

EXAMINATION OF THE YARPOLE GROUP NEIGHBOURHOOD DEVELOPMENT PLAN 2011 to 2031

Notice of a temporary suspension of the examination

During the course of my initial assessment of the plan, including the work undertaken on behalf of the Yarpole Group Parish Council (YGPC) by Herefordshire Council on a Strategic Environmental Assessment (SEA) of the plan and the production of an Environmental Report, it has come to my attention that although site allocations are made in the plan the Environmental Report does not include an assessment of those sites against the SEA objectives nor have any 'reasonable alternatives' identified in the 'Call for Sites' been considered against those same objectives. The alternatives considered in the Environmental Report are of a generic nature (make allocations or not make allocations) which does not adequately reflect the level of detail in the plan. At my request I was sent details of the objectives used in the assessment which was carried out and the reasons for the choice of sites and the rejection of others but it is not the equivalent of the assessment required¹ under the Environmental Assessment of Plans and Programmes Regulations 2004², commonly known as the 'SEA Regulations'. In the circumstances, I have concluded that the draft plan is not compatible with an EU obligation. It follows that the draft plan fails to meet the basic condition set out in s8(2)(f) of Schedule 4B to the Town and Country Planning Act 1990. The plan may not be adopted (that is 'made') until the necessary SEA work has been completed. It may also be necessary to undertake further work under the Habitats Regulations³

I have raised this matter with Herefordshire Council as the Local Planning Authority which, following submission, is now the 'responsible authority' under the SEA Regulations. In order to remedy the situation, I have requested the Herefordshire Council to undertake an assessment of both sites allocated in the plan and the identified 'reasonable alternatives' to those sites. The additional work is already under way but there will need to be a further

¹ By Regulation 12

² Giving effect to European Directive 2001/42/EC

³ The Conservation of Habitats and Species Regulations 2010

consultation with the statutory consultees and any others who were consulted⁴ on the Environmental Report. The consultation period is specified⁵ as 5 weeks but that period is likely to end during the Christmas/New Year period.

I have considered the options available in order to minimise the inevitable delay to the examination process. As I have only recently issued a list of questions to be addressed by the YGPC and I have also raised questions with the Herefordshire Council about affordable housing provision, I have decided to continue the examination until 11 December 2017 in order to give adequate time for response to my questions. However, thereafter, the examination will be temporarily suspended until 15 January 2018.

John R Mattocks, BSc DipTP MRTPI

Examiner

24 November 2017

⁴ Under Regulation 13

⁵ In Regulation 12

General Comments

The Yarpole Group NDP is a well written and clear document which is logically organised. The policies are clearly distinguished within lime green boxes followed by text setting out background considerations and evidential justification for each policy. The concluding section on delivering the plan is helpful and an appendix sets out supplementary design criteria as guidance. The overall impression is one of a professionally prepared document.

Nevertheless, I have identified some elements within the plan which will require revision and I think it only right that I should give notice of these so that they do not come as a surprise when my report is delivered.

Main Issue 1. Housing delivery and distribution between villages

The delivery of housing over the plan period is an issue of particular significance given the emphasis on this matter in Central Government policy and guidance. As is recognised in the plan, ensuring a range of housing to meet local needs, including affordable housing, is not only a requirement of the adopted Herefordshire Core Strategy but is also a factor in assessing the contribution made by the plan to sustainable development. Linked to this are questions over the distribution of housing between the villages within the plan area.

