Neutral Citation Number: [2014] EWCA Civ 228

Case No: C1/2013/0861

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION,
ADMINISTRATIVE COURT
MR JUSTICE SUPPERSTONE
CO/12288/2012

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/03/2014

Before:

THE MASTER OF THE ROLLS
LORD JUSTICE SULLIVAN
and
LORD JUSTICE BRIGGS

- -

Between:

(1) DAWS HILL NEIGHBOURHOOD FORUM **(2) STEWART ARMSTRONG** **(3) ANGUS LAIDLAW**	**Appellants**
- and -	
(1) WYCOMBE DISTRICT COUNCIL	**Respondent**
-and-	
(2) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**First Interested Party**
-and-	
(3) TAYLOR WIMPEY UK LIMITED	**Second Interested Party**

- -
- -

Paul Stinchcombe QC and Lisa Busch (instructed by **Leigh Day**) for the **Appellants**
Suzanne Ornsby QC and Isabella Tafur (instructed by **Wycombe District Council**) for the **Respondent**
Morag Ellis QC and Stephanie Knowles (instructed by **Berwin Leighton Paisner LLP**) for the **Second Interested Party**
The First Interested Party did not appear and was not represented

Hearing dates: 10th & 11th February 2014

- -

Approved Judgment

Lord Justice Sullivan:

Introduction

1. This is an appeal against the Order dated 13th March 2013 of Supperstone J dismissing the Appellants claim for judicial review of the Respondent's decision made on the 25th September 2012 to refuse the application made by the Daws Hill Residents' Association ("DHRA") for the designation of a neighbourhood area. The Respondent designated a smaller neighbourhood area excluding two strategic sites which had been included in the area specified in the application: the former RAF Daws Hill site, and the Handy Cross Sports Centre site.

2. Supperstone J set out the legislative framework, the factual background, and the reasons given by the Respondent for its decision, in paragraphs 3-14, 17-26 and 27-28 respectively, of his judgment: [2013] EWHC 513 (Admin). There was no challenge to those parts of the judgment. I gratefully adopt, and will not repeat them. For convenience, I have reproduced in an Annex to this judgment sections 61F and 61G which were inserted into the Town and Country Planning Act 1990 ("the 1990 Act") by the Localism Act 2011 ("the 2011 Act").

Section 61G

3. The proper interpretation of subsection 61G(5) of the 1990 Act is of central importance in this appeal. That subsection provides:

> "If –
> (a) a valid application is made to the authority,
> (b) some or all of the specified area has not been designated as a neighbourhood area, and
> (c) the authority refuse the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area,
>
> the authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas."

4. At first sight, the Respondent's decision falls squarely within the terms of the subsection. The Respondent refused the DHRA's application because it considered that the area specified in that application (including the Daws Hill and Sports Centre sites) was not an appropriate area to be designated as a neighbourhood area, but it exercised its power of designation so as to secure that some of the specified area (excluding the Daws Hill and Sports Centre sites) became a neighbourhood area. The Appellants did not contend that the Respondent exercised its power of designation unlawfully because the reduced area comprised the whole, and not merely part, of a designated neighbourhood area.

5. Before Supperstone J the Appellants' primary submission was that the Respondent had acted unlawfully because in exercising its power of designation so as to exclude the two strategic sites from the designated neighbourhood area the Respondent had acted in such a manner as to frustrate the purposes of the 2011 Act: see paragraph 29 of the judgment. The Respondent contended that subsection 61G(5) conferred a wide discretion to be exercised having regard

to the factual and policy matrix that existed at the time the decision was taken (see paragraphs 40-41 of the judgment); and that the factors taken into account by the Respondent fell within the ambit of that broad discretion: see paragraphs 51-56 of the judgment. Supperstone J accepted the Respondent's submission. He concluded that the discretion conferred by section 61G(5) was a broad one, to be exercised having regard to the "specific factual and policy matrix that exists in the individual case at the time the determination is made", and that the Respondent had properly had regard to that matrix: see paragraph 57 of the judgment.

