Town and Country Planning Act 1990

Neighbourhood Planning (General) Regulations 2012

WELSH NEWTON AND LLANROTHAL GROUP NEIGHBOURHOOD DEVELOPMENT PLAN

INDEPENDENT EXAMINATION

Draft Report to Herefordshire County Council

by Edward Cousins BA, LLM

June 2017

Introduction

1. This Draft Report[1] comprises the preliminary findings of my examination into the Welsh Newton and Llanrothal Group Neighbourhood Development Plan ('the Neighbourhood Plan'), which was submitted by the Welsh Newton and Llanrothal Group Parish Council to Herefordshire Council ('the Council') on 31 October 2016 for consultation, and was sent for examination on 17 January 2017.

2. At present it appears likely that I shall be recommending that the Council refuse to make the Neighbourhood Plan. The reason is that, in my judgment, the Neighbourhood Plan does not meet the '*basic conditions*' insofar as making the Plan breaches EU obligations relating to the Strategic Environmental Assessment. This will not be capable of cure without, at a minimum, re-submission and re-consultation with a new environmental report.

3. Although in the light of that finding, it may not be appropriate or lawful to proceed with modifications, I have indicated my views as to the appropriateness of the policies and their consistency with national policy. I would normally wish to request further information and representations before making findings on certain other issues, or proposing policy wording. I have indicated those matters in the text below, and in a summary section at the end of this Draft Report. In particular, without further information I am unable to recommend submission of the Plan to referendum without breaching obligations owed under the Habitats Directive.

My appointment

4. I was appointed by the Council to conduct an independent examination into the Neighbourhood Plan. I am independent of the Parish Council and of the Council. I do not have any interest in any land that may be the subject of the Neighbourhood Plan, and nor do I have any professional conflicts of interest.

5. I was called to the Bar of England and Wales in 1971 and practised as a barrister for over 30 years with expertise in property and land law, and associated Chancery litigation. From 2002 to 2011, I served as the Chief Commons Commissioner appointed under section 17 of the Commons Registration Act 1965. From September 2003, I served as Adjudicator to HM Land Registry, a role established by the Land Registration Act 2002. When, in 2013, this jurisdiction was transferred to the tribunal system, I sat as Principal Judge of the First-tier Tribunal (Property Chamber), and a Deputy Upper Tribunal Judge (Lands Chamber), until October 2014. I am published in the fields of the law of mortgages, commons and greens, and markets and fairs.

Statutory framework and remit of the examination

6. Section 38A of the Planning and Compulsory Purchase Act 2004 provides that 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 plan. The

[1] The status of the document is described as a "Draft Report". The reasons for this description will become clear in the text.

Parish Council is a '*qualifying body*', and the Council is a '*local planning authority*', for the purpose of the 2004 Act.

7. A '*neighbourhood development plan*' is defined by subsection 38A(2) as

> '*a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan*'.

8. By section 38(3)(c) of the 2004 Act, a neighbourhood development plan that has been made in relation to an area forms part of the statutory development plan, for the purpose of guiding town and country planning decisions. There is, under section 38(6), a presumption in favour of determining planning applications in accordance with the development plan, unless material considerations indicate otherwise.

9. Section 38B of the 2004 Act states as follows:

> ***'38B Provision that may be made by neighbourhood development plans***
>
> *(1) A neighbourhood development plan—*
> *(a) must specify the period for which it is to have effect,*
> *(b) may not include provision about development that is excluded development, and*
> *(c) may not relate to more than one neighbourhood area.*
> *(2) Only one neighbourhood development plan may be made for each neighbourhood area.*
> *(3) If to any extent a policy set out in a neighbourhood development plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy.*
> *(4) Regulations made by the Secretary of State may make provision—*
> *(a) restricting the provision that may be included in neighbourhood development plans about the use of land,*
> *(b) requiring neighbourhood development plans to include such matters as are prescribed in the regulations, and*
> *(c) prescribing the form of neighbourhood development plans.*
> *(5) A local planning authority must publish each neighbourhood development plan that they make in such manner as may be prescribed by regulations made by the Secretary of State.*
> *(6) Section 61K of the principal Act (meaning of "excluded development") is to apply for the purposes of subsection (1)(b).'*

10. Section 61K states, so far as is material, as follows:

> ***'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)'.

11. The Neighbourhood Planning (General Regulations) 2012 ('*the General Regulations*') were made under s.38B of the 2004 Act and prescribe some detailed requirements for neighbourhood development plan proposals and how they are to be consulted upon, publicised and submitted.

12. The procedure for examining draft neighbourhood development plans is provided for in Schedule 4B of the Town and Country Planning Act 1990, which is applied by section 38A(3) of the 2004 Act. This provides at paragraph 7 for the local planning authority to submit the draft plan for independent examination by a person who is independent of the qualifying body and of the authority, does not have an interest in any land that may be affected by the draft plan, and has appropriate qualifications and experience.

13. The examiner must make a report on the draft plan pursuant to paragraph 10 of Schedule 4B, which must recommend either that the draft plan is submitted to a referendum; or that modifications be made to correct errors or secure compliance with legal requirements, and the draft plan as modified be put to a referendum; or that the proposal for the plan be refused. The examiner's report must contain a summary of its main findings and give reasons for each of its recommendations.

14. The local planning authority is then required to publish the examiner's report, and to consider the recommendations made. If the local planning authority considers that the statutory requirements are complied with, the draft plan must then be put to a referendum and, if approved by the referendum, adopted as part of the development plan.

What must an examiner examine?

15. Paragraph 8 of Schedule 4B to the 1990 Act, as modified by section 38C(5) of the 2004 Act, requires the examiner to consider the following:

- whether the draft plan '*meets the basic conditions*' (defined at sub-paragraph (2));
- whether it complies with the provision made by or under sections 38A and 38B of the 2004 Act; and
- whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates; and

- whether the draft plan is compatible with '*the Convention rights*', as defined by the Human Rights Act 1998[2].