Q1. The Core Planning Principles set out in paragraph 17 of the National Planning Policy Framework (NPPF) include a requirement that plans should be kept up-to-date. Therefore, as far as possible, plans should take account of the latest available data at least at the point they are submitted for examination and, if possible, up to the point when they are 'made' (adopted). The figures on housing provision given in Table 1 on page 15 of the plan are 2016 based and they take no account of commitments. I have been provided by Herefordshire Council with the following update as at 1 April 2017:-

<i>Parish/Group parish</i>	<i>Number of new houses to 2031</i>	<i>Completions 2011-2017</i>	<i>Commitments 2011-2017</i>	<i>Remaining</i>
<i>Yarpole</i>	<i>48</i>	<i>8</i>	<i>17</i>	<i>23</i>

The figure for commitments represents planning permissions granted for housing which were valid at the base date. The figure of 17 includes the 5 with outline permission off Croft Crescent (YGNP Policy YG9) and a permission granted for 9 dwellings at Brook House Farm (Policy YG10). The other three are for individual dwellings or conversions. Since April 2017 permission has been granted for a further 16 dwellings: 6 in Yarpole allowed on appeal in May with a 7th dwelling off the same access road permitted by HC in July. In August 2017 full permission was given for the erection of 9 dwellings at Lower House Farm, part of the site allocated in NP Policy YG10.

Is it accepted the plan will need to be updated to reflect the position as at 1 April 2017 as well as the more recent permissions granted? If so, would the YGPC please provide revised text, paragraphs 3.10-3.13.

Q2. *Related to the above, there is no point in allocating a site in a plan once full planning permission is granted because it is no longer possible for plan policy to influence the form of development.* On that basis, is it accepted that Policy YG10 now serves no useful purpose and should be deleted as policy? If the YGPC consider that there should continue to be a reference to this site in the plan text would they please provide an appropriate wording.

Q3. a. What criteria have been used to determine where the settlement boundary lines should be drawn? Were alternatives considered? b. In view of the permissions granted, would the YGPC consider it appropriate that the settlement boundary for Yarpole village should be amended to include the sites granted permission recently which abut the boundary as shown on the submission policies map?

Q4. *Policy YG9 relates to a site for which outline planning permission has already been granted. The policy seeks to set criteria for consideration when application is made for reserved matters. However, Herefordshire Council DM section have confirmed that it is only the reserved matter of 'scale' which equates to the factors mentioned in the policy. Therefore, it is only the size of the dwellings proposed which requires further approval. No conditions have been imposed which would provide control over dwelling type or tenure. The policy cannot, therefore, be implemented in its entirety.*

For greater precision and clarity as to size, does the term 'small or medium sized' mean 3 bedroomed or smaller as Table 2 might suggest? What does the last sentence of the policy mean in practice? Is it that a higher proportion of, say, one bedroomed homes would be acceptable if they came within the categories stated?

The term 'starter home' has a specific meaning in Government policy and without control over tenure it is difficult to see how this part of the policy might be implemented. For a development of 5 open market dwellings the proportions in Table 2 would suggest that 3 be three-bedroomed dwellings and 1 be two-bedroomed. If that was to be the case, 4 out of 5 dwellings would represent a development of 'predominantly' small or medium size dwellings. Consequently, the fifth dwelling might be of any size. Is that what is intended?

NB There is reference in paragraph 6.11, second sentence, to a Design and Access Statement. That was submitted with the outline application and there is no further requirement for such a statement.

Q5. Settlement strategy. a. Lucton. The three main villages in the YNP area, Bircher, Lucton and Yarpole, are all listed in Figure 4.14 of the Herefordshire Core Strategy (HCS), without distinction, as settlements which are to be the 'main focus of proportionate housing development' in accordance with HCS

Policy RA2. However, it is stated in HCS paragraph 4.8.21: In parishes which have more than one settlement listed ... the relevant Neighbourhood Development Plan will have appropriate flexibility to apportion the minimum housing requirement between the settlements concerned. The distribution by dwelling numbers is shown in Table 1 with no provision in Lucton with policy provisions in YG2(b) and YG6 and justification for the approach in paragraph 5.2. In view of the representation made by CR Planning Solutions on behalf of A&M Garden Machinery does the YGPC have anything to add to the response given to the Regulation 14 representation?

