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EXAMINING NEIGHBOURHOOD PLANS IN ENGLAND: THE EXPERIENCE SO FAR

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Abstract

The planning system in England has undergone serial and far-reaching reforms over the past two decades with a number of notable changes reflecting a drive to speed-up planning, rescale it and look towards the neighbourhood as a unit of planning governance. An expression of the serial changes has been the establishment of neighbourhood planning (NP) as a part of the statutory land use planning system and the production of Neighbourhood Development Plans (NDPs). This iteration of local planning has brought its own set of procedural arrangements and regulations. One feature of neighbourhood planning process is the examination of the NDP. For this, an independent examiner is appointed who considers the Plan and whether it passes the required 'tests' (see Parker, Salter and Hickman, 2016). Drawing on data collected from the cadre of active NP examiners we reflect on how this stage has been experienced by examiners and places this new set of arrangements into the ongoing consideration of how knowledge and epistemic boundaries are maintained or reconciled as planning in England moves towards a co-production model.

EXAMINING NEIGHBOURHOOD PLANS IN ENGLAND: THE EXPERIENCE SO FAR

Introduction

Whilst there has been much academic interest in neighbourhood planning in England since it was introduced in 2010-11, there has been scant consideration of the neighbourhood plan examination stage or of the examiners charged with discharging this task. This paper begins to address this gap, by reporting on primary empirical research undertaken in the Autumn of 2016 and reflecting on what we now know, as well as what may be usefully explored further. The paper is structured by firstly providing a very brief introduction to neighbourhood planning (NP) and its place within the planning system, including its intended role and purpose. Second, we focus on the examination stage itself, reflecting upon what it is trying to achieve, why it is an important stage in the NP process, and what we might need to learn about its effectiveness. Thirdly we outline the results of the research carried out - where we learn more about the NP examination from the perspective of neighbourhood plan examiner's' themselves, before finally providing an agenda for further research in this area as part of our conclusions.

Neighbourhood Planning in Context

In November 2011 the Localism Act was enacted. This reflected a significant part of the governmental project to decentralise power to the local level and ostensibly to develop a 'new relationship' between central government, local government, communities and individuals (DCLG, 2010). A key feature of the Localism Act was the reformation of planning in England. The Act had at its centrepiece the right for communities to lead on the production of Neighbourhood Development Plans (NDPs). Communities were promised 'direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need' (DCLG, 2012: para 183) with neighbourhood planning seen as a tool to localise responsibility for development as part of a wider rethink about how local communities engage with planning. It is the latest in a line of government reforms and associated measures to increase community participation in planning (Wills, 2016: p31; Clifford and Tewdwr-Jones, 2013: p11; Parker et al, 2015) although - critically - for the first-time communities' plans will have statutory status within the planning system, with the same legal weight as local plans once 'made' following referendum. Communities were to be incentivised to prepare neighbourhood plans on the promise of 25% of Community Infrastructure Levy (CIL) receipts arising from development in their area, to help deliver the vision contained within the neighbourhood plan.

Neighbourhood plans were seen by government at the time as 'an alternative governance mechanism ...creating a "virtuous circle" where communities consent to development because they feel ownership' (DCLG, 2013, quoted in Brownill, 2017: p31) hence the growth agenda will be delivered by means of responsabilisation (Inch, 2015; Williams et al, 2014; Allmendinger and Haughton, 2012). The assumption behind NP is thus that if communities have a say over how their area develops they will act in a responsible way and there will be an increase in the acceptance of development (Ludwig and Ludwig, 2014). For many (e.g. Clarke and Cochrane 2013; Davoudi & Madanipour, 2013; Featherstone, et al, 2013; Newman, 2014; Williams, et

al. 2014; Wills 2016) the government's localism agenda has been identified as carrying neo-liberal credentials.

As Lerner (2000) emphasises: 'Neo-liberalism is both a political discourse about the nature of rule and a set of practices that facilitate the governing of individuals from a distance' (2000: p6) and as such, if it is accepted that neighbourhood planning reflects neo-liberal characteristics, then the empowerment of neighbourhoods is likely to be couched in a guided and managed form. Smith and Wistrich (2016) note the turn in Government rhetoric itself towards 'guided localism', in recognition of the need to set clear expectations in order that neighbourhood plans do not obstruct or counteract national growth priorities. This is an approach taken to manage the contradictions of a system where neighbourhood planning is just part of a multi-scalar and conflict ridden planning system which needs to be highly managed in order to ensure that conflict does not pervade (see Parker et al., 2017).