6. At the heart of Mr. Stinchcombe QC's submissions before this Court on behalf of the Appellants was a submission which was not made to Supperstone J, and which did not feature in the Appellants' original Grounds of Appeal. The new submission, incorporated into the Appellants' Amended Grounds of Appeal on the second day of the hearing, was that the discretion conferred by subsection 61G(5) - to decide what is an appropriate area to be designated as a neighbourhood area – is not a discretion to decide <u>whether</u> a given area should or should not be designated as a neighbourhood area, but is confined to a discretion to decide <u>within</u> <u>which</u> neighbourhood area any given site is to be included.

7. What was Parliament's intention in enacting the subsection? The starting point must be the language used in section 61G. In my judgment, that language does not support the existence of such a limitation. Both subsections (1) and (5) describe the designation function as a power, not a duty. On the face of it, a power given to a local planning authority to decide whether a specified area is "an appropriate area" to be designated as a neighbourhood area necessarily confers a broad discretion. The designation of an area as a neighbourhood area is not an end in itself. The purpose of designating an area as a neighbourhood area is to define the area within which a neighbourhood forum (outside the area of a Parish Council) is authorised to exercise certain planning powers: the making of a neighbourhood plan and/or a neighbourhood development order. When determining the issue of appropriateness it may, therefore, be necessary to have regard to a wide range of planning considerations.

8. It is true that if the authority refuses the application because it considers that the specified area is not an appropriate area to be designated as a neighbourhood area, subsection (5) then requires that the power of designation is to be exercised in a particular way, but the subsection does not require the power to be exercised so as to secure that <u>all</u> of the specified area forms part of an area that is, or is to be designated as a neighbourhood area. If Parliament had intended that the local planning authority should simply decide within which designated neighbourhood area any specified area should be included it would have required the power of designation to be exercised so as to secure that all, and not <u>some</u> or all, of the specified area forms part of a neighbourhood area. When imposing the duty on the manner in which the designation power must be exercised under subsection 61G(5) Parliament clearly envisaged that a local planning authority might exercise the power so as to designate a smaller area as a neighbourhood area leaving part or parts of the specified area outwith any neighbourhood area. In this appeal we are not concerned with the role of Parish Councils in the neighbourhood planning process, but it will be noted that even in a case where the "relevant body" making the application for designation of the area is a Parish Council, and the local planning authority must have regard to the desirability of designating the whole of the Parish Council's area as a neighbourhood area (see subsection 61G(4)(a)), it is not required to designate the whole, and may exclude part, of the Parish Council's area, thus ensuring that it will not be included in any neighbourhood area: see subsection 61G(3)(b).

9. Mr. Stinchcombe sought to overcome this difficulty, and to convert "some or all" in subsection 61G(5) into "all", by advancing two propositions:-

(1) That the power to designate a neighbourhood area is exercisable when an application is made by a "relevant body", and the definition of "relevant body" in subsection 61G(2) includes in paragraph (b) "an organisation or body" which is, or is capable of being, designated as a neighbourhood forum (on the assumption that, for this purpose, the specified area is designated as a neighbourhood area). The capability threshold in paragraph 61G(2)(b) is a relatively low one. Any organisation or body that meets the relatively basic conditions set out in section 61F(5) is capable of being designated as a neighbourhood forum.

(2) While a local planning authority can lawfully decline to consider certain types of repeat proposals for designation of a neighbourhood area (see paragraph 5 of Schedule 4B to the 1990 Act), it may not lawfully refuse to consider a repeat application or applications made in respect of the excluded part or parts of a specified area in an earlier application.

