

Middleton on the Hill and Leysters
Neighbourhood Development Plan
2011- 2031

Plan submitted for Examination

31 May 2017

Report to the Herefordshire Council on the
Independent Examination of the draft
Neighbourhood Development Plan

December 2017

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Summary of main findings

0.1 It is a requirement of the Localism Act that this report should contain a summary of its main findings. The reasons for each of the recommendations are given in the following sections of the report.

0.2 The principal findings in this report are that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in the Town and Country Planning 1990 Act (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

0.3 It is recommended that the plan, as modified, be submitted to a referendum and that the referendum area need not be extended beyond that of the neighbourhood area. The more significant recommendations, in plan order, for modifications to individual plan policies are: -

- that in Policy ML4 the proposal that car parking to serve the parish hall should be included as part of the housing allocation at Leysters Pole (site 8) be deleted and made a separate allocation under Policy ML19 [Recs 6 and 18];
- that site 17 should not be identified under Policy ML4 as an allocation but considered as a rural exception site in accordance with Policy ML6(5) [Rec 6];
- that the reference to requiring minimum space standards in new dwellings be deleted from Policy ML9 [Rec 10];
- that the application of local connection criteria under Policy ML10 should apply only for rural exception sites and should be detailed in the supporting text, not policy [Rec 11];
- that 'self-build low-cost housing' should not be treated as 'affordable housing' for the purposes of Policy ML10 but that 'low cost market housing' may be considered as a subordinate element on rural exception sites where required to assist in deliverability in accordance Core Strategy Policy H2 with provisions to ensure that such housing remains at an affordable price to meet local needs [Rec 11];
- that Policy ML14 should be deleted and Policy ML15 significantly amended so as to relate only to those highway and transport matters which can be achieved through the determination of planning applications [Recs 14 and 15].

Section 1 - Introduction

Appointment

1.01 I have been appointed by the Herefordshire Council¹ (HC), acting as the Local Planning Authority (LPA), under the provisions of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, to carry out an independent examination of the Middleton on the Hill and Leysters Neighbourhood Development Plan 2011-2031 (MLNDP) as submitted to the LPA on 31st May 2017. The HC carried out publicity for the proposed plan for a period of 6 weeks between 7th June and 19th July 2017 giving details of how representations might be made, in accordance with Regulation 16 of the Neighbourhood Plans (General) Regulations 2012 ('the 2012 Regulations')². I was sent the documentation required under Regulation 17 on 15th September 2017 including copies of all of the representations received under Regulation 16. The examination commenced formally on 6th October 2017. I have taken that documentation and all of the representations into account in carrying out the examination, along with additional material submitted during the examination as listed in Appendix X to this report.

1.02 I am a Chartered Town Planner (Member of the Royal Town Planning Institute) with over 45 years post-qualification professional experience in local and central government and latterly as a sole practitioner specialising in development plan policy work. I am independent of the Middleton on the Hill and Leysters Group Parish Council ('the Parish Council' – MLGPC) and of the Local Planning Authority. I have no land interests in any part of the plan area.

¹ Full title: "The County of Herefordshire District Council"

² All subsequent reference to a Regulation followed by a number is a reference to the 2012 Regulations.

My role as an examiner

1.03 The terms of reference for the independent examination of a Neighbourhood Development Plan are statutory. They are set out in the Localism Act 2011 and in the 2012 Regulations. As an examiner I must consider whether the plan meets what are called 'the basic conditions'³. In summary, these require me to consider: -

- whether, having regard to national policies and to advice contained in guidance issued by the Secretary of State, it would be appropriate to make the plan;
- whether the making of the plan would contribute to the achievement of sustainable development;
- whether the making of the plan would be in general conformity with the strategic policies contained in the development plan for the area; and to ensure that: -
 - the making of the plan would not breach, and would otherwise be compatible with EU obligations relating to Strategic Environmental and Habitats Assessment and that the plan would be compatible with Convention rights, within the meaning of the Human Rights Act 1998; and
 - that 'prescribed conditions' would be met and 'prescribed matters' would be complied with in plan preparation and submission.

1.04 Legislation requires that my report on the draft plan should contain one of the following recommendations: -

- a) that the draft plan is submitted to a referendum, or
- b) that modifications are made to the draft plan and the modified plan is submitted to a referendum, or
- c) that the proposal for the plan is refused.

I may make recommendations for modifications which I consider need to be made to secure that the plan meets the basic conditions or for compatibility with EU obligations and (Human Rights) Convention Rights. The only other modifications which I may recommend are those to correct errors.

³ These are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (as introduced in Schedule 10 of the Localism Act 2011)

Section 2 – Statutory compliance and procedural matters

2.01 The Herefordshire Council formally designated the Middleton on the Hill and Leysters Group of parishes Neighbourhood Area on 1st May 2014. The plan relates solely to the designated area and has been submitted by the MLGPC as the ‘qualifying body’.

2.02 The title of the plan is given on the front sheet as the Middleton on the Hill and Leysters Neighbourhood Development Plan 2011-2031⁴ with a sub-title ‘Submission Draft’ and date of April 2017. The statutory requirement⁵, that the plan ‘must specify the period for which it is to have effect’, has been met. The plan does not include provision about development which is ‘excluded development’. A plan showing the area to which the Neighbourhood Plan relates has been submitted as required by Regulation 15(1)(a).

2.03 The legislation states that the ‘general rule’ is that the examination of the issues by the examiner should take the form of the consideration of written representations. However, an examiner must hold a hearing ‘for the purpose of receiving oral representations about an issue’ where he or she considers a hearing ‘is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case’⁶. Before deciding whether a hearing would be required, on 13th October 2017 I issued a list of written questions seeking clarification and further information by way of justification for plan policies and received the Parish Council’s written responses to those questions on 23rd October. I also felt it necessary to pose some questions to Herefordshire Council⁷ about their representations on affordable housing provision in the plan, specifically on the allocation of an ‘exception’ site under MLNDP Policy ML4 and its likely viability. I have considered both the HC response⁸ and the MLGPC rejoinder⁹ to those questions.

2.04 I also sent a supplementary query to Herefordshire Council¹⁰ in the light of the MLGPC response to my question 9 about the compatibility of Policy ML9 with Government policy on the inclusion of a local housing space standard in a

⁴ On other submission documents the title is given as the Middleton on the Hill and Leysters NDP (‘D’ for ‘Development’) which is the correct generic term but I will use the shortened title used for the plan itself.

⁵ These statutory requirements are to be found in Section 38B of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011),

⁶ Paragraph 9 of Schedule 4B to the 1990 Act (as in reference 1 above)

⁷ On 12 October 2017

⁸ E-mail 23 October

⁹ E-mail 1 November 2017

¹⁰ E-mail 24 October 2017 with a follow-up on 27 November

neighbourhood plan. The HC response¹¹ required a further exchange with the MLGPC before I could be satisfied that I had adequate information to proceed with the examination without recourse to a hearing. I will be referring to my questions and the responses to them throughout this report which is structured along similar lines.

2.05 I visited the Middleton on the Hill and Leysters plan area on Thursday 16th November 2017. This provided me with a good appreciation of the very rural nature of the two parishes with its somewhat dispersed settlement pattern along with the setting of each of the two villages.

2.06 The MLGPC have submitted a Basic Conditions Statement in accordance with the Regulations¹². It includes a general analysis in which the plan is assessed in overall terms against each of the basic conditions in turn. Conformity with national policy is expressed, in Section 4 - Table 1, in terms of the core planning principles in paragraph 17 of the NPPF. Section 5 considers the plan against the three dimensions of sustainable development as set out in paragraph 7 of the NPPF and an analysis of individual NP policies in terms of their conformity with the strategic policies of the Herefordshire Local Plan (Core Strategy) is included at section 7. It is a helpful analysis which I have taken into account although it is necessary for me to consider the implications and effectiveness of plan policies in rather more detail especially in terms of individual elements of Government policy and sustainable development criteria.

The Human Rights Act and EU Obligations

2.07 Section 7 of the Basic Conditions Statement includes a statement that the plan is fully compatible with the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998. It includes an analysis of the effects of the plan against Articles 1, 6 and 14 of the First Protocol of the Convention. The policies and proposals in the plan are not considered to have a discriminatory impact on any particular group of individuals. No representations have been made concerning this aspect and from my own assessment I have no reason to conclude other than that the approach taken in the plan is fully compatible with, and does not breach, Convention Rights.

