

# **Leominster Area Neighbourhood Plan 2011-2031**

## **The Report by the Independent Examiner**

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10 December 2018



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## Summary

In carrying out the examination of the Leominster Neighbourhood Plan I have found it necessary to recommend quite a large number of modifications including the deletion of some policies.

I have concluded that, if the modifications that I have recommended are made:

- The Leominster Neighbourhood Development Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012 (as amended) and that;
- Having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;
- The making of the Plan would contribute to the achievement of sustainable development;
- The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;
- The Plan would not breach and would be otherwise compatible with European Union obligations and the European Convention on Human Rights.

I am therefore pleased to **recommend that the Leominster Neighbourhood Development Plan should proceed to a referendum subject to the modifications that I have recommended.**

I am also required to consider whether or not the referendum area should extend beyond the Neighbourhood Plan Area. The Plan includes the whole Parish of Leominster and I have seen nothing to suggest that the policies of the Plan will have “a substantial, direct and demonstrable impact beyond the neighbourhood area”. **I therefore conclude that there is no need to extend the referendum area.**



## **Introduction**

1. The Localism Act 2011 has provided local communities the opportunity to have a stronger say in their future by preparing neighbourhood plans which contain policies relating to the development and use of land.
2. Leominster Town Council is the qualifying body for the Leominster Neighbourhood Plan, which I shall refer to as the LNP or the Plan. The Plan covers the whole of the parish of Leominster.
3. Leominster is the largest market town in Herefordshire (excluding the City of Hereford) with a population of about 12,000. It lies about 12 miles north of Hereford and 7 miles south of the Shropshire boundary at the confluence of the Rivers Lugg and Kenwater, and parts of the town are in flood risk areas. The Parish of Leominster also covers a substantial rural area to the west, south and east and includes several smaller settlements of which the villages of Ivington, Brierley and Wharton are the largest.
4. If, following a recommendation from this examination, the Plan proceeds to a local referendum and receives the support of over 50% of those voting, it can be made and will then form part of the statutory development plan. This would make it an important consideration in the determination of planning applications, as these must be determined in accordance with development plan policies unless material considerations indicate otherwise.

## **Appointment of the Independent Examiner**

5. I have been appointed by Herefordshire Council (HC), with the agreement of Leominster Town Council (LTC) to carry out the independent examination of the LNP.
6. I confirm that I am independent of both HC and LTC and have no interest in any land which is affected by the LNP. I have never had any other professional involvement in Leominster, but I have carried out three previous neighbourhood plan examinations in Herefordshire at Breinton, Lower Bullingham and Bodenham.
7. I am a Chartered Town Planner with over 30 years' experience in local government, working in a wide range of planning related roles, including 15 years as a chief officer. Since 2006 I have been an independent planning and regeneration consultant. I have completed over 30 neighbourhood plan examinations and three health checks. I therefore have the appropriate qualifications and experience to carry out this examination.

## **The Scope of the Examination**

8. The nature of the independent examination is set out in Sections 8-10 of Schedule 4B of the Town and Country Planning Act 1990.
9. I must:
  - i. Decide whether the plan complies with the provisions of Sections 38A and 38B of the Planning and Compulsory Purchase Act 2004. These requirements relate primarily, but not exclusively, to the process of preparing the Plan and I shall deal with these first.
  - ii. Decide whether the neighbourhood development plan meets the basic conditions contained in Schedule 4B paragraph 8(2) of the Town and Country Planning Act 1990. This element of the examination relates mainly to the contents of the Plan.
  - iii. Make a recommendation as to whether the Plan should be submitted to a referendum, with or without modifications, and whether the area for the referendum should extend beyond the Plan area.
10. The Plan meets the basic conditions if:
  - i. Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the Plan;
  - ii. The making of the Plan contributes to sustainable development;
  - iii. The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
  - iv. The making of the Plan does not breach, and is otherwise compatible with, EU obligations.
11. I am also required to consider whether the Plan is compatible with the European Convention on Human Rights.
12. Paragraph 9 of Schedule 4B indicates that as a general rule the examination should be carried out on the basis of written representations unless a hearing is necessary to allow adequate consideration of an issue or to allow a person a fair chance to put a case. In carrying out the examination I concluded that the examination could be completed without a hearing.
13. The main documents to which I have referred in the examination are listed below:
  - Leominster Neighbourhood Plan, Regulation 16 Submission Plan November 2017
  - Leominster Neighbourhood Plan Basic Conditions Statement November 2017
  - Leominster Neighbourhood Plan Draft Consultation Statement October 2017



- Policy Maps prepared by Herefordshire Council relating to Leominster Parish, Leominster Town, Leominster Town Centre, Ivington, Brierley and Wharton
  - Environmental Report 2017
  - Habitats Regulations Assessment Addendum 2017
  - Habitats Regulations Assessment Final Report September 2018
  - Leominster Neighbourhood Plan Evidence Statement, produced after regulation 16 publicity on the submitted plan
  - Responses to regulation 16 publicity on the Submission Plan
  - Revised and clarified maps of proposed Local Green Spaces produced during the examination
  - Herefordshire Local Plan Core Strategy 2011-2031, referred to as the HCS
  - The Neighbourhood Planning (General) Regulations 2012 as amended which are referred to as the NPR
  - The Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR).
  - The National Planning Policy Framework 2012 which is referred to as the NPPF
  - National Planning Practice Guidance referred to as PPG
14. The documents which were submitted include all of those that are required to be submitted under regulation 15 of the NPR.
15. I made an unaccompanied visit to Leominster on 29-30 April 2018 to familiarise myself with the Parish and help me to understand the implications of the Plan policies. I spent a day and a half walking around the town, driving to the settlements around it and viewing all the key locations referred to in the Plan.
16. During the examination I sought clarification on several points. My emails and the responses to them have been posted on the HC website along with documents referred to in the responses. The examination has taken longer than expected to conclude for two reasons. Leominster Town Council produced an Evidence Statement to support some of the main policies in Plan in response to comments made by HC at the regulation 16 consultation stage. I was concerned that this was evidence that would normally be submitted with the Plan and that it was important that interested parties should have the opportunity to comment on it. Accordingly, I suspended the examination to allow for several errors and inconsistencies in this document to be corrected and for it to be publicised for a period of 6 weeks.
17. During this consultation Herefordshire Council determined that the Screening Assessment under the Habitats Regulations should be reviewed in the light of the findings of a recent legal judgement<sup>1</sup>. This review was completed during August and early September and subject to consultation until the end of October 2018.