16. Paragraph 8(2) of the Schedule, as modified by section 38C(5)(d) of the 2004 Act, tells us:

> *'(2) A draft [plan] meets the basic conditions if—*
> *(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the [plan],*
> *[…]*
> *(d) the making of the [plan] contributes to the achievement of sustainable development,*
> *(e) 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),*
> *(f) the making of the [plan] does not breach, and is otherwise compatible with, EU obligations, and*
> *(g) prescribed conditions are met in relation to the [plan] and prescribed matters have been complied with in connection with the proposal for the [plan]'.*

17. The General Regulations have, at regulation 32 and Schedule 2 thereof, prescribed a condition for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act. Paragraph 1 of Schedule 2 to the General Regulations stipulates that:

> *'[the] making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 20102) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects).'*

18. In what follows of this Report, I shall first consider the formal compliance with the provision by and under sections 38A and 38B of the 2004 Act. I shall then address the '*basic conditions*', before addressing the questions of human rights and the appropriate area for a referendum.

19. An application was made by the Parish Council on 12th November 2012 for the whole parish to be designated as a '*neighbourhood area*' for the purpose of the 2004 Act. This neighbourhood area was approved and authorised by the Council's Assistant Director of Economy, Environment and Cultural Services on 29th January 2013. The Parish Council is a 'qualifying body' by virtue of section 38A(12).

[2] Section 1 of the 1998 Act defines these as the rights and fundamental freedoms set out in—Articles 2 to 12 and 14 of the European Convention on Human Rights, Articles 1 to 3 of the First Protocol to the Convention, and Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.

20. Section 38A(2) requires the neighbourhood development plan to contain policies relating to the development and use of land lying in the neighbourhood area. The policies are set out in Section 5 of the Neighbourhood Plan. It appears to me that it is sufficiently clear from the way that the document is set out and from paragraph 5.0.1 of the explanatory text that the '*Vision and Objectives*' set out in Section 4 of the document were intended merely to set out the overarching ambitions of the Parish Council, and were to be distinguished from the '*Policies*' set out at Section 5. I am satisfied that the Policies do relate to the use and development of land within the neighbourhood area, and not to extraneous matters.

Section 38B

21. The Neighbourhood Plan must specify the period for which it has effect, which is required by section 38B(1)(a) of the 2004 Act. The title says, '*2011-2031*'. This is misleading as the plan cannot have effect before it is made, which will presumably be in 2017. It is also ambiguous as to whether the period includes the year 2031. The Executive Summary states that it will be used '*up to 2031*', as does paragraph 1.10 of the supporting text. It appears to me from the text of the Core Strategy, which also has 2031 in its title, that it was intended to terminate at the end of 2030,[3] yet the annualised housing delivery table at Appendix 4 to the Core Strategy includes a column for the year "*2031/31*" (please correct). At present, I am unable to recommend adoption without it being specified on what date the plan will expire. I shall invite representations as to the intended terminal date from the Parish Council and the Council.

22. The Neighbourhood Plan does not include provision about minerals and waste development, development specified in Annex I of Directive 85/337/EEC, or nationally significant projects. I am satisfied that it does not make provision for '*excluded development*'.

23. I am satisfied that the Neighbourhood Plan does not relate to more than one neighbourhood area.

Compliance of the draft plan with provision made by or under ss.38A and 38B

24. My duty under paragraph 8(1)(b) of Schedule 4B is to determine whether the proposed Neighbourhood Plan is in compliance with provision made by the General Regulations. Paragraph 8 does not state, at least not expressly, that it is any part of my role as independent examiner to enquire into whether the previous consultation and publicity procedures were properly conducted. Indeed, paragraph 7(1)(b) indicates that it was for the Council to determine whether the publicity requirements of the General Regulations (referred to at paragraph 6(2)(d) were complied with by the qualifying body, before they sent the draft plan proposal to examination. This is reflected in the NPPG.[4] Paragraph 8(6) states that '*The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft order is compatible with the Convention rights).*' Accordingly, I

[3] For instance, para 3.6: 'By 2031…', policy SS2: 'between 2011 and 2031'.
[4] Paragraph 052 Reference ID: 41-052-20140306.

shall not in this Report examine whether the publicity that was carried out was adequate for the purpose of Regulation 14.

25. Regulation 15 of the General Regulations requires that the plan proposal include a map or statement identifying the area to which the proposed plan relates, a consultation statement, the proposed plan, a statement explaining how the proposed plan meets the requirements of paragraph 8 of Schedule 4B, and an environmental report. Those procedural requirements have been met, and I have had regard to the statement and environmental report when reaching my own conclusions.

European law obligations

Habitats Regulations Assessment

26. The Habitats Directive[5] requires by article 6(3) thereof that any plan which is not directly connected with or necessary to the management of a protected site, but is likely to have a significant effect thereon (meaning that such an effect cannot be excluded beyond reasonable scientific doubt on the basis of objective information) must not be agreed to unless it has been subject to an '*appropriate assessment of the implications for the site*' and it has been ascertained that it will '*not adversely affect the integrity of the site concerned*'. If a plan is assessed and found to cause harm to the integrity of a protected site, article 6(4) enumerates some conditions under which a plan may exceptionally be approved where the plan must nevertheless be carried out for imperative reasons of overriding public interest. Those obligations have been transposed into national law by regulations 102, 102A and 103 of the Conservation of Habitats and Species Regulations 2010.

27. Case law establishes that one cannot approve plans in reliance upon the duty to assess the planned projects as and when they come forward and only approve them at that stage if found not to harm any protected site.[6] Consequently, the fact that there may be prescriptive language in the statutory development plan stating that projects cannot be approved if they would harm an SAC[7] cannot itself be sufficient to enable the plan to be approved without assessment, where it allocates or encourages particular development that is liable to harm a protected site.

28. Policies WNL1, WNL2, WNL3 and WNL4 are aimed at protecting the environment. They are not liable to generate development as such. Policy WNL5 is about design principles and seems unlikely to generate harmful human activity. However, Policies WNL6 to WNL8 support, Policy WNL9 allocates a site for development and Policy WNL10 supports new business developments. Policy WNL11 supports polytunnels[8] and WNL12 supports broadband infrastructure. Policies promote energy schemes and improvement of rights of way. In principle, such policies may favour new or altered patterns of human activity on land in, and beyond, the neighbourhood area.

