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SCHEDULES

SCHEDULE 1

Section 4

NEW SCHEDULE A2 TO THE PLANNING AND COMPULSORY PURCHASE ACT 2004

- 1 This is the new Schedule A2 to the Planning and Compulsory Purchase Act 2004 referred to in section 4—

“SCHEDULE A2

Section 38A(11A)

MODIFICATION OF NEIGHBOURHOOD DEVELOPMENT PLANS

Proposals for modification of neighbourhood development plan

- 1 (1) This Schedule applies if a neighbourhood development plan has effect for a neighbourhood area within the area of a local planning authority.
- (2) A qualifying body is entitled to submit a proposal to the local planning authority for the modification of the neighbourhood development plan.
- (3) The proposal must be accompanied by—
- (a) a draft of the neighbourhood development plan as proposed to be modified (the “draft plan”), and
 - (b) a statement which contains a summary of the proposals and sets out the reasons why the plan should be modified as proposed.
- (4) The proposal must—
- (a) be made in the prescribed form, and
 - (b) be accompanied by other documents and information of a prescribed description.
- (5) The qualifying body must send to prescribed persons a copy of—
- (a) the proposal,
 - (b) the draft plan, and
 - (c) such of the other documents and information accompanying the proposal as may be prescribed.
- (6) The Secretary of State may publish a document setting standards for—
- (a) the preparation of a draft of a neighbourhood development plan as proposed to be modified and other documents accompanying the proposal,
 - (b) the coverage in any document accompanying the proposal of a matter falling to be dealt with in it, and
 - (c) all or any of the collection, sources, verification, processing and presentation of information accompanying the proposal.

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- (7) The documents and information accompanying the proposal (including the draft plan) must comply with those standards.
- 2 (1) A qualifying body may withdraw a proposal at any time before the local planning authority act in relation to the proposal under paragraph 14.
- (2) If—
- (a) a proposal by a qualifying body is made by an organisation or body designated as a neighbourhood forum, and
 - (b) the designation is withdrawn at any time before the proposal is submitted for independent examination under paragraph 9,
- the proposal is to be treated as withdrawn by the qualifying body at that time.
- (3) If the withdrawal of the designation occurs after the proposal is submitted for independent examination under that paragraph, the withdrawal is not to affect the validity of the proposal.

Advice and assistance in connection with proposals

- 3 (1) A local planning authority must give such advice or assistance to a qualifying body as, in all the circumstance, they consider appropriate for the purpose of, or in connection with, facilitating the making of a proposal for the modification of a neighbourhood development plan for a neighbourhood area within their area.
- (2) Nothing in this paragraph is to be read as requiring the giving of financial assistance.

Requirements to be complied with before proposals made or considered

- 4 (1) The Secretary of State may by regulations make provision as to requirements that must be complied with before proposals for the modification of a neighbourhood development plan may be submitted to a local planning authority or fall to be considered by a local planning authority.
- (2) The regulations may in particular make provision—
- (a) as to the giving of notice and publicity,
 - (b) as to the information and documents that are to be made available to the public,
 - (c) as to the making of reasonable charges for anything provided as a result of the regulations,
 - (d) as to consultation with and participation by the public,
 - (e) as to the making and consideration of representations (including the time by which they must be made),
 - (f) requiring prescribed steps to be taken before a proposal of a prescribed description falls to be considered by a local planning authority, and
 - (g) conferring powers or imposing duties on local planning authorities, the Secretary of State or other public authorities.
- (3) The power to make regulations under this paragraph must be exercised to secure that—

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- (a) prescribed requirements as to consultation with and participation by the public must be complied with before a proposal for the modification of a neighbourhood development plan may be submitted to a local planning authority, and
- (b) a statement containing the following information in relation to that consultation and participation must accompany the proposal submitted to the authority—
 - (i) details of those consulted,
 - (ii) a summary of the main issues raised, and
 - (iii) any other information of a prescribed description.