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<sup>1</sup> People over wind and Sweetman v Coillte Teoranta (C-323/17)

## The Preparation of the Plan

18. An application from LTC for the designation of the Parish as a neighbourhood area was submitted on 6 June 2012 together with a map showing the area to be designated. It was subject to consultation from 14 June -26 July 2012 and was approved on 27 July 2012.
19. The Planning and Compulsory Purchase Act 2004 requires that the Plan clearly states the period to which it relates. The Basic Conditions Statement indicates that the end date for the Plan is 2031, There are references in the Plan to the plan period for the HCS, which is 2011-2031.<sup>2</sup> There are also some references to the end date of the LNP as 2031 in the Vision and in the introduction to Policy LANP1<sup>3</sup>, but the plan period is not clearly stated in the Plan. However, the introduction of the Plan refers to “how the town and wider area should develop up to 2031 and beyond.”<sup>4</sup> It is important that the plan period should be clearly stated.

### Recommendation

**Amend the front cover of the Plan to clearly state that the plan period is 2011-2031  
In the last line of the introduction on Page 4 replace “to 2031 and beyond” with “in the period 2011-2031.**

20. The Plan must not include any provision about development that is excluded development as defined in section 61K which is inserted into the 1990 Town and Country Planning Act. Excluded development includes “county matters”, such as mineral extraction and waste disposal, and major infrastructure projects. I am satisfied that the submitted Plan contains no policies which relate directly to these matters.
21. I am also satisfied that the Plan does not relate to more than one neighbourhood area.

## Public Consultation

22. The Consultation Statement describes the various stages of consultation that were undertaken during the preparation of the Plan. The decision to prepare a neighbourhood plan was taken by the Town Council in June 2012 and a Neighbourhood Plan Working Group (NPWG) was established at a formal public meeting in November 2012, following which a steering group was formed. Following this a newsletter outlining the process was circulated to every household and a launch meeting was held in January 2013 at the Earl Mortimer College at which key themes for the Plan were identified. Other public meetings were held at the Hop Pole public house and the village of Ivington. A website was developed to publicise progress on the Plan which carried details of all meetings and documents, interactive forums on each of the key themes and explained how people could get involved in the Plan. In September 2013

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<sup>2</sup> LNP pages 9 and 13

<sup>3</sup> LNP pages 17 and 25

<sup>4</sup> LNP page 4

all businesses in the town were invited to a Business Forum. Early in 2014 the first draft of the Plan was produced. It was launched in July 2014 and comments were invited up to the end of August 2014.

23. Formal consultation in accordance with Regulation 14 of the NPR took place between 10 December 2014 and 6 February 2015. Leaflets explaining the process were distributed to every house, the draft plan could be viewed on the website, copies were available at the Town Council Office, the Library, Community Centre, Grange Court and the Tourist Information Centre. The relevant statutory consultees were also consulted. A banner was displayed outside the Town Council office and public meetings were held at Earl Mortimer College, Ivington Primary School and the Dairy Café Wharton. The Consultation Statement lists all the statutory bodies who were consulted on the draft plan and these are in accordance with the requirements of the regulations.<sup>5</sup> I am satisfied that every effort was taken to bring the draft plan to the attention of those who live, work or do business in the Parish.
24. The Consultation Statement summarises all the comments received and sets out the Parish Council's comments and any amendments to the draft plan. It also sets out a list of other changes which were made to the draft plan after the regulation 14 consultation.
25. The Plan was first submitted to HC on 14 January 2016 and was publicised by HC in accordance with regulation 16 of the NPR from 20 January to 2 March 2016. This version of the Plan was then withdrawn, following comments from HC as part of this consultation. It was resubmitted on 27 October 2017. Publicity in accordance with Regulation 16 was repeated and took place between 2 November and 14 December 2017.
26. Further consultation on the Evidence Statement and on the Final Habitats Regulation Assessment was carried out during my examination.
27. Overall, I am satisfied that the consultation that took place during the preparation of the Plan and the Consultation Statement fully meet the requirements of the NPR.

### **The Basic Conditions Test – The Plan taken as a whole**

28. The consideration of whether the Plan meets the basic conditions is the main focus of the independent examination process. This section of my report clarifies the meaning of each of these conditions and considers how the Plan, taken as a whole, meets them.

***“Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan”***

29. National Policy is set out in the National Planning Policy Framework (NPPF). The NPPF was first published in 2012. A revised version of the NPPF was issued in July 2018. However, Annex 1,

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<sup>5</sup> Neighbourhood Planning (General) Regulations 2012, Schedule 1 Paragraph 1.