29. I have been provided with a document entitled '*Habitats Regulations Assessment*' dated October 2015 ('HRA') and purporting to be a '*high level screening assessment*',

[5] Council Directive 92/43/EEC of 21 May 1992.
[6] Case C-6/04, *Commission v UK* [2006] Env. L.R. 29 at [51]-[56].
[7] As there is, for instance, in Policies SD4 and LD2 of the Core Strategy.
[8] Please correct the spelling error which refers to 'polytunnnels'.

and an addendum dated September 2016. The 2015 document purported only to look at the River Wye SAC. It states (internal page 2) that it should be read in conjunction with '*the Herefordshire Pre-submission publication of the Local Plan – Core Strategy Habitats Regulations Assessment Report (April 2014)*'. The latter document has not been provided to me.

30. Natural England commented on 3rd November 2015 that there would need to be an assessment of impacts on both the River Wye SAC and the Wye Valley Woodlands SAC, and that the assessment carried out was now out-of-date because the Core Strategy had been adopted (appendix to the addendum). Appendix 1 to the Environmental report ('*Screening*' document dated 31st May 2013) indicated that the Wye Valley Woodlands SAC lies 3.5 kilometres from the Wye Valley Woodlands, and that '*a Full HRA Screening will be required*' for both those sites.

31. I have not found the HRA and its addendum helpful. The main report is out of date, ungrammatical in places, and does not contain the minimum information necessary for me to establish whether or not the obligations imposed by the Directive would be complied with if the Neighbourhood Plan were adopted. The addendum report incorporates a table which looks at each draft policy and baldly asserts that there will be no impacts on either SAC, without explaining the basis for these conclusions.

Information required

32. The evidence that any examiner requires to assess compliance with the Directive will have to include the following:

    (a) the citation/description and conservation objectives of the relevant protected sites (including the species or habitats for which they have been designated, any other relevant species that are important to the integrity of that ecosystem and, where relevant, maps or plans showing where those habitats or species are found within the protected sites);

    (b) where relevant, the most recent condition assessments describing the state of the protected sites and their vulnerabilities;

    (c) information as to the potential pathways or mechanisms by which the proposed neighbourhood plan might adversely affect the protected sites (such as for instance: waste water discharges; surface water runoff; visitor disturbance via roads or footpaths; air pollution; noise/traffic; diversion of activity from one area to another, perhaps arising as a result of restrictions on development channelling growth to different areas; interference with nesting, resting, rearing or feeding areas of relevant birds or other species; interference with migration routes or flight paths); and

    (d) a reasoned evaluation as to why harms from those pathways or mechanisms are, or are not, likely to occur. This is likely to include information as to the nature and scale of the development or activity affected by the draft plan, and the accessibility of the protected site, as well as information about the population status, distribution, physiology and behaviour of any relevant species.

33. The proposed Neighbourhood Plan must be considered in combination with other plans and projects which are relevant to the protected sites (including the existing levels of development and activity affecting the SACs, as well as approved plans and granted but as-yet-unimplemented planning permissions). Such plans and projects may not be limited to the Council's administrative area. If relevant, sufficient information must be provided about such other plans and projects to enable an evaluation to be made.

34. There is reference at paragraph 9.5 of the main HRA to a possible impact of '*this new development*' (the meaning of which is unclear) on phosphate levels on the River Lugg. Paragraph 9.6 of the main HRA asserts that it is unlikely that the Neighbourhood Plan will have any combined effects with any Plans from neighbouring parish councils, as the level of growth is the same as that proposed for the Housing Market Area in the Herefordshire Core Strategy, and all the proposed housing sites will be of a small scale. It is impossible on the information before me to evaluate whether, just because the Neighbourhood Plan is consistent with the Core Strategy, that means there would not be an adverse effect on the integrity of the SACs. Even if there was sufficient evidence to exclude harm from the Core Strategy at the date of its adoption, that may not be that case today. It is certainly impossible for me to rule out adverse impacts beyond reasonable doubt, without more information about such matters.

35. Pursuant to regulation 102A:

> '*[a] qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required.*'

It would be necessary for the Parish Council to provide the requisite information to the Council and to me, in order to reach a decision as to compliance with the Habitats Directive. Until that is done, it will not be lawful to approve the Neighbourhood Plan.

Strategic environmental assessment

Requirements of the Directive and regulations

36. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment ('*Strategic Environmental Assessment Directive'* ('the *SEA*') provides by article 3(2) that an environmental assessment is to be carried out for plans prepared for town and country planning or land use, which set a framework for development consent of certain projects, or which in view of the likely effect on protected sites, have been determined to require assessment under the Habitats Directive. Where a plan determines the use of small areas at local level and makes minor modifications to other town and country planning or land use plans, they require such assessment only where Member States determine that they are likely to have significant environmental effects (by virtue of article 3(3)).

37. Where an environmental report is required under article 3 of the Directive, article 5 provides that:

> *'an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated'.*
>
> *The report must contain:*
>
> *'the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment'*

This is to include the matters stated in Annex I.

Paragraph (h) of Annex I states:

> *'an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken'.*

It is proper to use information derived from other levels of decision-making or other assessment procedures, to avoid duplication.

38. Member states are required by article 6(3) to designate which authorities are to be consulted on the draft plan and report. They are also required by article 6(4) to identify:

> *'the public affected or likely to be affected by, or having an interest in, the decision-making', and the consultation procedures 'shall be determined by the Member States.'*[9]

Article 6(2) provides that:

> *'the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan'*.[10]

[9] See article 6(5).

[10] This is a justiciable question: Case C-474/10, *Department of the Environment for Northern Ireland v Seaport (NI) Ltd* at [46]-[50]; *Cogent Land LLP v Rochford DC* [2012] EWHC 2542 (Admin) at [119] per Singh J; *Kendall v Richford DC* [2014] EWHC 3866 (Admin) at [84] per Lindblom J.

