

Shobdon Neighbourhood Development Plan

2nd Submission Version 2011 – 2031

Report of Examination December 2017

Undertaken for Herefordshire Council with the support of Shobdon Parish Council on the 2nd submission version of the plan.



Independent Examiner:

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Summary

- I have undertaken the examination of the Shobdon Neighbourhood Development Plan during November and December 2017 and detail the results of that examination in this report.
- I regret that I find this Plan does not currently meet the basic conditions, and therefore may not proceed to a referendum.
- I recommend that some extra work is done, as detailed, and that the Plan undergoes another Reg14 consultation before being re-submitted under Reg15 of the Neighbourhood Planning (General) Regulations 2012 to the Local Planning Authority.

Abbreviations used in the text of this report:

The Shobdon Neighbourhood Development Plan is referred to as 'the Plan' or 'Shobdon NDP'.

Shobdon Parish Council is abbreviated to 'Shobdon PC'.

The National Planning Policy Framework is abbreviated to 'NPPF'.

The National Planning Practice Guidance is abbreviated to 'NPPG'.

The Herefordshire Core Strategy 2015 is abbreviated to HCS2015

The Strategic Housing Land Availability Assessment 2012 is abbreviated to 'SHLAA'.

Local Planning Authority (Herefordshire Council) is abbreviated to 'LPA'.

Strategic Environmental Assessment is abbreviated to 'SEA'.

Habitats Regulations Assessment is abbreviated to 'HRA'.

Note: I have cut a full examination short in the light of my decision to recommend the Plan does not proceed to a referendum. I have set out the reasons why, in my opinion, the Plan does not meet the Basic Conditions and legal requirements. I have not detailed all the modifications needed on the current policies, but I have offered some guidance where other changes would be needed to meet the Basic Conditions. I hope this outcome does not discourage the Parish Council from finishing the work in progress. The Shobdon NDP could be a good, useful document with a little more work.

1. Introduction and Background

1.1 Neighbourhood Development Plans

1.1.1 The Localism Act 2011 empowers local communities to develop planning policy for their area by drawing up neighbourhood plans. For the first time, a community-led plan that is successful at referendum becomes part of the statutory development plan for their planning authority.

1.1.2 Giving communities greater control over planning policy in this way is intended to encourage positive planning for sustainable development. The National Planning Policy Framework (NPPF) states that:

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

Further advice on the preparation of neighbourhood plans is contained in the Government’s Planning Practice Guidance website:

<http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/>

1.1.3 Neighbourhood plans can only be prepared by a ‘qualifying body’, and in Shobdon that is the Shobdon Parish Council (PC). Drawing up the Neighbourhood Plan was undertaken by the Neighbourhood Plan Steering Group, working to the Parish Council.

1.2 Independent Examination and Process to date

1.2.1 Once Shobdon PC had prepared their neighbourhood plan and consulted on it, they submitted it to Herefordshire Council. This action was performed twice. An initial submission a year ago was withdrawn, after the Parish Council were advised it had not properly considered site allocations, some of the sites were not deliverable, and the plan’s allocations at least were not likely to pass examination therefore. The Plan was withdrawn, detail on the site selection process was added, and the Plan then re-submitted to Herefordshire Council on the 19th July 2017.

1.2.2 After re-publicising the Plan with a further opportunity for comment at a re-run Reg16 stage, Herefordshire Council were required to appoint an Independent Examiner, with the agreement of Shobdon PC to that appointment.

1.2.3 I have been appointed to be the Independent Examiner for this plan. I am a chartered Town Planner with over thirty years of local authority and voluntary sector planning experience in

development management, planning policy and project management. I have been working with communities for many years, and have recently concentrated on supporting groups producing neighbourhood plans. I have been appointed through the Neighbourhood Plan Independent Examiners Referral Service (NPIERS). I am independent of any local connections to Shobdon and Herefordshire Council, and have no conflict of interest that would exclude me from examining this plan.