Hildreth (2011) for example highlights various manifestations of localism - 'community localism' being one derivative form - where the inhabitants of the neighbourhood can take ownership of the issues and solutions arising, but ultimately there are serious questions about how much this has been allowed to happen in reality. Much of the theoretical literature on urban governance indicates that state efforts to shape and limit the autonomy of actors is maintained by various means, technologies or governmentalities and while some see vehicles such as NP as part of efforts to 'govern through communities' (Dean, 2009) including how community action is often curtailed or managed as part of this purportedly empowering approach (Parker and Street, 2015; Rose, 1999). In terms of neighbourhood planning a number of 'boundary conditions' set the parameters within which groups can operate (Bradley, 2015; Parker et al, 2017). These including conforming to regulations associated to the NP process, and following the defined statutory process (Parker, 2012; Gallent and Robinson, 2012). The broader conditions and context of planning actions, including its rather subaltern place in the planning hierarchy - given its strategic context is defined by its 'parent' local plan, including housing growth targets, and consideration of what is legitimate in NDPs (Parker et al, in press; Eversole, 2010; Brownill, 2017) acts to shape or constrain the NDP as well as more general issues about resources and capacity of neighbourhoods.

This has led Parker et al (2017) to argue that government have framed or bounded NP to such an extent that the claimed openness and innovative potentials of NP are quite limited and this reflects the conclusions of others that localism is being deployed for 'symbolic advantage' (Ludwig and Ludwig, 2014: p253). Brownill (2016) claimed that localism is a cipher for instilling 'good governance' but this is on the ideological and policy terms shaped by government. For Hickman and Boddy (forthcoming) it is concealing a reality focussed on national political priorities rather than on local choice. For others, it can be understood as part of 'project austerity localism'; providing ideological cover for the impact of austerity and the restructuring of the welfare state as new actors are enrolled in the delivery of services. This also involves an increased reliance on individuals, communities and voluntary organisations (Bulley and Sokhi-Bulley, 2014; Davoudi and Madanipour, 2013; Jacobs, 2015; Wills, 2016a).

Much has been written about neighbourhood planning and its emerging outcomes, and early voices have raised some important questions about the inclusivity and practicalities involved. This neighbourhood planning literature has explored questions of its legitimacy (Davoudi and Cowie, 2013; Cowie and Davoudi, 2015); community capacity (Gunn et al., 2015); the emerging and uneven pattern of neighbourhood

planning (Parker and Salter, 2016; Turley, 2014; NLP, 2016); processes of co-production (Parker et al., 2015); the control and scope of neighbourhood plans (Parker et al., 2017); the role of political identities and agonistic interaction (Bradley, 2015; Parker et al., 2017; middle class activism (Matthews et al., 2015); community knowledge and technology (Jones et al., 2015); issues of hyper local territorial governance (Cowie and Davoudi, 2015; Colomb, 2017); the intricacies of the examination process (Parker et al., 2016); and how housing is being delivered (Bradley and Sparling, 2016).

Neighbourhood planning is predicated on the willingness and ability of communities to engage effectively and to have sufficient interest to invest the required time and energy over a sustained period. In order to do so technologies of agency are deployed (Davoudi and Madanipour, 2013) as new actors are enrolled in the delivery of services previously the preserve of the state (Peck and Tickell, 2002). As discussed, it is bounded within the constraints of local and national government policy and this limits its ability to deliver a 'new discourse.' Furthermore, at the end of the process neighbourhood planning groups are to produce technical land-use planning policies that have previously been the preserve of planning professionals. This requirement has led to discussion and concerns about the capacity of 'lay persons' to write effective and implementable planning policies that will be used to determine planning applications and in legal decisions (Department for Environment Food and Rural Affairs, 2013; Parker et al., 2015; Parker et al., 2014). To produce a plan many are seeking external support (Parker et al, 2014; Parker and Wargent, 2017). Furthermore, each stage of the neighbourhood plan process (including the consideration of what is to be done and how it should be done) is shaped by a number of factors, including: the stipulations of the neighbourhood plan regulations, the emerging view of allowable practices advised by DCLG, involvement of the LPA, advice from support organisations and the dynamic of the steering group, community members and independent examiners (Parker et al., 2014; Parker and Wargent, 2017).

Thus the planning reforms and NP in particular is seen also as part of a wider shift towards drawing non-state actors into plan-making and creating markets for planning services – including scrutiny and examination roles in NP as discussed here. This re-regulation of planning activity opens up new opportunities and roles and through such means governments enrol actors and promote disciplines that influence conduct as well as presenting opportunities to exercise agency. Edgar (2015) contends that these 'new' plans may offer a radical change to the way planning in England works. This ongoing change agenda may or may not prove to be radical but it has enabled not only separate or new roles for private, public and third sectors, but also new formulations of co-produced planning; where different knowledge sources and epistemic communities are brought into alignment in order to produce an agreed outcome.

Salet (2014) argues that knowledge in planning practice needs to be confirmed by scientific tests and rigours but also by cultures of practice. If such practice cultures are being stretched or widened then what kind of confirmation and its consequences are likely? In this connexion, Albrechts (2013) sees the deployment of co-production in planning as a political strategy. Others recognise that ultimately the results of co-production are substantially bound by predesigned limits and the interplay of power, also bearing in mind that 'actors interact to adjust each other's expectations and actions' (Whitaker, 1980 cited in Albrechts, 2013: p49) and as Callon identified (1980: p207), that 'protagonists are involved in a never ending struggle to impose their own definitions and to make sure that their view of how reality should be divided up prevails'.

