

BOSBURY NEIGHBOURHOOD PLAN

Bosbury Neighbourhood Plan Examination,
A Report to Herefordshire Council

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March 2017



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Introduction

The Neighbourhood Plan

- 1 Where modifications are recommended, they are presented as bullet points and highlighted in **bold print**, with any proposed new wording in *italics*.
- 2 This Report provides the findings of the examination into the Bosbury Neighbourhood Plan (referred to as the Neighbourhood Plan).
- 3 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.

“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.”

(Paragraph 183, National Planning Policy Framework)

- 4 The Neighbourhood Plan was prepared by the Bosbury Neighbourhood Plan Committee, on behalf of Bosbury and Coddington Group Parish Council.
- 5 As set out in the opening chapter of the Basic Conditions Statement, submitted alongside the Neighbourhood Plan, Bosbury and Coddington Group Parish Council is the *Qualifying Body* ultimately responsible for the Neighbourhood Plan. This is in line with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012) and Planning Practice Guidance (2014).
- 6 This Examiner's Report provides a recommendation with regards whether the Neighbourhood Plan should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes in favour, then the Plan would be *made* by Herefordshire Council. The Neighbourhood Plan would then be used to determine planning applications and guide planning decisions in the Bosbury and Catley Neighbourhood Area.

Role of the Independent Examiner

- 7 I was appointed by Herefordshire Council, with the consent of the Qualifying Body, to conduct an examination and provide this Report as an Independent Examiner. I am independent of the qualifying body and the local authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.
- 8 I am a chartered town planner and an experienced Independent Examiner of Neighbourhood Plans. I have extensive land, planning and development experience, gained across the public, private, partnership and community sectors.
- 9 As the Independent Examiner, I must make one of the following recommendations:
 - that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
 - that the Neighbourhood Plan, as modified, should proceed to Referendum;
 - that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 10 If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether the Referendum Area should extend beyond the Bosbury and Catley Neighbourhood Area to which the Plan relates.

Neighbourhood Plan Period

- 11 A neighbourhood plan must specify the period during which it is to have effect. Paragraph 1.3 of the Basic Conditions Statement submitted alongside the Neighbourhood Plan sets out that:

“The proposed Neighbourhood Plan states the period for which it is to have effect. That period is from the Plan being made (2015) up to 2031...”

- 12 Rather than refer to the month and year that the Final Submission version of the plan was submitted, it would also be helpful if the front cover of the Neighbourhood Plan referred to the plan period. I recommend:

- **Change “Final Submission – October 2016” to “To 2031”**

- 13 Taking the above into account, the Neighbourhood Plan satisfies the relevant requirement in this regard.

Public Hearing

- 14 According to the legislation, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.
- 15 However, the legislation establishes that it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.
- 16 Further to consideration of the information submitted, I confirmed to Herefordshire Council that I was satisfied that the Bosbury Neighbourhood Plan could be examined without the need for a Public Hearing. In making this decision I was mindful that the Neighbourhood Plan has emerged through robust consultation (see *Public Consultation*, later in this Report) and that people have been provided with significant and appropriate opportunities to have their say.

2. Basic Conditions and Development Plan Status

Basic Conditions

- 17 It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “basic conditions.” These were *set out in law*¹ following the Localism Act 2011. A neighbourhood plan meets the basic conditions if:
- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood 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);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations; and
 - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.²
 - An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.³
- 18 In examining the Plan, I am also required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:
- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;

¹ Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.

² Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

³ The Convention rights has the same meaning as in the Human Rights Act 1998.

- the Neighbourhood Plan meets the requirements of Section 38B of the 2004 PCPA (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area);
- the Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted for examination by a qualifying body.

- 19 Subject to the content of this Report, I am satisfied that these three points have been met.
- 20 In line with legislative requirements, a Basic Conditions Statement was submitted alongside the Neighbourhood Plan. This sets out how, in the qualifying body's opinion, the Neighbourhood Plan meets the basic conditions.

