

Neighbourhood Development Plan Examination - Basic Conditions Statement

**Town and Country Planning Act 1990 (as amended)
Paragraph 8(2) of Schedule 4B Statement
Submission Date**

Langwathby Neighbourhood Development Plan Proposal

by

Langwathby Parish Council acting as Qualifying Body

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Approved by Tom Woof MRTPI

INTRODUCTION

1. This Basic Conditions Statement (BCS) has been prepared by H&H Land and Property Ltd as part of its Neighbourhood Planning work with Langthby Parish Council. The Parish area has been designated a Neighbourhood Area and Langthby Parish Council is a qualifying body under the 2012 Neighbourhood Planning Regulations.
2. This BSC is submitted together with its appendices to Eden District Council (EDC) under Part 6 paragraph 22 of the Neighbourhood Planning Regulations 2012.

Background to the Langwathby NDP

BASIC CONDITIONS

3. Neighbourhood Development Plans must meet the following basic conditions¹.

(1) The examiner must consider the following—

- (a) whether the draft neighbourhood development plan meets the basic conditions (see sub-paragraph (2)),*
- (b) whether the draft neighbourhood development plan complies with the provision made by or under sections 61E(2), 61J and 61L,*
- (d) whether the area for any referendum should extend beyond the neighbourhood area to which the draft neighbourhood development plan relates, and*
- (e) such other matters as may be prescribed.*

(2) A draft neighbourhood development plan meets the basic conditions if—

- (a) 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,*
- (d) the making of the neighbourhood development plan contributes to the achievement of sustainable development,*
- (e) 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),*
- (f) the making of the neighbourhood development plan does not breach, and is otherwise compatible with, EU obligations, and*
- (g) 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.*

¹ Paragraph 8 of Schedule 4B to the 1990 Act

(6) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft neighbourhood development plan is compatible with the Convention rights).

4. To meet these basic conditions the following information is presented to help the Examiner in his or her consideration.

Schedule 4B Paragraph 8 Section (1)

1a) This is for the Examiner to determine having had regard to the information presented in this Statement. It is considered in detail below under Section (2).

b) the provisions of 61E(2), 61J and 61L as amended by s38C(5)(b) is a reference to the provisions of 38A and 38B.

In relation to the provisions of 38A and 38B the following is submitted.

38A

- 1) Langwathby Parish is a qualifying body and entitled to submit a neighbourhood development plan (NDP) for its own parish area
- 2) The Langwathby NDP expresses policies relating to land use within the neighbourhood area
- 3) to 12) are essentially post examination procedures.

38B

- 1) a) the period of the NDP is up to 2032 or 17 years. This period has been chosen to align the NDP with the dates of the emerging Eden District Council Local Plan.
- b) the NDP does not include any provision for excluded development such as national infrastructure
- c) the NDP does not relate to more than one neighbourhood area. It relates to Langwathby Neighbourhood Area as designated by Eden District Council on 17 July August 2014.
- 2) There is no other NDP in place in this neighbourhood area.
- 3) Refers to conflicts within the NDP.
- 4) Refers to regulations that the SoS may make relating to NDPs. Such regulations are 2012 No 637 The Neighbourhood Planning (General) Regulations 2012 which have been used to inform the process of making the Langwathby NDP. These regulations set out the process by which neighbourhood plans are to be made and set out
 - the consultation bodies for NDPs These have been included in the Consultation Statement (attached in the bundle appendix 2)
 - that NDPs which are likely to have a significant effect on European Sites (habitats) must be subject to an appropriate assessment. The Langwathby

NDP has been subject to a Strategic Environmental Assessment and Habitat Regulations Screening Exercise which has concluded that no further assessment is required (attached in the bundle appendix 3).

- • The 2015 amendment to the Regulations require that the submission of a Neighbourhood Plan is also accompanied by a Statement setting out the reasons why an Environmental Report (prepared under SI 2004/1633 Part 3 Para 12 (2) and (3)) is not required or a Report prepared in that way (as necessary). For this NDP a Statement is attached at Appendix 6 stating that because the Screening Opinions for the SEA and HRA regulations suggest that there will not be any significant environmental effects as a result of this plan, then no Environmental Report is required.
- that NDO may be subject to an Environmental Impact Assessment (not relevant for NDPs).