¹¹ E-mail from HC 29 November and my reply

¹² Regulation 15(1)(d)

2.08 An initial screening report under the Environmental Assessment Regulations¹³ was prepared by Herefordshire Council in March 2014 and consulted upon. The screening opinion was that, owing to the range of environmental designations in an around the plan area, there may be significant environmental effects and that a Strategic Environmental Assessment (SEA) would be required. A scoping report was produced in March 2015 upon which no comments were received from the statutory consultees.

2.09 A first stage Environmental Report was prepared in December 2016 linked to the Regulation 14 consultation on the draft plan and consulted upon. It included appendices detailing the environmental effects of the plan objectives, policies and proposals against SEA objectives and assesses both policy options and alternative site allocations against those objectives. No amendments were requested in consultation responses. However, amendments were made to three plan policies as the result of the Regulation 14 consultation and, as a result, a revised SEA was produced in May 2017 taking account of those amendments. Its conclusions are that for the most part many of the policies score positively against environmental objectives or have a neutral effect. I am satisfied that the SEA work fully meets the requirements of the EU Obligations¹⁴.

2.10 Initial screening under the Habitats Regulations¹⁵ was undertaken in March 2014 to identify any potential environmentally sensitive areas. This showed that the neighbourhood plan area as including part of the hydrological catchment of the River Wye (including the River Lugg) Special Area of Conservation (SAC), a European site. It concluded that a full screening of the plan, when prepared, would be required in order to meet the requirements of those Regulations. An Environmental Report, produced in December 2016, was consulted upon with a minor correction suggested by Natural England. An addendum produced in May 2017 took account of amendments to the plan following the Regulation 14 consultations reaching the conclusion, in paragraph 2.7 of the report that the neighbourhood plan would not have a likely significant effect on the European site. In view of that conclusion an 'appropriate assessment' under the Regulations has not been undertaken.

¹³ The Environmental Assessment of Plans and Programmes Regulations 2004

¹⁴ European Directive 2001/42/EC

¹⁵ The Conservation of Habitats and Species Regulations 2010, Regulation 102

2.11 From the above, I am satisfied that the submitted plan is compatible with EU environmental obligations and meets the basic condition prescribed by section 1 of Schedule 2 to the Habitats Regulations.

Section 3 - Preparation of the plan and the pre-submission consultation processes

3.01 As required by legislation¹⁶, the MLGPC have submitted a Consultation Statement. It sets out in detail the chronology of plan preparation from the launch in June 2015 at a community open day; a community survey to gauge opinions and identify issues (November 2016); the development of the vision and objectives; a call for sites and consultations on sites and options leading through to the formal draft plan consulted upon¹⁷ between December 2016 and February 2017. From this I can see that the public consultation processes were very thorough and has led, on the whole, to a fair degree of consensus within the community about the contents of the plan.

3.02 The Consultation Statement also sets out the responses to the Regulation 14 consultation identifying the main issues arising and how the representations were addressed in preparing the plan for submission to the local planning authority for examination. This has been helpful as an indication of the evolution of plan policy.

Section 4 - The Plan, meeting the basic conditions

4.01 This section of my report sets out my conclusions on the extent to which the submitted plan meets those basic conditions which are set out in the first three bullet points in paragraph 1.03 above. If I conclude that the inclusion of a policy in the plan means that, as submitted, it does not meet one or more of the basic conditions, I recommend a modification to the plan policy in order to ensure that the plan, taken as a whole, does meet those conditions. Where such a recommendation is made this is identified by the use of **bold text** followed by the recommendation number. Recommendations are numbered in plan order, not as they are mentioned in this report. The wording of the recommended modifications themselves is to be found in Appendix 1 to this report, in numerical order.

¹⁶ The Neighbourhood Planning (General) Regulations 2012, Regulations 15(1)(b) and 15(2)

¹⁷ In accordance with Regulation 14

4.02 As detailed indicated in section 2 above I initiated a series of initial exchanges by formal note and e-mail raising issues about certain aspects of plan policy before I was satisfied that I had sufficient information to proceed with the examination without the need for a public hearing. These exchanges have led to the identification of three main issues which I wish to discuss before dealing with more detailed aspects of policy wording and implementation. The first main issue is the treatment within the plan of policies for non land-use matters. These include local connection occupancy criteria in Policy ML10; broadband infrastructure (Policy ML12); Traffic management and road safety (Policy ML14) and the reference in Policy ML19 to the spending of any Community Infrastructure Levy (CIL) money received. The second main issue is the appropriateness of including self-build low-cost housing within the definition of affordable housing and the need and justification for the allocation of Site 17 under Policy ML4 when it is a 'rural exception site'. The third main issue is whether there has been adequate regard in drafting Policy ML9 to the Government policy on the inclusion of housing space standards in neighbourhood plans.

4.03 After considering the three main issues in the context of the basic conditions I will consider whether the remaining policies in the context of advice in Planning Practice Guidance¹⁸ that a policy in a neighbourhood plan should be sufficiently clear and unambiguous, and drafted with sufficient clarity, that a decision-maker can apply it consistently and with confidence when determining planning applications.

4.04 In working through the plan I will also comment, and make recommendations as appropriate, to ensure that the plan is as up-to-date as possible. By the time the plan is 'made' there is likely to have been a lapse of time approaching a year since production of the submission plan and new information is likely to have become available on certain aspects of the evidence produced in support of the plan. It is also the case that narrative about earlier stages in plan production is not relevant in the later stages.

¹⁸ PPG reference ID: 41-041-20140306

THE MAIN PLANNING ISSUES

Main planning issue 1 – The treatment of non land-use planning matters

4.05 *Statutory background, Government policy and practice guidance.*

Because, once 'made' a neighbourhood plan becomes part of the development plan, decisions on planning applications have to be taken in accordance with the plan unless material considerations indicate otherwise. That is a major strength. However, the statutory definition of the term 'neighbourhood development plan' is 'a plan which sets out policies (however expressed) in relation to the development and use of land'¹⁹ Many issues of concern to the local community either do not relate directly to the development and use of land or they may relate to development which is 'permitted'²⁰ and, therefore, not a matter over which the Local Planning Authority will have any say. Planning Practice Guidance (PPG) indicates that non land-use matters may be covered within neighbourhood plans but they should be clearly distinguished from land-use policy²¹, either by inclusion in an appendix or a separate document. Also, as the purpose of neighbourhood plan policies is to provide the basis for determining planning applications²² if something does not require planning permission, such as works within the highway, it is not something which should be covered by statutory planning policy but may be included in a section on community aspirations or as part of an action plan. Non-statutory sections of plans can be used to bring influence to bear on other (non-planning) departments of a local authority, for example.

4.06 *The approach taken in Policy ML10.* As written Policy ML10 applies to open-market mixed sites for ten homes or more, which is an error because the national policy, as applied in HCS Policy H1, is 'more than ten' that is 11 or more. It also covers cross references to Policy ML6 and site 17 (Policy ML4). It then requires the use of s106 agreements to ensure that 'all affordable housing' is made available as a first priority to those with a local connection and providing thereafter for what is called a 'cascade' arrangement for allocations. Therein lies the difficulty, in short because who actually occupies a dwelling is not a land-use matter unless, as on a rural exception site, permission would not otherwise be granted for that dwelling. It is analogous to the situation that applies to an agricultural worker's dwelling to which an occupancy condition is attached.

¹⁹ Section 38A(2) of the 1990 Act (as amended by the Localism Act 2011)

²⁰ See the Town and Country Planning (General Permitted Development)(England) Order 2015

²¹ PPG, reference ID: 41-004-20140306

²² PPG, reference ID: 41-002-20140306

4.07 On the other hand, sites allocated for housing in plans together with those which come forward within settlement boundaries are to meet the strategic requirement for the rural parts of Herefordshire in accordance with HCS Policies SS2 and RA1 and the 'pro-rata' approach indicated in HCS paragraph 4.8.21 with an element of affordable housing on larger sites in accordance with Policy H1. The evidence base to support those policies is largely at the HMA level and does not easily translate to the neighbourhood plan level. It is the nature of the affordable tenancy²³, such as rental or shared ownership, which may be controlled by the LPA to meet identified local housing needs rather than the residency qualification of individual occupants.