Implementation, indicates that neighbourhood plans submitted in accordance with Regulation 15 of the NPR on or before 24 January 2019 should be examined on the basis of the 2012 edition of the NPPF.<sup>6</sup>

30. There are two important preliminary points to emphasise in relation to this basic condition. The first is that I must consider this requirement in relation to the making of the Plan; it thus applies to the Plan as a whole rather than to individual policies. The second point is the use of the phrase “*having regard to*”. This means that I must consider the national policy and advice, but it does not mean that each policy should be in absolute conformity with it. PPG explains that “*having regard to national policy*” means that “*a neighbourhood plan must not constrain the delivery of important national policy objectives*”.<sup>7</sup> The Plan as a whole is clearly the sum of its policies and it is therefore necessary to consider the extent to which each policy complies with national policy and guidance. However, in reaching my conclusion on this basic condition it is the relationship of the Plan as a whole with national policies and guidance rather than individual policies which is the key consideration.
31. Table 1 of the Basic Conditions Statement relates the LNP to the Core Planning Principles of the NPPF and in some instances identifies the policies of the LNP that are most relevant to each of the principles. This is helpful as far as it goes, but the table does not consider the relationship between the specific policies set out in the NPPF and it does not therefore fully explain how each of the policies relate to national policy. I shall consider each policy in detail later in the report, but in some cases I have found the comment in the Basic Conditions Statement to be oversimplified. The purpose of the Basic Conditions Statement is to explain how the plan meets the legal requirements. It is a key document for the examination and the rather cursory statements here fall short of explanation. This means that I have had to spend additional time identifying the appropriate sections of the NPPF and testing their compliance with the policies of the Plan.
32. Also, relevant to this element of the basic conditions test is “...guidance issued by the Secretary of State” as set out in PPG. This contains extensive guidance on both general principles and specific aspects of the preparation of neighbourhood plans<sup>8</sup> some of which I have already referred to. It is important to be able to demonstrate that the preparation of the Plan has had regard to this. The Basic Conditions Statement does not refer to PPG, but in my report, I make frequent reference to it. At this stage I need to emphasise the importance of the guidance on the formulation of policies. “*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 plan for which it*

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<sup>6</sup> NPPF July 2018 paragraph 214 and footnote

<sup>7</sup> PPG What does having regard to national policy mean? Reference ID: 41-069-20140306

<sup>8</sup> PPG Neighbourhood Plan, Reference ID Paragraphs 41-001 to 41-087

has been prepared”<sup>9</sup>. Also “Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn on to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan...”<sup>10</sup> Many of the policies in the Plan have been drafted very generally, and in some cases, they do not add to existing Core Strategy policies. In some policies there is an absence of evidence or justification for the policies. Several of the modifications which I have recommended are necessary to comply with these elements of PPG.

33. I have considered each policy in turn having regard to national policy and guidance and my findings on each policy are set out later in this report. I have recommended quite a lot of modifications which are necessary to comply effectively with the NPPF and PPG. However, taking the Plan as a whole, and subject to the modifications I have recommended, there is no serious conflict between the policies of the Plan and national policies and guidance.

***“The making of the Plan contributes to sustainable development”***

34. There is inevitably considerable overlap between the requirements for satisfying this basic condition and the previous one as the NPPF clearly states that *“the purpose of the planning system is to contribute to the achievement of sustainable development and the policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.”*<sup>11</sup>
35. The NPPF then spells out the three dimensions of sustainable development: economic, social and environmental, and emphasises the interdependent nature of these. Again, it is important to note that the assessment to be undertaken relates to the Plan as a whole, but clearly the contribution of each policy needs to be considered to enable a conclusion to be reached. Policies which fail to demonstrate that they contribute to sustainable development are likely to require modification or deletion. As the NPPF points out, local circumstances vary greatly and that influences the way in which contributions to sustainable development can be made.<sup>12</sup>
36. The vision for Leominster is built around sustainability and embraces aspirations which relate to the economic, environmental and social dimensions of sustainable development. Table 2 of the Basic Conditions Statement indicates how the policies of the LNP contribute to each of the dimensions of sustainable development. This is a helpful approach to show that the balance between the three dimensions is maintained.
37. The contribution of each of the policies of the Plan to sustainable development is considered later in my report. However, taken as a whole I am satisfied that the Plan contributes to

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<sup>9</sup> PPG Neighbourhood Planning How should the policies in a neighbourhood plan be drafted? Reference ID: 41-041-20140306

<sup>10</sup> PPG Neighbourhood Planning What evidence is needed to support a neighbourhood plan? Reference ID 41-040-20160211

<sup>11</sup> NPPF Paragraph 6

<sup>12</sup> NPPF Paragraph 10

sustainable development.

***“The making of the plan is in general conformity with the strategic policies contained in the development plan for the area”***

38. As with the previous two conditions, the test applies to the Plan as a whole, but also requires consideration of individual policies against relevant strategic policies in order to reach an overall conclusion. The test of *“general conformity”* is fundamentally that the neighbourhood plan policies should not undermine the strategic policies of the Local Plan. The test is spelt out more fully in PPG.<sup>13</sup> It does not preclude some variation from a strategic policy where it is justified by local circumstances providing the proposal upholds the general principle that a strategic policy is concerned with. However, any departure from development plan policies needs to be clearly justified.
39. The main development plan document for the purposes of the LNP is the Herefordshire Local Plan Core Strategy 2011-2031 (HCS). The other development plan policies which are relevant are the saved policies of the Herefordshire Unitary Development Plan 2007 relating to Minerals and Waste.
40. Table 3 of the Basic Conditions Statement Sets out in some detail the HCS policies which are relevant to each of the LNP policies. As in the case of the NPPF, it does not explain the relationship between the Neighbourhood Plan policies and the Local Plan policies. HC have identified some conflicts with HCS policies and I have found it necessary to recommend some modifications to address them. However, taking the Plan as a whole, and subject to the modifications I have recommended, I am satisfied that it is in general conformity with the policies of the HCS.

