

Kimbolton Parish Council

Kimbolton Neighbourhood Development Plan

A report to Herefordshire Council of the Independent
Examination of the Kimbolton Neighbourhood Development
Plan

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Overall Finding

This is the report of the Independent Examination of the Kimbolton Neighbourhood Development Plan. The plan area is the entire civil Parish of Kimbolton within the Herefordshire Council area. The plan period is 2011-2031. The Neighbourhood Plan includes policies relating to the development and use of land. The Neighbourhood Plan does not allocate land for development. The Neighbourhood Plan demonstrates how the strategic housing target of a minimum of 30 new dwellings will be met.

This report finds that subject to specified modifications the Neighbourhood Plan meets the basic conditions and other requirements. It is recommended the Plan should proceed to a local referendum based on the plan area.

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”¹
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Kimbolton Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Kimbolton Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the Kimbolton Neighbourhood Area which was formally designated by Herefordshire Council (Herefordshire Council) on 7 July 2015. The Neighbourhood Plan has been produced by a Neighbourhood Plan Steering Group (the Steering Group), made up of local volunteers, on behalf of the Parish Council.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to Herefordshire Council. Herefordshire Council arranged a six-week period of publication between 11 October and 22 November 2017. Herefordshire Council has submitted the Neighbourhood Plan to me for independent examination.

Independent Examination

5. This report sets out the findings of the independent examination into the Neighbourhood Plan.² The report makes recommendations to Herefordshire Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum.

¹ Paragraph 183 National Planning Policy Framework (2012)

² Paragraph 10 Schedule 4B Town and Country Planning Act 1990

Herefordshire Council will decide what action to take in response to the recommendations in this report.

6. Herefordshire Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Once a neighbourhood plan has been independently examined, and the decision taken to put the plan to a referendum, it must be taken into account when determining a planning application, in so far as the policies in the plan are material to the application.
7. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will be 'made' by Herefordshire Council. If 'made' the Neighbourhood Plan will come into force as part of the Development Plan for the neighbourhood area, and subsequently be used in the determination of planning applications and decisions on planning appeals in the plan area. The Housing and Planning Act requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan. The Framework is very clear that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted³.
8. I have been appointed by Herefordshire Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and Herefordshire Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Independent Examiner of Neighbourhood Plans. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.

³ Paragraph 198 National Planning Policy Framework 2012

9. As independent examiner, I am required to produce this report and must recommend either:
- that the Neighbourhood Plan is submitted to a referendum, or
 - that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
 - that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.
10. I make my recommendation in this respect and in respect to any extension to the referendum area,⁴ in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.⁵
11. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.⁶ The National Planning Practice Guidance (the Guidance) states *“it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.”*
12. The examiner has the ability to call a hearing for the purposes of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary I proceeded on the basis of written representations.

Basic Conditions and other statutory requirements

13. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.⁷ A neighbourhood plan meets the Basic Conditions if:
- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;

⁴ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁵ Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

⁶ Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

⁷ Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.⁸

14. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.⁹ All of these matters are considered in the later sections of this report titled 'The Neighbourhood Plan taken as a whole' and 'The Neighbourhood Plan policies'.

15. In addition to the Basic Conditions and Convention rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.¹⁰ I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 (the Regulations) which are made pursuant to the powers given in those sections.

16. The Neighbourhood Plan relates to the area that was designated by Herefordshire Council as a neighbourhood area on 7 July 2015. A map of the Neighbourhood Plan boundary is included as Map 1 of the Submission Version Plan. The Neighbourhood Plan designated area is coterminous with the Kimbolton parish boundary. The Neighbourhood Plan does not relate to more than one neighbourhood area,¹¹ and no other neighbourhood development plan has been made for the

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

⁹ The Convention rights has the same meaning as in the Human Rights Act 1998

¹⁰ In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

¹¹ Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

neighbourhood area.¹² All requirements relating to the plan area have been met.

17. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;¹³ and the Neighbourhood Plan does not include provision about excluded development.¹⁴ I am able to confirm that I am satisfied that each of these requirements has been met.
18. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.¹⁵ The front cover of the Submission Version Plan clearly states the plan period to be 2011-2031.
19. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.¹⁶ It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan, except where this arises as a result of my recommended modifications so that the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention rights, and the other statutory requirements.
20. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.
21. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans are a reflection of thinking and aspiration

¹² Section 38B (2) Planning and Compulsory Purchase Act 2004

¹³ Section 38A (2) Planning and Compulsory Purchase Act 2004

¹⁴ Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

¹⁵ Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

¹⁶ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.

22. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the Basic Conditions and the other requirements I have identified.¹⁷

Documents

23. I have given consideration to each of the following documents in so far as they have assisted me in determining whether the Neighbourhood Plan meets the Basic Conditions and other requirements:

- Kimbolton Parish Neighbourhood Development Plan 2011-2031 Submission Draft October 2017
- Kimbolton Neighbourhood Development Plan Statement of Basic Conditions October 2017 [*In this report referred to as the Basic Conditions Statement*]
- Kimbolton Neighbourhood Development Plan 2011-31 Consultation Statement October 2017
- Environmental Report. Report for Kimbolton Neighbourhood Area September 2017
- Habitats Regulations Assessment. Kimbolton Neighbourhood Area. March 2017
- Habitats Regulations Assessment. Addendum Report for Kimbolton Neighbourhood Area September 2017
- Representations received during the Regulation 16 publicity period
- Herefordshire Council Progression to Examination Decision Document 12 December 2017
- Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015,
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Permitted development rights for householders' technical guidance DCLG (April 2017) [*In this report referred to as the Permitted Development Guidance*]
- Planning Practice Guidance web-based resource DCLG (first fully launched 6 March 2014) [*In this report referred to as the Guidance*]

¹⁷ See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- The Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004 (as amended)
- The Localism Act 2011
- The Housing and Planning Act 2016
- The Neighbourhood Planning Act 2017
- The Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations*].
- The Neighbourhood Planning (General) (Amendment) Regulations 2015
- The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016

Consultation

24. The submitted Neighbourhood Plan is accompanied by a Consultation Statement which outlines the process undertaken in the preparation of the plan. In addition to detailing who was consulted and by what methods, it also provides a summary of comments received from local community members, and other consultees, and how these have been addressed in the submission plan. I highlight here a number of key stages of consultation undertaken in order to illustrate the approach adopted.