4.08 Furthermore, I note that the web link provided within the policy to Herefordshire's local connection criteria is to a page provided by the Housing Department within Herefordshire Council, not planning. That is as might be expected because meeting housing needs, including setting the local connection criteria, is the responsibility of the Local Housing Authority (LHA) under Housing Act provisions. No land-use plan should set policy aimed at limiting or determining the actions of the LHA in the allocation of homes to those registered as being in need of housing. In that respect, as the LHA have represented, the plan cannot require, or even suggest, that any priority be accorded to those who are currently registered for housing in adjoining areas of Worcestershire, however close that may be geographically.

4.09 As indicated above, the use of s106 obligations, most often agreements, setting local occupancy criteria may be appropriate for housing permitted on rural exception sites. I am also aware that the application of local connection criteria and a cascade approach is how, in reality, effect is given to the provisions of HCS Policy H2. However, only including a web link to the current criteria means that the plan is not self-contained and cannot be understood by those without access to the internet. Also, because the criteria are set by the LHA they should be expressed as matter of planning policy but within the explanatory text. The approach to the allocation of any new affordable homes provided under Part 3 of the Policy ML10 has to be regarded as a community aspiration to be achieved by discussion with the LHA. However, there is no reason in principle why the criteria under Policy ML10 should not apply for exception sites only and the policy will require re-wording to make that clear.

²³ Within the definition of 'affordable housing' in the glossary of the NPPF

4.10 The position with regard to the inclusion of 'self-build low-cost housing' within Policy ML10 is discussed under Issue 2 below where I make a composite recommendation (No. 11) for modifications to Policy ML10.

4.11 *Policy ML12 – Broadband.* I have drawn the attention of the MLGPC to the fact that the first sentence in this policy, as drafted, is not clearly land-use related. I accept, in principle, the re-wording suggested by the Parish Council as it would overcome this difficulty but, bearing in mind that other plan policies, such as ML6, would prevent development in certain locations, the modification required for clarity should relate to the limited situations in which broadband infrastructure requires permission, not to any development which 'involves' the provision of such infrastructure. The MLGPC should also be aware that the second sentence in the policy, although referring to 'development', deals with something which is either outside the control of individual developers or is permitted development and, therefore, cannot be 'required'.

Recommendation 12.

4.12 *Policy ML14 – Traffic Management and Road Safety and Policy ML15 – Sustainable Transport Measures.* The way that Policy ML14 is phrased it has an extremely tenuous connection with land use and development requiring planning permission. Even though Herefordshire Council consulted on a draft charging schedule for Community Infrastructure Levy (CIL) in March 2016 matters have not been progressed further. Nevertheless, certain provisions within the Community Infrastructure Levy Regulations²⁴ have effect, most significantly the statutory²⁵ tests for the use of planning obligations made under s106 of the Town and Country Planning Act 1990 and the restrictions²⁶ placed on the 'pooling' of financial contributions for similar kinds of project, including infrastructure. Those restrictions are under review by the Government²⁷ but, for now at least, there is no reasonable likelihood that the majority of the priorities identified in the policy could be delivered through the planning system, and hence by this plan. Adequate regard has not been had to Government policy or practice guidance on these matters and the policy does not meet the basic conditions for that reason.

²⁴ 2010 with amendments in 2011, 2012, 2013 and 2014

²⁵ Regulation 122

²⁶ Regulation 123

²⁷ As announced by the Chancellor of the Exchequer in his budget statement, 22 November 2017

4.13 In response to my written question about the scope of this policy, although drawing attention to other neighbourhood plans which include similar policies, the MLGPC have suggested a modification to the introductory part of Policy ML14 in an attempt to link the list of priorities within the policy to development. However, I find it difficult to envisage in what way any of proposals under Policy ML4, or otherwise in accordance with Policy ML5, would be likely, in themselves, to meet the statutory tests for s106 obligations. Those are that the scheme would have to be necessary to make the development acceptable in planning terms; be directly related to the development and fairly and reasonably related in scale and kind to the development.

4.14 The suggested modification refers to 'supporting' proposals which would 'improve' pedestrian and cycle safety and 'reduce' the impact of existing traffic. I have no doubt of the importance placed on achieving such improvements by the local community but the very most that could be required would be for the proposed development not to make the situation worse, in other words, not in itself to cause harm (see below). Although expressed as a concern to the community in paragraph 4.5.3 there is no evidence that the modest level of new housing development proposed in the plan would, in itself, give rise to highway safety concerns. The suggested modification would not result in a policy meeting the basic conditions.

4.15 The only development mentioned within the policy which would require planning permission is the provision of additional parking to serve the Parish Hall as is mentioned also in Policies ML4 and ML19. That is considered further in paragraphs 4.51-2 below. Otherwise Policy ML14 is entirely aspirational in nature, primarily addressed at solving existing highway safety problems. The majority of the schemes listed would be implemented by the Herefordshire Council acting as the Local Highway Authority (LHwA), not as the planning authority. All of the schemes are listed as community projects in the Action Plan as Appendix 1 to the plan and such an approach is entirely in line with Practice Guidance (see paragraph 4.05 above). It is not appropriate to include such matters within 'statutory' plan policy. For the plan to meet the basic conditions the whole policy will need to be deleted with the priorities integrated with plan Appendix 1. There is nothing to prevent the MLGPC holding discussions with the LHwA to achieve their aims for highway safety improvements. **Recommendation 14.**

4.16 Policy ML15, on the other hand, is related to development and the first provision requires safe access. Associated with the deletion of Policy ML14, the first part of this policy would appropriately be expanded to deal with traffic generation from development and to add requirements relating to pedestrian and cycle safety.

4.17 The last sentence in Policy ML15 relates to public transport service improvements and is not land-use related. This is made clear in the second part of paragraph 4.5.8 which has nothing to do with planning. It is also covered in the action plan on page 61. It is an aspirational statement which should not be included in a statutory policy. **Recommendation 15.**

4.18 *Reference to CIL in Policy ML19.* Not only is there no CIL regime in place at the present time but the statement within the box at the top of page 43 in the plan is not a land-use policy. It is more in the nature of a statement of intended administrative action. It is good practice to include in plans an indication as to how land-use policy is to be delivered but how the Parish Council intends to spend money to facilitate that is purely a matter for them and, having regard to the PPG²⁸, should not be included in the policy itself. The subject is already covered adequately in the supporting text at the end of paragraph 4.7.4 and can be deleted from the policy box. Other issues in relation to Policy ML19 are considered in paragraphs 4.51-52, in connection with the proposal for additional parking to serve the parish hall and in paragraph 4.77. Recommendation 18 applies to all modifications to this policy.

Main planning issue 2 – The appropriateness of including ‘self-build low-cost housing’ within the definition of affordable housing and the allocation of Site 17 as a rural exception site for affordable housing

4.19 Policy ML10 commences by referring to affordable housing as defined by the National Planning Policy Framework and then indicates the providers of such housing ‘as well as individual self-build low-cost housing’. The fact of the matter is that the NPPF definition of affordable housing included in the Glossary to that document states specifically that ‘low-cost market housing may not be considered as affordable housing for planning purposes’. That still represents Government policy to this day even though the possibility of broadening the categories of affordable housing was mooted in consultations on revisions to

²⁸ Reference ID: 41-004-20140306

national policy²⁹. A definition of affordable housing in the Housing and Planning Act 2016³⁰ will not come into effect unless Regulations are approved by Parliament but there has been no indication that self-build homes are likely to come within the proposed definition. There is separate legislation³¹ relating to self-build housing which is not restricted to 'low cost'.

4.20 Herefordshire Council have confirmed the position with regard to the definition of affordable housing. The current national policy approach does not provide scope to widen the categories of housing tenure which may be treated as affordable and, therefore, on its face, Policy ML10 cannot be said to have had adequate regard for the national policy. HC also state that to include self-build low-cost housing within the definition would not conform to county-wide planning policy, by which I assume they are referring primarily to HCS Policies H1 and H2. I agree that it does not conform but the basic condition refers to 'general conformity' with strategic policy not specific conformity. The HCS policies are clearly designed to provide affordable housing in rural areas which Policy ML10 is also intended to achieve. I accept that as general conformity.