39. The requirements of the Directive are transposed by the Environmental Assessment of Plans and Programmes Regulations 2004. Regulation 12 transposes article 5, and Schedule 2 transposes Annex I.

40. Regulations 4 and 13 require the '*responsible authority*' (which in this case is the Parish Council as defined by regulation 2(1)) to send the draft plan and environmental report to '*consultation bodies*', namely: (a) the Countryside Agency; (b) the Historic Buildings and Monuments Commission for England (Historic England); (c) Natural England; and (d) the Environment Agency. The Countryside Agency was absorbed into Natural England and the Regulations do not reflect this. Regulation 13 also requires consultation of those who in the authority's opinion are likely to be affected by or have an interest in the decisions involved ('*the pubic consultees*'). Regulation 13(2)(c) provides that the responsible authority must:

> *'inform the public consultees of the address (which may include a website) at which a copy of the relevant documents may be viewed, or from which a copy may be obtained'.*

41. In domestic law, the basic requirements of a fair consultation are that '(a) consultation must be at a time when proposals are still at a formative stage, (b) sufficient reasons must be given for any proposal to enable intelligent consideration and response, (c) adequate time must be given for such consideration and response and (d) the product of consultation must be conscientiously taken into account in finalising any proposals'.[11] These requirements apply to any consultation under the 2004 Regulations.

42. The question arises whether, as we are dealing with a neighbourhood development plan, the Directive and Regulations apply.

43. Regulation 5(6) of the 2004 Regulations provides:

> *'(6) An environmental assessment need not be carried out–*
> *(a) for a plan or programme of the description set out in paragraph (2) or (3) which determines the use of a small area at local level; or*
> *[…]*
> *unless it has been determined under regulation 9(1) that the plan, programme or modification, as the case may be, is likely to have significant environmental effects, or it is the subject of a direction under regulation 10(3).'*

44. Regulation 9 states as follows:

> *'9.— Determinations of the responsible authority*
> *(1) The responsible authority shall determine whether or not a plan, programme or modification of a description referred to in–*
> *(a) paragraph (4)(a) and (b) of regulation 5;*

[11] *R (Assisted Reproduction and Gynaecology Centre) v HFEA* [2017] EWHC 659 (Admin) at [87] per O'Farrell J.

(b) paragraph (6)(a) of that regulation; or
(c) paragraph (6)(b) of that regulation,
is likely to have significant environmental effects.
(2) Before making a determination under paragraph (1) the responsible authority shall–
(a) take into account the criteria specified in Schedule 1 to these Regulations; and
(b) consult the consultation bodies.
(3) Where the responsible authority determines that the plan, programme or modification is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), it shall prepare a statement of its reasons for the determination.'

45. Regulation 2(1) defined '*responsible authority*' as the authority by which or on whose behalf the plan is prepared. In this case, the Parish Council is a '*responsible authority*' in the first instance, because it proposes and has prepared the plan, and the Council is probably one also (because it is the Council who will '*make*' the neighbourhood development plan).

46. The effect of regulations 9 is that that a formal, reasoned determination whether or not an environmental report is required must be made by the Parish Council. Although literally regulation 5(6) tells us that no assessment need be carried out unless it has been determined under regulation 9 that this is required, the responsible authority cannot get away with not assessing the plan by the expedient of failing to consider whether one is required.

Applicability of the Directive and Regulations

47. Although, for the purpose of paragraph 8(1)(b) of Schedule 4B to the 1990 Act, I am not to consider whether the prescribed publicity and consultation procedures are met, I am required to check that the making of the order does not breach EU obligations. This means that I must consider whether the SEA Directive and 2004 Regulations are engaged, and if so, whether the assessment was adequate and the consultation has enabled an early and effective opportunity to express an opinion on the draft plan.

48. I have not been provided with any document purporting to be a reasoned determination under regulation 9 of the 2004 Regulations. I have been provided with a document entitled '*Strategic Environmental Assessment Scoping Report October 2014*'. Appended to the back of this is a document entitled '*Initial Habitat Regulations Assessment and Strategic Environmental Assessment Screening Notification*'. This states at the back, above the date 31/05/2013 and the name of the assessor Mr James Latham, that the neighbourhood development plan '*will require further environmental assessment for Habitats Regulations Assessment and Strategic Environmental Assessment*'. This document appears to have been produced by the Council rather than the Parish Council. There have been two documents purporting to be environmental reports prepared for the purposes of the SEA Directive: one accompanying a consultation draft and dated October 2015, and a second version dated September 2016. On that basis, it appears to me that it must have been determined by or on behalf of the Parish Council that the Directive and Regulations

apply, for the purpose of regulation 9. It is not for me to go behind that decision. Accordingly, I have proceeded to consider whether the prescribed procedures have been followed.

Consultation and its effectiveness

49. There was a formal consultation on a draft plan and draft environmental report, from 26th October 2015 to 14th December 2015. The draft plan and a response form were available from a dedicated website with a link from the Council's website. An e-mail or letter was sent to a set of consultation bodies listed in the appendix to The Consultation Statement, which include the bodies prescribed by the Regulations. The Consultation Statement refers to a flyer displayed on the parish notice-boards. An advertisement was placed in the Welsh Newton and Llanrothal Parish magazine in January 2016, and there was '*delivery of representation forms to local households'*. There were a number of responses, only one of which appears to have been from an individual householder (Ty Carreg).

50. The flyers appended to the Consultation Statement are undated. They state:

> *'You are invited to a public meeting on the 29th November 1-3pm in the Village Hall. This will be an opportunity to find out about the progress of the Neighbourhood Plan and discuss any ideas or concerns you may have. The first draft of the plan will be available on the parish council website www.wnandl.org.uk'.*

The flyers do not state that there is a formal written consultation underway, and do not give the dates to respond.

51. It is concerning that the advertisement took place after the consultation period had closed, and indeed the advertisement stated as much. In my view, merely publishing the draft plan on a website that no-one would have any call to visit or be aware of, is unlikely to be sufficient to draw attention to a consultation. It is unclear from the Consultation Statement whether *all* households were sent a hard-copy flyer or letter explaining what was going on, in terms of the consultation.