European Convention on Human Rights (ECHR) Obligations

- 21 I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.
- 22 In the above regard, I note that Information has been submitted to demonstrate that people were provided with a range of opportunities to engage with plan-making in different places and at different times. Representations have been made to the Plan, some of which have resulted in changes and the Consultation Statement submitted alongside the Neighbourhood Plan provides a *“summary of responses and outcome of comments.”*

European Union (EU) Obligations

- 23 A Habitats Regulations Assessment (HRA) is required if the implementation of the Neighbourhood Plan may lead to likely negative significant effects on protected European sites.
- 24 Appendix 1 of the Environmental Report (October 2016) submitted alongside the Neighbourhood Plan comprises the Initial Habitats Regulations Assessment screening exercise undertaken to assess whether any European Sites exist within or in proximity to the Neighbourhood Area which could be affected by any future proposals or policies. This concludes that:
- “...no European Sites will need to be taken into account in the future Neighbourhood Development Plan for the Bosbury and Catley Neighbourhood Area and a Full HRA Screening will not be required.”*
- 25 There is no legal requirement for a neighbourhood plan to have a sustainability appraisal⁴. However, in some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment.

⁴ Paragraph 026, Ref: 11-027-20150209, Planning Practice Guidance

26 In this regard, national advice states:

“Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects.”
(Planning Practice Guidance⁵).

27 This process is often referred to as a screening or scoping report, opinion, statement or assessment. If the report identifies likely significant effects, then an environmental report must be prepared.

28 Herefordshire Council issued a Strategic Environmental Assessment (SEA) Scoping Report in October 2014. This concluded that:

“The initial screening highlights that the Neighbourhood Development Plan for the Bosbury and Catley Neighbourhood Area: a) Will require...Strategic Environmental Assessment.”

29 An Environmental Report incorporating Strategic Environmental Assessment was produced by Herefordshire Council and submitted alongside the Neighbourhood Plan. The Environmental Report provides evidence to demonstrate that the Strategic Environmental Assessment took account of the results of consultation with Natural England, Historic England and the Environment Agency, none of which have any objections to the final Report.

30 National guidance establishes that the ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations lies with the local planning authority,

“It is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a neighbourhood plan proposal submitted to it have been met in order for the proposal to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations” (Planning Practice Guidance⁶).

31 In undertaking the work that it has, Herefordshire Council has considered the Neighbourhood Plan's compatibility with EU obligations and has raised no objections or concerns in this regard. Taking this and the above into account, I conclude that the Neighbourhood Plan meets the basic conditions in respect of compatibility with European obligations.

⁵ Paragraph 027, *ibid*

⁶ Paragraph 031, Reference: 11-031-20150209, Planning Practice Guidance

3. Background Documents and the Bosbury and Catley Neighbourhood Area

Background Documents

32 In undertaking this examination, I have considered various information in addition to the Bosbury Neighbourhood Plan. This has included the following main documents:

- National Planning Policy Framework (the Framework) (2012)
- Planning Practice Guidance (2014)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- Herefordshire Local Plan Core Strategy 2011 – 2031 (2015)
- Basic Conditions Statement
- Consultation Statement
- Environmental Report

Also:

- Representations received

33 In addition, I spent an unaccompanied day visiting the Bosbury and Catley Neighbourhood Area.

Bosbury and Catley Neighbourhood Area

34 A plan showing the boundary of the Bosbury and Catley Neighbourhood Area is provided on page 14 of the Neighbourhood Plan. However, the red line boundary is not consistent, being “*dotted*” to the north and south. This provides the potential for unnecessary confusion and I recommend:

- **Revise the plan on page 14, using a consistent line to show the boundary of the Neighbourhood Area**

35 I also note that the Neighbourhood Area formally designated is “*Bosbury and Catley.*” Consequently, the Neighbourhood Plan, including Maps, should refer to the Neighbourhood Area as designated.

36 I recommend:

- **Change all Neighbourhood Area references in the Neighbourhood Plan, including Maps, to “*Bosbury and Catley Neighbourhood Area*”**

37 Herefordshire Council approved the designation of Bosbury and Catley as a Neighbourhood Area on 1 August 2014. This satisfied a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

38 The designated Neighbourhood Area does not coincide with the Parish boundaries (although it is wholly within the Parish boundary). I note that no comments regarding the nature of the boundary were received at designation stage and no comments were received at Submission stage.