***“The making of the order does not breach and is otherwise compatible with EU obligations”***  
Strategic Environmental Assessment and Assessment under the Habitats Regulations

41. PPG indicates that *“In some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a strategic environmental assessment”*<sup>14</sup>, subsequently referred to as SEA. A SEA requires the preparation of an environmental report. In order to determine whether the plan is likely to have a significant environmental effect, a screening assessment is necessary.
42. Regulation 15 of the NPR requires that the submission of a neighbourhood plan must include:  
*“(i) an environmental report prepared in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans Regulations (EAPPR) or  
(ii) where it has been determined under regulation 9(i) of these Regulations that the proposal is*

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<sup>13</sup> PPG What is meant by ‘general conformity’? Reference ID 41-074-20140306

<sup>14</sup> PPG Does a neighbourhood plan require a strategic environmental assessment? Reference ID: 11-027-20150209

*unlikely to have significant environmental effects (and accordingly does not require an environmental assessment), a statement of reasons for the determination”.*

43. Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (CHSR) puts into effect the requirements of Article 6.3 of the EU Habitats Directive and requires that:  
*“(1) Where a land use plan - is 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) and is not directly connected with or necessary to the management of the site, the plan-making authority must before the plan is given effect, make an appropriate assessment of the implications of the site in view of that site’s conservation objectives.”*  
Amendments to these regulations were made in the Schedule 2 to the NPR which inserted Regulation 102A to the CHSR:  
*“A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required.”*
44. An initial Screening Assessment was carried out in early 2013 which concluded that *“the Neighbourhood Development Plan .... Will require further environmental assessment for Habitat Regulations Assessment and Strategic Environmental Assessment”*. The submitted documents include an Environmental Report for the Leominster Neighbourhood Plan. This document describes in full the process that has been followed to determine that SEA is necessary, and to assess the objectives and policies of the Plan against a range of environmental objectives drawn from those used in the Sustainability Appraisal of the HCS. In accordance with good practice<sup>15</sup> the Draft SEA was prepared early in the plan preparation process and was subject to consultation at the same time as the Draft Plan was subject to regulation 14 consultation. The environmental report has been revised as the Plan has progressed with new versions produced taking account of changes made prior to submission in October 2015 and again in October 2017.
45. In accordance with the EAPPR the Environmental Report contains a non-technical summary and a scoping report which was subject to consultation with the statutory consultation bodies and was slightly amended to reflect their comments. The report identifies 16 SEA objectives and assesses the objectives and the policies against them. The SEA objectives were derived from the Sustainability Appraisal undertaken for the HCS.
46. The report also considers five options for the Plan and considers them against the SEA Objectives. The options are effectively strategic alternatives as they are high level approaches to the Plan. They include the option of not preparing a plan (“do nothing”) and the option of allocating additional housing and employment sites as well as the preferred option which was

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<sup>15</sup> Planning Practice Guidance When should a plan-maker start producing a strategic environmental assessment:  
Reference ID 11-029-20150209

to utilise the policies of the Core Strategy and add additional sustainability measures to benefit the town as a whole. Two other options which were considered were: to not include a sustainable urban extension and not to have a southern link road. Although at the time the options were first considered the Core Strategy had not been adopted these two options would now be contrary to the Core Strategy and therefore do not constitute “reasonable alternatives” as required by the EAPPR<sup>16</sup> as they would clearly conflict with the basic conditions. The implications of the option to make allocations are shown as uncertain as there is no evaluation of alternative sites because this approach was not pursued. I therefore find the consideration of alternatives rather inconclusive but acknowledge the limited scope for alternatives where allocations are not being made.

47. The environmental report looks at the short-, medium- and long-term effects of the policies and their cumulative effect. Following the regulation 14 consultation on the pre-submission draft of the Plan, there were modifications to several of the policies and two new policies were introduced. The environmental report contains a reassessment of those policies that were amended and an assessment of the policies that were added. I am satisfied that it is consistent with the requirements of the EAPPR.
48. An initial Habitats Regulations Screening Report carried out in 2013 concluded that because the River Wye Special Area of Conservation (SAC) lies to the south and downstream of the neighbourhood plan area a full Screening Assessment was necessary. A full Draft Screening Assessment was carried out in 2014 and concluded that because the draft policies of the Plan did not propose more development than could be provided under the policies of the HCS they were unlikely to have a significant effect on the River Wye SAC. An Appropriate Assessment under the Habitats Regulations was therefore not necessary. English Nature were consulted and endorsed this conclusion. This review was updated in 2017 to take account of changes to the Plan prior to its second submission.
49. During the examination a significant legal judgement emerged which drew attention to the way in which potential mitigation of effects on European designated sites should be considered.<sup>17</sup> In essence the judgement concluded that it is not appropriate to take into account the mitigation of any harmful effects that would result from the policies proposed in the Plan, in carrying out screening of the need for an Appropriate Assessment, and that any mitigation should be taken into account at the Appropriate Assessment stage. The NPR do not provide for Appropriate Assessment in association with neighbourhood plans.<sup>18</sup> Herefordshire Council asked for the examination to be suspended while it sought legal advice on the implications of the judgement for several neighbourhood plans including the LANP and reviewed the screening assessments for these plans.