25. The plan preparation process began with a well-publicised 'Launch Event' in April 2016 when a community meeting attended by approximately 80 people was held. Themes and issues raised at the meeting informed the production of a community questionnaire designed to surface local aspirations and priorities, that was circulated to local residents in July 2016. The survey was publicised through the Parish Magazine, through posters, and on the Neighbourhood Plan website. An analysis of the 151 responses informed the development of the vision, objectives, development strategy, and policies of the Neighbourhood Plan. The draft vision and objectives were discussed at a public meeting held in October 2016 that was attended by around 50 people. A draft Character Assessment and draft settlement boundary were published in December 2016 and these, and a Traffic

and Transport Action Plan prepared by the Parish Council published in September 2016 were all discussed at a public meeting held in December 2016.

26. Pre-submission consultation in accordance with Regulation 14 was undertaken in the period between 10 April and 30 May 2017 and included a leaflet distributed with the Parish Magazine; notices on noticeboards and on the Neighbourhood Plan website; as well as posters. Copies of the Plan and supporting documents were placed on deposit at two locations in the plan area and at Leominster Library. Details of the draft Plan were also sent to individuals and organisations who had attended meetings or commented previously as well as to parties and organisations specified in the Consultation Statement.
27. Comments were submitted by nine individuals and organisations. The observations made are comprehensively presented as Appendix 6 within the Consultation Statement where responses, and amendments to the Neighbourhood Plan, are set out. The suggestions have been reflected in a number of changes to the Plan that was approved by the Parish Council in September 2017, for submission to Herefordshire Council.
28. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 period of publication between 11 October and 22 November 2017. Representations from 13 different parties were submitted during the publicity period. The Coal Authority, Severn Trent, and Highways England confirmed they have no specific comments on the Neighbourhood Plan, and Welsh Water and Natural England did not wish to add to comments made earlier in the Plan preparation process. Welsh Water had, in May 2017, previously stated *“We are particularly pleased to note the key policy – Policy K1 Promoting a Sustainable Community – which specifies that “...development should be accommodated within infrastructure limits in particular for sewage treatment...”, though we would wish to point out that the Parish Council area is not served by public sewerage. We understand that a large proportion of the new dwellings required to meet the demonstrated local housing need have already been delivered. With regard to the remainder of the requirement, which we understand will be delivered on windfall/infill sites there are no issues in a water supply being provided, though some level of offsite mains may be required dependant on location”.*

29. Historic England confirmed their earlier comments and added *“Overall and in conclusion Historic England considers that the Kimbolton Draft Neighbourhood Plan exemplifies ‘constructive conservation’ and constitutes a very good example of community led planning”*. The Environment Agency stated *“As part of the adopted Herefordshire Council Core Strategy updates were made to both the Strategic Flood Risk Assessment (SFRA) and Water Cycle Strategy (WCS). This evidence base ensured that the proposed development in Hereford City, and other strategic sites (Market Towns), was viable and achievable. The updated evidence base did not extend to Rural Parishes at the NP level so it is important that these subsequent plans offer robust confirmation that development is not impacted by flooding and that there is sufficient waste water infrastructure in place to accommodate growth for the duration of the plan period. We would not, in the absence of specific sites allocated within areas of fluvial flooding, offer a bespoke comment at this time. We note that the Parish have utilised our Environment Agency guidance and pro-forma to inform the current submission. However, it should be noted that the Flood Map provides an indication of ‘fluvial’ flood risk only. You are advised to discuss matters relating to surface water (pluvial) flooding with your drainage team as the Lead Local Flood Authority (LLFA).”* This representation and the responses of CPRE and National Grid do not necessitate any modification of the Plan to meet the Basic Conditions. Sport England has set out a statement of national policy which I have taken into consideration in my examination of the policies of the Neighbourhood Plan.

30. In preparing this report I have taken into consideration all of the representations submitted during the Regulation 16 period even though they may not be referred to in whole, or in part. Where appropriate I refer to those representations of Herefordshire Council that relate to policies of the Neighbourhood Plan in the later section of my report relating to the Plan policies.

31. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which:

- a) Contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- b) Explains how they were consulted;
- c) Summarises the main issues and concerns raised by the persons

consulted; and

- d) Describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.¹⁸

32. The Consultation Statement includes information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Steering Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.

The Neighbourhood Plan taken as a whole

33. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and human rights requirements; has regard to national policies and advice contained in guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the development plan for the area. Each of the plan policies is considered in turn in the section of my report that follows this. In considering all of these matters I have referred to the background and supporting documents and copies of the representations provided to me.

Consideration of Convention rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and the making of the Neighbourhood Plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects

34. The Basic Conditions Statement states “*The Plan does not contain policies or proposals that would infringe the human rights of residents or other stakeholders over and above the existing strategic policies at national and district-levels*” and at paragraphs 7.3 to 7.5 seeks to demonstrate in some more detail that the Neighbourhood Plan does

¹⁸ Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

not breach and is compatible with Convention rights. I have given consideration to the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).¹⁹ I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention.

35. Paragraph 7.6 of the Basic Conditions Statement indicates some analysis has been undertaken to establish the impact the objectives and policies of the Neighbourhood Plan will have on persons with protected characteristics (as identified in the Equality Act 2010). From my own examination, the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics.
36. The objective of EU Directive 2001/42²⁰ is *“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”* The Neighbourhood Plan falls within the definition of ‘plans and programmes’²¹ as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.²²
37. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council to submit to Herefordshire Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.
38. The submission documents include an Environmental Report dated September 2017. This report confirms a Scoping Report had been made available to the statutory bodies for consultation from 23 March to 29 April 2016 and responses were incorporated where relevant. The draft Environmental Report was subject to consultation from 10 April to 15 May 2017. The report was published for consultation with the three

¹⁹ The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

²⁰ Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

²¹ Defined in Article 2(a) of Directive 2001/42

²² Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

statutory bodies as well as the general public. The final Environmental Report was published alongside the Submission Neighbourhood Plan document.