4. Public Consultation

Introduction

- 39 As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.
- 40 Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

Bosbury Neighbourhood Plan Consultation

- 41 A Consultation Statement was submitted to Herefordshire Council alongside the Neighbourhood Plan. The information within it sets out who was consulted and how, together with the outcome of the consultation, as required by the neighbourhood planning *regulations*⁷.
- 42 Taking the information provided into account, there is evidence to demonstrate that the Neighbourhood Plan comprises a "*shared vision*" for the Bosbury and Catley Neighbourhood Area, having regard to Paragraph 183 of the Framework.
- 43 As established earlier in this Report, the Neighbourhood Plan was produced by the Bosbury Neighbourhood Plan Committee. This Committee was formed in June 2014 and from then until August, fortnightly public workshops and meetings were held in the Village Hall. At these, people were encouraged to discuss sustainable development and opinions were captured and considered.
- 44 Two questionnaires, on sustainable development sites and policy matters, were then distributed and responses were compiled and considered. Villagers were asked to vote on four options for a new village boundary and in September 2014, a draft plan was published on the parish website.

⁷Neighbourhood Planning (General) Regulations 2012.

- 45 The plan underwent a six week consultation period. Comments were considered and a revised draft plan produced. This underwent an eight week consultation period at the end of 2014. Following a hiatus related to the adoption of the Herefordshire Local Plan Core Strategy, the submission version of the plan was submitted.
- 46 Evidence has been provided to demonstrate that the plan-making process was widely publicised. A new village noticeboard was provided in the centre of Bosbury village. A dedicated email address and social media feed were created and together with the noticeboard, used to advertise meetings and provide relevant information.
- 47 Posters were placed on parish noticeboards and A5 flyers were distributed. Articles were placed in the Ledbury Reporter village section. Information was also made available on the parish website.
- 48 The Consultation Report provides evidence to show that public consultation was central to the production of the Neighbourhood Plan. Community engagement was encouraged throughout the plan-making process. Matters raised were duly considered and the reporting process was transparent.
- 49 Taking all of the above into account, I am satisfied that the consultation process was robust.

5. The Neighbourhood Plan – Introductory Section

- 50 The Basic Conditions require consideration of whether or not the Neighbourhood Plan as a whole has had regard to national policies and advice contained in guidance issued by the Secretary of State and whether or not it is in general conformity with the strategic local policies of the Local Plan.
- 51 The policies of the Neighbourhood Plan are considered against the basic conditions in Chapter 6 of this Examiner's Report. This Chapter considers the Introductory Section of the Neighbourhood Plan.
- 52 For consistency, I recommend:
- **Page 3, "Character and Situation," refer to "Conservation Area" using capital letters at the start of each word. This is done at the start of the section, but not in latter paragraphs**
- 53 As established earlier in this Report, a Neighbourhood Plan must meet the basic conditions. It is therefore unnecessary to point out after each individual Policy that it is supported by national or local policy. This adds an unnecessary layer of detail without providing additional clarity to the Neighbourhood Plan.
- 54 In the above regard, I note that it is the role of the Independent Examiner to assess whether the Neighbourhood Plan has regard to national policy and advice, and is in general conformity with the strategic policies of the development plan.
- 55 I recommend:
- **Delete the paragraph "The following plans, documents and strategies support policy..." together with associated bullet points (NB, delete this paragraph following each Policy)**
 - **Page 5, third paragraph under "The Neighbourhood Plan Policies," change to "...for the theme *and* the local communities views on that subject." Delete remaining text in the paragraph**

6. The Neighbourhood Plan – Neighbourhood Plan Policies

Housing Growth

- 56 The Foreword to the National Planning Policy Framework (the Framework) establishes that sustainable development:

“...is about positive growth – making economic, environmental and social progress for future generations. The planning system is about helping to make this happen.

Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision.”

- 57 Chapter 6 of the Framework, “*Delivering a wide choice of high quality homes,*” seeks to “*boost significantly*” the supply of housing and with specific regard to how much development neighbourhood plans should provide for, Paragraph 184 of the Framework states that:

“Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.”

- 58 The Herefordshire Local Plan Core Strategy (Core Strategy) was adopted in 2015. It sets out the approximate number of houses to be built across the county between 2011 and 2031. Core Strategy Policy RA1 establishes the approximate number of houses to be built in rural areas. The Neighbourhood Area is situated in the Ledbury Rural Housing Market Area, where, according to Core Strategy Policy RA1, approximately 565 dwellings are to be provided between 2011 and 2031.

- 59 Core Strategy Policy RA1 identifies an “*indicative housing growth target*” and the Policy’s supporting text states that the specific purpose of this is for it to be:

“...used as a basis for the production of neighbourhood plans in the county.”