10. Mr. Stinchcombe submitted that the combined effect of these two propositions was that any local planning authority considering whether a specified area is an appropriate area to be designated as a neighbourhood area must appreciate that if it designates only some, but not all of the specified area as a neighbourhood area, then a further application specifying that excluded area as an area to be designated as a neighbourhood area can promptly be made by an organisation or body which meets the low capability threshold for designation as a neighbourhood forum for that area; and if that is done subsection 61G(5) will require the local planning authority to use its power of designation so as to secure that some or all of that excluded area is included in a neighbourhood area; and if the local planning authority decides that only some, but not all, of the excluded area should be included in a neighbourhood area, the same application process can be repeated in respect of the remaining part or parts of the excluded area, until, by a process of salami slicing (my words), the local planning authority is eventually constrained to designate the whole of the excluded area as a neighbourhood area.

11. Mr. Stinchcombe submitted that this analysis of the legislative provisions led to the conclusion that Parliament intended, not that local planning authorities should decide whether a specified area is an appropriate area to be designated as a neighbourhood area, but within which designated (or to be designated) neighbourhood area it should be included. Parliament's intention in enacting these provisions of the 2011 Act was, he submitted, that the whole of England should, wherever it is the wish of the local community, be covered by a patchwork of neighbourhood areas, within which neighbourhood forums will prepare neighbourhood development orders and neighbourhood development plans.

12. While the first of Mr. Stinchcombe's propositions is correct, as far as it goes, it fails to recognise the discretion conferred upon the local planning authority by subsection 61F(5): the authority may, not must, designate an organisation or body meeting the conditions set out in that subsection as a neighbourhood area. Once again, the manner in which this subsection (5) discretion may be exercised is subject to a duty: to have regard to the desirability of designating a body that meets the criteria in subsection (7). Provided the local planning authority does have regard to the desirability of designation in such a case, it may still refuse an application for designation as a neighbourhood forum.

13. Mr. Stinchcombe submitted that even if the local planning authority refused an application for designation as a neighbourhood forum by a body meeting the capability threshold in section 61G(2)(b), it would still be obliged to determine the application for the specified area

to be designated as a neighbourhood area. In order to refuse that application the local planning authority would have to exercise its power under subsection 61G(5), thus bringing into effect the obligation to exercise the power so as to secure that some or all of the specified area was included in an area designated (or to be designated) as a neighbourhood area.

14. In my judgment, this submission takes insufficient account of the need to read sections 61F and 61G together. I accept the submission of Miss Ornsby QC on behalf of the Respondent that the two sections are inextricably interlinked. A neighbourhood forum is an organisation or body that is authorised to act in relation to a neighbourhood area if it is designated by a local planning authority as a neighbourhood forum for that area: see section 61F(3) of the 1990 Act, as applied to neighbourhood development plans by section 38C (1) and (2)(a) of the Planning and Compulsory Purchase Act 2004. Putting the matter at its simplest: one cannot have a neighbourhood forum without its neighbourhood area (see the conditions in subsection 61F(5)); and outside the area of a Parish council one cannot have a neighbourhood area without its neighbourhood forum (see subsection 61G(1)).

15. The inclusion of an organisation or body which is capable of being designated as a neighbourhood forum as a "relevant body" in subsection 61G(2) is readily understandable. When section 61G came into force on 15th November 2011 there were no designated neighbourhood areas or neighbourhood forums. In order to meet what would otherwise have been a "Catch 22" impasse – with no neighbourhood forum there could have been no application for designation of a neighbourhood area, and with no designated neighbourhood area there could have been no application for designation as a neighbourhood forum – it was necessary to enable the making of combined applications by organisations or bodies capable of becoming neighbourhood forums, both for designation as an neighbourhood forum and for designation of the neighbourhood area in relation to which the neighbourhood forum would be authorised to act: see regulations 5 and 8 of The Neighbourhood Planning (General) Regulations 2012.

16. Against this statutory background, where the only purpose of a designated neighbourhood area is to define the area within which a designated neighbourhood forum is authorised to act, the Appellants' submission that provided an organisation or body which meets the capability threshold has made an application for designation of a specified area as a neighbourhood area, that application has a continuing life of its own, and must be determined under subsection 61G(5) even if the local planning authority has refused the applicant organisation or body's application for designation as a neighbourhood forum, makes no sense. If the unsuccessful applicant for designation as a neighbourhood forum was the first applicant under the 2011 Act, the local planning authority would be unable to comply with that part of subsection 61G(6) which requires it to exercise its designating power so as to secure that some or all of the specified area forms part of one or more areas designated, or to be designated, as neighbourhood areas, because there would be no such areas.