The importance of the relations of co-production in NP stem from a combination of three linked influences; the first being the *rescaling* of planning to produce a form of localism which mobilises a wider range of participants (Gallent et al, 2013); with neighbourhood planning as a key feature of this project to develop neighbourhood scale governance. The shift involves a new constellation of actors and reworking of relations between centre, local and neighbourhood, as well as extending cross-sectoral opportunities and duties on public, voluntary and private actors. This reopens or re-energises debates about how to organise and oversee co-produced planning activity (Albrechts, 2013; McCann and Ward, 2011; Mitlin, 2008; Watson, 2014). The second aspect relevant here is the changing nature of *planning practice* and the profession in an era of fragmentation, diversification and reformulation of state-society planning activity (Davoudi and Pendlebury, 2010). This has created a variety of new roles and witnessed the emergence of contributory expert groups who share some control of the multiple knowledge base that underpins the planning system (Parker et al, 2015; Raco et al, 2016; Corburn, 2003). Additionally, and a key feature of NP, is that *non-expert groups* are invited to lead on plan-making and can, for the first time, produce statutory development plan documents. This has provoked a great deal of interest as researchers and others have sought to highlight the likely issues arising in this situation. For one matter, the way in which the community are supported and managed by partners and influenced by formal regulations looms large 'Neighbourhood plans are necessarily co-produced and the study foregrounds the need to more closely examine and understand how such relations are developed, maintained and on what basis' (Parker et al., 2015: p531).

Thus if Neighbourhood planning reflects an example of co-production then we need to better understand the *terms* and relations of such (co)production in context and in execution and ultimately then how the products of such relations are then treated by higher authority (see also Turner, 2014). As a result of the above we may discern NP as a space of confluence of localism, co-production and neo-liberal experimentation and while the whole NP process becomes a site for different inputs and knowledges to meet, it is at the examination stage where the product of co-production effort is formally 'tested'.

The examination stage can thus be considered a critical juncture in the NP process and of the localism experiment. While the term is most often taken to be a moment where a disruption or change of direction is faced it is deployed here to bring attention to the way that processes or ideas are challenged or scrutinised against certain overt or implicit criteria. The NDP examination stage sits between the (co)production of local planning knowledge and views (now emerging through combinations of governance assemblages) and the dominant national concerns and priorities for planning outcomes to be growth oriented. This task of resolving such tensions is therefore one which can be fraught with difficulty and meaning with examiners potentially playing a dual role as agent of higher authority and co-producer.

Neighbourhood Plan Examination: Critical Juncture or a Signing-off?

As has been discussed, a final stage of the process in producing an NDP involves an 'independent' examination where the Plan is tested for its conformity to national policy, local strategic policy and a several other 'basic conditions' (see Locality, 2015; Parker et al, 2015). The examination stage is crucial in the development of the NP and it is where the confluence of inputs, knowledges and agendas are brought together and assessed - as such the examination becomes a point of convergence and of tension

where knowledge and rationalities are (apparently) resolved in some way. The examination and cadre of examiners who perform that role are one of those features acting to arbitrate such / any conflicts and to ensure conformity with any pre-scripted rules on content of neighbourhood plans. Attention to this stage and group is merited particular attention given that they are positioned at interstices and meeting ground between the governmentalities orchestrated by government and the politics of community developed from the grassroots.

Despite the importance of the examination stage the only work discussing the examiners thus far highlights how the vast majority of draft plans were modified by examiners - many substantially so (Parker et al, 2016). This paper seeks to add to current debates and focuses on the way that examiners operate, how they feel about the way NP is framed and the role of the examination. It draws on responses to a structured questionnaire sent to a sample of NP examiners who had examined more than two NDPs each by the end of October 2016. A total of 19 examiners responded who taken together had examined 85% of all neighbourhood plans that had reached examination by that time.

Since the first NDP was examined in December 2012 (the Upper Eden NDP) there have been over 300 subsequent examinations with 10 having failed at examination. A large proportion have been modified significantly including amendments to policy wording, deletion of policies and restructuring of the plan document (Parker and Salter, 2016; Parker, Salter and Hickman, 2016). This snapshot highlights that while few NDPs have failed at examination, many others have had some quite significant ‘flaws’ or have been ‘contested’ by the examiner, the local planning authority, or both (Parker and Salter, 2016; Parker et al., 2016). Overall the process has given rise to considerable unease among neighbourhoods, among at least some examiners and has most recently caught the attention of government (DCLG, 2017) with the Neighbourhood Planning Act (2017) including ‘provisions for engagement by examiners with qualifying bodies etc.’ This all serves to highlight that the examination stage is significant and merits further investigation.