1.2.4 As the Independent Examiner I am required to produce this report and recommend either:

- (a) That the neighbourhood plan is submitted to a referendum without changes; or
- (b) That modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
- (c) That the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.

1.2.5 The legal requirements are firstly that the plan meets the 'Basic Conditions', which I consider in section 3 below. The plan also needs to meet the following requirements under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990:

- It has been prepared and submitted for examination by a qualifying body;
- It has been prepared for an area that has been properly designated by the Local Planning Authority;
- It specifies the period during which it has effect;
- It does not include provisions and policies for excluded development;
- It does not relate to land outside the designated neighbourhood area.

The Shobdon Neighbourhood Development Plan complies with the requirements of Paragraph 8(1). The Neighbourhood Area was designated on 17th July 2012 by Herefordshire Council. The plan does not relate to land outside the designated Neighbourhood Area. It specifies the period during which it has effect as 2011 – 2031 and has been submitted and prepared by a qualifying body and people working to that qualifying body. It does not include policies about excluded development; effectively mineral and waste development or strategic infrastructure.

1.2.6 Unfortunately however there is a process problem with the Plan. In my opinion it has not met the legal requirements with regard to consulting with the community as required by Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 as amended. The draft Plan offered for consultation at this stage showed different allocated sites for residential

development. The Plan submitted to the LPA for the first time had altered the allocated sites. When this plan was withdrawn, altered again and re-submitted to the LPA under Reg16 a second time, further changes to the allocated sites had been made. The action of significantly changing the allocated sites and settlement boundary from the original reg14 draft plan, required, in my opinion, the Reg14 consultation to be re-run before the Plan was re-submitted. The need for this is heightened by the lack of robust site selection process and evidence on the site options prior to the Reg14 consultation.

1.3 Planning Policy Context

1.3.1 The Development Plan for Shobdon, not including documents relating to excluded mineral and waste development, is the Herefordshire Core Strategy 2015 (HCS2015). This document is strategic, and so all policies may be considered 'strategic' for the purposes of the Basic Conditions.

1.3.2 The National Planning Policy Framework (NPPF) sets out government planning policy for England, and the National Planning Practice Guidance (NPPG) website offers guidance on how this policy should be implemented.

1.3.3 During my examination of the Shobdon NDP I have considered the following documents:

- National Planning Policy Framework (NPPF) 2012
- National Planning Practice Guidance 2014 and as updated
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004
- The Localism Act 2011
- The Neighbourhood Planning (General) Regulations 2012 (as amended)
- Reg14 draft Shobdon Neighbourhood Development Plan (NDP)
- 1st Submission version of the Shobdon Neighbourhood Development Plan (NDP)
- 2nd Submission version of the Shobdon Neighbourhood Development Plan (NDP)
- The Basic Conditions Statement submitted with the Shobdon NDP
- The Consultation Statement submitted with the Shobdon NDP and representations made at Reg14 stage and during the 1st Reg16 consultation on the Plan
- The Environmental Report and HRA Report addendum submitted with the Shobdon NDP
- Neighbourhood Area Designation (map)
- Herefordshire Core Strategy 2011 – 2031: Adopted October 2015
- Representations received during the 2nd publicity period (reg16 consultation)

2. Plan Preparation and Consultation

2.1 Pre-submission Process and Consultation

2.1.1 Due to my recommendation on the Shobdon NDP, I will not comment extensively here.

However the Consultation Statement details extensive engagement from the designation of the neighbourhood area in July 2012, leading up to the Reg14 consultation in early 2016. The results of that consultation are comprehensively documented, and the consultation ran for 6 weeks from the 8th February to the 21st March 2016 as required.

2.1.2 I have outlined my view that the process with consultation on the Plan has been flawed in para 1.2.6 above. These mistakes have come in after the Reg14 consultation was undertaken.

Although the Consultation Statement details well responses received to the first draft of the Plan, it cannot adequately detail responses to the Submission document now being considered. This is because significant proposals in the current draft document have not been consulted on in the manner required by Reg14. This absence of consultation on key new proposals means that the requirements of Reg15 with regard to a Consultation Statement have not been properly met either. If the Reg14 Consultation is re-run, an extra section detailing comments received and the Steering Group's response will be all that is needed to make the document properly detail consultation needed on the proposals.