52. It is unclear what the notices on the notice-boards stated, where those were located or how likely it is that all households would have had an opportunity to see these boards.

53. A copy of the response form is appended to the Consultation Statement. This states:

> *'Welsh Newton & Llanrothal Group Parish Council Draft Neighbourhood Development Plan Pre-Submission Regulation 14 Consultation. 26th October 2015 – 7th December 2015. All responses must be received by 5pm Monday 7th December 2015.'*

The form did not state where the draft plan and environmental report could be viewed, nor any explanation as to what it related to. It also gave a date for responses which was a week earlier than the close of consultation. It is unclear when the forms were distributed and whether every household received one.

54. There was a second round of consultation at the pre-submission stage in 2016, pursuant to regulation 16 of the General Regulations. I have been provided with no information about how that consultation was carried out, and whether the requirements of regulation 13 of the 2004 Regulations were met on that occasion. It is possible that any defects in the first consultation were remedied by the second consultation, depending upon the effectiveness of that second consultation and how far it was possible at that stage to influence the plan-making.

55. It would be necessary for me to have more information about all the consultation that was carried out to form a view on the adequacy of the publicity. However, in a sense this is academic insofar as there was a serious failing which rendered the consultation ineffective, in that the environmental report failed to include such of the prescribed particulars as were reasonably required to permit an informed response.

Assessment of reasonable alternatives and adequacy of the Environmental Report

56. Article 5 of the SEA Directive specifies that an environmental report must contain the information set out in Annex I to the Directive, to the extent '*reasonably required*'.

57. I am satisfied that the report adequately provides an outline of the contents and main objectives of the Proposed Neighbourhood Plan, and its relationship with other relevant plans and programmes.

58. There is an attempt at providing information on the relevant aspects of the current state of the environment, environmental characteristics of the areas likely to be significantly affected and the likely evolution of the environment without implementation of the plan, in Table A2. For the reasons I have explained in relation to the Habitats Directive, there is clearly insufficient information given about the SACs, their environmental protection objectives and existing environmental problems (if any). However, I am satisfied that, in the context of a very detailed description in the Neighbourhood Plan itself, there is a reasonably adequate description of the general environment of the neighbourhood area. Gaps in data at local level are appropriately indicated. There is, in my view, a reasonable qualitative approach taken to assessment against 16 objectives, which correspond appropriately to the factors enumerated at paragraph (f) of Annex I.

59. The question arises, though, whether there is an adequate '*outline of the reasons for selecting the alternatives dealt with*', and adequate assessment of the effects on the environment of such alternatives.

60. The purpose of assessing alternatives under the SEA Directive is to test whether environmentally superior outcomes could be achieved without unacceptable detriment to other objectives.

61. The SEA Directive does not necessarily require alternatives to every policy; the assessment requires consideration of reasonable alternatives to the plan, which may include alternatives to particular policies, or wholly different approaches, or both.

62. In principle, *all* reasonable alternatives need to be evaluated. It is a question of planning judgment for the responsible authority as to what alternatives (if any) are

considered to be '*reasonable*'. The scope of any reasonable alternatives will be constrained by the objectives and intentions behind the plan, as well as existing national policy and the Core Strategy. However, the environmental report must consider '*all alternatives that are capable of meeting the relevant policy objectives, not a selection of such alternatives…give reasons for selecting particular options as "reasonable alternatives*", and rejecting those options it did reject'.[12] The alternatives considered must be genuine, realistic alternatives and not merely generic, or artificial ones. If all alternatives are rejected at an early stage as unreasonable and not carried forward to a detailed assessment, that may well be legitimate but the reasoning must be stated in the environmental report so that the public can make representations.[13]

63. The only reasoning on alternatives is contained at paragraphs 5.1 to 5.8 of the Environmental Report (September 2016). Paragraph 5.2 of the 2016 environmental report refers to the fact that the options considered were:

> (1) 'do nothing',
> (2) 'allocate sites for housing',
> (3) 'manage future housing using a settlement boundary',
> (4) 'allocate sites and identify a settlement boundary', and
> (5) 'manage future housing through a development management policy' (the approach that was taken forward).

The only comparative assessment (qualitative rather than quantitative) of those alternative options appears to take the form of a table on internal page 16. It is wholly unclear *where* the settlement boundaries were assumed to lie in the two options that had them, *which* sites were considered to be reasonable locations for housing, or *what* development management policies were assumed for Option 5. This does not permit the public consulted to make an informed and intelligent response.

64. It is striking that the table shows Options 2 and 4 scoring more highly against the environmental objectives than Option 5, and Option 3 scoring as well. The reasoning for selecting Option 5 in preference to Options 2 and 5 is not clearly expressed, and there is no explanation as to how the options have been narrowed to be included within the proposed Neighbourhood Plan. In particular:

(a) In relation to Option 2, it stated, 'A site has been considered for either employment or housing in Welsh Newton'. This is not a reason for rejecting Option 2, but rather, I assume, a reference to the former garage site at WNL9. This text does not explain why Option 2 was rejected and why this particular site, as opposed to other sites, was indeed then subsequently allocated notwithstanding such rejection.

(b) In relation to Option 3, it says,

[12] *R (RLT Built Environment Ltd) v Cornwall Council* [2016] EWHC 2817 (Admin) at [38]-[41], [44]-[46], Hickinbottom J. The quotation in this paragraph is at [44].
[13] *Heard v Broadland District Council* [2012] EWHC 344 (Admin) at [69]-[71] per Ouseley J.

> '*There is less certainty*[14] *over the positive effects on the baseline as any growth will be adjudged by criteria based policy.*[15] *Within the draft plan, the only place with a settlement boundary in the area is Welsh Newton Common considered along with designated greenspace within its boundary. Welsh Newton and Llanrothal have not designated a settlement boundary around these smaller more dispersed settlement*s.'

This text does not explain why Option 3 was rejected. As I read it, the paragraph is referring to what has eventually found its way into the Neighbourhood Plan, rather than how the Parish Council arrived at the decision to make that the policy.