b. Cock Gate. *A representation from the Development Management section of Herefordshire Council expresses concern about the identification of settlement boundary around Cock Gate, as a detached part of Yarpole village citing highway safety concerns. Road safety is also mentioned in another representation. In the plan, Cock Gate is mentioned in paragraphs 6.6 and 6.9. a. What, exactly, is the justification for drawing a settlement boundary at Cock Gate? b. How will this, as stated in paragraph 6.9, 'contribute towards the aim of drawing together the village's component parts' when it is also stated that the green gap between Cock Gate and the main part of Yarpole village is 'important to the village's open character'. c. As there is no explicit policy to protect the gap between Cock Gate and Yarpole might the plan increase the pressure for ribbon development along Green Lane? d. How would development at Cock Gate 'contribute to sustainable development'? e. What assessment has been made of the road safety implications of allowing additional access to the B4362? f. What is the justification for including the open (green) field (site 17) to the east of Mortimer House within the settlement boundary? g. The last sentence in paragraph 6.9 reads as policy. What would be the 'appropriate agreements' and what is the relevance of Policy YG8(f)? Is that an error, should it be part g)?*

Main Issue 2. Lack of explicit provision of affordable housing. *In YGNP paragraph 3.2 it is stated that the vision means there is sufficient housing to meet the needs of local people, including affordable homes. Also, the objectives for housing provision as set out in paragraph 3.3 of the plan indicate that new housing should contribute to a sustainable and balanced community, with bullet points to provide a mix of properties in terms of size, tenure and price and to satisfy locally identified needs for all life stages including affordable homes. Yet, the only explicit reference in the plan is in paragraph 3.12 where it is stated that 'the need for affordable housing is currently unquantified' and places reliance on the identification of 'exception sites' under HCS Policy H2 with mention of the establishment of a Community Land Trust.*

A local housing needs report produced by Herefordshire Council identified a need for affordable housing for 5 households in the three years from 2014. Also, the GL Hearn Local Housing Market Assessment (LHMA) 2012 Update, from which the statistics in Table 2 are drawn⁶ also indicates that of the 731 dwellings

⁶ Tables 61 and 62

needed within the rural parts of the Leominster HMA 183 should be affordable, which is 25%. It is that evidence on which HCS policy RA1 requirement for 14% growth is based and from which the figure for the provision of 48 dwellings in the YGNP area 2011-31 is derived. It might, therefore, be expected that if 50 dwellings are to be provided through plan policy⁷, some 12 or 13 of them should be within the affordable housing categories.

Q6. a. Should the text in paragraph 3.12 be amended and expanded to refer to the need for affordable housing identified in the 2014 local housing needs study⁸ and the GL Hearn evidence informing the HCS? b. Any affordable housing provision on exception sites would be over and above the numbers of dwellings envisaged in Table 1 of the plan, is that level of development likely to be acceptable to the local community? c. Has the Community Land Trust mentioned in paragraph 3.12 been established? Has any work been done to identify and discuss with landowners any possible exception sites for development in accordance with HCS Policy H2? d. What assurances, if any, can be given that this might result in the identification of deliverable sites to meet the currently identified (LHMA) need for affordable housing?

As indicated in the introduction to Main Issue 1, recent permissions, including those granted on appeal and at Brook House/Lower House Farms, have all been without any requirement for affordable housing nor can there be any requirement at Croft Close. The only other allocation, at Bircher, is indicated as suitable for only 5 dwellings and other developments within settlement boundaries will only yield small numbers of dwellings, all well below the threshold of 11 for affordable housing on open market sites under HCS Policy H1.

Q7. a. Without specific provision for affordable housing would the provisions of HCS Policy RA2 for development in rural villages be satisfied? b. Without such provision can the plan be held to contribute to sustainable development? c. Have any alternative options been considered, including the identification of one or more sites large enough to ensure affordable housing provision under HCS Policy H1?

I am aware that this situation has arisen largely as the result of recent decisions. As the LHMA identifies affordable housing needs across the whole of the rural parts of the Leominster HMA rather than for specific villages I will be asking the Herefordshire Council to provide information about provision in other neighbourhood plan areas within the HMA.