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<sup>16</sup> EAPPR Regulation 12(b)

<sup>17</sup> People over wind and Sweetman v Coillte Teoranta (C-323/17)

<sup>18</sup> NPR Schedule 2 paragraph 1



50. The scope and conclusion of the legal advice is summarised in a note issued by the Council which is attached at Appendix 1. This review focussed on whether in the light of two HCS policies, the examinations of the neighbourhood plans could be concluded and, subject to the examiners' recommendations and the results of any referendum, could be made. It concluded that the effects of these policies had been taken into account in the appropriate assessment of the HCS and therefore that there was no obstacle to the making of the LNP in this regard.
51. The Habitats Regulations Assessment 2014 and the Addendum Reports of 2015 and 2017 were reviewed in the light of the "People over Wind" case and a final report was produced in September 2018. This was the subject of publicity for a period of 6 weeks and consultation with statutory consultees.
52. A response from Natural England has expressed concern that Policy LANP24, and in particular the requirement that "*Development proposals should include a Nutrient Management Plan to deliver the necessary overall reductions in nutrient levels along these sections of the SAC*" may constitute mitigation. Welsh Water has responded to this to indicate that its planned investment in the Leominster sewage treatment works would mean that the development envisaged in Leominster could be accommodated without harm to the SAC.
53. My consideration of this policy follows in paragraph 161. My recommendation that it be deleted removes the concern that it amounts to mitigation and, having regard to the legal opinion obtained by HC, I am satisfied that the revised screening assessment demonstrated that the plan is unlikely to have significant environmental effects and that the process which has been followed is consistent with the CHSR.
54. I conclude that the making of the Plan does not breach and is otherwise in conformity with European Regulations.

### **Human Rights**

55. Nothing in the Plan suggests that there would be any breach of the European Convention on Human Rights

### **Vision, Aims and Objectives**

56. The Vision for Leominster in 2031 sets out the overall aspiration to be "*one of the county's more sustainable towns*" and amplifies this by referring to many specific aspects of sustainability which the Plan will seek to promote, including "*high quality, well designed, sustainable homes*", "*the opportunity to work from home or in businesses or services which provide low-energy, low-pollution and low-impact working environments*" and "*protected green areas which are linked together to create a green network which supports biodiversity*".
57. The Plan then sets out 5 aims:
  - 1 - To create a sustainable Leominster
  - 2 - To create a prosperous Leominster

- 3 - To create a greener Leominster
- 4 - To retain Leominster's distinctive identity
- 5 - To create a healthy Leominster
- 6 - To create an accessible Leominster

These aims effectively present the vision in a more structured way.

58. For each of the aims, the Plan then presents a number of objectives. Cumulatively this results in over 50 objectives. There is significant repetition between the objectives under different headings and it is important to recognise the distinction between objectives and policies. Objectives express what the plan intends to achieve, and policies define how these intentions will be achieved. Most of the objectives are very short statements of intent, but in some cases under objective 2 they are quite lengthy and read more like policy statements. For the avoidance of confusion, those objectives that read as policies need to be deleted or modified.

**Recommendations**

**In objective 2 – i delete “that will be available to ...where it is appropriate” and insert “in appropriate locations”.**

**Delete objective 2 – ix and 2 – x**

**In objective 2 – xi delete “palette of colours to create” and “– alongside more tree planting, seating etc”**

**delete objective 2 – xii**

59. The Vision and Objectives will not form part of the statutory development plan, but, as they provide the context for the policies which will, it is important that they are consistent with sustainable development. I am satisfied that the Vision and Objectives provide an appropriate balance between the economic, social and environmental dimensions of sustainable development.

**Policies**

60. I have considered all the policies of the Plan against the basic conditions, having regard to the evidence provided to justify them. Where necessary I have recommended modifications. I am only empowered to recommend modifications necessary to meet the basic conditions or to correct errors.
61. In considering the policies I have taken account of all the comments made during the preparation of the Plan with a particular focus on comments made in response to the regulation 16 consultation on the submitted plan. While I have not referred directly to all the comments made I have given attention to all of them.

**Sustainable Leominster**

**Policy LANP1 - Supporting the Highway Network and Southern Link Road to serve the strategic development needs in Leominster**

62. Policy LANP1 relates primarily to the provision of a new road linking the A44 at Baron's Cross and the A49 South East of the Town, which is included in the strategic infrastructure requirements identified in Appendix 5 of the HCS. Appendix 5 envisages that the provision of the link road will be brought forward by the developer(s) of the Sustainable Urban Extension (SUE) to the south-west of the existing built-up area of Leominster, where 1500 new dwellings are proposed by HCS Policy LO2.
63. Policy LANP 1 is a long and detailed policy. The first part of the policy places the new road into a broader context in which it may facilitate the reduction of through traffic in the town centre and has a number of requirements relating to traffic management and phasing. The first of these seeks a Comprehensive Traffic Management Strategy for the Leominster by Herefordshire Council as Highways Authority in partnership with the Town Council. While this may well be appropriate and there is no reason why the Town Council should not seek to encourage this, it is not a policy which relates to the development and use of land. As such it cannot form part of a neighbourhood plan policy and the neighbourhood plan cannot be used to require a certain course of action by the Highways Authority. I have therefore recommended modifications to delete the requirement for a comprehensive Traffic Management Strategy, but to refer to the aspiration for it to be done in the supporting text.
64. The policy also refers to the need for development of the SUE to be phased so that it does not add to thorough traffic in the town centre and sets a deadline for the delivery of the link road by 2025. Appendix 5 of the CS contains this target for the completion of the link road so that it does not impact adversely on the delivery of new housing, but the date is not included in Policy LO2. While it makes good sense to aim for this completion date, it is not appropriate to set a limit on the timescale for delivery in a planning policy, particularly as it is evident from both the supporting text and the comments of HC that it is not yet clear how the road will be funded. In this context I have noted a representation which offers discussions on the potential of new development at Barons' Cross to contribute towards the costs of the link road.
65. The inclusion of the words "*no later than 2025*" begs the question what happens if the road is not constructed by then? There is no suggestion that this would lead to abandonment of the proposed link road or the proposed housing allocation. The phasing of the link road in relation to the development of the SUE is a strategic issue that is not within the scope of the LANP.
66. The first section of the policy also indicates that the Traffic Management Plan will restrict the use by heavy traffic of roads in the Parish and in particular will restrict the use of the through route via Bargates to address issues of air quality. This pre-empts the findings of a Traffic Management Plan which it is not within the powers of this plan to require. While there is evidence of an air quality issue in Bargates, no detailed evidence is presented to demonstrate the need for or implications of a heavy vehicle ban. This can therefore only be a measure to be investigated rather than required at this stage.
67. The second part of the policy sets out 9 criteria to be taken into account in the design of the link road. Criteria i to v and viii are appropriate design considerations designed to ensure that