(c) In relation to Option 4, the text at paragraph 5.7 states:

> '*this was considered and rejected by the parishes for the combination of the reasons outlined within the above two options*'.

This is wholly unclear, because no reasoning seems to have been given for rejection of the previous two options.

(d) There was no explanation as to why Option 5 was preferred.

65. Since the obligations under the SEA Directive and Regulations have not been complied with, it is not possible to recommend adoption of the Neighbourhood Plan for that reason.

66. It is not clear whether an appropriately rigorous examination of alternatives has been undertaken, but just not documented. In that event, it might be possible to update the Environmental Report and re-consult on/re-submit the current draft neighbourhood plan.

67. However, if in truth all reasonable alternatives have not been examined appropriately, and there is no evidence before me that they have been, then my recommendation will inevitably be not only that the proposal for the Neighbourhood Plan be refused, but that the Parish will have to look again at the options, re-consult and come back with a revised neighbourhood development plan proposal.

68. It seems to me that it would not be appropriate for the examination stage to become a forum for re-examination of all the reasonable options, because the statutory regime is designed to make this a relatively light-touch examination compared to a public examination of a local plan, where the public have a right to speak and the examining inspector is testing the soundness, as opposed to strict legal compliance, of each policy. It would not be appropriate for an independent examiner to usurp the role of the qualifying body in formulating the neighbourhood development plan.

[14] It is unclear as to what, or what is being compared.
[15] Please correct the English.

69. Although this is not required by the procedure, I am prepared to receive representations from the Parish Council in advance of publishing my final report, to indicate what if any documented assessment of alternatives has already been done, and provide an account of their reasoning for rejecting and selecting options. This is not an opportunity to invent new reasons or to produce retrospectively a new assessment to what has been submitted for examination. It appears inevitable that a fresh Environmental Report and statutory consultation will be required in any event.

General Conformity with the development plan[16]

70. The policies in the proposed Neighbourhood Plan appear to be in general conformity with the development plan.

Appropriateness of the policies

71. The NPPG states (paragraph 41-041-20140306):

> *'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.'*

72. Also of importance is paragraph 5 of the NPPG (41-005-20140306), which states:

> *'The National Planning Policy Framework requires that the sites and the scale of development identified in a plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.'*

73. As a preliminary observation, it needs to be clear from the text of the Neighbourhood Plan which passages of text comprise the policies forming part of the statutory development plan, and which passages are merely explanatory reasoning for those policies. The text of some of the policies strays into explanation, which is inappropriate.

74. In some places, the draft policies seek to go beyond what is a permissible use of a development plan policy, such as in purporting to require financial contributions from all development.

[16] One point that requires correction is that throughout the Map references the words "License number" appears. The correct spelling of this word is Licence'.

75. Were it otherwise lawful to make the Neighbourhood Plan, I would make the following recommendations to secure compliance with this guidance as to clarity, precision, local distinction and not imposing excessive or otherwise inappropriate policy burdens:

The Policies

Policy WNL2 - Green Infrastructure

76. Subject to receiving further submissions, I would recommend modifying Policy WNL2, as follows:

> ***'Existing green infrastructure ('GI') within the neighbourhood area is protected by Core Strategy Policy LD3, which also encourages the creation of new green infrastructure as part of development proposals.***
>
> ***Desirable green infrastructure in this neighbourhood area includes priority habitats such as lowland dry acid grassland, traditional orchards, woodland and wildlife corridors, and other environmental assets in the neighbourhood area, to preserve and expand the existing ecosystem network (as set out in the Herefordshire Green Infrastructure Study (2010)).***
>
> ***The following ecological enhancements will be particularly encouraged as part of development: re-naturalising watercourses, woodland planting, provision of green roofs, and incorporation of features such as roosting opportunities for bats, the installation of bird nest boxes, and the use of native species in the landscape planting.'***

77. The NPPG advises that policies must be clear, precise and unambiguous, yet the term '*green infrastructure*' is not defined in the proposed Neighbourhood Plan. This is ambiguous and unclear.

78. In the context of a neighbourhood development plan, any particular land which it is proposed should receive a special designation would be expected to be shown clearly on a map, and as this has not been done, it appears that the term is being used in a generic sense.

79. It is important to define the term in order that the scope and intention of this policy is clear. The phrase is defined in the NPPF to mean:

> *'A network of multi-functional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities'.*

80. It appears to me, though, that the use of the term in proposed Policy WNL2 is couched much more broadly to mean habitats generally, because it refers to *'bird nest boxes'* and the supporting text at paragraph 5.1.5 refers to *'sustainable drainage systems'* as being an example of green infrastructure, as well as referring to green roofs.

81. The Core Strategy includes at policy LD3 (p.149) a policy to protect '*green infrastructure'*. This is defined in the supporting text to the Core Strategy (paragraph 5.3.17) to mean

> *'a multi-functional network of green spaces, links and assets within and surrounding the built environment, and providing connection to the wider countryside'*

82. Examples are given in tabular form to include rivers, streams and rights-of-way. Policy LD3 requires development proposals to protect, manage and plan for the preservation of existing and delivery of new green infrastructure, and say that they should achieve three objectives. It is necessary to define *'green infrastructure'* and it would appear to be the implication that this should be done by reference back to Policy LD3, so as to make clear that WNL2 is applying the principle of LD3 to the neighbourhood area.

83. The guidance makes clear that policies in a neighbourhood development plan should be distinct and respond to local circumstances. This means that they must not simply duplicate policies found elsewhere in the development plan. As proposed, the language of the second and third paragraphs of policy WNL2 with terms like 'such as' and 'could include' did not make sufficiently clear to developers that the specific types of green infrastructure were the locally desirable kinds, as opposed to a merely illustrative list duplicating examples given in the Core Strategy. The wording therefore required modification for clarity.