4.21 I have given consideration to the responses from the MLGPC in answer to my questions on this topic. I am referred to a similar policy provision in Humber, Ford and Stoke Prior Neighbourhood Plan but I see that the policy relates specifically to housing on rural exception sites. It is possible that the examiner was satisfied that there was the 'proportionate, robust evidence'³² necessary to justify such an approach in that plan area. I have reviewed the evidence base for Policy ML10 as listed on page 28 of the MLNDP of which the most relevant is the Community Survey 2016, more specifically the responses to question C6 as summarised in Chart 9 and paragraph 3.3.13. That shows that affordable homes for both sale and rent were treated as a single category. There was clearly strong support for the provision of affordable homes but it is not possible to distinguish within that category by tenure. 'Self-build' is a distinct category and is not linked to affordability. There is also no definition as to what is meant by low-cost. It is not the same as the Government's 'starter homes' initiative.

²⁹ DCLG December 2015, paragraphs 6-12

³⁰ S159(4) amending s106 of the Town and Country Planning Act 1990

³¹ The Self-build and Custom Housebuilding Act 2015 and 2016 Regulations

³² PPG Reference ID: 41-040-20160211

4.22 I am now provided with information about Shropshire Council's 'Build your own affordable Home' exceptions scheme but note that also relates specifically to exception sites. Suggestions that self-build housing can be cheaper than standard housing are largely anecdotal. It must depend on many factors. The statutory definition of 'self-build and custom housebuilding'³³ is not especially narrow.

4.23 The MLNDP opine that the definition of affordable housing within Policy ML10 will enable low cost homes for young families and smaller homes for older people needing to downsize and remain in community close to family. In view of the evidence presented on the predominance of home ownership and larger dwellings within the plan area it might reasonably be assumed that older people looking to downsize will have sufficient equity in an existing property. Their need might be expected to be met under Policy ML9 not Policy ML10. I accept that evidence on the nature of the existing stock strongly suggests a need for low cost homes for purchase by young families, but the 2012 Affordable Housing Needs Survey provides only a very limited indication of the nature of such need and is already 5 years old.

4.24 My conclusion is that the terms 'self-build' and 'low-cost' should not be conflated. There is no reason why self-build plots should not be identified within the settlement boundaries, including the allocated sites. Given the nature of the area and the lack of identification in the plan of a site for 11 or more dwellings it is unlikely that either HCS Policy H1 or MLNDP Policy ML10(3) will be engaged. If it were there would be no reason why the open market dwellings on such a site could not be self-build. Moreover, in the absence of robust evidence to the contrary, I find no compelling justification for including low-cost housing, or discounted sales, within the definition of affordable housing to be used in the drafting of any s106 obligation applying to such a development. It is in that situation that the Government is looking to apply a statutory definition of affordable housing in due course. Use of a wider definition for affordable housing on such sites, specifically to include low-cost or discounted market housing, contrary to the NPPF definition, is not justified and has not had regard to that policy. I also consider that it would be difficult to implement restrictions on the re-sale price of such properties. The inclusion of these provisions means that the policy as drafted fails to meet the basic conditions.

³³ Self-build and Custom Housebuilding Act 2015, s1(A1&A2) as amended by the Housing and Planning Act 2016, s9

4.25 The situation applying to rural exception sites is somewhat different. The very fact that the sites would not otherwise be granted planning permission for housing means that land values are lower. That factor enables housing to be delivered at a lower cost per unit than on open market sites. HCS Policy H2, applied through MLNDP Policy ML6(5), closely reflects the national policy³⁴ for such sites including, where it would be necessary to ensure the viability of the whole scheme, permitting some market housing. There has to be a proven local need for affordable housing meaning that up-to-date information about such needs would be required, as mentioned in MLNDP paragraph 4.2.17.

4.26 As part of any local housing needs survey undertaken to justify permission for a rural exception site it would be possible to identify a specific need for low cost housing for sale to local people. It is a requirement of HCS Policy H2 that any affordable housing provided should be retained in perpetuity for local people in need of affordable housing and it is apparent from what the MLGPC have said in response to my questions that what is being sought is very much in line with that thinking.

4.27 I consider that there is scope within the terms of HCS Policy H2 to include the possibility that a subordinate element within a development on an exception site might be for housing made available for sale to people with a local connection³⁵. As envisaged in the last paragraph of Policy ML10, such housing would need to be constructed for, and remain available at, a price which those people could afford. As the MLGPC now suggest, a stipulation through a s106 obligation would be that any future re-sale of the dwelling should be at a percentage below open market value. However, I do not have any evidential basis to suggest what the percentage discount might be. Shropshire may set a value of 60-70% but that may not be appropriate in this plan area. It is not, therefore, possible to stipulate a percentage in policy. It will need to be calculated according to individual circumstances taking account of the principles of HCS Policy H2; that is that any low-cost market housing would only be acceptable if it were to assist the deliverability of the whole affordable housing scheme and there was a proven local need. That may be self-build if it would otherwise meet the terms of the policy. Such an approach would have regard to national policy in that it would not alter the definition of affordable housing. If,

³⁴ NPPF, paragraph 54

³⁵ Including the cascade arrangement mentioned in Policy ML10

in the future, the NPPF definition of affordable housing was to be widened to include low cost market housing then the current constraints would no longer apply. In the meantime, there is an insufficient evidential basis for a policy which might allow individual plots to be identified as 'exceptions' exclusively for low-cost self-build as I understand to be the position in Shropshire.

4.28 Associated with the above, clarification is required in the wording used in the final part of the policy. The correct term to be used under section 106 of the Town and Country Planning Act 1990 is 'obligation' not 'agreement'. Although for affordable housing they will usually be agreement the Act provides for unilateral obligations. The word 'covenant' is used but in practice that can only be a s106 obligation. The first paragraph refers to 'first and subsequent lettings' of affordable housing. The policy, through Policy ML6(5), would be implemented through HCS Policy H2 which specifies that the affordable housing should be for 'local people in need ...' so that does not need to be repeated in Policy ML10. For clarity, and to avoid overlap or repetition, the final paragraph should be replaced by a revised policy relating specifically to the arrangements to ensure that any low-cost market housing permitted under the policy remains affordable for those in local need. **Recommendation 11.**

4.29 *The need and justification for the allocation of Site 17 under Policy ML4 when it is a 'rural exception site'.* The HC made representation at the Regulation 14 stage about the approach to affordable housing provision in the plan and expressed reservations about the development viability of site 17 for only three affordable dwellings. The MLGPC response to agree that 'current business models of affordable housing providers are unlikely to be able to deliver a three unit wholly social rented/ shared ownership development on the site'. That appears to have been part of the reason for seeking to include a wider definition of 'affordable housing'. Despite some adjustments made to policy wording the HC have maintained their reservations about the likely viability of the development on site 17. It is also notable that the assessment³⁶ of this site was that its development would have a 'significant adverse effect on landscape with high sensitivity' and would be 'totally inappropriate'.

4.30 In my written questioning addressed to Herefordshire Council on the subject of the allocation of site 17 I sought to highlight the general background to the treatment of exception sites in plans. As such sites are, by definition,

³⁶ Call for sites assessment report, Appendix 5

outside settlement boundaries and exceptions to general policies for development in such areas it is not normal practice to allocate them. HCS Policy H2 is a criteria based policy which may be used directly as a basis for development management decisions. I recognise that the MLGPC have sought to take a positive approach to the identification of sites for development in the MLNDP and they are to be commended for that. However, there is much emphasis in national policy and guidance on ensuring the viability and deliverability of development. For a site to be allocated there should be a reasonable degree of certainty that it can be delivered.

4.31 My conclusion on this issue is that it is not necessary for site 17 to be specifically allocated and the evidence presented does not demonstrate sufficiently that the site can be delivered as envisaged. The allocation does not satisfy the basic conditions for that reason. Even if the site remained allocated, it would be outside the settlement boundary for Leysters, Policy ML6(5) and hence HCS Policy H2 would still apply. Therefore, there would be no greater certainty of the likely deliverability of the scheme than if it were not allocated. I have recommended (above) a modification to Policy ML10 in order to include provision for exception sites to include a subordinate element of low-cost market housing subject to the terms of HCS Policy H2, including viability considerations. Such factors are best considered according to the facts of the case, on merit.

Recommendation 6.

Main planning issue 3 – Whether a policy may be included in a neighbourhood plan requiring compliance with specified housing space standards.