17. For these reasons, I consider that sections 61F and 61G enable a local planning authority when considering a combined application by an organisation or body which is capable of being designated as a neighbourhood forum both for designation as a neighbourhood forum and for designation of the neighbourhood area for that neighbourhood forum, to exercise its power under section 61F(5) to refuse the application for designation as a neighbourhood forum. If it does so it may decline to determine the application for designation of the specified area as a neighbourhood area on the basis that an organisation or body whose application for neighbourhood forum designation has been refused is not a "relevant body"

because it is no longer "capable of being designated as a neighbourhood forum". This would confine the need to exercise the section 61G(5) power of designation to those cases where the local planning authority did consider it appropriate to designate a neighbourhood forum, but did not think that the specified area was appropriate for designation as the neighbourhood area. In such a case, as in the present case, the local planning authority would be able (even if the applicant was the first successful applicant for neighbourhood forum status) to exercise its power of designation so as to ensure that some of the specified area was designated as a neighbourhood area.

18. While Parliament clearly envisaged that there might be repeat applications for designation, it would, to put it at its lowest, be surprising if, in enacting subsection 61G(5), Parliament had intended that a lawful decision by a local planning authority that the whole of a specified area was not an appropriate area to be designated as a neighbourhood area and that only some of the area was an appropriate area to be so designated, could be circumvented by the simple expedient of another body capable of being designated as a neighbourhood forum making a further application in respect of the excluded area, and then the repetition of that process as often as necessary in order to eventually secure the designation of the whole of the originally specified area. For the reasons set out above, I do not accept Mr. Stinchcombe's submission that we are driven to reach such an improbable conclusion. If such a repeat application was made by an organisation or body which passed the capability threshold in section 61G(2)(a) in respect of an area which the local planning authority had previously considered was not an appropriate area to be designated as a neighbourhood area, the local planning authority would be entitled to refuse the application for neighbourhood forum designation under section 61F(5), and that would dispose of the repeat application. It does not follow that the local planning authority would necessarily refuse a repeat application for designation. Circumstances might have changed so as to justify a fresh application in respect of the excluded area. Whatever the precise extent of the power conferred by section 61F(5), it is sufficiently broad to enable local planning authorities to refuse repeat applications of the kind envisaged by Mr. Stinchcombe, which would in other contexts be described as an abuse of process. The submission that it was Parliament's intention that the whole of England and Wales should, wherever it is the wish of the local community, be covered by a patchwork of neighbourhood areas, conflicts with the express terms of section 61G whether one is considering an application by a neighbourhood forum or a Parish Council: see paragraph 8 (above).

The remaining Grounds of Appeal

19. In his other Grounds of Appeal Mr. Stinchcombe submitted that Supperstone J had erred in concluding that, when exercising the discretion conferred by subsection 61G(5), the Respondent was entitled to have regard to the "policy and factual matrix" that existed at the time of its decision, so as to exclude the two strategic sites from the designated neighbourhood area for reasons which all related to their strategic nature. He submitted that the matters relied upon by the Respondent were irrelevant considerations, and/or that the Respondent's decision frustrated the purpose of the 2011 Act. Although he did not concede that these other grounds of appeal were dependent upon the Court accepting his approach to the interpretation of subsection 61G(5), it is difficult to see why the factors considered by the Respondent when deciding to exclude the two strategic sites from the designated neighbourhood area (see paragraph 28 of the judgment) were irrelevant considerations or why the Respondent's decision frustrated the purpose of the 2011 Act, if the discretion conferred by the subsection is a discretion to decide <u>whether</u> a given area should or should

not be designated as a neighbourhood area, and is not confined to a discretion to decide within which neighbourhood area that area should be included.

