhood plan has completed consultation but has not gone to local referendum and subsequent examination.<sup>8</sup> The Minister stated that ‘before the plans have been examined, they will have material weight and they can, in exceptional circumstances, be used just on the basis of prematurity to refuse an application, if the application is so substantial that it could completely knock the legs out from that emerging plan’.

Local Plans, however, **will not** have material weight until they are have been submitted to the Planning Inspectorate.

<sup>5</sup> House of Commons Debate, 6 September 2012

<sup>6</sup> “The struggle for sites” Planning, 31 May 2013

<sup>7</sup> “Meeting with Nick Boles MP” Hartford Parish Council [www.hartfordparishcouncil.org.uk](http://www.hartfordparishcouncil.org.uk),

<sup>8</sup> “New guidance will give weight to emerging plans”, RIBA, 23 January 2014

#### 4. Neighbourhood Plans within Cheshire

Tattenhall was the fourth area in the UK to take a Neighbourhood Plan to referendum. The plan was approved by 96% of those voting (52% turn out) on 24<sup>th</sup> October 2013<sup>9</sup>.

The Tattenhall Neighbourhood Plan policies oppose "large scale, inappropriate development" along existing village boundaries and include support for housing developments of up to 30 homes only in such areas<sup>10</sup>.

Two housing developers (Barratt Homes and Wainhomes, who have submitted planning applications for 68 and 137 homes respectively in the Tattenhall area) are challenging the LPA executive's endorsement of the Neighbourhood Plan on a technical ground, namely that "the plan is technically flawed". The claim questioned the impartiality of the examiner of the plan, who was a non-executive director of a land company promoting an urban extension at Hoole Gate in Chester at the time of the examination. <sup>11</sup>

The challenge lodged against the LPA (Cheshire West and Chester Council) **does not** relate to the content of the Neighbourhood Plan, nor to the process followed by Tattenhall Parish Council

Winsford Neighbourhood Plan has reached the examination stage. A legal submission on behalf of the Darnhall Estate (an objector to the plan) challenges "whether the Winsford Neighbourhood Plan should be delayed from coming into effect until a new borough-wide Local Plan has been progressed"<sup>12</sup>. Again, the challenge was lodged against the LPA (Cheshire West and Chester Council) and **does not** relate to the content of the Neighbourhood Plan or its validity.

##### 4.1 "Neighbourhood areas"

Designation of an area as a "neighbourhood area for the purposes of preparing a Neighbourhood Development Plan" is a necessary enabling step before starting development of a Neighbourhood Plan.

Across Cheshire East, three neighbourhood areas (Adlington, Astbury & Moreton, High Legh) have applied to the LPA for designation. One area (Brereton) has already been designated as a "neighbourhood area".

In Cheshire West and Chester, a total of nineteen areas were designated as "neighbourhood areas" in 2013. Tarporley is currently applying for designation, with consultation closing in February 2014.

##### 4.2. Why have a Neighbourhood Plan

A Neighbourhood Plan would become part of the statutory development plan for the area, superseding the local plan that's still in development for Cheshire East (whilst being aligned with it).

A Neighbourhood Plan gives our community more say about where new homes are built and sets policies for housing, retail, industry, heritage, landscape protection and infrastructure; protecting Stapeley from unwanted development. The community would have greater control over the way in which the parish develops<sup>13</sup>. As discussed previously, a Neighbourhood Plan gains material planning weight far sooner than a Local Plan does.

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<sup>9</sup> www.planningresource.co.uk, 25 October 2013

<sup>10</sup> Pinsent Masons LLP [www.out-law.com](http://www.out-law.com) 16 December 2013

<sup>11</sup> Pinsent Masons LLP, [www.out-law.com](http://www.out-law.com), 16 December 2013

<sup>12</sup> Winsford Town Council website news item, [www.winsford.gov.uk/news\\_more.asp?news\\_id=137](http://www.winsford.gov.uk/news_more.asp?news_id=137)

<sup>13</sup> "The good councillor's guide", National Association of Local Councils, 4<sup>th</sup> Edition, 2013

Over 800 local councils (as of December 2013) are actively developing Neighbourhood Plans. Those plans that have already reached the referendum stage have received overwhelming voter support.

The Parish Council would lead the planning project, for example via a Working Group.

## **5. Support available for Neighbourhood Planning**

Support and funding once again becomes available from Government in February 2014, through the "Supporting Communities in Neighbourhood Planning" programme, for;

- Direct advice and support, tailored to meet our needs,
- Grant payments of up to £7,000 to contribute to costs incurred by the group preparing the neighbourhood plan.

The LPA is also legally required to provide advice and assistance in the development of a Neighbourhood Plan, such as; providing data for the Plan's evidence base, technical support for plan creation, information sharing, advice on national policies/guidance.

There is a wealth of support and guidance available through Locality<sup>14</sup> and [mycommunityrights.org.uk](http://mycommunityrights.org.uk).

## **Conclusion**

Changes will be seen for both planning and development landscapes in 2014. The lack of a 5 year housing supply in Cheshire East is attracting speculative development applications, along with proposals to expand existing development sites, exerting pressure on local communities. Many parishioners have voiced their concerns about future development in the parish, either directly to Councillors or through comments on both the Local Plan and specific planning applications.

Neighbourhood Planning presents the Parish Council with an opportunity to act on the concerns of local residents and businesses about protecting Stapeley's environment for the benefit of the local community, tapping in to the support and funding available to deliver a plan that defines future development in line with the wishes of the local population.

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<sup>14</sup> [www.locality.org.uk](http://www.locality.org.uk)