2.1.3 Herefordshire Council undertook the second Reg 16 consultation and publicity from the 28th July 2017 for six weeks, ending on the 15th September 2017. I will not detail all of the comments received, but I have considered them all. Of particular note for this examination are key points in the following representations:

2.1.4 Welsh Water reject the suggestion that the foul sewer system is no adequate, and suggest a form of words to protect against development overloading the system in the future. Although I note what the Plan says about perceived inadequacies in the system locally, without evidence this assertion cannot be used to contradict the view of the statutory body whose responsibility it is to provide an adequate system.

2.1.5 Gladman Developments have commented in some detail on the legal aspects of whether the Plan meets the basic conditions. I do not agree with all of their submission, but I do accept the point they make about the lack of adequate site assessments prior to allocation. Gladman also agree with my assessment that a further Reg14 consultation should have been undertaken. They

consider Policy S5 an unacceptable restriction on development, as do John Amos and Co in their submission. I would draw this discussion to the attention of the Parish Council for any future re-draft of the Plan.

3. Recommendation and the Basic Conditions.

3.1 Besides the requirements of the Neighbourhood Planning Regulations 2012 with regard to consultation, there are aspects of the Shobdon NDP that do not meet the Basic Conditions. These are that the Plan must:

- Have regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contribute to the achievement of sustainable development;
- Be in general conformity with the strategic policies of the development plan for the area; and
- Be compatible with and not breach European Union (EU) obligations and human rights law.

3.2 The Plan and the submitted SEA Environmental Report and HRA Addendum meet the requirements of the Basic Conditions with regard to EU obligations, and I see no breach of the requirements with regards to human rights law either.

3.3 The Plan does not comply with government guidance however with respect to site allocations. The NPPG states (ID: 41-042-20170728) that:

“A qualifying body should carry out an appraisal of options and an assessment of individual sites against clearly identified criteria.”

This has not happened with the Shobdon NDP. The 2nd Submission version of the Plan has added some discussion about each site which does make the choice a bit clearer, but there are no clear criteria used consistently for each site, within a documented assessment process. This needs to be much clearer, and could be set out in a separate appendix to avoid spoiling the conciseness of the Plan. The same NPPG reference has links to further guidance on site selection, and I am sure the LPA will be happy to assist as well. Only with this work done will Policy S4 comply with the Basic Conditions.

3.4 The allocation of sites is originally discussed in terms of an exercise to move the settlement boundary, and by so doing, allow development on sites newly included within the settlement. This is not an adequate approach to either site allocation or revising a settlement boundary. I understand the LPA has guidance on criteria to use to draw up and revise a settlement boundary, and would advise that these are used, and summarised in the Plan for reference. Criteria also have to be complied consistently. So revising a settlement boundary to include all planning permissions for residential development that are adjacent to the existing boundary needs to do that for all

permissions. Presently the recent permission for residential development to the rear of New House Cottages has been excluded from the revised settlement boundary, but the Calvi site of Canterbury Road is included. Whatever the local concerns about the New House Cottages site, it needs to be treated consistently, and the settlement boundary cannot be used to attempt to thwart any further renewal of this permission but allow others.

3.5 Paragraph 5.9 in the Plan discusses a presumption that the New House Cottages site permission should not be renewed. This is not appropriate in the text of a neighbourhood plan that is about justifying policy. The statement is almost policy itself, but would not be acceptable policy due to being unreasonable and having a negative attitude to sustainable development. The paragraph also suggests that the site land at the end of The Grove is still within the proposed settlement boundary, and could be developed if the access issues are sorted out. This statement is no longer true, as the boundary was altered again in the 2nd submission Plan. However as a general point it is not acceptable for a settlement boundary to allocate sites in this way. Site allocation is a separate process, the results of which can then be reflected in the revised settlement boundary. The settlement boundary needs to be based on consistent criteria and evidenced, as also required by NPPG (ID 41-040-20160211), and for this reason Policy S2 does not meet the Basic Conditions.