the route takes account of the needs of pedestrians and cyclists, provides for contributions to biodiversity, provides the southern limit of the SUE and will not result in the Barons' Cross area being isolated from the town. I am satisfied that they are consistent with the basic conditions. Criteria vi and vii are traffic management measures which do not relate to the development and use of land. Criteria viii and ix require that the design minimises the effects of noise and that run off from the road should not be allowed to enter the River Arrow or other water courses and meet the basic conditions.

68. The note following the policy, which precludes the use of the route through Bargates and the use of other minor roads in the urban areas by construction traffic for strategic development sites, is phrased as a policy. While this is an understandable aspiration, the precise relationship between the construction of the Link Road and the development of the SUE is not explicit and it is therefore not clear how construction is intended to reach the development sites. It is therefore necessary to delete this note.
69. I have also recommended modifications to the supporting text to accommodate the aspirations which I have recommended should be deleted from the policy itself.

#### **Recommendations**

##### **In Policy LANP1:**

##### **Modify the first paragraph to read:**

**“A new road linking the A44 at Barons' Cross and the A49 south east of the town will be constructed in association with the development of the Sustainable Urban Extension (SUE). The delivery of the SUE must be phased in relation to the construction of the link road to minimise the impact of increased traffic on the main route along Bargates and through the town centre. The completion of the entire route is a priority and must be achieved as early as possible to facilitate the delivery of housing.”**

##### **Delete criteria vi and vii**

##### **In the supporting text to Policy LNDP 1:**

**Delete the note that immediately follows the policy at the top of page 26.**

**In the next paragraph delete “but no later than 2025”, but after “...as a priority” add**

**“Completion will depend on agreement as to how the road can be funded, but it is intended that the road should be completed by 2025 to facilitate the development of the SUE.”**

**Add after the last paragraph of supporting text: “The Town Council will request that Herefordshire Council prepare a comprehensive traffic management study for the town in consultation with the Town Council which will consider: the feasibility of a heavy goods vehicle ban, except for access on the main through route from the west to the east of the town and the appropriate speed limit on the link road to limit road noise.”**

**Reorder the criteria to form a continuous sequence.**

#### **Policy LANP2 – Leominster Sustainable Urban Extension**

70. Policy LANP2 adds to the provisions of CS Policy LO2 which provides for the construction of 1500 houses in the SUE. As HC point out it would be helpful for the policy to directly cross refer to Policy LO2.
71. The first criterion requires the preparation of a Masterplan for the whole site with development phased to provide the sense of a series of incremental developments with their own characteristics rather than a uniform housing estate. It also highlights the importance of good connections to the town centre. I am satisfied that this is consistent with sustainable development, is not unduly prescriptive and does not conflict with national policy or guidance.
72. HC have questioned how the requirement in criterion b. to *“reflect the architectural language of Leominster”* will be assessed and I have recommended a modification which will clarify this. This criterion also encourages self-build dwellings.
73. Criterion c. provides for the creation of a village centre within the new development and this expands on the provision in Policy LO2 for the provision of community facilities and a new primary school.
74. In criterion d. there is a requirement for density to be high around the village centre and to decrease further away from it. There is no definition of what “high” means. There is no requirement to define a specific density but a modification to express more clearly that the requirement is for relatively higher densities at the centre compared with the overall average of 35 dwellings per hectare proposed in Policy LO2 would provide clearer guidance for decision makers.
75. Criterion e. requires the provision of some sheltered/warden monitored housing within the development and is consistent with the basic conditions.
76. Criteria f. and g. require energy efficiency standards to reflect national standards and require low embodied energy in the construction materials. The Ministerial Statement of March 2015 introduced national standards for energy efficiency and renewable energy equivalent to the former Sustainable Homes Level 4 and indicated that *“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.”*<sup>19</sup> The application of the national standards is a matter for the local planning authority.
77. Criteria h., i., j. and l set out requirements relating to movement and accessibility for all modes of transport for the new development and are consistent with the basic conditions. Criterion k. requires that development should be designed so that the tenure of development is not obvious from its appearance and there are no large blocks of a specific tenure. This is also consistent with the basic conditions.