Research Findings

In the following sections we review the findings of the survey of examiners, reflecting in particular on what the views of examiners reveal about the ‘rhetoric versus reality’ of Government intentions for NP examination in practice. Firstly this is done by reflecting on the *approach* being taken towards examination. Thence we consider the examiners themselves, both in terms of their recruitment but also their training and then turn to think about the quality or characteristics of the draft NDPs being examined. We also reflect on how examiners may be called upon in the future and and lastly consider how the NDPs are likely to be implemented or otherwise fare in practice given the environment that has shaped them thus far.

i. Light Touch Examinations?

The way the examination element of neighbourhood planning has been set up reflects the intent of the Government to treat NDPs differently from local plans. It has been described as “light touch” reflecting the fact that the legal requirements are less onerous than for Local Plan examinations (see Town and Country Planning Act 1990, as amended via the Localism Act 2011 and the Neighbourhood Planning Regulations 2013/2015).

The appointed NDP examiner is charged with assessing whether the plan meets a series of legislative requirements and a set of ‘basic conditions.’ (see Locality, 2015; Parker, 2012). This means that examiners are not testing the plan for soundness, its planning merits or other material considerations (clarified in case of R. (Crownhall Estates Ltd) v Chichester District Council (2016)). It is intended that the broader hierarchy of planning policy, within which NPs are situated, should provide appropriate checks and balances. For example, strategic issues such as objectively assessed housing need and the spatial distribution of growth are assessed using the tests of soundness for the Local Plan process instead and the NDPs should reflect these strategic parameters (or be more positive towards development than the local plan provisions).

Many examiners highlighted their purpose as being ‘simply’ to test plans in relation to the ‘basic conditions’:

“Anything more would be at risk of challenge” (respondent #10).

“To establish whether the Basic Conditions are met. That's it.”
(respondent #14).

When asked how examiners approached examination, all stipulated that they assess the plan against the basic conditions and legislative requirements, but for some their approach also reflected an appreciation of the wider purposes of neighbourhood planning as produced by non-planners:

“I do however try to keep in mind that the NP groups are not (usually) professionals, and that they have invested a great deal of time and effort. So I am careful not to be over critical or dismissive of the content of the plans”
(respondent #10).

“Secondly to remain aware that the community dimension means some wording will be novel to me, but that does not necessarily make it unacceptable. It is not our task to make the plan perfect, although the NPPF does ask for clarity in policy” (respondent #3).

“I have felt the need to show respect for the qualifying bodies because they are voluntarily working for their communities - they are not paid public sector workers or consultants. This may introduce a degree of leniency, but I have not ignored significant problems with a plan or approved unsatisfactory NPs because of this” (respondent #19).

However, there are questions about the wisdom of a more lenient set of tests, which the supposed ‘light touch’ approach implies, and the sufficiency of these basic conditions tests, particularly in light of an apparent increasing threat of judicial review (see below).

Over half of the respondents used the terminology “light touch” in relation to the exam approach however many chose to emphasise that this did *not* mean that the process was insufficiently robust or rigorous:

“It is light touch when compared to the Local Plan inquiries in that examiners are not required to consider the soundness of the plan e.g. the merits of alternative sites. However, the examination is still fairly rigorous as the policies will be used in considering planning applications” (respondent #05).

Furthermore, the “light touch” nature may vary from examination to examination as “*sometimes the representations (especially those submitted by developers or landowners) are so complex that a properly forensic examination of the issues is required*” (respondent #10) as otherwise the plan may be open to challenge and “*on occasions with contentious plans it can require a lot of detailed and complex work*” (respondent #09).

Reflecting the original intentions for examinations the guidance is clear that generally ‘the examination of a draft neighbourhood plan or Order will not include a public hearing. Rather the examiner should reach a view by considering written representations’ (DCLG, 2014: para 56 - Reference ID: 41-056-20140306). It is notable, therefore, that more than half of examiners (63%) had conducted hearings for examinations and chose to do so to get a better understanding of matters, to investigate specific issues and to test the evidence.

In addition to formal hearings, one examiner reported holding a ‘clarification meeting’ and in certain circumstances, where the examiner had concerns over the evidence base, relevant parties were asked to provide further information and to answer specific questions (with corresponding documentation in the public domain). There have also been occasions where the NP examination has been suspended while further work is carried out, for example, with regards to the Strategic Environmental Assessment (SEA).