4.32 This issue arises because of the inclusion in Policy ML9 of a requirement that each dwelling must be ‘as a minimum, but ideally exceed, the minimum standard recommended by the RIBA in ‘the Case for Space’ 2011. The first point to make is that the RIBA space standard is not a recognised planning standard. Plans should be self-contained and not cross-reference to other documents, especially ones which have no status in terms of national planning policy.

4.33 The second point is that Government policy issued by way of a Written Ministerial Statement (WMS)³⁷ is that only the ‘new national technical standards’

³⁷ 25 March 2015

should be applied. These include internal space standards for dwellings. It is specifically stated in the WMS that ‘... qualifying bodies preparing neighbourhood plans should not set in their emerging ... plans ... any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings.’ Not only that but it is also stated that neighbourhood plans should not be used to apply the new national technical standards. In other words, the standards are to be applied nationally.

4.34 HC suggested to me by e-mail³⁸ that the PPG³⁹ indicates some flexibility for local plans at least to justify local standards if the effect on the viability of development has been properly tested. I do not read the guidance that way and it cannot take precedence over national policy. The reference is to standards on water and access, not internal space. Be that as it may, I recognise that policy is not statute and the courts have held that consideration should be given to any robust evidence to justify an exception to policy.

4.35 The MLGPC response to my question 9 about this policy was to refer me to the examiner’s report on the Wellington Neighbourhood Plan. However, this specific point does not appear to have been raised. I accept that the policy is aimed at achieving a mix of dwelling types and sizes in line with the NPPF but that does not justify the inclusion of unrecognised local space standards. More significantly in my view, the Government’s intention in seeking to apply a national standard is very clear. It is to avoid there being unreasonable burdens on the housebuilding industry undermining development viability and hence deliverability. There is no indication that any viability assessments have been undertaken for this plan. Moreover, I consider it would unworkable for the industry to have to comply with differing local space standards applying to the very small geographical areas covered in neighbourhood plans. It would represent an undesirable burden on development. The inclusion of a local space standard in this plan has not had regard to Government policy on this matter and has to be deleted for the plan to meet the basic conditions.

Recommendation 10.

³⁸ 29 November 2017

³⁹ Ref ID 56-002-20160519

CLARIFICATION OF OTHER PLAN POLICIES

4.36 As indicated in paragraph 4.03 above I will now consider the plan in terms of the clarity of the plan policies particularly with a view to their application in decision-making by the Local Planning Authority. I will also comment where certain aspects of the plan require updating.

4.37 *Section 2.* Although it is interesting by way of background, section 2 'The story so far' will not be so relevant for the final version of the plan. Understandably, it stops at the Parish Council's consideration of the Regulation 14 representations. Much of the information duplicates that found in the Consultation Statement submitted alongside the plan itself. If it is to remain it will need to be updated to include the later stages, including mention of the examination process. **Recommendation 1.**

4.38 *Policy ML1.* The way this policy is worded it reads that all development proposals should address all of the priorities listed which is clearly not feasible. The MLGPC have accepted that is not intended and agreed that the qualification 'Where relevant ...' would make this clear.

4.39 Although such a qualification would apply to the third listed priority, regard must be had to the national policy on planning obligations contained in paragraph 204 of the NPPF and the statutory provisions in the CIL Regulations. I consider that it is the words 'for the wellbeing of the whole community' which could be construed as going beyond what might realistically be achieved because an obligation can only be required to provide for any community facilities needed by the potential residents of a new development, not the existing residents, even though they might well benefit also. Those words are not strictly necessary and may be deleted to avoid any misinterpretation and to ensure the plan meets the basic conditions.

4.40 The final paragraph in Policy ML1 is confusingly worded. As the policy is intended to be 'over-arching' in setting out the community's sustainable development priorities it does apply to any development proposal, where relevant. It is also going somewhat beyond the terms of s38(6) of the 2004 Act to say that development proposals must comply with the plan. The correct wording is in the first sentence of paragraph 4.1.2. Although the MLGPC accepted in response to my question 1 that the policy be re-worded, on reflection, I have decided to recommend that the paragraph be deleted altogether because it does not properly reflect the statutory position which will apply anyway and so the paragraph has no useful purpose. The text in paragraph 4.1.2 adequately covers the point and no re-wording is required.

Recommendation 2.

4.41 *Policy ML2.* I accept the value of a policy which sets out the strategy for development in the parish. As stated in the supporting text this is closely aligned with that of the Herefordshire Core Strategy with the focus on development in the two villages, particularly Leysters, with development outside the village settlement boundaries restricted to particular types of development as specified in HCS Policies RA3 to RA6. However, the precise wording of the policy, especially the second sentence, could be interpreted differently. It is clearly not what was intended but as drafted it is saying that provided a development is considered to be 'limited small-scale', which term is not defined, it will be 'supported' provided it has 'limited negative impact' on amenity or the environment. Given the purpose of policy in a neighbourhood plan, 'support' can only be interpreted as meaning permission should be given.

4.42 I have pointed out in my written question 2 that the second sentence contradicts the third point under the policy within which the words 'in particular but not exclusively Policy RA3' introduce further uncertainty of interpretation. The MLGPC agreed those words might be deleted, as they should from paragraph 4.1.5 for consistency. To avoid any contradiction I recommend the complete deletion of the second sentence in the introductory section. It is too openly worded and is adequately covered elsewhere in the plan. Amenity is mentioned as a criterion under several policies and environmental considerations are covered in detail in Policy ML11. Together with the cross-reference to the HCS in point 3 and point 4 dealing with agriculture and rural enterprises, plus Policies ML13 and 16 to 18, most forms of development are covered by the plan.

4.43 I have decided that as Policy ML5, mentioned under point 1, includes a cross-reference to Policy ML4 it is not an error to omit reference to ML4 in Policy ML2.

4.44 I questioned the statement at the end of paragraph 4.1.4 that development at Middleton on the Hill 'should be restricted to small-scale infill only' because that reads as policy. Policy ML5 refers to 'infill' and that should be 'in keeping with the scale, form and character of its surroundings subject to Policy ML11.' The effect of those considerations might well be that the development is 'small-scale' but the term is not otherwise defined. It therefore introduces uncertainty in interpretation of the plan and should be deleted to avoid any ambiguity.

4.45 The purpose of my question on the last sentence in paragraph 4.1.6 was to highlight that the priority given in national policy to the development of brownfield land is something that is most effectively done as part of the plan-making process itself. Otherwise the fact that a site is brownfield would be an important material consideration but it would not necessarily outweigh any other policy conflict, for example if the site was in the open countryside. HCS Policy RA2(2) needs to be read in that context. In most instances it is not realistic to expect a developer to search for available brownfield sites as an alternative to a greenfield site. A similar consideration would apply to agricultural land grades unless there was an option on siting within a large agricultural unit. For clarity I recommend the deletion of the last sentence in paragraph 4.1.6 and also the words 'in the first instance' from the second paragraph in Policy ML2.

Recommendation 3.

4.46 *Section 4.2 – Providing New Housing.* HCS Policy RA1 is not listed as a 'relevant policy' in the list on page 18 of the plan. It is a strategic policy which provides for the level of growth within the Leominster rural HMA (14%) from which a requirement for 23 dwellings in this neighbourhood area is derived according to the methodology outlined in paragraph 4.8.21 of the HCS, as mentioned in MLNDP paragraph 4.2.4. The MLGPC have accepted that Policy RA1 has been omitted in error. **Recommendation 4.**

4.47 *Policy ML3.* The latest available information on housing completions and permissions provided by HC is for 31 March 2017. As at that date, there had been 7 completions and a further 6 permissions, leaving sites for 10 dwellings to be identified to meet the 'target' of 23, not 12 as stated in paragraph 4.2.4. Corrections by way of updating are, therefore, required: point 1 in Policy ML3 should be 13, not 11 and at the end of paragraph 4.2.4 the figure should be 10 not 12. HC have also drawn attention to an error at the end of paragraph 4.2.6 in that the GL Hearn LHMA work identified that 55.6% of the affordable housing within the Leominster Rural HMA should be of 1 or 2 bedrooms, not 90% as stated.

4.48 HC also draw attention to the reference in paragraph 4.2.7 to HCS Policy RA3 rather than H2. However, the principle of identifying sites for rural affordable housing as an 'exception' to the countryside policy is under point 5 in Policy RA3 so that is not wrong. Nevertheless, the summary of the policy applying is taken from Policy H2 which is the development management policy. Both should be mentioned for completeness.