Consideration of proposals by authority

- 5 (1) A local planning authority may decline to consider a proposal submitted to them if they consider that it is a repeat proposal.
- (2) A proposal (“the proposal in question”) is a “repeat” proposal for the purposes of this paragraph if it meets conditions A and B.
- (3) Condition A is that—
- (a) in the period of two years ending with the date on which the proposal in question is received, the authority received a proposal under this Schedule (“the earlier proposal”),
 - (b) the authority did not make a neighbourhood development plan in response to the earlier proposal as a result of paragraph 8(4) or 14(4) or (8), and
 - (c) the earlier proposal was the same as or similar to the proposal in question.
- (4) Condition B is that the local planning authority consider that there has been no significant change in circumstances since the earlier proposal was dealt with as mentioned in sub-paragraph (3)(b).
- 6 If a local planning authority decline to consider a proposal under paragraph 5 they must notify the qualifying body of that fact and of their reasons for declining to consider it.
- 7 (1) This paragraph applies if—
- (a) a proposal has been made to a local planning authority,
 - (b) the authority have not exercised their powers under paragraph 5 to decline to consider it, and
 - (c) the authority consider that the modifications contained in the draft plan to which it relates are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace.
- (2) The local planning authority must instead consider the proposal under paragraph 6 of Schedule 4B to the principal Act (as applied by sections 38A(3) and 38C(5) of this Act).
- (3) That Schedule is to apply in relation to the proposal as if the proposal had been submitted to the local planning authority under that Schedule.
- 8 (1) This paragraph applies if—

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- (a) a proposal has been made to a local planning authority,
 - (b) the authority have not exercised their power under paragraph 5 to decline to consider it, and
 - (c) paragraph 7 does not apply.
- (2) The authority must consider—
- (a) whether the qualifying body is authorised for the purposes of a neighbourhood development plan to act in relation to the neighbourhood area concerned as a result of section 61F of the principal Act (as applied by section 38C(2)(a) of this Act),
 - (b) whether the proposal by the body complies with provision made by or under that section,
 - (c) whether the proposal and the documents and information accompanying it (including the draft plan) comply with provision made by or under paragraph 1, and
 - (d) whether the body has complied with the requirements of regulations made under paragraph 4 imposed on it in relation to the proposal.
- (3) The authority must also consider whether the draft plan complies with the provision made by or under sections 38A and 38B.
- (4) The authority must—
- (a) notify the qualifying body as to whether or not they are satisfied that the matters mentioned in sub-paragraphs (2) and (3) have been met or complied with, and
 - (b) in any case where they are not so satisfied, refuse the proposal and notify the body of their reasons for refusing it.

Requirement to appoint examiner

- 9 (1) This paragraph applies if—
- (a) a local planning authority have considered the matters mentioned in paragraph 8(2) and (3), and
 - (b) they are satisfied that the matters mentioned there have been met or complied with.
- (2) The local planning authority must submit for independent examination—
- (a) the draft plan, and
 - (b) such other documents as may be prescribed.
- (3) The authority must make such arrangements as they consider appropriate in connection with the holding of the examination.
- (4) The authority may appoint a person to carry out the examination, but only if the qualifying body consents to the appointment.
- (5) If—
- (a) it appears to the Secretary of State that no person may be appointed under sub-paragraph (4), and
 - (b) the Secretary of State considers that it is expedient for an appointment to be made under this sub-paragraph,
- the Secretary of State may appoint a person to carry out the examination.

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- (6) The person appointed must be someone who, in the opinion of the person making the appointment—
 - (a) is independent of the qualifying body and the authority,
 - (b) does not have an interest in any land that may be affected by the draft plan, and
 - (c) has appropriate qualifications and experience.
- (7) The Secretary of State or another local planning authority may enter into arrangements with the authority for the provision of the services of any of their employees as examiners.
- (8) Those arrangements may include—
 - (a) provision requiring payments to be made by the authority to the Secretary of State or other local planning authority, and
 - (b) other provision in relation to those payments and other financial matters.

