SCHEDULES

SCHEDULE 9

NEIGHBOURHOOD PLANNING

PART 1

NEIGHBOURHOOD DEVELOPMENT ORDERS

1 The Town and Country Planning Act 1990 is amended as follows.

2 After section 61D insert—

"Neighbourhood development orders

61E Neighbourhood development orders

(1) Any qualifying body is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development order.

(2) A "neighbourhood development order" is an order which grants planning permission in relation to a particular neighbourhood area specified in the order—
  (a) for development specified in the order, or
  (b) for development of any class specified in the order.

(3) Schedule 4B makes provision about the process for the making of neighbourhood development orders, including—
  (a) provision for independent examination of orders proposed by qualifying bodies, and
  (b) provision for the holding of referendums on orders proposed by those bodies.

(4) A local planning authority to whom a proposal for the making of a neighbourhood development order has been made—
  (a) must make a neighbourhood development order to which the proposal relates if in each applicable referendum under that Schedule more than half of those voting have voted in favour of the order, and
  (b) if paragraph (a) applies, must make the order as soon as reasonably practicable after the referendum is held.

(5) If—

(a) there are two applicable referendums under that Schedule (because the order relates to a neighbourhood area designated as a business area under section 61H), and

(b) in one of those referendums (but not the other) more than half of those voting have voted in favour of the order,

the authority may (but need not) make a neighbourhood development order to which the proposal relates.

(6) A "qualifying body" means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development order to act in relation to a neighbourhood area as a result of section 61F.

(7) For the meaning of "neighbourhood area", see sections 61G and 61I(1).

(8) The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the order would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).

(9) Regulations may make provision as to the procedure to be followed by local planning authorities in cases where they act under subsection (8).

(10) The regulations may in particular make provision—

(a) for the holding of an examination,

(b) as to the payment by a local planning authority of remuneration and expenses of the examiner,

(c) as to the award of costs by the examiner,

(d) as to the giving of notice and publicity,

(e) as to the information and documents that are to be made available to the public,

(f) as to the making of reasonable charges for anything provided as a result of the regulations,

(g) as to consultation with and participation by the public, and

(h) as to the making and consideration of representations (including the time by which representations must be made).

(11) The authority must publish in such manner as may be prescribed—

(a) their decision to act under subsection (4) or (8),

(b) their reasons for making that decision, and

(c) such other matters relating to that decision as may be prescribed.

(12) The authority must send a copy of the matters required to be published to—

(a) the qualifying body that initiated the process for the making of the order, and

(b) such other persons as may be prescribed.

(13) A local planning authority must publish each neighbourhood development order that they make in such manner as may be prescribed.

61F Authorisation 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.

61G Meaning 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).

61H Neighbourhood areas designated as business areas

(1) Whenever a local planning authority exercise their powers under section 61G to designate an area as a neighbourhood area, they must consider whether they should designate the area concerned as a business area.

(2) The reference here to the designation of an area as a neighbourhood area includes the modification under section 61G(6) of a designation already made.

(3) The power of a local planning authority to designate a neighbourhood area as a business area is exercisable by the authority only if, having regard to such matters as may be prescribed, they consider that the area is wholly or predominantly business in nature.

(4) The map published by a local planning authority under section 61G(8) must state which neighbourhood areas (if any) are for the time being designated as business areas.

61I Neighbourhood areas in areas of two or more local planning authorities

(1) The power to designate an area as a neighbourhood area under section 61G is exercisable by two or more local planning authorities in England if the area falls within the areas of those authorities.

(2) Regulations may make provision in connection with—

(a) the operation of subsection (1), and

(b) the operation of other provisions relating to neighbourhood development orders (including sections 61F to 61H) in cases where an area is designated as a neighbourhood area as a result of that subsection.

(3) The regulations may in particular make provision—

(a) modifying or supplementing the application of, or disapplying, any of the provisions mentioned in subsection (2)(b),

(b) applying (with or without modifications) any provision of Part 6 of the Local Government Act 1972 (discharge of functions) in cases where the provision would not otherwise apply,

(c) requiring local planning authorities to exercise, or not to exercise, any power conferred by any provision of that Part (including as applied by virtue of paragraph (b)), and

(d) conferring powers or imposing duties on local planning authorities.

61J Provision that may be made by neighbourhood development order

(1) A neighbourhood development order may make provision in relation to—

(a) all land in the neighbourhood area specified in the order,

(b) any part of that land, or

(c) a site in that area specified in the order.

(2) A neighbourhood development order may not provide for the granting of planning permission for any development that is excluded development.

(3) For the meaning of "excluded development", see section 61K.

(4) A neighbourhood development order may not grant planning permission for any development in any particular case where planning permission is already granted for that development in that case.

(5) A neighbourhood development order may not relate to more than one neighbourhood area.

(6) A neighbourhood development order may make different provision for different cases or circumstances.

61K Meaning of "excluded development"

The following development is excluded development for the purposes of section 61J—

(a) development that consists of a county matter within paragraph 1(1)(a) to (h) of Schedule 1,

(b) development that consists of the carrying out of any operation, or class of operation, prescribed under paragraph 1(j) of that Schedule (waste development) but that does not consist of development of a prescribed description,

(c) development that falls within Annex 1 to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended from time to time),

(d) development that consists (whether wholly or partly) of a nationally significant infrastructure project (within the meaning of the Planning Act 2008),

(e) prescribed development or development of a prescribed description, and

(f) development in a prescribed area or an area of a prescribed description.

