

# Neighbourhood Planning Guidance Note 35

# Basic Conditions

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This guidance note explains the 'basic conditions' which all Neighbourhood Development Plans need to meet in order to be successful at examination and therefore operational as part of the planning system.

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Following the 6 week Regulation 14 consultation on your draft Neighbourhood Development Plan, the next important milestone in the plan's journey towards adoption will be reaching the independent examination. Here, all Neighbourhood Development Plans need to meet what are known as 'basic conditions', in order to be put to referendum and made (adopted) by Herefordshire Council. Whilst detailed guidance in respect of examinations can be found at Guidance Note 32, the examiner charged with looking into your plan will want to know whether or not it meets these conditions.

### **The basic conditions that a draft Neighbourhood Development Plan must meet if it is to proceed to referendum**

Guidance Note 15: Planning and other legislation considers the legal aspects of things in greater detail, but the basic conditions are set out in paragraph 8(s) of Schedule 4B to the Town and Country Planning Act (1990), as applied to neighbourhood plans by Section 38A of the Planning and Compulsory Purchase Act (2004). The basic conditions are detailed as follows:

1. Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the Neighbourhood Development Plan.
2. The making of the Neighbourhood Development Plan contributes to the achievement of sustainable development.
3. The making of the Neighbourhood Development Plan 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).
4. The making of the Neighbourhood Development Plan does not breach, and is otherwise compatible with, EU obligations.
5. Prescribed conditions are met in relation to the Neighbourhood Development Plan and prescribed matters have been complied with in connection with the proposal for the Neighbourhood Development Plan.

At first glance these basic conditions may seem rather daunting but in essence they seek to ensure that your plan:

- Has regard to national planning policy (refer to the NPPF and Planning Practice Guidance);
- Contributes to the achievement of sustainable development (refer to the NPPF for the latest definition of this);
- Is in general conformity with the strategic policies in the development plan for the local area (the Core Strategy/Local Plan for Herefordshire);
- Is compatible with EU Obligations, including Human Rights requirements, and environmental assessment requirements.

The following points provide greater clarity on these:

- National planning policy – a Neighbourhood Development Plan must not constrain the delivery of important national policy objectives set within the National Planning Policy Framework. Paragraph 16 sets the tone for neighbourhood plans, while paragraph 184 is directly relevant.
  - NDPs should support the strategic development needs set out in Local Plans, including policies for housing and economic development;
  - Plans should positively support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan;
  - They should identify opportunities to use Neighbourhood Development Orders to enable development that are consistent with their Neighbourhood Development Plans to proceed.
- Sustainable development – how will your plan contribute to improvements in social, economic and environmental conditions? How will any adverse effects arising from its proposals be prevented or offset? This gives rise to the need for an evidence base, which is explained in Guidance Note 10.

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It would be useful for you plan to reflect how each of its policies and proposals are making this contribution. A Sustainability Appraisal is not a legal requirement for NDPs but this could be an additional way of demonstrating contributing to sustainable development for more complex plans.

- General conformity – this concerns the extent to which your plan:
  - Upholds the principles underlying strategic policies within the Local Plan (Core Strategy);
  - Conflicts with the policies and proposals contained in the Local Plan (Core Strategy);
  - Adds local detail to countywide policies or fills policy vacuums without undermining the purpose of strategic policies;
  - Is underpinned by robust evidence.
- EU obligations – is your plan or order compatible with the following European Union obligations, which have been transposed into domestic legislation, thereby ensuring its legal compliance?
  - Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (often referred to as the Strategic Environmental Assessment (SEA) Directive) – refer to Guidance Note 9a for further details;
  - Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds (often referred to as the Habitats and Wild Birds Directives respectively). These aim to protect and improve Europe’s most important habitats and species. They will certainly be of relevance to Neighbourhood Development Plans being prepared in Herefordshire, further details of which are set within Guidance Note 9;

- Other European directives, such as the Air Quality Directive (2008/50/EC) or the Water Framework Directive (2000/60/EC) may be relevant, too.

## When must we take account of the basic conditions?

The short answer to this question is straight away! Throughout the process of developing your Neighbourhood Development Plan you will need to consider whether you feel that the document has met all of the required ‘basic conditions’ which the plan will be judged on.

By preparing a basic conditions statement you can seek to demonstrate to the independent examiner that your draft Neighbourhood Development Plan meets the basic conditions.

You are advised to discuss and share early drafts of the basic conditions statement with your designated support offer from Herefordshire Council’s neighbourhood planning team, as it is crucial that you do not fall foul of any one of the basic conditions. If you do not meet all of the basic conditions then your Plan will not be successful at examination. This can happen, as one Parish Council based in Sussex has already witnessed.

On 24 January 2014, it was revealed that the Slaugham Neighbourhood Development Plan had become the first in the country to fail an independent examination due, in part, to the plan’s failure to meet the basic condition concerning EU obligations. Here, the environmental appraisal of the plan, which has to be undertaken pursuant to separate regulations derived from EC Directive 2001/42/EC (the SEA Directive), was found to be inadequate. As a consequence of this report, the Parish Council will have to go back to the drawing board and start the process from scratch at their own expense.

The necessity to undertake Habitats Regulations Assessment is equally as important as environmental appraisal, as identified by Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended), which is clear that:

“The making of the NDP is not likely to have a significant effect on a European site (as defined

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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 & c) Regulations 2007 9(e) (either alone or in combination with other plans or projects)".

### **What will Herefordshire Council do to assist us in this area?**

Your support officer, will be happy to provide constructive comments on the emerging Neighbourhood Development Plan prior to submission and discuss the contents of any supporting documents, including the basic conditions statement. If your support officer considers that a Draft Plan may fall short of meeting one or more of the basic conditions they will discuss their concerns with the steering group, in order that these can be considered before it is formally submitted to Herefordshire Council in readiness for the 6 week Regulation 16 consultation, the last stage prior to examination. However, this service will only be effective if your support officer is kept abreast of latest iterations of your plan and other events. Therefore we strongly advise that you stay in touch even if you are using consultants or preparing your plan through a third party.

### **How do we demonstrate that our plan satisfies the conditions?**

A basic conditions statement setting out how your Neighbourhood Development Plan meets each of the basic conditions stated above, must accompany your final plan when it is submitted to Herefordshire Council. A basic conditions checklist is available on the website (NDP2) and completing this should be of some assistance prior to drafting the full statement.

There is no set template for a basic conditions statement, but they should demonstrate how the plan meets each condition. The use of sub-headings can greatly assist with this and will help to avoid any confusion.

Several Neighbourhood Development Plans are now in operation in other parts of the country, all of which successfully passed through their examinations. It would therefore be worth looking at the accompanying basic condition statements to gain a better idea of their layout and style.

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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