5) Refers to the publication of NDPs

6) Clarifies what is excluded development.

(d) Whether the area for the referendum should extend beyond the area that the draft Neighbourhood Development Plan relates.

It is not considered that there is any benefit in extending the area for the referendum beyond the Designated Neighbourhood Plan Area because the effect of the policies in the NDP are specific to Langwathby Parish.

(e) Prescribed Matters

There are no prescribed matters other than those considered below under paragraph 2 (g).

Schedule 4B Paragraph 8 Section (2)

(a) SoS Guidance - National Planning Practice Guidance

5. NPPG 070 says:

A qualifying body is advised to set out in its basic conditions statement how they have had regard to national policy and considered whether a particular policy is or is not relevant. A qualifying body is encouraged to set out the particular national policies that it has considered, and how the policies in a draft neighbourhood plan or the development proposals in an Plan take account of national policy and advice.

6. The National Policies that have been considered for relevance are listed below

NPPF Paragraph	Summary of Relevance to Neighbourhood Planning	How the NPPF is taken account of in the Langwathby NDP
NPPF 2	Confirms the significance of the adopted development plan unless material considerations indicate otherwise	Consideration of the status of the EDC plans has been considered and views taken as to their relevance to the NDP.

NPPF 6 – 15	Puts sustainability at the heart of the planning system and the importance of local circumstances in plans.	The NDP is intended to improve the sustainability of the community of Langwathby and Langththby Parish by addressing a local housing and employment in a locally distinctive way.
NPPF 16	Refers to neighbourhood planning and seeks that communities engage with the process and develop policies for housing, economic development and positively shape and direct development that is outside the strategic elements of the local plan.	The NDP considers housing issues explicitly through active engagement of the community with the process
NPPF 17	Seeks that neighbourhood planning plays a part in developing an empowering and succinct planning system.	The NDP is an empowering process for the community in Langwathby and Langththby and deals with housing that is referred to in this paragraph of the NPPF.
NPPF18 – 22	Seeks the encouragement and protection of sites for economic growth	The NDP protects employment sites
NPPF 23 - 27	Refer to town centres	Not applicable
NPPF 28	Refers to policies to support economic growth in rural areas	The NDP allocates sites which will support economic growth in the wider rural area.
NPPF29 – 40	Refers to supporting sustainable transport	Not relevant to this NDP
NPPF 42 - 45	Refers to supporting high quality communications infrastructure	Not relevant to this NDP
NPPF47 – 55	Refers to the delivery of a wide choice of housing and in particular NPPF 50 refers to mixed communities which reflect local demand	The NDP seeks to deliver an increased amount of housing for future residents which will be more affordable than any other housing in the parish.
NPPF 56 – 68	Refers to the requirement for good design and in particular NPPF 58 seeks that NDPs should set out how that quality is to be provided	Not applicable.

NPPF 69 – 78	Refers to the promotion of healthy communities and in particular to the use of neighbourhood plans to designate open green space	Not applicable
NPPF 79 – 92	Refers to the protection of Green Belt land	Not applicable
NPPF 86	This policy refers to the criteria for inclusion of a village within the Green Belt and the openness of the character of the village as part of the open character of the Green Belt.	Not applicable
NPPF 93 – 108	Refers to climate change and flooding	Not applicable
NPPF 109 - 125	Refers to the conservation of the natural environment including biodiversity	All developments must take due account of national or international designations for habitats. The NDP does not alter this in any way.
NPPF 126 - 141	Refers to the conservation and enhancing of the historic environment. There is no specific reference to Neighbourhood Plans in this section of the NPPF.	All developments must also take due account of national or international designations for landscape.
NPPF 142 – 149	Refers to safeguarding minerals	No relevant to this NDP
NPPF 150 – 182	Refers to Plan making and specifically to local authority plan making as neighbourhood planning is considered in the next section.	Not applicable
NPPF 183	Confirms that Neighbourhood Planning provides powers to grant planning permission	The NDP does this.
NPPF184	Seeks that NDP do not promote less development than is set out in the Local Plan or undermine its strategic policies.	The NDP promotes a wider form of development than the Local Plan and does not undermines its strategic policies.
NPPF 185	Sets out the relationship of NDPs with other policies	This is implicit in the NDP