- 60 The indicative housing growth target for settlement in the Ledbury Rural Housing Market Area is 14%. Consequently, in accordance with Core Strategy Policy RA1 and the Framework, the Neighbourhood Plan, like other neighbourhood plans elsewhere within the Ledbury Rural Housing Market Area, should not provide for less than 14% housing growth in the Neighbourhood Area.
- 61 Consequently, this 14% housing growth target is:
- “...the basis for the minimum level of new housing that will be accommodated in each neighbourhood development plan. The target represents a level of growth for parishes...”* (Paragraph 4.8.21, Core Strategy)
- 62 The Neighbourhood Plan recognises that there are approximately 350 dwellings in the parish. Applying the 14% indicative growth target would result in the need for the Neighbourhood Plan to provide for approximately 49 new dwellings over the period 2011-2031. As established earlier, the plan period is from 2015 to 2031, so any dwellings built between 2011 and 2015 would contribute to the need identified. Herefordshire Council states that 7 dwellings were built during this period.
- 63 Given the presumption in favour of sustainable development and the need to boost significantly the supply of housing, national and local policy therefore provides the basis for at least 42 homes to come forward in the Neighbourhood Area between 2015 and 2031. As above, this is a *“minimum level.”*
- 64 The supporting text to Core Strategy Policy RA1 states that:
- “Local evidence and environmental factors will determine the appropriate scale of development.”*
- 65 Clearly, the development of a single large scale housing estate adjacent to a small linear settlement runs the risk of severe harm to local character. The Core Strategy recognises this and the supporting text to Policy RA1 points to the need for development to be designed to take into account local character and to comprise high quality design.
- 66 Whilst it is not a requirement for every neighbourhood plan to allocate land for housing or to set out how much housing should be provided over the plan period, in the case of Bosbury, plan-makers have sought to do so and Policy 1 of the Neighbourhood Plan addresses Housing Growth.

Policy 1 – Housing Growth

- 67 Policy 1 begins with what appears to be a positive approach to supporting proposals for the development of up to 8 homes on any one site within the main area of Bosbury village, as defined by the settlement boundary. However, on consideration of the settlement boundary, identified on the plan on page 13 of the Neighbourhood Plan, it is unclear where potential development sites for up to 8 dwellings might be.
- 68 The settlement boundary appears to be drawn tightly to the existing built-up area of Bosbury. Information provided on page 17 of the Neighbourhood Plan suggests that there is the potential for 21 homes to be provided within the settlement boundary. Of these, it is suggested that 8 dwellings would arise on unidentified windfall sites. Given the tight settlement boundary and the absence of substantive evidence, there appears to be some uncertainty over whether there is sufficient scope for the development of 8 windfall dwellings within the settlement boundary.
- 69 It is suggested that the remaining 13 dwellings would arise from development in an area towards the north of the village, at Old Court Farm Barns and North of Old Court Farm. This is an area in the most historic part of Bosbury, within the Conservation Area and close to other heritage assets, including the Grade 1 Listed Holy Trinity Church. Consequently, whilst the presence of heritage assets is not, in itself, a factor that prevents development, it does present a potential constraint to the type of development that might come forward.
- 70 In addition to the above, the Neighbourhood Plan recognises that there are flooding constraints in parts of the Neighbourhood Area and that, specifically, *“some of the area surrounding and to the north of Old Court Farm”* is within an area of high flood risk. Taking this and the above constraint into account, and in the absence of substantive evidence, there is no certainty that together, land at Old Court Farm Barns and North of Old Court Farm can provide 13 dwellings during the plan period.
- 71 Notwithstanding this, even if it were possible for a total of 21 new dwellings to be delivered during the plan period, then this would still fall considerably short of the *minimum* requirement for 42 dwellings identified above.

72 As established earlier, a neighbourhood plan cannot promote less development than that required by the local plan. The restrictive nature of the proposed settlement boundary, together with the Neighbourhood Plan's highly restrictive approach to development outside of it, as set out in Policy 6, considered later in this Report, severely limits the potential for sustainable development to come forward. It does so to a degree whereby the Neighbourhood Plan promotes less development than that required.

73 Policy 1 does not meet the basic conditions.

74 Page 17 of the Neighbourhood Plan states that:

"...it is not possible to add 46 new homes to Bosbury village and be compliant" (with the Core Strategy).