Other issues of compliance with basic conditions.

Some of the policies in the plan do not relate to land-use planning but to other aspects of council activity. Section 38A(2) of The Town and Country Planning

⁷ Although that figure may require updating in the light of recent permissions

⁸ For Croft and Yarpole, Herefordshire Council Strategic Intelligence Team, June 2014

Act 1990 (as amended by the Localism Act 2011) defines a “neighbourhood development plan” as a plan which sets out policies (however expressed) in relation to the development and use of land Furthermore, it is stated in paragraph 183 of the National Planning Policy Framework (NPPF) that neighbourhood planning can be used: to set planning policies through neighbourhood plans to determine decisions on planning applications. However, in the Planning Practice Guidance (PPG), it is also recognised that: neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land.⁹ It goes on to state that: Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non land use matters should be clearly identifiable. For example, set out in a companion document or annex.

What this means in practice is that the policies in the statutory part of a neighbourhood development plan should deal only with those matters which come within the purview of the Local Planning Authority in making decisions on planning applications. Traffic speeds, pedestrian safety and traffic management measures fall within the responsibility of the Local Highway Authority. It is absolutely understandable that such issues are a major concern for the local community and that the Parish Council might well wish to promote road safety measures but, if they are included in a neighbourhood plan, they have to be treated in a different way from policies concerned with the development and use of land. This also applies to works on highway land, such as speed bumps, which do not require planning permission. The only matters which may be covered in a planning policy are those which are directly related to a development proposal and necessary for that development to take place. In other words they need to meet the tests for planning conditions and/or planning obligations as set out in paragraph 204 of the NPPF. These considerations apply to YGNP Policy YG11 and the accompanying text.

Q8. Would the YGPC please re-consider the wording of Policy YG11 and indicate whether it might be possible to relate it to the development and use of land. Otherwise, how would the PC wish their concerns about highway safety to be referenced in the plan?

Allied to the above, Policy YG16 is headed ‘Use of Community Infrastructure Levy’ but is more widely drawn. The introduction of a CIL charging regime in Herefordshire has been paused but, nevertheless, the scope for achieving contributions through s106 is limited. Not only that any Community Infrastructure Levy would be applied in accordance with a statutory charging schedule which is outside the influence of a neighbourhood plan. The PC might well wish to include an indication within the plan text of their aspirations for spending CIL funds should they materialise but that is not a direct land-use policy matter.

⁹ Ref. ID. 41-004-20140306

Q9. In view of the above, how would the YGPC wish their priorities for spending possible CIL receipts to be dealt with in the plan?

I now raise a number of more detailed questions on certain aspects of the policies in the plan.

Q10. Policy YG1. *It is not entirely clear how this policy is supposed to be used for the purposes of decision-making. The text in paragraph 3.6 correctly summarises the statutory position on the status of the development plan, which includes the neighbourhood plan. There is no need to cross-reference to HCS policies.* a. How is it intended that policy YG1 should be used for the purpose of guiding decisions on planning decisions? b. Is the policy intended as a 'catch all' for situations where there is no specific NP policy covering a development proposal? If so, what does the last paragraph add to the plan? c. Might the reference to benefits in the last sentence be clarified to state that these can only be sought where they meet the tests for planning obligations in paragraph 204 of the NPPF?

NB Working from home does not require planning permission unless the nature of the business is such that a material change of use is involved.

Q11. Policy YG2. Part c). *The words 'where it will support the retention and possible expansion of facilities and services' appear to be a justification for the strategy to accommodate the majority of development in Yarpole, rather than policy.* Should these words be moved to the supporting text? (The wording is also rather presumptive, would 'where it would assist in supporting ...' be more appropriate?). Part d). Why say 'not exclusively Policy RA3'? Why is it necessary to say this at all? *It does not add anything to the plan.*

Q12. Policy YG3. Part e). *This provision not only cross-references to general policy YG14 but uses different words which may cause difficulty in plan implementation. The same comment applies to Policies YG6(a) and YG8(a) as well as to Policy YG4(c).* Is there a justification for the repeat of policy provisions? Is not policy YG14 adequate to apply to all proposals for development in conservation areas?