This implies that in some - perhaps more complex cases - examiners do not consider written representations to be a sufficient basis for testing the basic conditions and in reaching conclusions. As well as holding formal examination hearings alternative approaches are also being adopted, reflecting in part the flexibility in the examination process and lack of prescriptive guidance that has existed. Overall it appears that government underestimated the level of scrutiny likely to be required and the implications of light touch scrutiny for the robustness of plans in implementation/ post-exam stages.

ii. Recruitment and Appointment of Examiners

Unlike Local Plan examination there is no government body responsible for the examination process. An independent examiner is selected through open competition and appointed by the local planning authority in agreement with the Qualifying Body. The legislation states that the examiner must be ‘independently qualified’ and meet a number of basic requirements, i.e. that the examiner:

- is *independent* of the qualifying body and the authority;
- does not have an *interest in any land* that may be affected by the draft plan/order; and
- has *appropriate qualifications and experience*.

In early 2013, a number of professional bodies, led by the Royal Institute of Chartered Surveyors, with encouragement from the Department for Communities and Local Government (DCLG), established the Neighbourhood Planning Independent Referral Service (NPIERS). Examiners were recruited onto the panel following a formal application process which allowed for applicants to be vetted to ensure they had the ‘right’ expertise and qualifications.

The large majority of respondents (95%) in our survey were professionally qualified town planners (MRTPI/FRTPI), but examiners populating the NPIERS panel also includes those from the legal profession (i.e. planning lawyers), chartered surveyors and others including accredited mediators. A growing number of individuals and organisations are now offering NDP examinations as part of their portfolio of planning services outwith this panel. Whilst the majority of respondents to this study were appointed via the NPIERS panel, this recent expansion of the market was reflected in our findings. One respondent noted that: *‘LPAs are beginning to realise that there many well-qualified examiners out there, and are now appointing directly or through third parties’* (respondent #10). Given the broad nature of what might be considered as “appropriate qualifications”, and no regulatory qualifying body, some respondents considered that the opening up of the market did raise questions about how to guarantee appropriate experience for competent NP examinations to ensure consistency. They highlighted the need for rigour in recruitment, and expressed concern that a lack of relevant experience and a widening of the pool could lead to inconsistencies:

“At present there is no restriction on who can examine a NP and the qualifications and experience required” (respondent #5).

“I believe that there should be a more rigorous approach to the recruitment and appointment of Examiners, as I am concerned that some of those appointed do generally lack the relevant experience to conduct the Examination of statutory Development Plan documents” (respondent #17).

“I think there is a danger of inappropriately experienced or qualified examiners entering the market and winning appointments on price” (respondent #9).

An open market in the appointment of examiners also - inevitably - introduces price as a factor. An examiner’s history in relation to NP outcomes (including recommending major modifications or even failure) also has the potential to be a factor in the choice of the examiner elsewhere i.e. the market test may not relate to the examiner’s professional judgement or appropriateness of their decisions, but could be based more on their previous record of passing plans and their average number of proposed modifications (Wicks, 2014). It may also lead to a reluctance on the part of examiners to fail plans. This may challenge stakeholders perceptions of the impartiality of the process. A recent high court challenge to the Newick neighbourhood plan considered whether there was inherent and apparent bias in the examiner appointment process¹. Whilst the challenge was unsuccessful, there is still the perception that the potential for bias remains (Wilding, 2016; Wicks, 2014) as LPAs and QBs have freedom and discretion about whom they appoint to carry out the examination. For us the approach to recruitment and training (see below), as well as ongoing community of practice development appears to need further attention - lest the quality of the outcomes and the perception of the process be damaged.

¹ This point was also considered in *R. (Larkleat Homes Ltd) v Rutland County Council* [2015] EWCA Civ. 597 and it appears that this point was dismissed in that case.

iii. Sole Practitioners: training, support and guidance for examiners

Unlike the examination of Local Plans there is no standardised training available for NDP examinations and while the majority of respondents indicated that they had received some training, several had not. The lack of support available to examiners, was raised as a negative experience. One respondent commented that *'NPIERS needs to up its game generally in supporting examiners'* (respondent #4). Examiners have to decide *"on the right course of action without any advice or support from 'official' sources; you are very much on your own"* (respondent #1) which is particularly the case when *"difficult decisions have to be made and reasonable consistency maintained"* (respondent #3). Experience of the training, after having conducted at least two examinations, revealed some concern. Some examiners reported that training was *'too limited ... we contact each other for help'* (respondent #4) and that mutual support was growing instead, yet *'no real peer-to-peer learning takes place'* (respondent #4) and that there is *'nothing formal or wholehearted'* (respondent #1). A number of examiners mentioned the importance of self-initiated informal contact with other examiners as a response to the challenge of lone working:

"On more challenging examinations, I have asked examiner colleagues privately for their advice on certain aspects and also to review my final draft" (respondent #12).

"Informal network with two other examiners has been very helpful" (respondent #9).

This is in stark contrast to the process for local plan examination, with the organisational backdrop, support and peer review offered by the Planning Inspectorate, where local plan examination reports are reviewed by up to three peers to ensure consistency with national policy and to proof against judicial review. One respondent specifically highlighted as a negative experience: *"the lack of any backup when difficult decisions have to be made and reasonable consistency maintained"* (respondent #3).