61L Permission granted by neighbourhood development orders

(1) Planning permission granted by a neighbourhood development order may be granted—

(a) unconditionally, or

(b) subject to such conditions or limitations as are specified in the order.

(2) The conditions that may be specified include—

(a) obtaining the approval of the local planning authority who made the order but not of anyone else, and

(b) provision specifying the period within which applications must be made to a local planning authority for the approval of the authority of any matter specified in the order.

(3) Regulations may make provision entitling a parish council in prescribed circumstances to require any application for approval under subsection (2) of a prescribed description to be determined by them instead of by a local planning authority.

(4) The regulations may in particular make provision—

(a) as to the procedure to be followed by parish councils in deciding whether to determine applications for approvals (including the time by which the decisions must be made),

(b) requiring parish councils in prescribed circumstances to cease determining applications for approvals,

(c) conferring powers or imposing duties on local planning authorities,

(d) treating parish councils as local planning authorities (instead of, or in addition to, the authorities) for the purposes of the determination of applications for approvals (subject to such exceptions or modifications in the application of any enactment as may be prescribed),

(e) applying any enactment relating to principal councils within the meaning of section 270 of the Local Government Act 1972 for those purposes (with or without modifications), and

(f) disapplying, or modifying the application of, any enactment relating to parish councils for those purposes.

(5) A neighbourhood development order may provide for the granting of planning permission to be subject to the condition that the development begins before the end of the period specified in the order.

(6) Regulations may make provision as to the periods that may be specified in neighbourhood development orders under subsection (5).

(7) If—

(a) planning permission granted by a neighbourhood development order for any development is withdrawn by the revocation of the order under section 61M, and

(b) the revocation is made after the development has begun but before it has been completed,

the development may, despite the withdrawal of the permission, be completed.

(8) But an order under section 61M revoking a neighbourhood development order may provide that subsection (7) is not to apply in relation to development specified in the order under that section.

61M Revocation or modification of neighbourhood development orders

(1) The Secretary of State may by order revoke a neighbourhood development order.

(2) A local planning authority may, with the consent of the Secretary of State, by order revoke a neighbourhood development order that they have made.

(3) If a neighbourhood development order is revoked, the person revoking the order must state the reasons for the revocation.

(4) A local planning authority may at any time by order modify a neighbourhood development order that they have made for the purpose of correcting errors.

(5) If the qualifying body that initiated the process for the making of that order is still authorised at that time to act for the purposes of a neighbourhood development order in relation to the neighbourhood area concerned, the power under subsection (4) is exercisable only with that body's consent.

(6) A modification of a neighbourhood development order is to be done by replacing the order with a new one containing the modification.

(7) Regulations may make provision in connection with the revocation or modification of a neighbourhood development order.

(8) The regulations may in particular make provision—

(a) for the holding of an examination in relation to a revocation proposed to be made by the authority,

(b) as to the payment by a local planning authority of remuneration and expenses of the examiner,

(c) as to the award of costs by the examiner,

(d) as to the giving of notice and publicity in connection with a revocation or modification,

(e) as to the information and documents relating to a revocation or modification that are to be made available to the public,

(f) as to the making of reasonable charges for anything provided as a result of the regulations,

(g) as to consultation with and participation by the public in relation to a revocation, and

(h) as to the making and consideration of representations about a revocation (including the time by which representations must be made).

61N Legal challenges in relation to neighbourhood development orders

(1) A court may entertain proceedings for questioning a decision to act under section 61E(4) or (8) only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day on which the decision is published.

(2) A court may entertain proceedings for questioning a decision under paragraph 12 of Schedule 4B (consideration by local planning authority of recommendations made by examiner etc) only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day on which the decision is published.

(3) A court may entertain proceedings for questioning anything relating to a referendum under paragraph 14 or 15 of Schedule 4B only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which the result of the referendum is declared.

61O Guidance

Local planning authorities must have regard to any guidance issued by the Secretary of State in the exercise of any function under any provision relating to neighbourhood development orders (including any function under any of sections 61F to 61H).

61P Provision as to the making of certain decisions by local planning authorities

(1) Regulations may make provision regulating the arrangements of a local planning authority for the making of any prescribed decision under any provision relating to neighbourhood development orders (including under any of sections 61F to 61H).

(2) The provision made by the regulations is to have effect despite provision made by any enactment as to the arrangements of a local planning authority for the exercise of their functions (such as section 101 of the Local Government Act 1972 or section 13 of the Local Government Act 2000).

61Q Community right to build orders

Schedule 4C makes provision in relation to a particular type of neighbourhood development order (a community right to build order).”

3 In section 5(3) (provisions for the purposes of which the Broads Authority are the sole district planning authority)—

(a) after “sections” insert “61E to 61Q,”, and

(b) at the end insert “and Schedules 4B and 4C”.

4 In Schedule 1 (local planning authorities: distribution of functions), after paragraph 6 insert—

“6A (1) This paragraph applies to the functions of local planning authorities under any of sections 61E to 61Q and Schedules 4B and 4C (neighbourhood development orders).

(2) Those functions are to be exercised by a district planning authority in any area of a non-metropolitan county.”