4.49 Otherwise I find Policy ML3 together with the text in paragraphs 4.2.1 to 4.2.14 to provide a useful background to the allocations for housing made in Policy ML4. The updates and corrections are included in **Recommendation 5**.

4.50 *Policy ML4*. HC have made representation against the degree of prescription in the details given in this policy on the expected form of development. There is also concern to ensure that the policies are sufficiently flexible to ensure deliverability. However, I accept that the proposals in the plan have come about through the call to sites and active community engagement, and involvement of the landowners. In particular, alternative options have been evaluated for the largest site, site 8, and the form of development detailed has arisen as the result of discussions within the community. I am satisfied from the MLGPC response to my question 4d. that the deliverability of the proposals is not compromised by the policy requirements.

4.51 My main reservation is on the way the community aspiration to see the provision of additional parking provision for the parish hall is dealt with within the policy for site 8. I have no doubt about the importance attached to this by the community and I accept that the eastern end of the site 8, opposite the hall, would be a good site but it cannot be made a policy requirement linked in any way to the development of site 8 for housing nor should it be perceived as being any form of pre-condition for permission to be granted for housing. I do not question the exercise which has been undertaken to assess the attributes of the alternative sites considered against sustainability criteria but there is simply no relationship at all between the car parking proposal and the housing element of the scheme. Indeed, the residents of the new homes would be most unlikely to require any parking for visits to the hall given the close proximity. The parking area could not be required as part of a planning obligation as a result. It would not meet any of the statutory tests for an obligation and, therefore, as currently worded, the policy does not meet the basic conditions.

4.52 Policy ML4 should deal with housing only and, for the reasons given above, for the basic conditions to be met the reference to the development including car parking for the parish hall must be deleted from the description for Site 8 as well as in paragraph 4.2.17. The land required for the car park, associated with the parish hall as a community facility would logically be allocated under Policy ML19 with the site shown on the Policies Map separately. There would also be a consequential amendment to paragraph 4.7.3 (see recommendation 18). I note

that the landowner has supported the allocation, including the car parking, which suggests that there is a reasonable expectation that both elements of the scheme would be deliverable. Negotiations with the landowner might be identified under the Action Plan. The deletion of site 17 is dealt with in paragraphs 4.29-31 above. **Recommendation 6.**

4.53 The Environmental Health Officer in Herefordshire Council has made a number of detailed representations about sites 9 and 11 allocated under Policy ML4 suggesting that the nature of the existing uses is such that contamination issues may arise suggesting conditions which might be imposed on any planning permission but not, actually, suggesting that any modification be made to the plan. It has not been suggested that such considerations would raise doubts about the deliverability of the allocations.

4.54 A representation has also been made seeking the allocation of a site at Casino Farm, Middleton on the Hill for housing. It lies outside, although abutting the settlement boundary identified in the plan. The site was not put forward during the call for sites process, has not been subject to sustainability analysis not community involvement. It is not, therefore, an option for allocation at this late stage. Nevertheless, I felt it appropriate to ask the MLGPC for their comments on the proposal. They have identified some merit in the removal of the redundant poultry sheds on the land and that would undoubtedly be a material consideration should a planning application be considered. Policy ML6 would apply. As things stand the settlement boundary has been drawn after following the proper process and in that respect the plan meets the basic conditions.

4.55 *Policy ML5.* For clarity in the implementation of the plan I have questioned the meaning of the references in this policy to 'infill' and 'amenity' although those words appear elsewhere in the plan also. I questioned whether the term 'infill' means for 1 or 2 dwellings as suggested in the Community Survey but the MLGPC have responded by suggesting that 'infill' be defined in the Glossary as 'development of vacant plots between existing buildings'. On its face, that could result a significant number of building plots rather than one or two, however, the application of Policy ML11 should ensure that any development would be in keeping with the character of the area. The settlement boundaries have also been tightly drawn. I accept the definition, therefore. With some adjustment to the wording for clarity ('sound' and 'noise' are the

same thing), I agree to the suggested definition of 'amenity' which otherwise is a somewhat vague term and that these additional definitions be included in the plan glossary for clarification (Recommendation 22). I do not recommend any changes to Policy ML5 itself.

4.56 The HC Environmental Health Officer has sought an addition to the wording in part 2 of Policy ML5 to refer to the effect on the amenity of future residential occupiers from existing agricultural and commercial development with similar additions to Policy ML6. Although I understand that the point relates to the suitability of a particular site for housing taking account of existing uses adjoining it, there is no requirement for neighbourhood plans to include policies on every potential issue which might arise in the consideration of a planning application⁴⁰. The policy is dealing with the effect of proposed development on the environment and existing uses, not the other way around. It does not fail any basic condition because of the omission.

4.57 *Policy ML6*. I have drawn the attention of the MLGPC to paragraph 200 of the NPPF in which it is stated that the nationally defined permitted development rights should not be removed unless there is clear justification for doing so. The last paragraph in the policy states that those rights 'may be removed' 'in the interests of landscape and visual amenity'. That is not a clear justification because such factors could apply anywhere. There is also no explanation in the supporting text for the policy.

4.58 In response, the MLGPC have referred to the Characterisation Report and the fact that it is 'a deeply tranquil rural area' and stated that 'it may be appropriate' to remove the permitted development rights for extensions, boundary treatments and surfacing 'exceptionally and only in particularly sensitive locations' in order to protect the rural character. That is more precise in meaning but does not give any guidance as to the geographical areas which are regarded as particularly sensitive. The only areas identified in the plan are listed in part 8 of Policy ML11 and I therefore recommend referring to them specifically. With such modification I consider the plan would have regard to national policy and hence would meet the basic conditions which the original wording did not. An additional paragraph is required in the text to explain the reasoning. **Recommendation 7.**

⁴⁰ PPG, reference ID: 41-040-20160211

4.59 *Policy ML7*. In my question 7 I drew attention to an inconsistency between the policy itself, which refers to extensions being subservient to the 'main dwelling' and the supporting text in paragraph 4.2.24 which refers to the 'original' dwelling going back 20 years. I asked for evidence relating to the '20 year rule' which has not been forthcoming because that would be a significant restriction. In response, the MLGPC suggest deletion of the references in the supporting text, including the 20 year limitation.

4.60 I am satisfied that the policy itself meets the basic conditions. The concept of the 'main' dwelling should be reasonably understood by the decision maker. It is implicit that the main dwelling will be the same as that originally built and if extensions are 'subservient' should enable the original to remain identifiable. The policy may, to a degree, assist in retaining variety and choice in the dwelling stock as stated. Only the supporting text requires amendment to achieve consistency within the plan. **Recommendation 8.**

4.61 *Policy ML8* It is not clear to what 'regulatory requirements' the policy is referring. The MLGPC have accepted that this may be deleted for clarity in application. There should also be a qualification 'Where practicable and feasible to do so ...' However, as I have mentioned above, in the absence of CIL Charging Schedule given the current restrictions on the pooling of s106 contributions the kinds of off-site measures mentioned under point 7 in this policy cannot be delivered. The proposed developments in themselves are too small to be likely to justify obligations covering off-site improvements which would meet the statutory tests. There is no indication that Grampian-style conditions would be justified either. For the policy to meet to have had regard to Government policy on these matters point 7 will have to be omitted.

4.62 The term 'adequate parking' in point 3 has to be explained otherwise no guidance is given to a decision maker as to how many parking spaces might be required to obtain planning permission. If, as the MLGPC now indicate, that is by reference to HCS MT1 then that needs to be stated for clarity. The Local Transport Plan is not a planning document.

4.63 The MLGPC have accepted that the reference to paragraph 173 of the NPPF in the last sentence of paragraph 4.2.26 is in error. Building Regulations requirements are not a matter for planning. The reference should be to measures to deal with climate change as referenced in bullet point 6, paragraph 17 of the NPPF. **Recommendation 9.**

4.64 *Policy ML9*. See paragraphs 4.32-35 and Recommendation 10.

4.65 *Policy ML10*. See paragraphs 4.06-10; 19-28 inc. and Recommendation 11.

4.66 *Policy ML11*. This is clearly worded policy. No modification.

4.67 *Policy ML12*. See paragraph 4.11 and Recommendation 12.