20. If the discretion is not so confined, any decision by the local planning authority as to appropriateness must take into account the factual and policy matrix that exists in each individual case at the time that the decision is made. As I have mentioned, the Appellants do not challenge the Judge's account of the factual and policy matrix. It is unnecessary to repeat the detail. The first four reasons given by the Respondent for excluding the two strategic sites from the specified area (it was common ground that the fifth reason did not take the matter any further) are all interlinked. In summary, it was not simply that RAF Daws Hill and the Sports Centre sites were strategic sites that would have larger than local impacts upon larger "communities of interest" requiring any referendum to take place over a much wider area than the specified area, possibly extending to the whole of the District Council's area; it was that the planning process in respect of these two strategic sites was already well advanced by September 2012. Outline planning permission had been granted for the Sports Centre site and a revised outline application for that site was under consideration, and a planning application pursuant to a highly prescriptive Development Brief for the Daws Hill site, which had been approved in draft for consultation in June 2012, was anticipated that Autumn.

21. The DHRA's application for designation of a neighbourhood area had explained why it sought the inclusion of the two strategic sites within the designated specified area. That explanation included the following paragraphs:

> "The suggested high-density residential development of RAF Daws Hill and the proposed inclusion of 36,000 sqm of employment generating floorspace other supporting development and a hotel in the Sports Centre redevelopment we believe will adversely affect the quality of life for existing residents. The Daws Hill Neighbourhood Plan (NP) is being developed to help deliver the local community's ambitions and needs for the plan period 2012-2026 in accordance with the Localism Act 2011 and 2012 to allow them to exercise influence over decision that will 'make a big difference' to their lives within the neighbourhood area.
>
> The existing residential area is boxed-in by the M40, Handy Cross Sports Centre, Marlow Hill, Wycombe Abbey School grounds and RAF Daws Hill, and is therefore directly affected by the two development sites at Handy Cross and RAF Daws Hill. Any large-scale development within the neighbourhood area will have a profound impact on the existing residents due to increased traffic within the area, increased traffic flow through the area and the consequent increase in noise pollution, air pollution and disruption; environmental issues; the impact of increased commercial and retail facilities in a predominantly residential area; the changed character of the dramatically increased residential area and home numbers in a designated Area of Outstanding Natural Beauty (AONB) because of the suggested higher density developments; the impact on local schools, health and welfare resources; the impact of the

> delivery of services: water, telephone/broadband, electricity and gas supplies; and the impact of the developments on security of the schools, and the character of the gateway to High Wycombe (Handy Cross onto Marlow Hill)."

22. Given that the primary purpose of the DHRA was to influence the scale of development on the two strategic sites through the neighbourhood development plan process, the Respondent was entitled to conclude that any neighbourhood development plan would be overtaken by events. Depending on the complexity of the issues to be resolved in the neighbourhood development plan (and there is no dispute that the two strategic sites raised very complex issues), and assuming a positive outcome at both the independent examination and the referendum stages, it would take between 12 and 21 months before a neighbourhood development plan could be approved. In these circumstances the Respondent was entitled to conclude that in this particular case false expectations would be raised and time and resources would be wasted. In my judgment, this particular combination of factors could not sensibly be described as an irrelevant consideration for the purpose of the exercise of the designation power in section 61G(5).

Character of the area

23. Before the judge, Mr. Stinchcombe submitted that the Respondent had failed to take into account the character of the area by excluding the two strategic sites which were part of a single area (paragraph 35 judgment). His submission that the concept of the character of a neighbourhood area which is to be found in sub-paragraph (a)(iii) of subsection 61F(7) must "translate through to section 61G from section 61F" (ibid) was not accepted by the judge (see paragraph 36 of the judgment). While I would accept that the reference to the "character of [the] area" in subsection 61F(7)(a)(iii) does not "transfer" or "translate through" to subsection 61G(5), I do not accept that this leads to the conclusion that the character of the area is an irrelevant consideration for the purpose of the designation power in the latter subsection. The character of an area proposed for designation as a neighbourhood area is bound to be a relevant consideration when the local planning authority is deciding whether its designation as a neighbourhood area is appropriate. If, which is by no means clear, the judge reached a contrary conclusion on this issue, I would respectfully disagree with him on that point.