What examiner must consider

- 10** (1) The examiner must first determine whether the modifications contained in the draft plan are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace.
 - (2) The following provisions of this paragraph apply if the examiner determines that the modifications would have that effect.
 - (3) The examiner must—
 - (a) notify the qualifying body and the local planning authority of the determination, and
 - (b) give reasons for the determination.
 - (4) The qualifying body must decide whether it wishes to proceed with the proposal or withdraw it, and must notify the examiner and the local planning authority of that decision.
 - (5) If the qualifying body notifies the examiner that it wishes to proceed with the proposal, the examiner must consider the draft plan and the documents submitted with it under paragraph 8 of Schedule 4B to the principal Act (as applied by sections 38A(3) and 38C(5) of this Act).
 - (6) In that event that Schedule is to apply in relation to the draft plan and the documents submitted with it as if they had been submitted to the examiner under that Schedule.
- 11** (1) If paragraph 10(2) does not apply, the examiner must consider the following—
 - (a) whether the draft plan meets the basic conditions (see subparagraph (2));
 - (b) whether the draft plan complies with the provision made by or under sections 38A and 38B;
 - (c) such other matters as may be prescribed.
 - (2) A draft plan meets the basic conditions if—

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- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,
 - (b) the making of the plan contributes to the achievement of sustainable development,
 - (c) the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
 - (d) the making of the plan does not breach, and is otherwise compatible with, EU obligations, and
 - (e) prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.
- (3) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft plan is compatible with the Convention rights).

Procedure for examination

- 12** (1) The general rule is that the examination of the issues by the examiner under paragraph 10 or 11 is to take the form of the consideration of written representations.
- (2) But the examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue at the hearing—
- (a) in any case where the examiner considers that there are exceptional reasons for doing so, or
 - (b) in such other cases as may be prescribed.
- (3) The following persons are entitled to make oral representations about the issue at the hearing—
- (a) the qualifying body,
 - (b) the local planning authority, and
 - (c) such other persons as may be prescribed.
- (4) The hearing must be in public.
- (5) It is for the examiner to decide how the hearing is to be conducted, including—
- (a) whether a person making oral representations may be questioned by another person and, if so, the matters to which the questioning may relate, and
 - (b) the amount of time for the making of a person's oral representations or for any questioning by another person.
- (6) In making decisions about the questioning of a person's oral representations by another, the examiner must apply the principle that the questioning should be done by the examiner except where the examiner considers that questioning by another is necessary to ensure—
- (a) adequate examination of a particular issue, or
 - (b) a person has a fair chance to put a case.
- (7) Sub-paragraph (5) is subject to regulations under paragraph 15.

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Recommendation by examiner

- 13** (1) After considering a draft plan under paragraph 11, the examiner must make a report on the draft plan containing recommendations in accordance with this paragraph (and no other recommendations).
- (2) The report must recommend either—
- (a) that the local planning authority should make the draft plan,
 - (b) that the local planning authority should make the draft plan with the modifications specified in the report, or
 - (c) that the local planning authority should not make the draft plan.
- (3) The only modifications that may be recommended are—
- (a) modifications that the examiner considers need to be made to secure that the draft plan meets the basic conditions mentioned in paragraph 11(2),
 - (b) modifications that the examiner considers need to be made to secure that the draft plan is compatible with the Convention rights,
 - (c) modifications that the examiner considers need to be made to secure that the draft plan complies with the provision made by or under sections 38A and 38B, and
 - (d) modifications for the purpose of correcting errors.
- (4) The report may not recommend that a plan (with or without modifications) should be made if the examiner considers that the plan does not—
- (a) meet the basic conditions mentioned in paragraph 11(2), or
 - (b) comply with the provision made by or under sections 38A and 38B.
- (5) The report must—
- (a) give reasons for each of its recommendations, and
 - (b) contain a summary of its main findings.
- (6) The examiner must send a copy of the report to the qualifying body and the local planning authority.
- (7) The local planning authority must then arrange for the publication of the report in such manner as may be prescribed.