84. Paragraph 109 of the NPPF states that the planning system should

> *'contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes'.*

85. In this regard, Objective WNC6 – which I reiterate is not part of the Policies - states that on Welsh Newton Common list of habitats set out in a list of bullet-points '*are particularly valued and will be protected'*. This includes ponds, species-rich hedgerows, and dry stone walls, which are not specifically protected by Policy WNL2 other than as '*green infrastructure'*, which appears to be an unexplained omission. It is not, however, my function to recommend modification of the proposed Neighbourhood Plan unless its adoption would be '*inappropriate*', and I do not consider it would be inappropriate to adopt in the modified form indicated above.

Policy WNL3 – Protecting and Enhancing Local Wildlife and Habitats

86. The first paragraph within the box corresponding to Policy WNL3 on page 41 ('*The land in the Parish…habitats*.') should not be in the box as it is reasoned justification rather than a statement of policy. It should be deleted from Policy WNL3 and either expunged or incorporated into the explanatory text.

87. It should be made clear that not all the plant species listed in the third paragraph of the policy are to be required to be planted in every landscaping scheme. I would recommend rephrasing this paragraph to insert '***appropriate***' before '***mixture of native species'***, and to replace '***including***' with '***such as***'.

88. The phrase '*Where impacts have been identified within development management*' is obscure, but appears to relate solely to adverse impacts upon nesting or roosting sites. For this reason, I would recommend deletion of this phrase and its replacement with: '*Where development would otherwise adversely affect roosting or nesting sites'*.

89. I note that Objective WNC6 (p.20) states,

> *'All new developments will be required to provide space for bat roosts, owl, swift, swallow and house martin nests as so many nesting sites locally have been lost through insensitive development'.*

This objective has plainly not been translated into the Policies section. As independent examiner, it is not my job to assess the soundness of the Neighbourhood Plan and whether or not it may be justified to require all developments to provide such nesting sites as a matter of policy. I note that Natural England suggested the change from a catch-all form of words. My statutory function is limited to assessing whether it is appropriate to make the plan having regard to national policies and guidance, and I am only empowered to recommend modifications that are necessary to secure compliance with the '*basic conditions'*. The evidence before me does not prove that it is necessary to require all development within the neighbourhood area to include nesting sites for any particular species, desirable though that may be. The fact that Objective WNC6 cannot be delivered through the plan does not in itself make Policy WNL3 inappropriate for the purpose of national policy and guidance. As there is a conflict between Objective WNC6 and Policy WNL3, the express terms of the policy will prevail[17] and so it is not formally necessary for me to recommend modification to address the conflict.

Policy WNL4 - Local Greenspace Protection

90. The final paragraph of Policy WNL4 is not compliant with national policy and in particular paragraphs 203, 204 and 206 of the NPPF (which in turn reflect regulation 122 of the Community Infrastructure Levy Regulations 2010). It is national policy that financial contributions only be required by planning authorities where this is

[17] Supporting text does not have the force of policy and cannot trump or add requirements to a policy: *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567 at [16] per Richards LJ; and see s.38B(3) of the 2004 Act, set out above.

necessary to make development acceptable in planning terms, to overcome what would otherwise be a negative feature or effect of the development. If a development does not harm the identified local green spaces (for instance by adding to visitor pressure), then it will not accord with national policy to seek improvements to the local green space. I would recommend modification to delete and replace this paragraph to read as follows:

> **'*The Parish Council will support appropriate proposals for the enhancement of the identified local green spaces to benefit local wildlife and support green infrastructure objectives.*'**

Policy WNL5 - Building Design Principles

91. The first sentences of the first and second paragraphs are repetitious but I do not consider it necessary to propose modifications. Those parts of Criterion 6 should be deleted from the sentence '*The Code for Sustainable Homes….*' to the end. On 25th March 2015, a ministerial statement was issued by the Rt Hon. Sir Eric Pickles. This stated that:

> *'qualifying bodies preparing neighbourhood plans should not set in their emerging…neighbourhood plans…any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. This includes any policy requiring any level of the Code for Sustainable Homes to be achieved by new development'*.

There is no exception for '*legacy cases*' in circumstances where the plan has not yet been made.

Policy WNL6 - Welsh Newton Common Settlement Boundary and New Housing

92. The cross-reference must be modified to refer to Map 8. The designation of the boundary appears broadly appropriate. Under the heading '*Protection of the Natural Environment*', the second sentence requires modification to insert '***where appropriate***' after '***undertaken***', because wildlife surveys will not always be proportionate for all development.

Policy WNL7 – Rural Exception Housing

93. I recommend modification of the final sentence. It is unduly prescriptive to dictate that all ancillary buildings should be constructed of timber.

Policy WNL8 – Extensions to Houses and Residential Conversions of Former Agricultural Buildings

94. It is unclear as to what is meant by '*dispersal of activity on such a scale as to prejudice village vitality' in* Criterion 3 on the conversion of buildings. I consider that this is unacceptable. I would wish to invite representations as to what was intended here, with a view to modification for clarity. Criterion 5 is also unclear and ungrammatical and similarly will require modification.

Policy WNL9 – Site Allocation – Former garage Site, Welsh Newton

95. The reference to Map 7 should read 'Map 9'. The sentence beginning '*The affordable housing element*' should be deleted because it seeks unnecessarily and inappropriately to dictate that the property be let at a market rate if not needed for affordable housing, and is unduly prescriptive as to tenure. As to the representation relating to potential site contamination needing to be considered before development took place, it appears to me that such matters would properly be expected to be investigated at the time of a planning application. Thus, no specific additional or different provision need be made in the Neighbourhood Plan. There is reference to such issues in the supporting text at paragraph 5.2.29.

Policy WNL10 – New business development in former agricultural buildings

96. Criterion 2 is over-prescriptive and '*where appropriate*' should be added before '*to screen*'. Screening can sometimes be detrimental to the appearance of development in some circumstances, by exaggerating the appearance of density and massing. It is not advisable to be unduly prescriptive in a plan policy which addresses conversions generally. '*PAR operated*' is unclear, and should be defined.

Policy WNL 11 – Polytunnels

97. This appears to be consistent with policy.[18]

Policy WNL12 - Supporting New Communications Technologies and Broadband

98. The final paragraph requires to be deleted. Road works often do not require permission from the local authority as they are often permitted development. In cases where they are not permitted development, it is inappropriate for a local development plan to impose financial obligations on works contractors or dictate the terms on which they undertake work. The planning system is concerned with regulating the use and development of land, not with allocating risks and costs between landowners and private parties who engage in building operations.