39. The Environmental Report sets out the assessment framework used to assess the sustainability performance of the Neighbourhood Plan. The Neighbourhood Plan objectives, options, and policies have been appraised with a generally positive outcome. Two policies were re-screened following amendment of those policies in response to Regulation 14 consultation submissions. The Environmental Report confirms *“Overall the Neighbourhood Plan policies and objectives have a positive impact towards the SEA baseline data”* and *“No significant cumulative effects have been identified”* and *“The results of Task B3, as shown at Appendix 4, demonstrates that the cumulative impact of the NDP policies over the course of the plan period is generally positive. Although some policies may have a neutral or uncertain impact during the first 5 years of the plan period, there is no reason why they cannot have a positive effect in the medium to long-term due to policy safeguards included in the Local Plan (Core Strategy); these safeguards should avoid or mitigate against unacceptable adverse impacts. Task B4 of SEA brings together the results of earlier tasks and identifies the cumulative impact of the entire of the NDP. This task, which is also attached at Appendix 4, reveals that the objectives and policies contained in the Kimbolton NDP are by and large in general conformity with the Local Plan (Core Strategy), which means that the cumulative effect of the plan will contribute to the achievement of the SEA objectives. The policies in the Kimbolton NDP are not considered to be in direct conflict with or propose greater levels of growth and development than strategic policies contained in the Local Plan (Core Strategy), which themselves have undergone a full Sustainability Appraisal.”*
40. There is a need to consider whether the Environmental Report generates and assesses alternatives for a reasonable range of plan issues, and secondly for any given issue, whether the range of alternatives considered is reasonable. The method adopted includes assessment of 9 options including a ‘do nothing’ option. Generation of alternatives for every conceivable issue and option is not a requirement of the EA Regulations and could be detrimental to efficient plan making; insufficiently focussed on the important issues within the specific plan area; and not well suited to community led plan making where processes benefit from being proportionate, transparent and

easily understood. The EA Regulations acknowledge SEA is plan context dependent in terms of taking into account the objectives and geographical scope of a neighbourhood plan. In *Gladman Developments Ltd v Aylesbury Vale DC [2014] EWHC 4323 (Admin)* it was confirmed that a report will satisfy the requirements of the Implementing Regulations, and hence the Directive, if the information included in the report is that which is “*reasonably required to evaluate the likely significant effects of the plan or programme and reasonable alternatives taking account the objectives and the geographical scope of the plan or programme.*” The Environmental Report includes identification, description and evaluation of the likely significant effects on the environment of reasonable alternatives.

41. Alternatives have been assessed to the same level of detail against a consistent set of assessment criteria. Paragraph 8 of Schedule 2 to the EA Regulations requires an outline of the reasons for selecting the alternative dealt with. The explanation of why the preferred alternative was selected is presented in paragraphs 5.4 to 5.7 inclusive. The explanation is brief and not well developed, but is capable of description as an outline. This requirement has been met in respect of the Neighbourhood Plan. The requirement for the Environmental Report to include a non-technical summary has also been met.
42. The Guidance states “*The strategic environmental assessment should only focus on what is needed to assess the likely significant effects of the neighbourhood plan proposal. It should focus on the environmental impacts which are likely to be significant. It does not need to be done in any more detail, or using more resources, than is considered to be appropriate for the content and level of detail in the neighbourhood plan.*”²³ I consider likely significant effects have been assessed. I am satisfied that the level of consideration of alternative strategies in the Environmental Report is appropriate for the content of the plan and meets the requirements of the SEA Directive and the Regulations. It is confirmed in paragraph 7.3 of the Environmental Report that Herefordshire Council will monitor outcomes from the NDP policies. I am satisfied that the requirements in respect of Strategic Environmental Assessment have been met.
43. The Habitats Regulations Assessment published in March 2017 states “*It is therefore concluded that the Kimbolton NDP will not have a likely significant effect on the River Wye SAC*”. The submitted Habitats

²³ National Planning Policy Guidance Revision date 09 02 2015 Paragraph 30 Reference ID:11-030-20150209

Regulations Assessment Addendum Report for the Neighbourhood Plan dated September 2017 details the findings of the screening of proposed changes to policies and considers if they significantly affect the conclusions of the earlier Habitats Regulations Assessment Report published in March 2017 and states “*Therefore, the earlier conclusion that the Kimbolton NDP will not have a likely significant effect on the River Wye SAC remains valid.*” I have not seen anything that suggests the Neighbourhood Plan will have a significant effect on a European offshore marine site. I conclude the Neighbourhood Plan meets the requirements of the EU Habitats Regulations.

44. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.

45. I conclude that the Neighbourhood Plan:

- is compatible with the Convention rights
- does not breach, and is otherwise compatible with, EU obligations
- is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.

46. The Guidance states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. Herefordshire Council as local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations

- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).²⁴

Consideration whether having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan; and whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development

²⁴ National Planning Practice Guidance paragraph 080 Reference ID: 41-080-20150209

47. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans²⁵ which requires plans to be “*consistent with national policy*”.
48. Lord Goldsmith has provided guidance²⁶ that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”
49. The Basic Conditions Statement includes Table 1 which I am satisfied demonstrates how the Neighbourhood Plan has regard to relevant identified components of the Framework.
50. The Neighbourhood Plan includes a positive vision for Kimbolton that envisages “*limited residential growth to support a strong community*”. The vision also includes environmental considerations with reference to “*retention of inherent rural character, landscape and tranquillity*”. These statements are consistent with the underlying principles of the Framework, specifically, the need to jointly and simultaneously seek economic, social and environmental gains through the planning system.
51. The vision is supported by nine objectives of the Neighbourhood Plan which provide a link between the vision and the policies of the plan. These objectives relate to the promotion of new housing to meet local needs; protection and support for local community facilities; support and encouragement of successful agriculture and the rural landscape setting it provides; support for local businesses and encouragement for appropriate new business; maintenance of roads and active travel routes and identification of additional routes and links; identification of

²⁵ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

²⁶ The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the Lord’s Grand Committee on 6 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

measures to reduce traffic speeds and improve safety on movement routes; protect and enhance the diverse elements of the rural environment; enhancement of communications infrastructure; and encouragement of community involvement and spirit and welcome to new residents. These objectives are consistent with the Framework.

52. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that the need to *'have regard to'* national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition *"having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan."*
53. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision-taking.²⁷ The Guidance states, *"This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions"*²⁸.
54. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some

²⁷ Paragraph 14 National Planning Policy Framework 2012

²⁸ National Planning Practice Guidance (Ref ID:41-072-20140306)

alternative plan would make a greater contribution to sustainable development.

55. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Table presented in paragraph 5.5 of the Basic Conditions Statement confirms the nature of the alignment of Neighbourhood Plan policies with the aims of the Framework for each dimension of sustainability.

56. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes are of an appropriate quality; will enhance social and economic facilities; and will protect important environmental features. In particular, I consider the Neighbourhood Plan seeks to:

- Promote development of a minimum of 40 new homes to meet identified local needs and contribute to the wider housing market focussing development within a Kimbolton village settlement boundary and ensuring infill housing development is suitable for its surroundings;
- Maintain and enhance rural character and local distinctiveness, protecting higher grade agricultural land and promoting use of brownfield land whilst ensuring all development can be served by appropriate infrastructure;
- Promote good design of new housing and extensions and ensure all development promotes local character and distinctiveness respecting the significance of heritage assets, and respecting the value of dark skies, and use of renewable energy;
- Promote safe and convenient movement and adequate car parking facilities, and new communications infrastructure;
- Promote improvement and avoid loss of community facilities, designate two Local Green Spaces, and require new open spaces in developments;
- Promote employment development of an appropriate scale and character; and avoid loss of employment premises.