3.6 When policies as currently drafted do not meet the Basic Conditions, there is an option, usually used by examiners, to consider modifications that will rectify the situation. In this case however I would have no option but to recommend the deletion of policies that define a new settlement boundary, and allocate sites. This course of action would have left the Plan unrecognisable from the document submitted, and of limited use to the Parish. It is not the role of an examiner to re-write a neighbourhood plan, and so with regret I must recommend that this Plan as currently drawn up should not proceed to a referendum.

Recommendation: The Shobdon Neighbourhood Development Plan should not proceed to a referendum for the following reasons:

Process as regards consultation with the community required by Regulations 14 and 15 of the Neighbourhood Planning (General) Regulations 2012 as amended has not been complied with. Policies in the plan do not comply with the Basic Conditions, and cannot be modified in a way that would make them acceptable.

3.7 In order to be helpful, I also list here issues that you may wish to consider with other policies in the Plan. Where these do not meet the Basic Conditions, modifications would probably have been possible.

Policy S1: Criteria b) the proposed phrasing of development is not supported by any evidence requiring it, and is likely to be considered an unreasonable restriction on development therefore. Also, the Plan operates from 2011 to 2031, so that any phasing to avoid all development happening early in the development period has passed already.

Policy S2: Besides problems with the revision of the settlement boundary, discussed in the reasons for my recommendation I also have concerns about the use of the word 'infilling' in this policy. This is not a concept that is appropriate for development within the hamlets that have no defined settlement boundary, are dispersed settlements in terms of existing residences and are wholly within, and covered by, countryside policy. It may well be contrary to Policy RA3 in the HCS2015.

Policy S3: The policy generally deals with traffic calming which is land-use, but in a couple of instances strays into attempting to regulate highway issues, which are not. A development plan must address land-use issues only, as required by the NPPF (para 154). In particular criteria e) is not a land-use issue, and I do not see the connection between development and increased speed of traffic.

Policy S5: as commented elsewhere, I do not consider this Policy meets the Basic Conditions.

Policy S9: If you wish this policy to effectively designate the Parish as an area suited for small-scale wind energy development under the provisions of the Written Ministerial Statement of June 2015, then the policy will need to be clear about the size of turbine considered 'small'. You may also want to consider if the whole parish is an appropriate area, or if it would automatically exclude the historic park. The policy has useful criteria further defining when development would be acceptable or not.

Policy S10: This policy has incorporated the more nuanced wording suggested by Welsh Water, but it is still demanding contributions to rectifying a problem that the company does not accept exists. Without evidence that the alleged problem exists, the requirement for contributions is not reasonable. Note Policy S4 still has the blanket ban on any development before the sewer is improved. This is contrary to the Basic Conditions in that it is not an evidenced demand, and the evidence from the Water Authority suggests that there is no problem.

Policy S13: The proposed Local Green Spaces are not listed within the policy or the text, and this makes identification less clear. The proposed designations, and the reasons for them should be clearer in the text supporting the policy. I found some useful discussion of the reasons for designation of one area in the Consultation Statement, but of course it needed to be in the Plan. I was not convinced by proposals to designate several of the sites. The small copse in the centre of the village is not in itself worthy of designation, but combined with the adjacent play area does become a varied green space important to the setting of the village with its mature trees. The play area to the west of the village in the new development is better defined as 'open space' rather than being defined as Local Green Space in my view. The NPPF (paras 76-77) states clearly that the LGS designation will not be suitable for most green spaces, they need to be special. Finally I was also not convinced of the special attributes of the field to the west of the stream and north of the main road.

Policy 14 Criteria b) is not at all clear as to what land is referred to. It could be defined on a map better. Also not currently clear is why the gap needs to be maintained, is it for visual or ecological purposes, or both?

The above comments do not claim to be a comprehensive review of the rest of the Plan, they are offered as guidance for any future work undertaken on it.