75 In reaching this conclusion, plan-makers point to the presence of the Conservation Area, Flood Zoning and "*Planning Evidence.*" Taking the latter of these first, the fact that development proposals have been refused and/or dismissed at appeal does not amount to conclusive evidence that it is not possible for sustainable development to come forward in the Neighbourhood Area. Taking the examples of two recently dismissed appeals⁸, these were for 37 and 46 dwellings, respectively. I note that such large schemes would almost inevitably have a significant impact on local character, given the nature of Bosbury.

76 As highlighted earlier, the Core Strategy is concerned to ensure that the scale of development should take into account local evidence and environmental factors. The fact that two proposals for what, on the face of it, might have comprised disproportionately large schemes, were dismissed at appeal does not amount to the same thing as it not being possible to provide for the housing growth required and there is no substantive evidence before me to the contrary.

77 I also noted earlier that the presence of a heritage asset does not prevent development from coming forward. Chapter 12 of the Framework, "*Conserving and enhancing the historic environment,*" establishes that heritage assets should be conserved in a manner appropriate to their significance. In so doing, national policy recognises:

"...the desirability of new development making a positive contribution to local character and distinctiveness."

⁸ Ref: APP/W1850/W/15/3053084; APP/W1850/W/15/3002571

- 78 Heritage assets may constrain the type and nature of development that can come forward in certain locations, but their presence does not prevent development. Rather, when done well, development can actually help to preserve and even enhance the significance of heritage assets. There is no substantive evidence to demonstrate that the presence of the Conservation Area means that the Neighbourhood Plan should provide for significantly less housing than that required.
- 79 The Environment Agency's flood risk maps identify parts of the Neighbourhood Area where flooding is a significant constraint. However, this is largely outside the built up area. Areas immediately to the north, south and east of Bosbury are not constrained by flood risk.
- 80 Criteria 1C and 1D of the Policy 1 largely amount to the same thing. There is no information to distinguish between "*natural, built and historic environment*" and "*village character.*" Together, these criteria have regard to Paragraph 58 of the Framework, which requires neighbourhood planning policies to:
- "...respond to local character and history..."*
- 81 The final part of the Policy requires development to take account of another policy in another document not controlled by the Neighbourhood Plan.
- 82 Taking all of the above into account, I recommend:
- **Delete all of the text in Policy 1 and replace with "*New development in the Neighbourhood Area must respect the natural, built and historic environment.*"**
 - **Change title of Policy 1 to "*Village Character*"**
 - **Delete Paras 1, 2, 4, and 5 of the Justification and Evidence**
 - **Change last sentence of Paragraph 7 of the Justification and Evidence to "*The Parish Council will keenly support such proposals.*"**
 - **Delete Page 13 (Settlement Boundary plan and text)**
 - **Delete Page 17 (all text)**

I acknowledge that the recommendations above will come as a disappointment to plan-makers. However, as this part of the Neighbourhood Plan does not meet the basic conditions, the only alternative approach at this stage would be to recommend that the Neighbourhood Plan should not proceed to Referendum.

The Community Feedback table provides useful background information, particularly for prospective applicants for residential development. It is not recommended that this be removed from the Neighbourhood Plan.

Local Character

Policy 2 – Local Character

- 83 Policy 2 seeks to ensure that development responds to local character and history and in this way, it has regard to Paragraph 58 of the Framework, referred to earlier in this Report. It is also in general conformity with Core Strategy Policy SS2 (*Environmental quality and local distinctiveness*), which states that development should:

“...conserve and enhance those environmental assets that contribute towards the county’s distinctiveness...”

- 84 Also, good design is recognised by the Framework as comprising:

“a key aspect of sustainable development...indivisible from good planning.”
(Paragraph 56)

- 85 In addition, national policy requires good design to contribute positively to making places better for people (Chapter 7, The Framework). Paragraph 58 of the Framework goes on to require development to:

“...respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;”

- 86 The general aims of Policy 2 support good design and seek to protect local character. For example, Criterion 2A of the Policy sets out a positive approach to reinforcing local distinctiveness.