Respondents were generally of the view of the need for a national organisational backup for both the recruitment and training of examiners which *"should provide quality assurance about the qualifications and experience of examiners"* (respondent #5). Reflecting on the widening of the market for examiners, one respondent commented that *"if examiners are not NPIERS trained, they should have to show a level of competence comparable with the NPIERS training and have passed a similar assessment recently taken by NPIERS examiners"* (respondent #6).

The lack of guidance (and standardised training) was highlighted by many examiners as a cause for concern - although this is mooted to be under development in Summer 2017 (see Out-law 2017). Respondents reported that the main guidance they drew on was found in the National Planning Policy Framework (2012) and the national planning practice guidance, although some drew on other sources; notably case law, other examiners reports, and conversations with DCLG and other examiner colleagues (either directly or through the NPIERS forum). Communities are concerned that issues won't be dealt with consistently and examiners are concerned about the potential for judicial review if there are perceived discrepancies in the way issues are handled across NPs. But as examiners hail from different organisational and professional backgrounds, with their own interpretation of guidance and case law, shaped by their

professional and personal experiences, differences in approach are likely to emerge. One examiner identified as a challenge avoiding “*bringing one’s own views into the process*” (respondent #4) and another that, “*differences in approach*” were “*to be expected given the lack of available guidance*” (quoted in Out-law, 2017). For example, the survey highlighted differences between those examiners who take time to propose modifications to policies in order to ensure that they meet the basic conditions and those that are more likely to recommend the deletion of policy. The variations appear be down to how the individual examiner views the scope of their role within a fuzzy operating environment.

Most examiners felt further guidance would be useful and intimated that guidance on both procedural matters and plan production would be helpful for themselves and others involved. Almost all of the respondents (84%) felt the new guidance should be aimed at examiners, as well as (68%) seeing guidance on examination for neighbourhood planning groups and local authorities as useful. Respondents indicated that further guidance to ensure consistency would be helpful “*basically anything that would help to provide a benchmark and increase consistency between examiners and the quality of reports*” (respondent #1) - including on recent case law and JRs, with a respondent also suggesting “*peer review or some form of quality checking or spot checking*” (respondent #12) as well as a mechanism for examiners’ to share information and seek advice and guidance.

iv. The Quality of Plans Examined: reflections on and implications for examiners

When first introduced the government adopted a flexible approach to the NP exams in order to enable groups to develop a Plan that met their needs, however, as reported by Ludwig and Ludwig (2014) this vagueness about what a plan should be and how it should be prepared has served to confuse. As a result DCLG have sought overtime to provide more clarity on the process of plan preparation by funding third party organisations to produce a series of tools, templates and technical guides. However, despite this wealth of information examiners tell us that poor-quality plans are still reaching the examination stage.

Examiners had varying views on the quality and scope of plans, with at one end of the spectrum, frustration expressed at “*the depressingly low level of ambition of most plans*” (respondent #4), and at the other “*some good, well written and innovative plans and policies*” (respondent #1) were applauded.

The variability in knowledge of the neighbourhood Qualifying Bodies who had been preparing plans was mentioned. This reflects wider concerns over the ability of non-planners / laypersons to write and produce statutory planning policies and documents (see Parker et al., 2015) and this was a key theme that emerged through the research. 88% of examiners reported that QBs have only a ‘basic knowledge’ or poor knowledge given the way they have approached the examination and this represented a challenge in the examination process. This is reflected in the number of instances where examiners have had to modify NDPs (see also Parker and Salter, 2016; Parker et al., 2016).

While the newness of the process may be attributable here the QB’s lack of technical planning expertise is also at issue. Despite the resources available for groups to access this, examiners have reported QBs as presenting limited knowledge of basics such as the meaning of “development”, many attempts to include non-land-use policies in NDPs, a lack of appreciation of existing (local/national) policies, imprecise wording

of policies, muddled documentation and missing documents submitted for examination - as well as inadequate evidence to justify policies. 90% of examiners reported that they had examined NDPs where the evidence base was problematic in some respect. This included topics such as the Sustainability Appraisal, housing need and housing allocations and local green space requirements.

In order to address these issues the QBs, and where appropriate, relevant parties were asked to provide further information (documented in the public domain), the matter was discussed at a hearing and policies were modified, deleted and in certain instances the Plan was recommended not to proceed to referendum.

The ability of groups to reach examination stages with a basic level of knowledge raises questions as to how this could and should be addressed earlier in the process. It was felt by some that the examination stage was 'too late' and many issues should have been picked up and addressed earlier in the process. Poorly drafted policies and quality of plans (including supporting documents), which required extensive modifications, caused frustration for some examiners:

“Poor documentation of plans, the bureaucratic process of Strategic Environmental Assessment” (respondent #9).

“Being asked to examine poor plans. I found excuses not to do them and then resigned from NPIERS” (respondent #7).