Functions of authority: modifications proposed by qualifying body

- 14** (1) This paragraph applies if an examiner has made a report under paragraph 13.
- (2) If the report recommends that the local planning authority should make the draft plan, the authority must do so (subject as follows).
- (3) But if the examiner's report recommends that the authority should make the draft plan with the modifications specified in the report, the authority must make the draft plan with those modifications (subject as follows).
- (4) Sub-paragraph (2) or (3) does not apply if the authority consider that to make the draft plan or (as the case may be) to do so with those modifications would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights.

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- (5) If the authority do not make the draft plan on that ground, they must give reasons to the qualifying body for doing so.
- (6) Where sub-paragraph (2) or (3) applies, the authority may make the draft plan with modifications or (as the case may be) modifications other than those specified in the report if—
 - (a) the authority considers the modifications need to be made to secure that the draft plan is compatible with EU obligations and the Convention rights, or
 - (b) the modifications are for the purpose of correcting errors.
- (7) The authority must make the draft plan or (as the case may be) the draft plan with modifications permitted by this paragraph as soon as reasonably practicable and, in any event, by such date as may be prescribed.
- (8) If the examiner's report recommends that the local planning authority should not make the draft plan, the authority must not make the draft plan.

Regulations about examinations

- 15 (1) The Secretary of State may by regulations make provision in connection with examinations under paragraph 9.
- (2) The regulations may in particular make provision as to—
 - (a) the giving of notice and publicity in connection with an examination,
 - (b) the information and documents relating to an examination that are to be made available to the public,
 - (c) the making of reasonable charges for anything provided as a result of the regulations,
 - (d) the making of written or oral representations in relation to draft plans (including the time by which written representations must be made),
 - (e) the written representations which are to be, or which may be or may not be, considered at an examination,
 - (f) the refusal to allow oral representations of a prescribed description to be made at a hearing,
 - (g) the procedure to be followed at an examination (including the procedure to be followed at a hearing),
 - (h) the payment by a local planning authority of remuneration and expenses of the examiner, and
 - (i) the award of costs by the examiner.
- (3) The regulations may in particular impose duties on an examiner which are to be complied with by the examiner in considering the draft plan under paragraphs 10 and 11 and which require the examiner—
 - (a) to provide prescribed information to each person within sub-paragraph (4);
 - (b) to publish a draft report containing the recommendations which the examiner is minded to make in the examiner's report under paragraph 13;

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- (c) to invite each person within sub-paragraph (4) or representatives of such a person to one or more meetings at a prescribed stage or prescribed stages of the examination process;
 - (d) to hold a meeting following the issuing of such invitations if such a person requests the examiner to do so.
- (4) Those persons are—
- (a) the qualifying body,
 - (b) the local planning authority, and
 - (c) such other persons as may be prescribed.
- (5) Where the regulations make provision by virtue of sub-paragraph (3)(c) or (d), they may make further provision about—
- (a) the procedure for a meeting;
 - (b) the matters to be discussed at a meeting.

Interpretation

16 In this Schedule—

“the Convention rights” has the same meaning as in the Human Rights Act 1998;

“the development plan”—

- (a) includes a development plan for the purposes of paragraph 1 of Schedule 8 (transitional provisions);
- (b) does not include so much of a development plan as consists of a neighbourhood development plan under section 38A;

“draft plan” has the meaning given by paragraph 1(3);

“prescribed” means prescribed by regulations made by the Secretary of State.”

Commencement Information

I1 Sch. 1 in force for specified purposes at Royal Assent, see s. 46

I2 Sch. 1 para. 1 in force at 31.1.2018 in so far as not already in force by S.I. 2018/38, reg. 3(b)

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