The requirement that development 'shall not adversely affect' the character or appearance of a conservation area is not aligned with the approach advocated in Government policy¹⁰ to assessing development proposals in conservation areas. Policy YG14 is in line with the statutory requirement¹¹ that special attention should be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

¹⁰ NPPF, paragraphs 131-4

¹¹ S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

Q13. Policy YG4, Bircher. *There are several references in the plan to a possible need for highways improvements at the junction of Leys Lane with the B4362. In Policy YG3(h) it is stated that contributions 'may' be required for improvements to the junction. References in the text, paragraphs 4.3 and 4.4, to the difficulties at the junction are vague. It is not at all clear how any requirement to improve the junction would meet the tests for planning obligations in paragraph 204 of the NPPF. It is unlikely to be possible to pool s106 contributions. Also, it might well be held unreasonable to require any part of the site allocated under Policy YG4 to be made available for highway improvement works unless those works were directly related to, and necessary for, the proposed development of that site. It cannot be required by policy 'for other development along that lane'.*

Q13 a. What exactly is the position with regard to permitting further development within the settlement boundary along the eastern side of Leys Lane? Has the Highway Authority indicated that improvements would be required before any development might take place? If not, is there any indication as to how much development might take place (in terms of dwelling plots) before this factor would result in a refusal of permission in the absence of such improvements?

b. Is it possible for the proposed development at Bircher under Policy YG4 to take place without any improvements to the junction with the B4362? If so, how can land be required to be set aside for such improvements as indicated in Policy YG4(e)?

c. The Policies Map shows a single, relatively large, area of land as allocated but the 'call for sites' map shows two smaller parcels (numbered 19 and 27) with capacities of 2 dwellings on each site. When was a decision taken to combine the sites and what is the basis for the assumption (in para. 4.4) that the site might accommodate 5 dwellings? In view of the steeply sloping nature of the site, what is the degree of confidence that 5 dwellings would be compatible with the conservation area?

Q14. Local Green Space policies, YG5, YG7 and YG12.

Although there is justification given in the plan text for keeping these areas free from development it is only in paragraph 4.5 (Policy YG5) that there is reference to the criteria in paragraph 77 of the NPPF. Local Green Space is a very specific designation which is not to be applied to most open spaces. It is not sufficient, in itself, to state only that the areas have been protected in old (now superseded) development plans. NB. Herefordshire UDP Policy HBA9 was 'saved' but has now been superseded by Core Strategy Policies as listed in Appendix 1 to the HCS.

Q14a. What is the specific justification for the identification of Local Green Spaces in Lucton (YG7) and Yarpole (YG12) assessed against the criteria in paragraph 77 of the NPPF?

Q14b. In view of the fact that the Vicarage Farm land in Yarpole is within a conservation area and the setting of listed buildings what is the 'added benefit' of designations as LGS? See NPPG Ref. ID 37-011-20140306

The wording of these three policies is similar, that is 'No development shall be permitted in this area that will adversely affect the contribution it makes to the village's environment.' However, paragraph 78 of the NPPF states clearly that the policy for managing development within a Local Green Space should be consistent with policy for Green Belts. That policy does not preclude all development but only 'inappropriate' development and even then allows for very special circumstances.

Q14c. For these policies to have had regard to national policy, and hence meet a basic condition, is it accepted that development which would adversely affect the contribution of the LGS to the village environment might be termed 'inappropriate' and that such inappropriate development would only be permitted 'in very special circumstances'?

Q14d. In paragraph 6.6 and in other places there is reference to 'green gaps' and 'green wedges', some of which are identified as LGS others not. This is confusing. Can this differing terminology be clarified?