“Most NPs lack some basic evidence such as the SEA and HRA screenings, many have unclear poorly written policies, some are clearly seeking to prevent any further development” (respondent #5).

“Muddled documents needed for the examination” (respondent #3).

v. Resolution of conflict: a more active role for examiners?

It appears that for the examiners NP is proving an interesting and positive experience despite issues identified above. They reported a wide range of positive experiences in examining neighbourhood plans, including at a personal and professional level, these included:

“Feedback from local authorities and QBs on the clarity of my approach” (respondent #12).

“Persuading the parties of the sense of a course that ensures compliance with the statutory requirements” (respondent #11).

“Good feedback from clients. Satisfying to improve NPs by recommending modifications which make them more robust and fit for referendum” (respondent #10).

“Intellectually challenging” (respondent #2).

Many remarked on the positive experience of seeing communities embrace the opportunity to develop a neighbourhood plan and commented on the quality of the plans as reflecting the amount of work undertaken by communities:

“Largely positive. For the first time, communities genuinely have a degree of “power” to control development (as per the NPPF)” (respondent #18).

“Seeing communities deciding the future of their area through constructive and creative dialogue” (respondent #13).

“Helping to shape well produced planning documents that have local support” (respondent #6).

It was felt by some that the neighbourhood plan examination process had become more detailed than originally intended and there is a discernible trend from a flexible approach to a tighter one influenced by the legal-challenge-led approach of some developers:

“It is up to the examiner as to how rigorously the policies are checked out against national and strategic local policies. Examiners are required to provide reasons for their recommendations and therefore need to be clear on their reasoning as this may be subject to review should there be a legal challenge to the plan” (respondent #5).

Others remarked on the experience of dealing with others in the process:

“Challenge for the sake of challenge (cost is so little compared to reward). Lack of understanding and (developer funded) cynicism from private sector planners. Negative response from many developers/lawyers (seen as a threat). Many LPAs slow to understand and the associated absence of well-resourced LPAs” (respondent #18).

“I have had very few negative experiences, apart from a perception of rigid intransigence in some cases” (respondent #17).

It is evident that some groups submit plans for examination that they know are problematic (having being advised so by the LPA, consultants or by ignoring documentary guidance) – it can only be assumed that they want to game the system and see if they can “get it past the examiner.” The subsequent modification, or in some cases failure, of NDPs should therefore be anticipated. Furthermore, it has been reported that some LPAs are aware of problems with the emerging neighbourhood plan but are leaving the difficult decisions up to the examiner to resolve. For example one respondent commented that:

“there is often too much onus on the examination and an increasing tendency to let the examiner sort out problem issues, which the LPA could easily do but seems unwilling to, as this will create an issue with the QB” (respondent #1).

and another examiner argued that:

“for the most part LPAs seem content to rely upon guidance from the Examiner” (respondent #12).

“Some local authorities hide behind the examiner and submit clearly inadequate plans for examination in the hope the examiner sorts out the issues they should have addressed when supporting NP groups” (respondent #6).

This situation can put the examiner in a rather difficult position for the reasons outlined in previous sections. There is some concern yet to be fully investigated about the use of legal challenge (mainly judicial review) and how this may impact on neighbourhood planning groups (QBs) and on the approaches taken by examiners. This aspect requires further exploration.

As discussed previously, the extent of proposed modifications, in order to ensure the plan meets the requirements of national policy, can lead to concerns over community ownership as the 'post-examination' plan may be substantially different from the plan submitted for examination and may not necessarily reflect the intention of the community (Parker et al, 2015). For example, on receipt of the examiners report some QBs have been withdrawing the neighbourhood plan for examination and a well publicised case is where Swanwick Parish Council actively campaigned for a 'no' vote at referendum as they disagreed with the post-examination modifications made to their NDP (Gardiner, 2016).

vi. Implementation

Some examiners have queried how some neighbourhood plans can and will be implemented effectively – despite having passed the basic conditions test. The idea that the 'light touch' approach urged by Government, and the lower testing threshold involved, may not actually mean that the Plans will stand up to the rigours of implementation – i.e. when the local planning authority seeks to apply the policies when determining planning applications and, increasingly, when the development industry tests them in its own ways (either through the planning process or via the legal system). For example, despite being assessed at examination the housing policies in the Haddenham NP and the Henfield NP have been quashed due to inadequacies and inaccuracies in the evidence base and the plan preparation process. Indeed concerns have been raised that some plans may soon be dismantled through the appeals process due to a lack of awareness of the legislation and the principles and responsibilities of plan making bodies (respondents #10 and #7). For others frustration was expressed that as a result of a lack of knowledge of communities 'samey' plans are being produced (respondent #12), with communities not being bold enough in their aspirations resulting in a lot of missed opportunities and limited ability to shape the community (respondents #1 and #4).