4.68 *Policy ML13*. The word 'also' in the second line of the policy is superfluous (error). Although the policy states that 'renewable energy proposals' will be supported no reference is made to the Government policy on wind turbines⁴¹ which is that permission should not be granted for such development unless a suitable site has been identified in a neighbourhood plan, which it has not. As suggested, by the MLGPC, to have had regard to Government policy wind turbines need to be excluded. **Recommendation 13.**

4.69 *Policy ML14*. See paragraphs 4.12-15 and Recommendation 14.

4.70 *Policy ML15*. See paragraphs 4.16-17 and Recommendation 15.

4.71 *Policy ML16*. I sought clarification of certain aspects of this policy in my question 12. The first part of the policy lists 5 types of economic activity to which priority will be given but they are distinct and more than one is not likely to apply to any particular development proposal. The MLGPC agree to the insertion of 'or' between each priority for clarity.

4.72 The second point relates to the final paragraph. It may well be that what are termed 'large-scale' employment uses would be difficult to assimilate within the rural landscape but it cannot be stated unequivocally unless there is very clear evidence on the point. Also, not all Class B employment uses need be large-scale, however defined, especially within Class B1, as the MLGPC acknowledge.

4.73 I consider that this policy provision clearly runs counter to the Government policy for economic development in rural areas as stated in the third bullet point in the Core Planning Principles, paragraph 17 of the NPPF, to 'proactively drive and support sustainable economic development' and, more specifically, paragraph 28 although the policy as a whole clearly reflects those aims. I have reached the conclusion that the community's concerns about the impact of large-scale employment uses on the rural character of the area is already covered by the first point in the second part of Policy ML16 and by Policy ML11 more generally. The last paragraph is unnecessary. The comment in paragraph 4.6.6 may remain.

Recommendation 16.

⁴¹ Written Ministerial Statement 18 June 2015 and PPG Ref. ID: 5-005-20150618

4.74 *Policy ML17.* This is a clearly worded policy. No modification.

4.75 *Policy ML18.* The MLGPC have accepted that the reference to 'rural enterprises' in the first line of the policy is in error. The policy is intended to apply only to agricultural and forestry enterprises. Other rural enterprises will fall to be considered under Policy ML16.

4.76 The MLGPC also agree that the policy is intended to apply only when planning permission is required in view of the extensive permitted development rights accorded to agricultural and forestry activities, including prior approval in some cases. That is best made clear by the insertion of additional wording at the start of the policy. I also questioned the meaning of the term 'rural ambience' in the fourth criterion under the policy as that could be a very restrictive requirement. Agricultural and forestry activity is part of the 'ambience', the countryside can sometimes be quite a noisy place! The reference to rural ambience should be deleted. By way of comment, related to the point raised by the Environmental Health Officer, there is a need to ensure when considering proposals for the conversion of agricultural buildings for residential use that their proximity to active farmyards does not then have an unduly constraining effect on the longer-established uses through the application of this policy provision.

Recommendation 17.

4.77 *Policy ML19.* In paragraph 4.18 above I deal with the issue of including reference to funding sources within the policy box. I have also concluded that the proposal to provide parking facilities to serve the parish hall, included as the first priority proposal in this policy is quite distinct and unrelated to the housing proposal under Policy ML4 and must be split out to be allocated under Policy ML19. This will require amended wording and alterations to the Policies Map.

4.78 I have also drawn the attention of the MLGPC to the fact that the first part of Policy ML19 is not clearly expressed as a land-use policy and a revised wording has been agreed. **Recommendation 18.**

4.79 *Policy ML20.* There is a drafting error at the end of the first criterion in this policy. The reference should be to Policy ML19, not 18. The MLGPC have also agreed that the term 'within the locality' is vague and should refer to 'parish'.

4.80 Paragraphs 4.7.7 and 8 together with 4.7.11 are dealing with the approach to the identification of Assets of Community Value which are subject to a completely separate process which falls outside of the neighbourhood plan.

Although it is a process by which existing community facilities may be protected it is not related to plan policy ML20. There is no reason why there should not be mention of this as a community aspiration but clearly identified separately, as suggested in the PPG. **Recommendation 19.**

4.81 *Policy ML21.* The reference to the provision of providing open space for those 'working' within a development accords with HCS Policy OS1 but it would only be likely to be required in relatively large developments which would not be likely within this area given the terms of Policies ML11 and ML16 and could not be off-site. The MLGPC have accepted that the provision has not been justified and should be removed for that reason. **Recommendation 20.**

4.82 *Section 5.* I have already mentioned that the MLGPC are to be congratulated on the inclusion of a specific section in the plan on implementation and monitoring. However, in the column on 'Implementation lead' in Table 1 there is reference to agencies other than the Local Planning Authority when the prime purpose of a statutory neighbourhood plan within the planning system is to provide a basis for decisions on planning applications. Other, albeit related, aspects of concern to the community, most particularly those dealing with traffic and highway safety issues, fall within the responsibility of the Highways Authority. I accept, however, that such agencies can play an important part in the delivery of planning policy and that all that is required is a minor clarification in the wording of the second column. **Recommendation 21.**

4.83 *Glossary.* In paragraph 4.54 above I have indicated that definitions of the terms 'infill' and 'amenity' should be added to the plan glossary.

Recommendation 22. I have also noted a number of errors within the glossary which require correction and which are listed under **Recommendation 23.** They are mostly self-explanatory. The exception is the omission of any reference to unilateral undertakings by developers which are a form of obligation under s106 of the 1990 Act. These may be offered when agreement cannot be reached, more often in an appeal context.

Section 5 - Formal conclusion and overall recommendations including consideration of the referendum area

Formal Conclusion

5.01 I conclude that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in Schedule 4B to the Town and Country Act 1990 (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights. Modifications also need to be made by way of the correction of errors to ensure that the plan is up-to-date.

Overall Recommendation A.

I recommend that modifications, as set out in Appendix 1 to this report, be made to the draft Middleton on the Hill and Leysters Neighbourhood Development Plan 2011 – 2031 and that the draft plan as modified be submitted to a referendum.

The referendum area

5.02 As I have recommended that the draft plan as modified be submitted to a referendum I am also required under s10(5)(a) of Schedule 4B to the Town and Country Planning Act 1990 to recommend whether the area for the referendum should extend beyond the neighbourhood area.

5.03 There have been no representations seeking an extension of the referendum area. The fact that the neighbourhood area covers two parishes with a single council suggests a strong affinity between those parishes. The villages are reasonably self-contained within a rural hinterland. No cross-boundary issues have been identified. Consequently, I find there to be no justification for extending the referendum area beyond the designated neighbourhood area.

Overall Recommendation B.

The area for the referendum should not extend beyond the neighbourhood area to which the plan relates.

Signed:

John R Mattocks

JOHN R MATTOCKS BSc DipTP MRTPI FRGS

21 December 2017

APPENDIX 1 – RECOMMENDATIONS FOR MODIFICATIONS TO THE PLAN

- 1. Update section 2 in the plan to include the later stages of plan preparation.**
- 2. Insert the words 'Where relevant,' before 'development proposals' at the start of the second sentence in Policy ML1; delete the words 'for the wellbeing of the whole community' from the third listed priority and delete the whole of the final paragraph.**
- 3. Delete the second sentence in the first paragraph of Policy ML2.**
In the second paragraph of Policy ML2, first line, delete the words 'in the first instance'
On the third line under point 3 in policy ML2 and in paragraph 4.1.5 delete the words 'in particular, but not exclusively, Policy RA3'
At the end of paragraph 4.1.4 delete all after 'distinct, sensitive setting' and substitute 'Policy ML5 provides that development there should be restricted to infill within the settlement boundary.'
Delete the last sentence in paragraph 4.1.6.
- 4. *Correction of error.* Add Policy RA1 – Rural Housing distribution to the list of relevant Herefordshire Core Strategy Policies on page 18 of the MLNDP.**
- 5. Make corrections as updates to Policy ML3 as follows:-**
Point 1 to read 'Around 13 dwellings constructed ... between April 2011 and March 2017'.
Point 2 to read '9 new dwellings ...'.
At the end of point 4, add 'including on rural exception sites'.
Make corrections to the supporting text following Policy ML3 as follows:-
In the last line of paragraph 4.2.4, substitute '10' for '12'
At the end of paragraph 4.2.6, substitute '55.6%' for '90%'
In paragraph 4.2.7, line 4, for 'Policy RA3' substitute 'Policies RA3 and H2'.