- 87 However, no evidence is provided to demonstrate that the open landscape beyond the Conservation Area *“underpins its special interest.”* Consequently, this part of the Policy fails to have regard to Planning Practice Guidance⁹, which states:

⁹ Paragraph: 042 Reference ID: 41-042-20140306

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”

- 88 Further, it is not entirely clear – and the Neighbourhood Plan provides no substantive evidence to demonstrate – which part of the open countryside beyond the Conservation Area *“strongly contributes to its character”* and in what way. This imprecision fails to provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.
- 89 The final part of Criterion Policy 2B seeks to ensure that *“positive views and vistas”* are maintained. These are neither defined nor identified. There could be any number of views into or out of the Conservation Area, for example, and views are likely to change dependent upon the season or even time of day. It is not clear how a changing view might be maintained. No indication is provided of what a *“positive”* view comprises. This is a subjective matter and this part of the Policy is also imprecise and fails to provide a decision maker with a clear indication of how to respond to a development proposal.
- 90 Criterion 2C is less about local character than energy efficiency and the provision of green energy. Paragraph 173 of the Framework requires *“careful attention to viability and costs”* and Paragraph 193 requires that information in support of an application is *“relevant, necessary and material”* to the application in question.
- 91 No substantive information is provided to demonstrate that it would be viable or relevant in all cases for development to *“take every opportunity”* to incorporate features to reduce carbon emissions. This part of the Policy does not meet the basic conditions. Further, it is not clear how the visual impact of a feature relates to its viability and no information is provided in this regard.
- 92 Notwithstanding the above, national policy promotes energy efficiency and a reduction in carbon emissions and I take this into account in the recommendations below.

- 93 Policy 2F seeks to impose a requirement on all development to consider the unknown. No evidence is provided to demonstrate that, in all circumstances, it will be relevant and viable for all development proposals to consider unknown sub-surface archaeology. It is established, in national policy, that where a site on which development is proposed includes, or has potential to include, heritage assets with archaeological interest, an appropriate desk-based assessment and if necessary, field evaluation, should be submitted. As set out, Policy 2F does not meet the basic conditions and may lead to unnecessary confusion, whilst adding little, if anything, to established national policy.
- 94 The final part of the Policy imposes a requirement for all development to be assessed against a non-statutory planning document. *“Building for Life”* provides helpful advice in relation to the design of housing and neighbourhoods. However, it is not an adopted planning policy document and its contents simply contain advice. Requiring all development to include an assessment against the twelve criteria within the *“Building for Life”* would fail to have regard to Paragraph 193 of the Framework, referred to above.
- 95 Part of the supporting text to Policy 2 reads as though it comprises a Policy, which it does not and I address this in the recommendations below.
- 96 Taking everything into account, I recommend:
- **Criterion 2B, for consistency, change to “Conservation Area”**
 - **End Criterion 2B after “Conservation Area.” (delete “that currently strongly...are maintained**
 - **Change Criterion 2C to “*The delivery of renewable and low carbon energy development that respects its surroundings will be supported.*”**
 - **Delete Policy 2F and final paragraph of Policy 2**

- **Justification and Evidence, third Para, change to “*The Parish Council wishes to ensure that new development is sustainable and in keeping with the existing village character. The Parish Council would like proposals to comprise exemplary development and in this regard, strongly support the use of the Commission for Architecture and the Built Environment’s Building for Life assessment tool (see note on page 12).*”**
- **Change fourth Para to “...runoff. *The Parish Council is keen to ensure that houses have suitable flood defences in their siting and design and that existing homes are not detrimentally impacted by new development.*”**

The Local Economy

Policy 3 – The Local Economy

- 97 The opening sentence of Policy 3 is unnecessary. It states that the Policy should be adhered to. It is simply a fact that a development plan should be adhered to unless material considerations dictate otherwise.
- 98 Criterion 3A uses the phrase “*will be permitted.*” This runs the risk of pre-determining the planning application process without taking relevant matters into account. It may prevent a balanced consideration and result in support for unsustainable forms of development. Further, national policy supports the conversion of existing redundant buildings into dwellings and in some cases, having regard to Permitted Development Rights, planning permission is not a requirement. Criterion 3A of Policy 3 limits its support to “*non-residential workshops or workplaces*” and as worded, fails to have regard to this.
- 99 Criteria 3B attempts to prevent any greenfield residential development outside the settlement boundary. This goes well beyond national or local planning policy without justification. As set out above, there is a presumption in favour of sustainable development. Criteria 3B fails to have regard to this and does not meet the basic conditions.
- 100 Criteria 3C relates directly to Criteria 3B. In addition, Criteria 3C is vague and imprecise. The phrase “*may be considered*” not only lacks meaning, but is incorrect. An application for development will be considered, no matter what is proposed.
- 101 Criteria 3D seeks to ensure that development in the Neighbourhood Area is sensitive to local character. Whilst this largely repeats the requirements of Policy 2, it meets the basic conditions. The final part of Criteria 3D is a reference more appropriate to the supporting text.
- 102 Taking all of the above into account, I recommend:
- **Policy 3, Criterion 3A, change to “*The conversion of existing redundant buildings to employment uses will be strongly supported.*”**
 - **Delete Criterion 3B and 3C**