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<sup>19</sup> Ministerial Statement of 25 March 2015 under the heading “Plan Making”

78. Criterion m. requires the incorporation of the latest communication technologies into the proposed development and is consistent with the basic conditions.
79. Criterion n. relates to the management of nutrient levels. As currently worded the meaning of this is not clear to the uninitiated as it makes no reference to where the standards apply. My understanding is that it relates to nutrient levels within the in the River Wye SAC, which includes the valley of the River Lugg below Leominster. This provision is unnecessary as it duplicates the requirements of CS policy SD4 and would be inappropriate having regard to the legal ruling relating to the Habitats Regulations which was covered in paragraphs 48-53 of my report. The last line of criterion n. does not make sense in relation to the first part and does not add to CS Policy LO2.
80. Criterion o. requires the provision of broad green corridors (in particular Cockcroft Hill and land to the west) to allow for the migration of wildlife between the centre of the town and the periphery. The NPPF attaches importance to promoting *“the preservation, restoration and re-creation of priority habitats”* and preventing *“harm to geological conservation interests.”*<sup>20</sup> CS policy LO2 also refers to the *“retention of the highly sensitive landscape areas and geological features of Cockcroft Hill (which encompasses Ryelands Croft) by retaining this site as natural open space;”*. However, there is no definition of “broad” and no explanation of why broad green corridors are necessary. These areas are included within the very extensive areas proposed as Local Green Spaces in Policy LANP11 which are considered in paragraphs 126-129 of this report. I sought clarification on this issue and it is apparent that the sensitive area referred to in Policy LO2 is much more restricted than that shown on the map of proposed Local Green Spaces. I have therefore recommended modifications to reflect the need for the Master Plan for the area to address this issue.
81. Criterion p, requiring the provision of allotments, recreation areas, orchards and mature tree planting is consistent with the basic conditions.
82. Criterion q. relating to access for construction traffic needs to be deleted for the same reason as the similar requirement on Policy LANP1.

## **Recommendations**

### **In Policy LANP2:**

**In the second line after “when” insert “subject to the criteria in Policy LO2 of the Core Strategy and the following requirements:”**

**Modify criterion b. to read “proposals for new homes demonstrate that they will contribute to local distinctiveness by having regard to the architectural character of Leominster. Self-build dwellings will be encouraged.”**

**Modify criterion d. to read “Within the average density of up to 35 dwellings per hectare**

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<sup>20</sup> NPPF paragraph 117

**required by policy LO2, higher densities will be permitted around the village centre and densities will decrease away from the centre.”**

**Delete criteria f. and g.**

**Delete criterion n.**

**In criterion o. delete “Broad” and after” ...Corridors (“ delete “in particular” and insert “..including the highly sensitive landscape areas and geological features of Cockcroft Hill, to be defined in the Masterplan)**

**Delete criterion q.**

**Renumber the criteria into a continuous sequence.**

### **Policy LANP3 – Supporting the strategic and small scale housing development needs in Leominster Town**

83. This policy sets out criteria for small scale housing developments within the current Leominster settlement boundary. Before considering the individual criteria, it is important to consider the general conformity of the policy with CS Policy LO1. This raises two issues: a) whether there should be provision for development beyond the settlement boundary and b) whether the strategic allocation in Policy LANP2, existing commitments and the provisions of this policy are sufficient to meet the need for a minimum of 2,300 new dwellings between 2011 and 2031 identified in Policy LO1 of the CS. P13 of the Plan refers to the CS requiring a minimum of 2,500 new dwellings but it has been confirmed to me that this is an error. A prime requirement for neighbourhood plans is that they *“should not promote less development than set out in the Local Plan or undermine its strategic policies.”*<sup>21</sup>
84. It is envisaged in Policy LO1 that the SUE will provide 1,500 new dwellings and that *“the remaining dwellings will be provided through existing commitments, smaller scale non-strategic sites within the existing built up area; those which come forward through the Leominster Neighbourhood Development Plan, or sites judged as having development potential which are identified in the Strategic Housing Land Availability Assessment.”* This provides for the possibility of some development outside the settlement boundary. Policy LANP3 is more restrictive than this as it only provides for small scale development within the settlement boundary. I shall return to this issue following consideration of the amount of development provided for.
85. The table on page 30 of the LANP aims to demonstrate the extent to which residential completions since 2011 and existing planning permissions will meet the need for a further 800 dwellings over and above the 1,500 to be provided by the SUE. It indicates that there is permission for a further 587 dwellings in the Parish. This would leave a requirement for a minimum of a further 213 dwellings. However, this is not consistent with the Evidence Statement included with the submission document which addresses the scale of development that can be accommodated by the Plan in some detail. There are also several internal

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<sup>21</sup> NPPF paragraph 184

inconsistencies in the Evidence Statement. While these are small, I sought clarification in order to be able to use a consistent set of information and have recommended modifications to the Plan to correct errors.

86. As a result, I have established that the table following paragraph 3.2 of the Evidence Statement should show that outstanding planning permissions total 634<sup>22</sup> and completions since 2011 total 129. This suggests a remaining requirement for 37 dwellings.<sup>23</sup> The table in paragraph 3.5 of the Evidence Statement then lists more recent applications. Some of these have been approved, providing for 23 further dwellings, making a total of 657, and others for a further 22 dwellings are awaiting determination. It cannot be assumed, as paragraph 3.6 does, that all of those awaiting determination will be approved.

87. Thus it is my understanding that the current position is not as expressed in paragraphs 3.6 and 3.7 of the Evidence Statement but as summarised below:

Dwellings required	800
Dwellings completed since 2011	129
Permissions granted	657
Additional dwellings required	14

Thus, if the SUE delivers 1500 dwellings within the plan period it will together with existing commitments almost meet the requirement for a minimum of 2,300 dwellings.