57. Subject to my recommended modifications of the Submission Plan including those relating to specific policies, as set out later in this report, I find it is appropriate that the Neighbourhood Plan should be made having regard to national policies and advice contained in guidance issued by the Secretary of State. I have also found the Neighbourhood Plan contributes to the achievement of sustainable development.

Consideration whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

58. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.²⁹ “*Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies*”.³⁰

59. The Guidance states, “*A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.*”³¹

60. In this independent examination, I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). Herefordshire Council has informed me that the Development Plan applying in the Kimbolton neighbourhood area and relevant to the Neighbourhood Plan comprises the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and that the whole of the Core Strategy is considered to be the strategic policy of the Development Plan.

²⁹ Paragraph 16 National Planning Policy Framework 2012

³⁰ Paragraph 184 National Planning Policy Framework 2012

³¹ National Planning Practice Guidance Paragraph 077 Reference ID: 41-077-20140306

61. In considering a now repealed provision that “*a local plan shall be in general conformity with the structure plan*” the Court of Appeal stated “*the adjective ‘general’ is there to introduce a degree of flexibility.*”³² The use of ‘general’ allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

62. The Guidance states, “*When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:*

- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;*
- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;*
- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy;*
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.*”³³

My approach to the examination of the Neighbourhood Plan policies has been in accordance with this guidance.

63. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole and each of the plan policies below. I have noted the contents of Table 3 included in paragraph 6.2 of the Basic Conditions Statement. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

³² Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P &CR 31

³³ National Planning Practice Guidance (ID ref: 41-074 201 40306)

The Neighbourhood Plan policies

64. The Neighbourhood Plan includes 22 policies. I have here repeated the policy titles as they appear in the List of Policies presented on page 4 of the Neighbourhood Plan:

K 1 Promoting a Sustainable Community

K 2 Development Strategy

K 3 The scale of new housing

K 4 Housing development within the settlement boundary

K 5 Housing in the countryside

K 6 Extensions to dwellings

K 7 Design of new housing

K 8 Ensuring an appropriate range of tenures, types and sizes of houses

K 9 Affordable housing

K 10 Protecting and Enhancing Local Character

K 11 Local Heritage List

K 12 Controlling light pollution

K 13 Broadband

K 14 Renewable Energy

K 15 Traffic management and road safety improvements

K 16 Transport and connectivity

K 17 Business development

K 18 Protection of existing business premises

K 19 Agriculture and forestry enterprises

K 20 Enhanced Services and Facilities for the Community

K 21 Protection and enhancement of community facilities

K 22 Open Spaces

65. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.” “Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”*³⁴
66. The Guidance states *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”*³⁵
67. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.*³⁶
68. *“A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004).”*³⁷
69. A number of the Neighbourhood Plan policies include references to specific Core Strategy policies. In order to provide a practical

³⁴ Paragraphs 184 and 185 National Planning Policy Framework 2012

³⁵ National Planning Practice Guidance Paragraph 041 Reference ID: 41-041-20140306

³⁶ National Planning Practice Guidance Paragraph 040 Reference ID: 41-040-20160211

³⁷ National Planning Practice Guidance Paragraph 004 Reference ID: 41-004-20140306

framework for decision-making on development proposals, as required by paragraph 17 of the Framework, it is preferable that policies should be self-contained and not include references to policies in other parts of the Development Plan. Self-contained neighbourhood plan policies may also avoid obsolescence resulting from changes to strategic policy. I have, however, not recommended modifications to remove references to specific strategic policies in the Neighbourhood Plan policies as they have been utilised as a shorthand method of capturing content of strategic policies without lengthy repetition in the Neighbourhood Plan policies. In this way they do assist clarity. These references do also have the advantage of confirming general conformity with strategic policy, and are indicative of a desirable co-ordinated working approach between the Parish Council and Herefordshire Council.

70. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is made they will be utilised in the determination of planning applications and appeals, I have examined each policy individually in turn. I have considered any inter-relationships between policies where these are relevant to my remit.

Policy K 1 Promoting a Sustainable Community

71. This policy seeks to establish that development proposals should address five stated priorities considered essential for maintaining a cohesive and resilient community.
72. The term *“Where this Plan does not cover a proposal any decision should reflect, where possible,”* is imprecise. The reference to the community’s sustainable development priorities in the final paragraph is unnecessary as the policy has already stated development proposals should address those priorities. The general reference to policies within the Core Strategy does not provide a practical framework for decision making on development proposals. It is also unnecessary and confusing for the policy to state *“Development proposals must comply with the policies in this Neighbourhood Plan”* as the Neighbourhood Plan should be read as a whole. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning

applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

73. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policy SS1.

74. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with building a strong, competitive economy; supporting a prosperous rural economy; promoting sustainable transport; delivering a wide choice of high quality homes; requiring good design; promoting healthy communities; meeting the challenge of climate change and flooding; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the proposed modification this policy meets the Basic Conditions.

**Recommended modification 1:
In Policy K1 delete the final paragraph**

Policy K 2 Development Strategy

75. This policy seeks to establish that the village of Kimbolton will be the focus for development within the Parish with limited small-scale development opportunities being supported where they have limited negative impact upon amenity and the environment especially the landscape. The policy also seeks to establish a Kimbolton settlement boundary and includes components relating to brownfield land, agricultural land, other policies, and agricultural and rural enterprises.

76. The terms “*relevant policies*” and “*not exclusively*” make the reference to the Core Strategy imprecise. It is unnecessary and confusing for one policy to refer to other policies in the Plan as the Neighbourhood Plan should be read as a whole. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

77. Whilst the term “*small scale*” is imprecise I have not recommended a modification in this respect as the policy requires an assessment of impact which is inevitably related to site context. The term “*particular regard shall be had*” is imprecise and does not provide a basis for decision making in respect of planning proposals. Paragraph 111 of the Framework states planning policies “*should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided this is not of high environmental value*”. Inclusion in the policy of the term “*in the first instance*” does not have sufficient regard for national policy. I have recommended a modification in this respect.
78. Paragraph 112 of the Framework sets out national policy in relation to the use of agricultural land. I have recommended a modification to delete the component of the policy that merely duplicates this aspect of national policy.
79. The Framework states neighbourhood plans should “*support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings*” and “*promote the development and diversification of agricultural and land-based rural businesses.*” The policy has regard for national policy in these respects.
80. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies SS2 and RA3.
81. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with building a strong, competitive economy; supporting a prosperous rural economy; delivering a wide choice of high quality homes; promoting healthy communities; and conserving and enhancing the natural environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 2:

In Policy K 2

- **delete the second paragraph**

- in provision 1 delete “in accordance with relevant policies set out in this Neighbourhood Plan, including K5”
- in provision 2 delete “relevant policies in” and insert “Policy RA3 of”; and delete the text after “Strategy”

Policy K 3 The scale of new housing

82. This policy seeks to establish provision for a minimum of 40 new homes to meet demonstrated local housing need, and to make a contribution to the wider housing market. The policy clarifies the total supply will include dwellings already constructed or granted planning permission in the plan period; windfall development within the defined settlement boundary; and appropriate development in the countryside.
83. The policy includes references to Policies K5 and K6, which should be K4 and K5. It is, however, unnecessary and confusing for one policy to refer to other policies in the Plan as the Neighbourhood Plan should be read as a whole. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
84. Herefordshire Council has commented “*Para 4.2.7- Rural exception sites should be in accordance with principally policy H2, as well as policy RA3*”. I have referred to this matter in the Annex to my report.
85. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides a level of housing provision set out in Policies SS3 and RA1.
86. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 3: In Policy K 3

- after “new homes” insert “(including around 35 new dwellings constructed or with planning permission granted between April 2011 and April 2017)”
- delete all text after “2031.”

Policy K 4 Housing development within the settlement boundary

87. This policy seeks to establish criteria for support of development proposals within the defined Kimbolton village settlement boundary.
88. It is unnecessary and confusing for one policy to refer to other policies in the Plan as the Neighbourhood Plan should be read as a whole. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
89. Paragraph 53 of the Framework states “*Local Planning Authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.*” Whilst the Framework is silent with respect to the role of neighbourhood plans in this matter I consider a local policy approach in this respect is appropriate.
90. The policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policy RA2 and LD1.
91. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; requiring good design; and conserving and enhancing the historic environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 4:

In Policy K 4 delete “subject to Policy K 10”

Policy K 5 Housing in the countryside

92. This policy seeks to establish criteria for support of proposals for new housing development outside the defined settlement boundary. The policy also seeks to establish that permitted development rights may be removed from properties in the interests of landscape and visual amenity.
93. Herefordshire Council states *“with regard to the potential removal of Permitted Development Rights, it needs to be made clear in which circumstances that this would be necessary to apply”*. The term *“may be removed”* is imprecise. Householder permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the Order”) as amended. Part 1 of Schedule 2 to the Order sets out the permitted development rules concerning what enlargements, improvements, alterations and other additions a householder may make to their house and the area around it without the need for an application for planning permission. An Article 4 Direction is a mechanism whereby a Local Planning Authority can exceptionally modify permitted development rights however no such Direction is in place in the Neighbourhood Area. A policy approach as proposed in Policy K5 is appropriate however it is necessary to more precisely describe the circumstances where removal of rights will occur. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
94. Herefordshire Council has also commented *“With regard to any proposed rural dwellings outside these boundaries, the draft plan recommends criteria in policy K5 Housing in the Countryside. We would like to recommend that a further criterion be applied which is that the amenity of any occupants arising out of a (any) new dwellings should not be compromised by existing agricultural or commercial activity. This would be to safeguard the amenity of future occupants”*. I agree it would be inappropriate for planning permission to be granted for a new dwelling in a location where occupiers would be exposed to activity that is detrimental to residential amenity. I have recommended a modification of the policy in this respect.
95. Herefordshire Council has commented *“It is noted that this policy covers some of the same criteria as its Core Strategy equivalent, RA3.*

It should also be noted, however, that the apparent absence of an exception criteria for proposals of exceptionally high quality and innovative design, that satisfy the criteria in paragraph 55 of the NPPF, does not mean that these can be resisted in the NDP area. Proposals deemed to be of this type will still be permitted in accordance with the Core Strategy and national policy”.

96. Paragraph 55 of the Framework states “Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: ● the essential need for a rural worker to live permanently at or near their place of work in the countryside; or ● where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or ● where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or ● the exceptional quality or innovative nature of the design of the dwelling. Such a design should: – be truly outstanding or innovative, helping to raise standards of design more generally in rural areas; – reflect the highest standards in architecture; – significantly enhance its immediate setting; and – be sensitive to the defining characteristics of the local area.” I have recommended a modification of the policy in respect of a proposal of exceptional quality or innovative design.
97. It is unnecessary and confusing for one policy to refer to Policy K21 as the Neighbourhood Plan should be read as a whole. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
98. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies H2, RA3 and RA4, not least in the definition of the area to be treated as outside the settlement of Kimbolton.
99. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with

supporting a prosperous rural economy; promoting sustainable transport; delivering a wide choice of high quality homes; and conserving and enhancing the natural environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 5:

In Policy K 5

- **delete “listed in Neighbourhood Plan Policy K 21”**
- **add additional criterion 6 “Where the amenity of occupants of any new dwellings would not be compromised by existing agricultural or commercial activity;”**
- **add additional criterion 7 “Where a proposed dwelling is of truly exceptional quality or innovative design helping to raise standards of design more generally in rural areas; reflects the highest standards in architecture; significantly enhances its immediate setting; and is sensitive to the defining characteristics of the local area.”**
- **replace the final sentence with “In locations where extension or modification of a permitted dwelling is likely to have an adverse impact on its landscape setting, or on visual amenity, permitted development rights relating to extension and modification of that dwelling will be removed.”**

Policy K 6 Extensions to dwellings

100. This policy seeks to establish criteria for support of planning applications for extensions to dwellings.

101. The policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policy LD1.

102. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with requiring good design through the promotion of local distinctiveness whilst avoiding unnecessary prescription; and conserving and enhancing the historic environment. This policy meets the Basic Conditions.

Policy K 7 Design of new housing

103. This policy seeks to establish design measures that should be included within development proposals for new housing.
104. It is unnecessary and confusing for one policy to refer to other policies in the Plan as the Neighbourhood Plan should be read as a whole. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
105. The term “*should contain*” does not offer a basis for decision making on development proposals as it does not specify any consequence. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
106. The policy includes requirements relating to “*maximum possible reduction in the carbon footprint of any development*”. The term “*maximum possible*” is imprecise. The Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 included the following: “*From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings*”. Whilst the policy itself refers to “*any development*” the policy title clearly states the content relates to “*design of new housing*”. Housing is in any case the most likely form of any development that will be proposed in the plan period. I have recommended a modification in this respect. On the same basis and in respect of the Written Ministerial Statement I have also recommended deletion of requirements relating to those measures “*associated with buildings*” that refer to “*the provision of energy and water conservation measures*” and “*renewable energy infrastructure such as discreetly sited photovoltaic panels.*” In reaching this conclusion I have taken into consideration Guidance relating to optional technical standards which states in respect of water efficiency standards “*All new homes already have to meet the mandatory national standard set out in the Building Regulations (of 125*

litres/person/day). Where there is a clear local need, local planning authorities can set out Local Plan policies requiring new dwellings to meet the tighter Building Regulations optional requirement of 110 litres/person/day. It will be for a local planning authority to establish a clear need based on: existing sources of evidence; consultations with the local water and sewerage company, the Environment Agency and catchment partnerships; and consideration of the impact on viability and housing supply of such a requirement.”³⁸ The requirement relating to water conservation measures has not been sufficiently justified in these terms.