NPPF186 - 219	Refers to decision taking, enforcement and implementation	These policies are not directly relevant the NDP other than the generality of the NDP forming part of the development framework.
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7. The Rt Hon Greg Clark MP says in his forward to the NPPF that Planning should be a creative exercise, a collective enterprise, not excluding people and communities, and Neighbourhood Planning is intended to address this.
8. The presumption in favour of sustainable development within the NPPF means that neighbourhoods should plan positively to support local development that is outside the strategic elements of the local plan².

Schedule 4B Paragraph 8 Section 2

(b) listed buildings

The Listed Building within Langwathby shown in the list within the Plan. It is not considered that the policies within the plan will have any particular effect upon these buildings.

Schedule 4B Paragraph 8 Section 2

(c) conservation areas

The only conservation area within the NDP area is the Settle – Carlisle Rail line. It is not considered that the policies within the plan will have any particular effect upon the conservation area.

Schedule 4B Paragraph 8 Section 2

(d) Sustainable Development

9. The thrust of the Neighbourhood Plan is to increase the sustainability of the communities in Langwathby by allowing a sensible amount of new development spread across an allocated site and a series of smaller windfall sites, seeking housing for the aging population, protecting employment land and the heritage and character of the countryside.

10. Greg Clark, Minister for Planning and Decentralisation said:

"Most people love where they live, yet the planning system has given them almost no say on how their neighbourhood develops. The Coalition Government will

² NPPF paras 15 and 16

revolutionise the planning process by taking power away from officials and putting it into the hands of those who know most about their neighbourhood - local people themselves. This will be a huge opportunity for communities to exercise genuine influence over what their home town should look like in the future. It will create the freedom and the incentives for those places that want to grow, to do so, and to reap the benefits. It's a reason to say yes."

Schedule 4B Paragraph 8 Section 2

(e) General Conformity with Strategic Policies

The meaning of general conformity

11. The term 'general conformity' is not defined in law but has been discussed in a number of judgements; particularly with regard to the relationship between Structure Plans and Local Plans. The use of the adjective 'general' is to introduce a degree of flexibility, although not unlimited flexibility. The judgements seem to conclude that the degree of flexibility this phrase permits will depend upon the planning judgement of the decision maker and the particular circumstances of the case.
12. In this case, the test is to be applied to a new and different tier of planning policy formulation; that between the strategic elements of a Local Plan and a Neighbourhood Development Plan or Plan. This relationship has not been tested in the Courts and there is no case law to consider to help in these circumstances, other than in the most general sense. It is useful therefore to consider what was the intention of the legislator in choosing these words to define this relationship. The SoS states in the NPPF;
Neighbourhood planning gives communities the direct power to plan the areas in which they live through setting planning policies for the development and use of land. Parishes can use neighbourhood planning to grant planning permission through neighbourhood development Plans for specific development that complies with the Plan.
13. This is what the Langwathby NDP intends to do. The process of preparing a NDP is a discretionary one that is undertaken by the Community, it is intended to be a locally driven process and one which is not undertaken by Local Authorities. As such, for a local community, it is a significant undertaking and one that is made voluntarily and not made lightly. To be worth this effort and time, the result of a NDP must be sufficiently different from the Local Plan and to allow a difference that, although not undermining the overall strategy, does provide for decision making that would not otherwise be possible without a NDP. To this extent then the subject and scope of an NDP will require more flexibility rather than less in the range of flexibility that 'general conformity' allows. The converse of this, if a more rigid approach to 'general conformity' were to be adopted, would tend to reduce the chances that Local Communities would undertake the process of NDP making and the purpose of the Localism Act would be severely diminished.
14. The scope of NDPs will tend to seek out those areas of permission that will make the most positive difference for Local Communities and the phrase 'general conformity' needs to be interpreted accordingly.
15. For the relationship between the LoNDPn Plan and Borough UDPs a definition of general conformity was proposed which referred to the significance of harm caused a spatial development strategy. This level of planning and the level of 'general conformity' between Structure Plans and Local Plans has the potential to affect a larger and inherently more strategic area than that between a Local Plan and Neighbourhood Area. It is therefore natural that the degree of conformity between policies of higher tiers within the overall framework need to be tighter than those between lower tiers of policy; which may be looser, because they affect a smaller and inherently less strategic area; and looser still where the proposal is for a single site as in the case with this NDP.