24. However, the point is of no assistance to the Appellants. Their submission that the Council failed to have regard to the character of the area when deciding to exclude the two strategic areas from the designated neighbourhood area is wholly unrealistic. It is true that the words "character of the area" do not appear in either the officers' report or the formal reasons given for the Council's decision, but on a fair reading of both of those documents it is clear that, unsurprisingly, both officers and members were very well aware of the character of the various parts of the specified area proposed by the DHRA, and in particular they were familiar with the character of the two strategic sites. A revised planning application for the Sports Centre site had been received, and the meeting of the Council's Cabinet on 10th September 2012 which considered the DHRA's application for designation was also considering changes to the Daws Hill Development Brief following public consultation. The fact that the two sites were strategic sites was a reflection of their location and size and their "brownfield" character, but they were excluded from the designated neighbourhood area because they were two strategic sites where the planning process was very well advanced, and not because they were, in some way unrelated to their strategic characteristics, "out of character" with the remainder of the neighbourhood area.

Conclusion

25. I would dismiss this appeal.

Lord Justice Briggs:

26. I agree.

The Master of the Rolls:

27. I also agree.

Annex

61FAuthorisation to act in relation to neighbourhood areas

(1)For the purposes of a neighbourhood development order, a parish council are authorised to act in relation to a neighbourhood area if that area consists of or includes the whole or any part of the area of the council.

(2)If that neighbourhood area also includes the whole or any part of the area of another parish council, the parish council is authorised for those purposes to act in relation to that neighbourhood area only if the other parish council have given their consent.

(3)For the purposes of a neighbourhood development order, an organisation or body is authorised to act in relation to a neighbourhood area if it is designated by a local planning authority as a neighbourhood forum for that area.

(4)An organisation or body may be designated for a neighbourhood area only if that area does not consist of or include the whole or any part of the area of a parish council.

(5)A local planning authority may designate an organisation or body as a neighbourhood forum if the authority are satisfied that it meets the following conditions—

(a)it is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area),

(b)its membership is open to—

(i)individuals who live in the neighbourhood area concerned,

(ii)individuals who work there (whether for businesses carried on there or otherwise), and

(iii)individuals who are elected members of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,

(c)its membership includes a minimum of 21 individuals each of whom—

(i)lives in the neighbourhood area concerned,

(ii)works there (whether for a business carried on there or otherwise), or

(iii)is an elected member of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,

(d)it has a written constitution, and

(e)such other conditions as may be prescribed.

(6)A local planning authority may also designate an organisation or body as a neighbourhood forum if they are satisfied that the organisation or body meets prescribed conditions.

(7)A local planning authority—

(a)must, in determining under subsection (5) whether to designate an organisation or body as a neighbourhood forum for a neighbourhood area, have regard to the desirability of designating an organisation or body—

(i)which has secured (or taken reasonable steps to attempt to secure) that its membership includes at least one individual falling within each of sub-paragraphs (i) to (iii) of subsection (5)(b),

(ii)whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area, and

(iii)whose purpose reflects (in general terms) the character of that area,

(b)may designate only one organisation or body as a neighbourhood forum for each neighbourhood area,

(c)may designate an organisation or body as a neighbourhood forum only if the organisation or body has made an application to be designated, and

(d)must give reasons to an organisation or body applying to be designated as a neighbourhood forum where the authority refuse the application.

(8)A designation—

(a)ceases to have effect at the end of the period of 5 years beginning with the day on which it is made but without affecting the validity of any proposal for a neighbourhood development order made before the end of that period, and

(b)in the case of the designation of an unincorporated association, is not to be affected merely because of a change in the membership of the association.