107. The Policy seeks to provide an additional level of detail or distinct local approach to that set out in Strategic Policies SS6 and LD1. The Framework states “local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally” and “Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness”. The policy seeks to reinforce local distinctiveness whilst avoiding unnecessary prescription referred to in paragraphs 60 and 59 of the Framework.

108. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies SS6 and LD1.

109. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with requiring good design, and conserving and enhancing the natural environment.

³⁸ Housing: Optional technical standards MHCLG 27 March 2015 Paragraphs 14 and 15 Reference ID:56-014-20150327

Subject to the proposed modification this policy meets the Basic Conditions.

**Recommended modification 6:
In Policy K 7**

- delete the first sentence
- delete “Development proposals should” and insert “To be supported development proposals must”
- delete “the provision of energy and water conservation measures”
- insert “and” before “broadband”
- delete “and energy renewable infrastructure such as discreetly sited photovoltaic panels”
- delete “in accordance with Policy K 12”

Policy K 8 Ensuring an appropriate range of tenures, types and sizes of houses

110. This policy seeks to establish that all proposals for new housing development will have to demonstrate how they contribute to maintaining a mix of tenures, types, and sizes of dwelling in the Parish.
111. The policy also encourages smaller dwellings with two and three bedrooms. The term “*will be encouraged*” does not provide a basis for the determination of planning applications. I have recommended a modification in this respect.
112. The policy includes requirements relating to space standards. Herefordshire Council has commented “*This is not an issue of conformity with the Core Strategy. However, the issue of minimum internal space standards in new dwellings is covered already by building regulations. Local planning authorities may use nationally recognised optional technical standards where there is evidence to show these are required. However, Neighbourhood Plans may not be used to apply these.* [https://www.gov.uk/guidance/housing-optional-technical-standards.](https://www.gov.uk/guidance/housing-optional-technical-standards)”
113. The Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 included the following: “*From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical*

standards or requirements relating to the construction, internal layout or performance of new dwellings". I have recommended a modification in this respect.

114. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policy H3.

115. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 7:

In Policy K 8

- **replace the second sentence with “In order to even out the size range of dwellings available in the Parish and meet identified needs, proposals must be for smaller dwellings of two or three bedrooms, unless it can be demonstrated this is not appropriate.”**
- **delete the second paragraph**

Policy K 9 Affordable housing

116. This policy seeks to establish that the need for affordable housing will be met by development of rural exception sites and through a specified minimum of 40% of properties on windfall developments, of 10 or more homes or which have a combined floorspace of more than 1,000 square metres. The policy also seeks to establish a basis for allocation of affordable homes, and to ensure properties meet local needs in the future.

117. It is unnecessary and confusing for one policy to refer to other policies in the Plan as the Neighbourhood Plan should be read as a whole. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

118. Paragraph 54 of the Framework includes the statement, *“In rural areas, exercising the duty to cooperate with neighbouring authorities, local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate.”* The glossary to the Framework states *“affordable housing should include provisions to remain at an affordable price for future eligible households...”*. Allocation of affordable housing is an administrative process that normally falls outside land use planning. However, the policy states *“All affordable homes will be subject to Section 106 Agreements”* and goes on to state these will be the mechanism to control allocation. On this basis the policy will be providing a practical framework within which decisions on planning applications (which can include a Section 106 Agreement) can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

119. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies H1 and H2.

120. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 8:

In Policy K 9

Delete “consistent with Neighbourhood Plan Policy K 5”

Policy K 10 Protecting and Enhancing Local Character

121. This policy seeks to establish that all development proposals will be expected to protect and enhance local character and designated and non-designated aspects of the historic and natural environment including their settings. The policy establishes principles against which proposals should be assessed for: the area within and on the edge of Kimbolton; outside Kimbolton village; for the protection of key views including skylines; in respect of field patterns and boundaries; for the

protection of local habitats and wildlife corridors, mature and established trees of amenity value; and for the protection and enhancement of woodland including traditional orchards, and the setting of the historic park at Berrington Hall. The policy requires defined development proposals to be supported by a statement demonstrating character assessment.

122. Principle 1vi of the policy refers to street furniture. Provision of street furniture is permitted development that does not require planning permission. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The Guidance states, *“Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements.”* The acknowledgement in the Neighbourhood Plan of issues raised in consultation processes that do not have a direct relevance to land use planning is consistent with this guidance and represents good practice. The Guidance states, *“Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”* I have recommended a modification so that the policy has regard for national policy.

123. Paragraph 47 of the Framework includes the statement that local planning authorities should set out their own approach to housing density to reflect local circumstances. The Framework is silent with regard to the role of neighbourhood plans in this respect. I consider principle 1ii of the policy, where it refers to density of development, does seek to ensure development will respond to local character and history, and reflect the identity of local surroundings. The statement that *“developments of up to three dwellings are the optimum size”* is not sufficiently justified, nor does it provide a basis for decision taking in respect of development proposals. I have recommended a modification in this respect.

124. Principle 3 refers to the protection of key views. It is unclear how protection is to be achieved. I have recommended a modification in this respect so that the policy provides a practical framework within

which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

125. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies SS6 and LD1.

126. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 9:

In Policy K 10

- **Delete “Developments of up to three dwellings are the optimum size”**
- **Delete “Protect” and insert “Not significantly adversely affect”**
- **Transfer principle 1vi to the Implementation and Monitoring section of the Neighbourhood Plan.**

Policy K 11 Local Heritage List

127. This policy seeks to establish an approach to the consideration of the conservation and enhancement of designated and non-designated heritage assets in respect of development proposals. The policy also requires consideration of surface and sub-surface archaeology. I have recommended a modification so that the policy title is correctly stated in the list of policies presented on page 4 of the Neighbourhood Plan.

128. The terms “*required to consider*” and “*should take full account of*” do not provide a basis for the determination of planning applications. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of

predictability and efficiency as required by paragraph 17 of the Framework.

129. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies SS6 and LD1.

130. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with conserving and enhancing the historic environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 10:

In Policy K 11

- **in line 1 Delete i after assets**
- **delete “consider” and insert “demonstrate consideration”**
- **delete “should take” and insert “must demonstrate they have taken”**

The policy title as it appears in the list of policies presented on page 4 of the Neighbourhood Plan should be changed to the title “Heritage Assets” to correspond with the title of the policy within the Policies Section of the Plan.

Policy K 12 Controlling light pollution

131. This policy seeks to establish criteria for the support of proposals for or including external lighting works; requires submission of schemes; and makes provision for monitoring of schemes.

132. The term “*general enjoyment of the night sky*” is imprecise. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

133. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted

on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policy LD1.

134. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with requiring good design; and conserving and enhancing the natural environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 11:

In Policy K 12 delete “or the general enjoyment of the night sky”

Policy K 13 Broadband

135. This policy seeks to establish conditional support for the development of new high-speed broadband infrastructure. The policy also seeks to establish that all new development should make provision for high speed broadband and other communication networks.
136. The term “*where it is practicable to do so*” imprecise. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
137. The Framework states “*Advanced, high quality communications infrastructure is essential for sustainable economic growth. The development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services.*” The policy has regard for this element of national policy.
138. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015.
139. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with

supporting high quality communications infrastructure. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 12:

140. **In Policy K 13 delete “where it is practicable to do so” and insert “unless it is demonstrated that provision is not practicable”**

Policy K 14 Renewable Energy

141. This policy seeks to establish support for renewable energy proposals where they respect their landscape and rural setting.
142. The policy refers to support for proposals where “*their scale reflects the community’s needs*”. It is not the intention of national policy that renewable energy production in an area should be limited to the needs of the local community. I have recommended a modification in this respect so that the policy has regard for national policy.
143. The term “*also*” is unnecessary and confusing. The terms “*appropriate in size*”, “*relevant to its surroundings*”, “*considered inappropriate within the rural setting*”, and “*not of an industrial nature*” are imprecise. The Framework refers to landscape and visual impacts rather than scale. I have recommended a modification in these respects so that the policy has regard for national policy, and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
144. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies SS6 and SD2.
145. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with meeting the challenge of climate change and flooding, and conserving and enhancing the natural environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 13:

In Policy K 14

- **in the first paragraph delete “also” and delete “and their scale reflects the community’s needs”**
- **in the second paragraph after “impact on” insert “visual amenity or”**
- **delete the third paragraph**

Policy K 15 Traffic management and road safety improvements

146. This policy seeks to require promotion of measures to improve pedestrian and cyclist safety and reduce the impact of vehicles travelling through the area. The policy also seeks to establish key priorities for traffic management and facilitation of movement, and states developer contributions will be required to contribute to the funding of these measures.

147. Herefordshire Council has stated *“Regard should be given to improving access through walking and cycling along with safety enhancements at or near the primary school.”* It is not within my role to recommend modifications that insert additional policy matters in the Neighbourhood Plan.

148. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The Guidance states, *“Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements.”* The acknowledgement in the Neighbourhood Plan of issues raised in consultation processes that do not have a direct relevance to land use planning is consistent with this guidance and represents good practice. The Guidance states, *“Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”* I have recommended a modification so that the policy has regard for national policy.

Recommended modification 14:

Delete Policy K 15 and transfer the text to the Implementation and Monitoring section of the Neighbourhood Plan

Policy K 16 Transport and connectivity

149. This policy seeks to establish requirements relating to transport and connectivity that proposals for new development will need to show. The policy also states the Parish Council will work with Herefordshire Council to improve public transport services serving the community.
150. Herefordshire Council has commented "*Parking standards should be in accordance with those set out in the Local Transport Plan.*" The policy requires proposals to show satisfactory provision of off-street parking based on the nature of the proposal and the characteristics of the site in question. I have recommended a modification so that the policy also requires consideration of parking standards in the Local Transport Plan in accordance with Strategic Policy MT1.
151. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. The intended action that the Parish Council will work with Herefordshire Council to improve public transport services is without doubt highly desirable and will be key success factors in the positive transformation of the area over the Plan period. This intended action does not relate directly to the development and use of land and as such cannot serve a role in the determination of planning applications. It is inappropriate for a policy to rely on the actions of organisations where there is no certainty that they will be fulfilled throughout the Plan period.
152. The Guidance states, "*Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.*" I recommend a modification in accordance with the Guidance so that the actions in question are not included in policies but are contained solely in the Monitoring and Implementation Section of the Neighbourhood Plan. In this way these important actions are not lost sight of, but are appropriately presented.

153. It is unnecessary and confusing for one policy to refer to other policies in the Plan as the Neighbourhood Plan should be read as a whole. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
154. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies SS4 and MT1.
155. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with promoting sustainable transport, and conserving and enhancing the natural environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 15:

In Policy K 16

- **in point 2 continue “having regard for parking standards in the Local Transport Plan in accordance with Core Strategy Policy MT1”**
- **In point 5 delete “and in accordance with Policy K12”**
- **transfer the final sentence to the Monitoring and Implementation Section of the Neighbourhood Plan**

Policy K 17 Business development

156. This policy seeks to establish conditional support for development proposals that assist retention and development of local businesses. Five priorities are stated. The policy also seeks to establish that large scale employment (within Class B uses or equivalent) would be out of keeping with the character of the area and will not be supported.
157. Herefordshire Council has commented “*This is covered to the same extent by the equivalent Core Strategy policy, RA6.*” The policy does confirm local priorities for expanded or new economic activity.

158. The term “*encouraged*” does not provide a basis for the determination of development proposals. The term “*priority being given*” is imprecise. It is unclear how priority will be given to the types of proposals identified and what they will be given priority over. It is also unclear what is “*equivalent*” of Class B and what is “*large scale employment*”. The term “*small-scale*” is also imprecise. Other provisions of the policy ensure new employment uses will not be of such a scale to have adverse impacts. Similarly, those provisions of the policy also ensure extension of existing premises will not have adverse impacts. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

159. The Framework states neighbourhood plans should support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings. The Framework also states neighbourhood plans should “*support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres*”. I have recommended a modification so that the policy has regard for national policy.

160. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies SS5, E1 and E4.

161. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with supporting a prosperous rural economy; requiring good design; and conserving and enhancing the natural environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 16:

In Policy K 17

- delete “encouraged and insert “supported”
- delete “with priority being given to” and insert “in particular”
- delete “small scale”
- delete the final sentence

Policy K 18 Protection of existing business premises

162. This policy seeks to establish that existing commercial business premises should be protected from change or redevelopment to residential use except in specified circumstances.