16. The NPPF³ says that *Neighbourhood planning is a powerful set of tools for local people*. This wording is intended to give local communities ambition and higher goals than is possible with Area Action Plans, Village Design Guides and the like. To be powerful a NDP must be intended to allow a locally distinctiveness to be tangible and real and not be completely in conformity with higher tier policy. A level of variation within the strategic framework is part of neighbourhood planning.
17. For all these reasons the NDP needs to be considered with an understanding of 'general conformity' that is generally looser than that used to consider the relationship between Structure and Local Plans or between the LoNDPn Plan and UDPs.

NPPG 74 says:

What is meant by 'general conformity'?

When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:

- 1. whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with**
- 2. the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy**
- 3. whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy**
- 4. the rationale for the approach taken in the draft neighbourhood plan or Plan and the evidence to justify that approach**

These four issues are considered in the accompanying Table of Conformity.

³ NPPF para 184

NDP Policy	NPPF assessment of General Conformity with Strategic Policy			Deliverability	Sustainability	Breach of EU regulations	
<i>whether the neighbourhood plan policy supports and upholds the general principle that the strategic policy is concerned with</i>	<i>the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy</i>	<i>whether the draft neighbourhood plan policy provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy</i>	<i>the rationale for the approach taken in the draft neighbourhood plan and the evidence to justify that approach</i>				
LNP Policy 1 Housing Provision	Yes the current and emerging strategic policy sees a limited degree of new housing development in Langwathby broadly in line with the figure in this policy	No conflict	Additional detail through the use of criteria for housing development	The approach is to set out clear criteria which focusses development onto allocated sites and deal with other possible sites coming forward	Yes - see letters from landowners	Yes, this approach will allow a significant scheme to provide the public benefits in terms of affordable housing and other infrastructure benefits together with small sites to take advantage of opportunities for developments they arise without compromising the character of the village.	no - the major site will be less than 150 units

LNP Policy 2 Housing Sites	Yes - allocating a site supports the delivery of housing within the district	No conflict	Additional detail in the form of site allocations in the plan and criteria within the policy	This includes the same site that have been consistently proposed throughout the Eden Local Plan preparation.	Yes - see letters from landowners	Yes a larger site will allow a mix of housing and the delivery of affordable housing which will assist in securing a social mix in the village and add to the vitality of the community.	No - each site will be less than 150 units
LNP Policy 3 Small allocated sites and windfall sites	Yes - emerging policy suggests unallocated small sites are an acceptable way to provide small scale housing schemes	No conflict	Additional detail in the form of development rates as they emerge from time to time.	The use of development rates will ensure that a number of small scale developments can come forward to meet the ongoing needs of the community without overburdening the community or infrastructure.	Yes - the policy does not place overly burdensome requirements on development proposals	Yes, compliance with this policy will allow small scale housing development where it will not have an adverse impact on the local community	No

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LNP Policy 4 Affordable housing	Yes - the policy explicitly supports strategic policy for affordable housing and affordable housing contributions are to be retained for use within the parish.	No conflict	Yes, this policy provides a level of detail in referring specifically to the provision of older persons housing as part of affordable housing provision.	This policy is considered the best way of responding to the changing national position of affordable housing provision and on the not untypical aging population in the parish and the absence of any planning policy to specifically encourage this form affordable housing.	Yes - where evidence suggests older persons housing is required this will also provide evidence of demand.	Yes - this policy will help ensure that affordable housing contributions are reserved to meet parish needs and that the community is more resilient to aging and will add to the vitality of the community.	No
LNP Policy 5 Older peoples housing	The existing strategic policy is silent on housing for older people	No conflict	This policy adds local details by including a requirement for older persons housing in schemes of more than 4 units.	There is an aging population generally, and this policy seeks to address this in a small way by ensuring that a modest amount of new housing on major schemes will be reserved for local older people.	Yes. This modest requirement is unlikely to place an unreasonable burden on developers when the local older market is considered to be a key market for new housing in Langwathby in any case.	Yes - this policy will ensure there is some housing reserved for older local people and allow the community to have an increased demographic spread	No

