

Further Plaistow and Ifold NP Legal Advice Query Response – 25 October 2021:

From: Gwion Lewis QC [email redacted]

Sent: 25 October 2021 18:41

To: Nicola Golding

Cc: Martina Kent

Subject: Re: PLAISTOW AND IFOLD NEIGHBOURHOOD PLAN - Water Neutrality - ONE FURTHER POINT OF CLARIFICATION PLEASE

Dear Nicola

I am grateful to Toby for engaging with my opinion and asking a follow-on question. He believes that it would be possible to achieve water neutrality through a combination of (i) achieving efficiency of 110lpd in new development; and (ii) offsetting consumption elsewhere. As I understand him, he is asking if a neighbourhood plan policy requiring or supporting this combination would comply with national planning policy and guidance.

I regret that I do not think that this formulation would overcome the difficulties that we have previously discussed. Although this formulation would not impose the more onerous efficiency standard of 90lpd, the clear guidance in the relevant section of the PPG (para. 14: see my written opinion) is that if a more onerous efficiency standard than 125lpd is to be imposed, *including the optional lower standard of 110lpd*, it must be imposed by the local planning authority in its Local Plan policies, not imposed at a parish or community level in a neighbourhood plan. This guidance is consistent with the instruction previously given in the 2015 Written Ministerial Statement that “[n]eighbourhood plans should not be used to apply the [optional] new national technical standards” (which means, here, the option to impose a requirement of 110lpd per day).

It might be that Toby is not contemplating a policy in the draft neighbourhood plan that explicitly requires a standard of 110lpd to be met. He might, instead, be contemplating a policy that leaves it to the developer’s judgment to determine the appropriate balance between ‘water efficiency’ and ‘water offsetting’ to achieve ‘water neutrality’. However, as I understand it, there is no realistic prospect of water neutrality being achieved on this basis unless a more onerous water efficiency standard than the default 125lpd is achieved. In other words, a more onerous ‘water efficiency’ standard than 125lpd is a necessary condition of achieving neutrality: it cannot realistically be achieved by water offsetting measures alone. If I am correct in that understanding, a policy simply requiring a balance between ‘water efficiency’ and ‘water offsetting’ to achieve water neutrality would still be contrary to the PPG because:

1. The effect in practice would be to require, indirectly via a neighbourhood plan, compliance with a more onerous water efficiency standard than the default 125lpd, when the PPG is clear that this should only be done at the Local Plan level having proven the need for such a requirement.
2. The failure to be specific about the more onerous water efficiency standard would be contrary to the emphasis in the PPG and 2015 Ministerial Statement on a “simpler, streamlined system” in which there are only two possible water efficiency standards (125lpd or 110lpd, with the latter only imposed at a Local Plan level).

With regret, therefore, I am afraid that my advice is unchanged despite Toby’s understandable efforts to try to find a workable solution. The fundamental problem here is

that the policy response to the issue cannot be delivered at the level of the neighbourhood plan; the PPG requires the policy response to be delivered at a Local Plan level. Whilst it might be possible to determine individual planning applications whilst awaiting that policy response (although I note Natural England's advice that only "critical" applications should be determined), decision-making is distinct from plan-making and is subject to different guidance in the PPG. Unfortunately, the PPG is clear that a neighbourhood plan cannot depart from the 125lpd standard unless that is supported by the extant Local Plan. A neighbourhood plan policy that would, in substance, require or support such a departure, even if only indirectly, would be very unlikely to be endorsed by the inspector examining the neighbourhood plan.

I am sorry that I am not responding more positively. I do understand the frustration with the current position but I have come to the clear conclusion that the issue cannot be resolved at the neighbourhood plan level. A Local Plan solution will be necessary. If I can be of any further assistance, please do not hesitate to contact me.

Kind regards,

Gwion