Q15. Paragraph 6.2. Reference to planning agreement. Would the YGPC please confirm that the planning agreement mentioned in this paragraph (repeated in 6.14) is the s106 planning obligation dated 12 November 1993 which is available on the Parish Council website? *If so, it appears that the Parish Council (as distinct from the Church Council) is not a party to the agreement.* In the circumstances, what is the status of the 'green land' mentioned in paragraphs 2.1 and 2.2 in Part 2 of the Schedule to the agreement? Is there any obligation on the landowner to offer the land to the parish council for community use as suggested in the YNP text?

Q16. Policy YG8, line 4. What is the definition of a 'small development'? Does it matter what size it is if it can be regarded as 'infilling'? Should the term 'infilling' be defined? *A long-standing definition of the term 'infilling' is that it represents the filling of a small gap within an otherwise developed frontage.*

Q17. Paragraph 6.6. See Q5 b. with reference to the 'green gap' between the main part of Yarpole village and Cock Gate. The part of this paragraph dealing with the 'green wedge' at Vicarage Farm overlaps with paragraph 6.18 related to policy YG12. Would the plan be clarified by bringing together parts of para. 6.6 with para. 6.18? See also Q14d. above.

Q18. Paragraph 6.8. *There is an error in paragraph numbering. There is no 6.7.* Much of this paragraph reads as policy. Should it be? Is it correct that this site now has planning permission for one dwelling? If so, should this be corrected?

Q19. Paragraph 6.12, page 28, line 4. Why would conversion of the barns to dwellings require planning permission?

Q20. *Welsh Water have confirmed that works to increase the capacity of the Lucton and Yarpole Treatment works are programmed for 2018. In view of this, does Policy YG13 have any continued purpose? If so, would the YGPC please provide an updated wording for policy and text.*

Q21. Policy YG14. a. *The wording of the first paragraph is not entirely consistent with that of s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990: '... special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area.'* Is it accepted (as suggested by the HC) that the words 'where possible' are unnecessary? Also, should it be character or appearance rather than 'and'? *They are not the same thing and to require both to be achieved is a stricter test than national policy.*

b. In part 2, does 'will not be resisted' mean 'will be permitted'?

c. Part 4. *This criterion is inconsistent with the first part of the policy. To 'contribute positively' is more than 'preserve'.* What is the justification for this criterion? What regard been had to paragraphs 133 and 134 of the NPPF which refer to 'significant harm' and 'less than significant harm' to designated assets?

d. Part 5. In paragraph 7.7 it is stated that landscape proposals should be an integral part of proposals for 'all but minor works'. For clarity and feasibility, should that caveat form part of the policy?

Q22. Policy YG15. a. Bearing in mind that neighbourhood plan policy can only apply to land-use planning matters what are the 'regulatory requirements' mentioned in lines 4 and 5 of this policy?

b. Criterion d). The only reference to flood risk elsewhere in the plan is in paragraph 6.15 under Policy YG10. Is it likely that flooding might be an issue anywhere else? How would the plan-user know to which areas this would apply? Should there be reference to the blue areas shown on the Yarpole Policies Map? Also, does the PC acknowledge that flood risk assessments cannot be required for developments of under 1 hectare? Does the policy warrant qualification?

c. Criterion f). What is the intended means to implement this criterion? *As worded this criterion appears set requirements beyond those which would be directly related to the development and necessary for the grant of permission.*

Q23. Policy YG16. *Also see Q9. a. Herefordshire Council have made representation drawing attention to the fact that most developments will be too small to warrant s106 contributions. That is because the tests for the making of such obligations, as set out in paragraph 204 of the NPPF, must be met. In that context, what is meant by 'appropriate' and how is it envisaged that this policy might be implemented?* b. Is it accepted that the heading to the policy should be amended and the reference to CIL removed from the penultimate line?

Q24. Appendix 2. Would the YGPC wish to provide an update of this table?