LNP Policy 6 Existing Employment Land	Yes - The existing strategic policy seeks to protect existing employment land for its intended purpose.	No conflict	This policy sets out a local level of detail for the protection of certain employment sites.	The rational for this policy is to protect land for employment generating purposes in order to ensure that Langwathby remains a viable community. The use of NDO's is an acceptable way of seeking other uses on these sites however. This leaves the decision making with the local community. The pre-submission consultation identified a need to recognise the importance of the protected green spaces and the local environment generally.	Yes - there has been no concerns raised about this policy during pre-submission consultation.	Yes - a key part of ensuring economic sustainability is to retain employment uses within the Parish.	No
LNP Policy 7	Yes - the policy supports the general position of protecting and enhancing the intrinsic beauty of the countryside and the character of the settlement.	No conflict	The policy highlights the green spaces in the centre of the village as protected areas.	There is no particular need to seek additional protection for heritage assets as the current protection is considered adequate.	Yes	yes	No
LNP Policy 8	Yes - protection of designated heritage assets is part of local and national policy requirements	No conflict	Only insofar as it lists the heritage assets.-		Yes	Yes	No

Schedule 4B Paragraph 8 Section 2

(f) EU obligations

18. The NDP has been subject to a Screening Exercise by the appropriate environmental body (Eden District Council) which was prepared and submitted to the statutory environmental bodies (English Heritage, Natural England and the Environment Agency) at draft and final stage who agreed with the report's conclusions that no detailed assessments to comply with the SEA Directive or HRA were required. Therefore the plan is considered to be compatible with EU obligations.

Schedule 4B Paragraph 8 Section 2

(g) Prescribed matters and conditions

19. Paragraph 1 of Schedule 2 of the Neighbourhood Planning Regulations 2012 prescribes the following condition for the purpose of this section of the Basic Condition Statement.

The making of the neighbourhood development Plan is not likely to have a significant effect on a European site (as defined 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(e)) (either alone or in combination with other plans or projects).

20. The effect of this condition and the explanatory note to the Neighbourhood Planning Regulations 2012 is that provided the appropriate environmental body (Eden District Council) is of the view that the NDP is not likely to have a significant effect upon a European Site (as considered above in Section (f) of the Statement) then, in the Examination of the Plan, the Examiner must apply the prescribed condition.

CONCLUSION

21. The Basic Conditions as set out in Schedule 4B to the TCPA 1990 are considered to be met by the Langwathby NDP. It is therefore respectfully suggested to the Examiner that the Langwathby NDP complies with Paragraph 8(1)(a) of Schedule 4B of the Act.

Appendix 5

List of background documents and weblinks

1. Eden Core Strategy <http://www.eden.gov.uk/planning-and-development/eden-local-development-framework/development-plan-documents/core-strategy-dpd/>
2. Living Working Countryside - Matthew Taylor Report [Living Working Countryside: The Taylor Review of Rural Economy and Affordable Housing](#)
3. EDC Report to Executive November 2011 [report PP62/11 of the Director of Policy and Performance \(PDF: 218 Kb / 8 pages\)](#)

Appendix 6

Statement of Reasons why an Environmental Report is not required.

Under SI2015/20 Neighbourhood Planning (General) (Amendment) Regulations 2015 submission of a Neighbourhood Plan should be accompanied by a Statement of Reasons why it has been determined that an Environmental Report is not required. This determination is for the Responsible Authority to undertake, but it is hoped that the reasons stated below will be accepted by Eden District Council in its determination.

1. The SEA screening report has concluded that there will be no significant environmental impact from the implementation of the plan.
2. The HRA Screening report has concluded that there will be no significant impact on habitats as a result of the implementation of the plan.