- **Criterion 3D, delete last sentence (“Due...appropriate”)**

Local Facilities

Policy 4 – Local Facilities

103 Paragraph 58 of the Framework promotes:

“...the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.”

104 Generally, Policy 4 supports the retention and development of local services and community facilities. However, there is no evidence to demonstrate that the requirements of the first paragraph of the Policy have regard to Paragraph 193 of the Framework, referred to earlier in this Report. Consequently, the start of the Policy fails to have regard to the need to ensure that information required in support of a proposal is relevant, necessary and material to the application in question.

105 Policy 4A could result in unforeseen circumstances, such that it supports any kind of development, so long as it leads to the sustainable development of the village centre. For example, it may be possible that a major development of any kind outside the village centre could provide funding for the diversification and enhancement of village centre facilities. I take this into account in the recommendations below.

106 I also note that, through use of the phrase “*will be allowed*” the Policy runs the risk of pre-determining a planning application without taking relevant considerations into account.

107 The first part of Policy 4B protects the loss of local community services and amenities. However, the second part is imprecise. No indication is provided of what “*significant material evidence and reason*” might be. However, having regard to the supporting text, it may be that in some circumstances, it is simply unviable for a facility to continue to be provided and it would be unreasonable, therefore, for Policy 4B to prevent a change of use. I address this below.

108 I recommend:

- **Policy 4, delete first paragraph**
- **Policy 4A, change to “*The diversification and/or enhancement of local amenities and related services for the local community that support the sustainable development of the village centre will be supported.*”**
- **Policy 4B, change to “*...will be resisted unless it can be demonstrated after an active twelve month marketing period that the existing use is unviable.*”**

Transport

Policy 5 - Transport

109 The first part of Policy 5 requires all development to provide a transport assessment, including measures to mitigate any impacts arising. There is no evidence to demonstrate that such a requirement has regard to Paragraph 193 of the Framework and consequently, this part of the Policy does not meet the basic conditions.

110 Policy 5A goes on to seek to prevent harm to highway safety. As set out, this part of the Policy is imprecise. *"Unacceptable highway dangers"* are not defined, so it is not clear to an applicant, or decision maker, what these may be, or for example what an acceptable highway danger might comprise. The Policy also goes on to run the risk of pre-determining the planning application process through use of the phrase *"will not be permitted."* This may fail to provide for the balanced consideration provided for by the planning application process.

111 Notwithstanding the above, the Framework seeks to ensure that developments:

"...create safe and accessible environments..."

and I take this into account in making the recommendations below.

112 Policy 5B states that development should maximise opportunities to walk or cycle to the village centre and within the (undefined) *"Local area."* It is not clear why all development should need to do this, why it would be relevant, appropriate or necessary for all development to do so, or whether such provisions would be viable in all cases. There is no substantive evidence to demonstrate that the requirements of Policy 5B have regard to Paragraphs 173 or 193 in this respect.

113 However, Paragraph 75 of the Framework states that

"...policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks..."

114 Taking this and the above into account, I recommend:

- **Policy 5, delete text and re-word as: *“Development should not result in harm to highway safety. Improvements to and/or the expansion of the local footpath and bridleway network and/or the creation of new cycle ways will be supported.”***