When introduced, a classic policy hierarchy process was envisaged with NDPs having to be in 'general conformity' with the strategic policies in the adopted LDP and in turn having regard to national policy. In practice, however, NDPs are coming forward in advance of an up-to-date Local Plan, and this raises the question of whether the process is sufficiently robust in these situations. If a plan is not examined in a sufficiently rigorous manner it could be susceptible to challenge, as well as having a limited shelf-life as policies in the Local Plan would then take precedence (as the latest plan to be adopted) (respondents #10 and #7).

Overall the ability of 'made' neighbourhood plans to stand up to scrutiny is key and their failure to do so may undermine communities' confidence in the system and the value of NP overall.

Conclusion and Further Research

The examination is an important feature of NP given it marks a crossing point between the model of co-produced planning that neighbourhood planning exhibits and the

rhetoric of innovation and empowerment that has accompanied NP. It also needs to operate within the imposition of top-down parameters derived from national policy and the other 'basic conditions' tests. Our work has indicated an apparent lack of understanding of the requirements of NP by many QBs. Variable examiner quality and consistency are also creating problems at both the examination stage and possibly for the effective implementation of the NDPs.

The current role of the independent examiner can be seen as a mediator between national government and the policy array and those producing the neighbourhood plan. Considering the tensions associated with a co-production model there will always be a role for the examiner to arbitrate conflict and for those producing the plan / involved in its production to seek out and expect the examiner to do so. However by displacing oppositional debate there is a danger as Allmendinger and Haughton (2012) indicate, that it will be shifted to arenas outside the apparatus of mainstream consensus building such as the legal arena and which in turn can lead to inequalities as such means are only accessible to those with expert support and financial means to participate.

Reflecting this co-production point of view it is also important to remember that once the community submits the Plan it is effectively out of their hands. There is thus an understandable fear and some apprehension for groups over the examination process. This may be due in part to the lack of involvement and control once the Plan has been submitted (i.e. the LPA are responsible for organising consultation on the publicity plan and for any proposed amendments to the neighbourhood plan post-examination). This may mean that post-examination co-production and discussion between the LPA and the QB may still be required in order to agree with the proposed modifications and amendments to the plan. At present it is unclear how much dialogue is taking place as the majority of examiners take on board the examiners' recommendations (Parker and Salter, 2016; Parker, Salter and Hickman, 2016).

This throws up a series of questions about how the process actually works, how it is marketed, how it is understood and latterly how the plans will perform when finalised and are subjected to the scrutiny of market actors. This type of system issue is best highlighted in terms of *upstream change and issues* - including: the use of consultants and how they are briefed and operate, scrutiny of LPA input, clarity about what the NDP can do in its policy and evidence context, issues related to policy writing, with micro-politics within communities and how this may influence Plan content. Secondly of *Downstream issues* – where the plan may well encounter resistance or challenge by developers and others, or needs to be defended by its authors within the neighbourhood.

The foregoing discussion highlights how important or significant the examination stage is for participants and NP generally and in conceptual terms when reflecting on the role of NP as enhancing participatory engagement with environmental change. This significance underscores the merit of further study to assess a number of issues or questions that have arisen, namely:

1. Robustness of NDPs to legal challenge, particularly where there is no extant LP or five-year land supply and:

- a. Are NPs moving into a more judicialised era? i.e. will we see further legal challenge both during and after NDP production.
 - b. Is this a threat that examiners are concerned about?
 - c. Are the basic conditions tests sufficient to ensure robustness in a more judicialised era? Will the 'light touch' approach be sufficient?
 - d. Do examiners feel equipped / sufficiently confident to 'protect' NPs from challenge? Is that clearly part of their remit?
 - e. How examiners are navigating through this environment and what their experiences have been also merit further exploration
2. Are examiners experts? Is the societal trend towards denigrating expertise impacting on examiners and the way they are invited to operate?
 - a. What knowledge do examiners need in order to be able to do their job properly?
 - b. What guidance or operating space should examiners occupy?
 - c. What should be the basis for recruitment?
 3. The local plan examination and the neighbourhood plan examination - what can be learnt from each other?
 4. The examiner as a lone worker: how important is peer review, and organisational support to improve examiners' experiences and exam outcomes?
 5. How might the tests and the relationship to local and national policy be better communicated to ensure that the scope for innovation and worthwhile contribution of NDPs be maximised.
 6. What adjustments to the NP process upstream are needed a result of the type of findings presented here?

Overall it is possible to claim that the examination stage is critical in the success of neighbourhood planning and therefore understanding how communities prepare their plans and how these are then 'tested' should be of interest not only to an academic audience but to communities, examiners and policymakers alike. We feel that the examination 'test' needs to be one that is fully understood and acts to ensure that those producing the plan present a robust and high quality draft - although the boundaries of the product may be constrained by other considerations (see Parker et al., 2017). However the process must necessarily result in plans that can survive in a hostile planning and development environment - as well as being worthwhile in substantive terms - otherwise the utility of their production will be called seriously into question.

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