163. The terms “*protected*” and “*from change from*” are imprecise. Whilst a residential use is the most likely to be proposed the justification to the policy does not provide evidence why loss to that use only, should be protected. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

164. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policy E2.

165. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with building a strong, competitive economy, and supporting a prosperous rural economy. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 17:

In Policy K 18 delete the first sentence

Policy K 19 Agriculture and forestry enterprises

166. This policy seeks to establish conditional support for proposals for agricultural, forestry or rural enterprises.
167. The Framework states planning policies should support economic growth in rural areas and in particular “*promote the development and diversification of agricultural and other land-based rural businesses*”.
168. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies SS5 and E1.
169. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with supporting a prosperous rural economy and conserving and enhancing the natural environment. This policy meets the Basic Conditions.

Policy K 20 Enhanced Services and Facilities for the Community

170. This policy seeks to establish support for enhancement of key services and facilities and seeks to establish criteria for their development. A village play area and, a multi-use sports hall at Kimbolton Primary School are identified as priorities. The policy also seeks to establish a basis for use of Community Infrastructure Levy or other funding to deliver the specified facilities.
171. Paragraph 70 of the Framework states planning policies should plan positively for the provision and use of community facilities. It is appropriate for a community to utilise the neighbourhood plan preparation process to identify land-use projects as priorities for the utilisation of locally determined expenditure arising from Community Infrastructure Levy and other receipts.
172. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted

on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policy SC1.

173. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with promoting healthy communities. This policy meets the Basic Conditions.

Policy K 21 Protection and enhancement of community facilities

174. This policy seeks to establish that named existing community facilities and any other assets provided over the plan period should only be redeveloped or re-used if either of two specified criteria are met.

175. The term “re-use” is imprecise and does not provide a basis for the determination of planning proposals. It is unnecessary and confusing for one policy to refer to other policies in the Plan as the Neighbourhood Plan should be read as a whole. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

176. Paragraph 70 of the Framework states planning policies should “*guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs.*” The policy has regard for this element of national policy.

177. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policy SC1.

178. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 18:

In Policy K 21

- **after “re-use” insert “for other purposes”**
- **delete “Such sites should meet the requirements of Policy K 20”**

Policy K 22 Open Spaces

179. This policy seeks to designate land at Chestnut Avenue, and the Primary School playing field as Local Green Spaces. The policy also seeks to establish requirements relating to provision of open space in new developments, and includes provision for active travel.

180. The wording of the policy does not reflect the terms of the designation of Local Green Spaces set out in paragraph 76 of the Framework where it is stated communities will be able to rule out development other than in very special circumstances. It is not appropriate for the Policy to seek to establish an alternative description of the designation. I have recommended a modification in this respect.

181. The Framework states *“Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.”*

182. Designation of Local Green Space can only follow identification of the land concerned. For a designation with important implications relating to development potential it is essential that precise definition is achieved. The proposed Local Green Spaces are presented on the Kimbolton Policies Map at a scale that is sufficient to identify the precise boundaries of each Local Green Space proposed for designation.

183. In respect of the areas intended for designation as Local Green Space I find the Local Green Space designations are being made when a neighbourhood plan is being prepared, and I have seen nothing to suggest the designations are not capable of enduring beyond the end of the plan period. The intended designations have regard to the local planning of sustainable development contributing to the promotion of healthy communities, and conserving and enhancing the natural environment, as set out in the Framework.

184. The Framework states that: *“Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:*

- *where the green space is in reasonably close proximity to the community it serves;*
- *where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- *where the green area concerned is local in character and is not an extensive tract of land.”³⁹*

I find that in respect of each of the intended Local Green Spaces the designation relates to green space that is in reasonably close proximity to the community it serves, is local in character, and is not an extensive tract of land.

185. I now consider whether there is sufficient evidence for me to conclude that the two areas proposed for designation as Local Green Space are demonstrably special to a local community and hold a particular local significance. The Neighbourhood Plan sets out, in paragraphs 4.7.15 and 4.7.16, a justification for the designations. Whilst the justification is brief, in the context of the Neighbourhood Plan as a whole, and the Character Assessment undertaken I conclude each of the areas proposed for designation as Local Green Space is demonstrably special to a local community and holds a particular local significance.

186. I find both the areas proposed as Local Green Space are suitable for designation and have regard for paragraphs 76 and 77 of the Framework concerned with the identification and designation of Local Green Space.

³⁹ Paragraph 77 National Planning Policy Framework 2012

187. The second part of the policy relates to provision of new open space and recreation facilities to meet the needs of people living/working within new developments. Paragraph 73 of the Framework states *“Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.”* Policy K 22 has sufficient regard for the approach of national policy.
188. The third part of the policy has regard for Paragraph 75 of the Framework which states *“Planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.”*
189. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and provides an additional level of detail or distinct local approach to that set out in Policies OS1, OS2 and MT1.
190. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 19:

In Policy K 22 replace the second sentence with “New development on these sites is ruled out other than in very special circumstances.”

Summary and Referendum

191. I have recommended 19 modifications to the Submission Version Plan. I have also made a recommendation of modification in the Annex below.

192. I am satisfied that the Neighbourhood Plan⁴⁰:

- is compatible with the Convention rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the statutory requirements set out in paragraph 8(1) of schedule 4B of the Parish and Country Planning Act 1990 and meets the Basic Conditions:
 - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
 - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.⁴¹

I recommend to Herefordshire Council that the Kimbolton Neighbourhood Development Plan for the plan period up to 2031

⁴⁰ The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

⁴¹ Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

should, subject to the modifications I have put forward, be submitted to referendum.

193. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.⁴² I have seen nothing to suggest the referendum area should be extended beyond the designated Neighbourhood Area.

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Herefordshire Council as a Neighbourhood Area on 7 July 2015.

Annex: Minor Corrections to the Neighbourhood Plan

194. A number of consequential modifications to the general text, and in particular the justification of policies sections, of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies.

195. I am able to recommend modification of the Neighbourhood Plan in order to correct errors.⁴³ I recommend the following minor change only in so far as it is to correct an error or where it is necessary so that the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework:

The statement in paragraph 4.2.7 relating to rural exception sites should make reference to being in accordance with strategic policy H2, as well as policy RA3

The heading to Table 1 at Paragraph 4.4 of the Statement of Basic Conditions should be amended to refer to the Kimbolton Neighbourhood Development Plan.

**Recommended modification 20:
Modification of general text will be necessary to achieve consistency with the modified policies, and to correct identified errors including those arising from updates.**

⁴² Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁴³ Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990

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REPORT ENDS