(9)A local planning authority may withdraw an organisation or body's designation as a neighbourhood forum if they consider that the organisation or body is no longer meeting—

(a)the conditions by reference to which it was designated, or

(b)any other criteria to which the authority were required to have regard in making the designation;

and, where an organisation or body's designation is withdrawn, the authority must give reasons to the organisation or body.

(10)A proposal for a neighbourhood development order by a parish council or neighbourhood forum may not be made at any time in relation to a neighbourhood area if there is at that time another proposal by the council or forum in relation to that area that is outstanding.

(11)Each local planning authority must make such arrangements as they consider appropriate for making people aware as to the times when organisations or bodies could make applications to be designated as neighbourhood forums for neighbourhood areas.

(12)Regulations—

(a)may make provision in connection with proposals made by qualifying bodies for neighbourhood development orders, and

(b)may make provision in connection with designations (or withdrawals of designations) of organisations or bodies as neighbourhood forums (including provision of a kind mentioned in section 61G(11)(a) to (g)).

(13)The regulations may in particular make provision—

(a)as to the consequences of the creation of a new parish council, or a change in the area of a parish council, on any proposal made for a neighbourhood development order,

(b)as to the consequences of the dissolution of a neighbourhood forum on any proposal for a neighbourhood development order made by it,

(c)suspending the operation of any duty of a local planning authority under paragraph 6 or 7 of Schedule 4B in cases where they are considering the withdrawal of the designation of an organisation or body as a neighbourhood forum,

(d)for determining when a proposal for a neighbourhood development order is to be regarded as outstanding, and

(e)requiring a local planning authority to have regard (in addition, where relevant, to the matters set out in subsection (7)(a)) to prescribed matters in determining whether to designate an organisation or body as a neighbourhood forum.

61GMeaning of "neighbourhood area"
(1)A "neighbourhood area" means an area within the area of a local planning authority in England which has been designated by the authority as a neighbourhood area; but that power to designate is exercisable only where—

(a)a relevant body has applied to the authority for an area specified in the application to be designated by the authority as a neighbourhood area, and

(b)the authority are determining the application (but see subsection (5)).

(2)A "relevant body" means—

(a)a parish council, or

(b)an organisation or body which is, or is capable of being, designated as a neighbourhood forum (on the assumption that, for this purpose, the specified area is designated as a neighbourhood area).

(3)The specified area—

(a)in the case of an application by a parish council, must be one that consists of or includes the whole or any part of the area of the council, and

(b)in the case of an application by an organisation or body, must not be one that consists of or includes the whole or any part of the area of a parish council.

(4)In determining an application the authority must have regard to—

(a)the desirability of designating the whole of the area of a parish council as a neighbourhood area, and

(b)the desirability of maintaining the existing boundaries of areas already designated as neighbourhood areas.

(5)If—

(a)a valid application is made to the authority,

(b)some or all of the specified area has not been designated as a neighbourhood area, and

(c)the authority refuse the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area,

the authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas.

(6)The authority may, in determining any application, modify designations already made; but if a modification relates to any extent to the area of a parish council, the modification may be made only with the council's consent.

(7)The areas designated as neighbourhood areas must not overlap with each other.

(8)A local planning authority must publish a map setting out the areas that are for the time being designated as neighbourhood areas.

(9)If the authority refuse an application, they must give reasons to the applicant for refusing the application.

(10)In this section "specified", in relation to an application, means specified in the application.

(11)Regulations may make provision in connection with the designation of areas as neighbourhood areas; and the regulations may in particular make provision—

(a)as to the procedure to be followed in relation to designations,

(b)as to the giving of notice and publicity in connection with designations,

(c)as to consultation with and participation by the public in relation to designations,

(d)as to the making and consideration of representations about designations (including the time by which representations must be made),

(e)as to the form and content of applications for designations,

(f)requiring an application for a designation to be determined by a prescribed date,

(g)entitling or requiring a local planning authority in prescribed circumstances to decline to consider an application for a designation, and

(h)about the modification of designations (including provision about the consequences of modification on proposals for neighbourhood development orders, or on neighbourhood development orders, that have already been made).