Policy WNL 13 – Supporting Community-Led Low Carbon Energy Schemes

99. Criterion 6 must be deleted. The Ministerial Statement of 25th March 2015 states:

> *'From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. This includes any policy requiring any level of the Code for Sustainable Homes to be achieved by new development; the government has now*

[18] There is an extra 'n' in the word Polytunnels. to which I have already made reference above.

withdrawn the code, aside from the management of legacy cases. …From the date the Deregulation Bill 2015 is given Royal Assent until 30 September 2015: The government's policy is that planning permissions should not be granted requiring, or subject to conditions requiring, compliance with any technical housing standards other than for those areas where authorities have existing policies on access, internal space or water efficiency.'

Policy WNL14 – Renewable Energy Schemes

100. The final two sentences on referendums must be deleted. A planning application must be judged on its own terms in accordance with the statutory development management procedure. A development plan policy cannot create requirements to hold referendums.

Policy WNL15 - Improving Local Footpaths, Bridleways, Cycleways and other Public Rights of Way

101. The second paragraph must be deleted. A financial obligation may only be required in accordance with the Community Infrastructure Levy Regulations, and may in no circumstances be required under national policy unless it is necessary to make a development acceptable in planning terms (for instance, because that development will increase traffic so as to require specific highways improvements). The planning system cannot be used to impose additional taxation on developers just because it would be desirable to raise funds for particular public goods.

Policy WNL16 - Provision and Protection of Local Community Facilities

102. Some correction to the spelling and grammar is required. What is meant by '*the* locality' is vague. I would therefore propose amending the final paragraph with the criteria to read as follows:

'The change of use of existing community facilities to other uses will not be permitted unless the following can be demonstrated:
the proposal includes suitable alternative provision of equivalent or enhanced facilities which are accessible by public transport, walking or cycling and have adequate car parking; or
there is no longer a need for the facility.'

Achievement of sustainable development

103. Sustainable development is not defined by legislation, but regard must be had to the relevant national policy and guidance. As the Ministerial Foreword to the NPPF explains, the concept is about ensuring better lives for ourselves without resulting in worse lives for future generations. The NPPF explains that the concept of sustainable development is to advance economic, social and environmental objectives. The NPPF states at paragraph 6 thereof that:

'*policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system*'.

Paragraph 16 of the NPPF provides guidance that neighbourhoods should develop plans that support the strategic development needs set out in Local Plans including for housing and economic development, plan positively to support local development. I am satisfied that - subject to the question of impact on protected sites under the Habitats Directive discussed above- the Neighbourhood Plan, as recommended to be modified, would make a contribution towards sustainable development by supporting appropriate economic development whilst protecting the local environment.

The appropriate area for a referendum

104. I have considered whether any referendum should extend beyond the neighbourhood area. In this instance, I can see no particular reason to hold a wider referendum, having regard to the consistency with the Core Strategy and the absence of any large planned development at or near a boundary with a neighbouring parish.

The Convention rights

105. This neighbourhood development plan amounts to an interference with the property rights of landowners insofar as it will form part of the framework for the control of the use and development of land within the neighbourhood area. Article 1 of the First Protocol to the European Convention on Human Rights provides for the state to 'enforce such laws as it deems necessary to control the use of property in accordance with the general interest', where those laws pursue a legitimate aim and strike a fair balance between the private interests of the proprietor and the general public interest.[19] I am satisfied that the policies as recommended to be modified are justified by legitimate aims, chiefly protection of the environment, amenity of local people, wildlife, and local heritage, and that they strike a fair balance. In that regard, they are in general conformity with the existing statutory development plan, and whilst they establish a presumption for or against particular types of development, they should not predetermine planning decisions which are made on their merits.

Summary

106. I am regrettably unable to recommend that the proposed Neighbourhood Plan be submitted to a referendum and, subject to any written representations, am minded to recommend that the proposal for the plan be refused.

107. The environmental report does not adequately address the question of reasonable alternatives so as to give confidence that it has identified, described and evaluated all reasonable alternatives as required by regulation 12 of the 2004 Regulations. It does not explain why such alternative approaches as it mentions were rejected, particularly when they were evaluated as having a better environmental assessment, nor why the final preferred policies were selected in preference to rejected options. This failure to comply with the SEA Directive and 2004 Regulations means that the Neighbourhood Plan does not comply with the '*basic conditions*'.

[19] *R (Skelmersdale Limited Partnership) v West Lancashire Borough Council* [2016] EWHC 109 (Admin) at [30]-[31] per Jay J.

108. I have not been provided with insufficient information and reasoning to conclude that it would be lawful to make the Plan under the Habitats Regulations. I have a power to request further information for the purpose of determining whether there would be an impact, and would wish to do this if the Plan could otherwise be lawfully made.

109. The wording of certain policies is not appropriate as they are inconsistent with national policy and guidance. I have suggested possible modifications that could overcome those deficiencies, although that would not overcome the obstacles to adoption referred to in the previous two paragraphs.

Further representations

110. I propose to invite further representations from the Parish Council at this stage as to the following:
    (a) submission of evidence as to:
        (i) what took place in terms of the process of assessing, selecting and rejecting alternative options, and the reasons for such selection and rejection; and
        (ii) what opportunities that the public had to participate in an early and effective way in the selection of such options;
    (b) information proving that harm to Special Areas of Conservation under the Habitats Regulations can be excluded.

111. If I were able to conclude that the Neighbourhood Plan could be lawfully adopted because the environmental assessment obligations were complied with, or could be complied with without resubmission of the plan, I would then invite representations as to modifications relating to:

    (a) specifying the intended terminal date for the Neighbourhood Plan; and
    (b) my proposed modifications to the detailed policy wording.

112. It appears to be unlikely that the Neighbourhood Plan could be lawfully made with modifications, and so I am not inviting such detailed representations on the text at this stage.

Edward F Cousins
Independent Examiner