- 6. In Policy ML4, under Site 8, delete the second sentence 'The development should also include the provision of a car parking area of ten spaces to serve the Parish Hall'. Also delete all of the third sentence in paragraph 4.2.17 of the plan text after the word 'settlement.' Amend the housing allocation shown on the Leysters Policies Map to exclude the proposed car parking area.**

Delete site 17 from the policy and as an allocated site on the Leysters Policy Map. Amend the reference to the site in the supporting text, paragraph 4.2.17, to indicate that it may become available as a rural exception site, subject to Policy ML10.
- 7. Delete the last paragraph in Policy ML6 dealing with the removal of permitted development rights and substitute the following revised paragraph:-**

Permitted development rights for extensions, boundary treatments or surfacing may be removed exceptionally within particularly sensitive locations such as those listed in part 8 of Policy ML11.

Include an additional paragraph in the supporting text to justify this policy approach.
- 8. Delete the last three sentences in paragraph 4.2.24 from 'Extensions ...' to '...generations.'**
- 9. In policy ML8 replace the second sentence in the introductory paragraph by the following:-**

Where it is practicable and feasible to do so, development proposals should contain a coordinated package of design measures which include the following:

Delete point 7.

Include a reference in the supporting text to the fact that an assessment of the adequacy of any parking within new housing will be judged against the provisions of Policy MT1 in the Herefordshire Core Strategy.

Delete the final sentence in paragraph 4.2.26 and substitute the following:-

Part 6 of the policy takes account of bullet point 6 in paragraph 17 of the NPPF (Core Planning Principles) in putting forward measures to support the transition to a low carbon future in a changing climate.

10. Delete the first sentence in the second paragraph of Policy ML9.

11. Modify Policy ML10 as follows:-

In the introductory paragraph, delete the words 'as well as individual self-build low-cost housing';

Delete point 1.

In point 2 add 'and subject to the provisions below';

In point 3, replace 'ten homes or more' by 'more than ten homes' and in the last line delete 'and for discounted sales'

At the beginning of the second main paragraph replace 'All ...' by 'On rural exception sites ...' and 'Section 106 Agreements' by 'a Section 106 obligation' Delete all after 'local connection' at the end of line 2 and include the current local connection criteria in the explanatory text.

At the end of the third main paragraph, referring to the 'cascade' arrangement, delete reference to the Worcestershire parishes.

Replace the final paragraph of the policy by the following:-

On rural exception sites, a subordinate element of low-cost housing for sale may be permitted where it is demonstrated, under the terms of Herefordshire Core Strategy Policy H2, that such housing would be necessary to subsidise affordable housing provision on the site, ensure viability and achieve the successful delivery of the whole development.

Any low-cost housing will be permitted only subject to a section 106 obligation which provides for any future sale of the dwelling(s) to be at a percentage below the market value of the property at that time, set at a level estimated to be affordable for those with a local connection, or otherwise in accordance with the cascade arrangements described above.

Include within the supporting text an explanation of the criteria and methodology for calculating the percentage below market value to be specified for any future sale of a dwelling permitted as low-cost housing in accordance with Policy ML10.

12. Amend the first sentence in Policy ML12 to read:-

Where planning permission is required, development proposals for the provision of high speed broadband infrastructure to serve the parish should not adversely ...

13. Insert ', not including wind turbines,' between 'proposals' and 'that' in line 1 of Policy ML13 and delete the word 'also' in the second line of the policy.

14. Delete Policy ML14 and the associated text with the contents to be integrated with plan appendix 1, the transport action plan.

15. Amend the first criterion under Policy ML15 to read as follows:-

The traffic generated can be accommodated safely on the road network and access arrangements for new development is designed to ensure there will be no harm to highway safety and that full account has been taken of the need to protect the safety of cyclists and pedestrians on adjacent roads and footways.

Delete the last sentence in Policy ML15 and the last two sentences in paragraph 4.5.8 and integrate the text with the Transport Action Plan in Appendix 1.

16. In Policy ML16, first part, insert the word 'or' between each of the five priorities and delete the final paragraph referring to large-scale employment.

17. At the start of Policy ML18 delete the words 'New development' and substitute 'Where planning permission is required,' and in criterion 4, line 2, delete the words 'or the loss of rural ambience'.

18. Delete the introductory section to Policy ML19 and replace it by the following:-

Proposals for the development of key services and facilities, including: (as currently listed 1. to 4.) will be approved provided that: (criteria a) to c)). Delete the words 'All such proposals should ensure:'

Add the following:-

Land is allocated for a car park for 10 cars to serve the village hall, as shown on the Leysters Policy Map. Delete the last sentence in paragraph 4.7.3.

Delete the last sentence in Policy ML19 (within box on page 43) and integrate the details of the intended funding of community facilities with the text in paragraph 4.7.4.

- 19. In the first criterion of Policy ML20, first line, replace the word 'locality' by 'parish' and, in line 3, replace 'ML18' by 'ML19'. Move the text in paragraphs 4.7.7, 4.7.8 and 4.7.11 to follow 4.7.12 under a clear heading 'Assets of Community Value' to make clear it is of the nature of a community aspiration to make use of the separate statutory provisions to protect community facilities.**
- 20. In lines 1 and 2 of Policy ML21 delete the words 'to meet the needs of those living/working within their developments'.**
- 21. In section 5, heading on page 47, insert the word 'Delivery' after 'Implementation' and in column 2 of Table 1 insert 'and Delivery' between 'Implementation' and 'Lead'.**
- 22. Make the following additions to the definitions included in the Glossary to the plan, pages 50-56:-**
 - 'Amenity' – 'the benefit and living conditions enjoyed by residential occupiers which may be affected by development on adjacent land, including loss of privacy through overlooking, effect on daylight or sunlight, noise or smell.'**
 - 'Infill' –'Development of vacant plots between existing buildings.'**
- 23. Make the following corrections to errors within the Glossary section of the plan:-**
 - Page 51. Conservation Areas. Delete 'Town and Country Planning Act 1990' and substitute 'Planning (listed Buildings and Conservation Areas) Act 1990'**
 - Exception sites. Split out from under 'Evidence Base' with emboldened heading.**
 - Perpetuity/Planning obligations/Previously Developed Land. Split these out from under 'Permitted Development Rights' with individual emboldened headings**
 - S106 agreements. Add 'and obligations' and state 'a developer may also offer a unilateral undertaking as a potential obligation should it not be possible to reach agreement with the Local Planning Authority.'**

APPENDIX 2.

Abbreviations used in this report:

'the 1990 Act'	The Town and Country Planning Act 1990, as amended
CIL	Community Infrastructure Levy
DM	Development Management
GPDO	The Town and Country Planning (General Permitted Development) (England) Order, 2015
HC	Herefordshire Council
HCS	Herefordshire Local Plan – Core Strategy (CS)
HMA	Housing Market Area
EU	European Union
LHA	Local Housing Authority
LHwA	Local Highway Authority
LPA	Local Planning Authority
NP	Neighbourhood Plan (generic term)
NPPF	The National Planning Policy Framework ('the Framework')
PPG	(national) Planning Practice Guidance
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
s106	Section 106 of the Town and Country Planning Act 1990 dealing with planning obligations, including agreements
MLNDP	Middleton on the Hill and Leysters Neighbourhood Development Plan ('the Plan')
MLGPC ('the PC')	Middleton on the Hill and Leysters Group Parish Council
RIBA	Royal Institute of British Architects
'the 2012 Regulations'	The Neighbourhood Plans (General) Regulations 2012 (any reference to a Regulation number is to these Regulations)
WMS	Written Ministerial Statement

APPENDIX 3.

Main local evidence base documents to which reference has been made in preparing this report in addition to Regulation 15 submission documents:

Evidence Base Report (March 2016)

Herefordshire Core Strategy (adopted October 2015)

Herefordshire Local Housing Market Assessment, 2012 Update, GL Hearn (November 2013)

Housing Options Survey (May 2016)

Local Affordable Housing Needs Survey for Middleton on the Hill and Leysters Group Parish (February 2012)

Middleton on the Hill and Leysters Neighbourhood Plan Community Survey Report (Jan 2016)

Middleton on the Hill and Leysters Neighbourhood Plan Characterisation Study and Assessment Maps (November 2015)

Middleton on the Hill and Leysters Neighbourhood Plan Consultative Draft (Regulation 14) (December 2016)

Settlement Boundary and Call for Sites Report and Appendices 1-5 (May 2016)