Landscape and Environment

Policy 6 – Landscape and Environment

- 115 Policy 6A seeks to exclude any new housing development outside Bosbury's settlement boundary, other than that for agricultural workers dwellings. Notwithstanding that the proposed settlement boundary itself fails to provide for sustainable growth, having regard to national policy and in general conformity with the Core Strategy, but by excluding residential development in the way that it does, Policy 6A is more stringent than any national or local planning policies – including those for National Parks, Areas of Outstanding Natural Beauty or Green Belt.
- 116 No substantive evidence has been provided to justify such a departure from national and local policy.
- 117 The fact that the countryside provides for recreation and wildlife is not in itself a reason to exclude new housing from being built there. Much of the country's housing, at one time or another, was built on a green field. As worded, Policy 6 may serve to place a barrier in the way of sustainable development coming forward in the Neighbourhood Area and there is no substantive evidence to the contrary. Policy 6 does not meet the basic conditions.
- 118 I note that the combined impact of the Neighbourhood Plan's housing-related policies would, without modification, severely restrict the potential for residential development to the extent that it simply would not be possible for the Neighbourhood Area to meet its housing requirements and be in general conformity with the Core Strategy. Without modification, the Neighbourhood Plan would not meet the basic conditions and could not progress to Referendum
- 119 In consideration of the supporting text to Policy 6, I note that the designation of Local Green Space might have provided an appropriate mechanism whereby plan-makers could have sought to afford significant protection to special green areas, to the extent that development could only take place there in exceptional circumstances. However, Policy 6 does not seek to designate Local Green Space. Furthermore, Policy 6 specifically seeks to prevent residential development and would apply to the majority of the Neighbourhood Area. Local Green Space designations concern all types of development and cannot apply to extensive tracts of land.

120 The justification for Policy 6 refers to bioersity. National policy strongly promotes biodiversity and taking this and the above into account, I recommend:

- **Delete the text of Policy 6 and replace with “*Development should minimise impacts on biodiversity. Net gains in biodiversity will be supported.*”**
- **Justification and Evidence, delete Paras 1, 2, 3 and 4 (NB, Policy 6 does not relate to a single site or area, but to “*the undeveloped areas outside the new Bosbury Settlement Boundary*”)**
- **Change title of Policy 6 to “*Biodiversity*”**

7. The Neighbourhood Plan: Other Matters

121 The final Paragraph under "*Building for Life*" on page 12 reads as though it comprises a Policy, which it does not. The "*Next Steps*" section on the same page has been overtaken by events.

122 The plan on page 15 is a reproduction of a plan from another document and is out of date .

123 It is not clear why the Flood Risk plan provided refers to recent planning application refusals. This does not relate to Policies and is confusing.

124 There is no need for the inclusion of the map on page 19. Areas of Flood Risk and heritage sites are already indicated elsewhere; and the settlement boundary and Policy 1B are recommended for deletion.

125 The recommendations made in this Report will have a subsequent impact on Policy, page and paragraph numbering.

126 Taking the above into account, I recommend:

- **Delete final Para under "*Building for Life*" on page 12**
- **Delete "*Next Steps*" section on page 12**
- **Delete plan on page 15**
- **Delete reference to recent planning applications on the Flood Risk plan on page 18**
- **Delete map on page 19**
- **Update the Policy, page and paragraph numbering, taking account of the recommendations contained in this Report.**

8. Summary

127 Taking all of the above into account, a number of modifications are recommended in order for the Neighbourhood Plan to meet the basic conditions.

128 Subject to these modifications, I confirm that:

- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood 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);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations; and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.

129 Taking the above into account, I find that the Bosbury Neighbourhood Plan meets the basic conditions. I have already noted above that the Plan meets paragraph 8(1) requirements.

9. Referendum

130 I recommend to Herefordshire Council that, subject to the modifications proposed, **the Bosbury Neighbourhood Plan should proceed to a Referendum.**

Referendum Area

131 I am required to consider whether the Referendum Area should be extended beyond the Bosbury and Catley Neighbourhood Area.

132 The Neighbourhood Area was approved by Herefordshire Council in 2014 and no comments with regards the boundary were submitted during the Submission Consultation period.

133 Whilst I note that the boundary does not coincide with that of the Parish boundary, it is not a statutory requirement for it to do so. Whilst this may result in administrative issues, with regards establishing who has a right to vote, the Neighbourhood Area comprises that originally sought by the local community and subsequently approved by Herefordshire Council. There is no substantive evidence to demonstrate that the boundary is not appropriate.

134 Consequently, I recommend that the Plan should proceed to a Referendum based on the Bosbury and Catley Neighbourhood Area approved by Herefordshire Council on 1 August 2014.

Nigel McGurk, March 2017
Erimax – Land, Planning and Communities

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