88. However, there also appears to be some conflict between the supporting text of the HCS and the views expressed by HC in its Progression to Examination document for the LANP. Paragraph 4.6.8 of the CS states that *“The land south of Leominster is sufficient not only to meet the housing target for the current plan period but is also likely to help meet the housing needs of the town through further development post 2031 supported by new highway infrastructure and community facilities”*. However, the Progression to Examination document asks, *“is there evidence to show that this residual requirement can be met through the policies of this plan and within the settlement boundary.”* I have been advised that there is no conflict between these statements as the SUE has the potential to deliver more than 1,500 dwellings in the long term, but 1,500 is considered a realistically deliverable amount during the plan period.

89. The delivery of the 2,300 dwellings required is heavily dependent on the delivery of the 1,500 dwellings within the SUE within the plan period. Given the clear inter-relationship between the SUE and the delivery of the proposed link road and the apparent absence of a firm funding commitment to the link road, there must be at least an element of risk that the delivery of the SUE will be subject to some delay and that less than 1500 dwellings will be provided by 2031. It is not unusual for the delivery of major urban expansions to be delayed and, while, existing commitments almost meet the 800 dwellings required in addition to the SUE, there is a clear need for some flexibility in the event of any delay. It is reasonable to assume that there will be

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<sup>22</sup> This includes 414 dwellings at Barons Cross rather than the 424 shown in the Schedule of commitments. The commitments also include small permissions at Ivington, Brierley and Wharton as well as Leominster

<sup>23</sup> Not 27 as shown in the table in paragraph 3.4 of the Evidence Statement



further small-scale permissions within the settlement boundary, but there is no evidence within the Plan which attempts to quantify what potential there is for this. It is my impression that the settlement boundary is drawn fairly tightly, and no substantial obvious infill sites have been identified within it. The fact that most of the substantial sites that have recently been permitted are on the edge of the built-up area and have led to an extension of the settlement boundary tends to confirm this.

90. The supporting text to Policy LANP3 suggests that “in exceptional circumstances small scale developments may be considered in areas adjoining the settlement boundary...”. However, this statement does not fall within the policy and, as the delivery of 2,300 dwellings is so clearly dependent on the rate of delivery of the SUE, the Policy itself needs to allow for some flexibility if there is a need for additional development to meet the need for 2300 dwellings. It is important to note that the figure of 2,300 dwellings is a minimum and without some provision for development outside the settlement boundary it could effectively become a cap, and this would be inconsistent with CS Policy LO1. However, although the figure of 2,300 dwellings is a minimum, the amount of development in excess of this figure cannot be regarded as open ended. The Habitats Screening Assessment has identified the potential for harm to water quality in the River Wye Special Area of Conservation. The Appropriate Assessment under the Habitats Regulations carried out for the HCS has found that the level of growth proposed in the Core Strategy Plan has been found unlikely to have significant effects and this has subsequently been confirmed by Welsh Water. This includes some small-scale development outside the settlement boundary. Nevertheless, an open-ended approach to development may increase the risk of harm.
91. I therefore agree with HC that a modification to provide for small-scale development adjacent to the settlement boundary as well as within it is necessary to ensure that the Plan is in general conformity with CS Policy LO2, but such development should only be permitted where it can be demonstrated that it is necessary to meet the minimum of 2,300 dwellings.
92. Gladman developments have objected to the use of the term “small-scale” in the policy. Given the large scale of the proposed SUE and the further large development envisaged at Baron’s Cross, there is unlikely to be any requirement for further large-scale developments. However, the term “small-scale” is not defined in the policy and without such a definition it is difficult to determine what scale of development may fall within it. Any such definition should not be rigid as some flexibility to allow for the characteristics of the site is appropriate, but for the policy to be meaningful some indication of the scale it is referring to is necessary. The HCS defines the term “strategic locations” as “around 100 homes in the market towns.” In the absence of any other definition or any clear justification for any other figure that is the only guidance available to a decision maker.
92. I explored this issue in an email query and the HC response was that *The definition of ‘small scale’ in terms of Policy LANP3 is a matter for the NDP group to define within their policy justification*”, while the Parish Council response was that: *“This would be a matter for HC*

*planners to determine but from a local viewpoint 100 seems to be very high. We would prefer small scale being between 5 to 30 dwellings”.*

93. General conformity with the development plan does not necessarily require precise adherence to it, but there should be a clear rationale for the approach taken. From the information that I have, the Plan is close to providing for the minimum of 2,300 dwellings that is required, and it is reasonable to assume that there will be some further windfall developments during the Plan period, though there is no basis for an assumption as to how many. However, unless some provision is made for additional development outside the settlement boundary, any significant delay in the delivery of the SUE is likely to result in a shortfall in the delivery of housing. Developments of around 100 dwellings or more are rightly seen as strategic, but to limit any further developments to around 30 dwellings may well require several such developments to make a significant contribution to housing delivery. I therefore recommend that small-scale development in this context should mean up to around 50 dwellings which would provide for developments that are clearly smaller than strategic allocations but large enough to make a significant contribution if required. I have also recommended rephrasing of the first part of the policy as its meaning is not clear.
94. Representations have been made regarding the suitability of two sites, one off The Rugg and one adjacent to Ginhall Lane for residential development, suggesting that they should be included within the settlement boundary. It is not appropriate for me to propose piecemeal modifications of the settlement boundary in the absence of a full appraisal of all the options. Any proposals for residential development would need to be considered against the development plan policies at the time of the application, which may include the modifications I have recommended.
95. Turning to the individual criteria, I have several concerns regarding both content and clarity. Criterion a. is too vague to be meaningful as it begs the question of how high quality and sustainable design can be defined.<sup>24</sup> Criterion b. meets the basic conditions. Criterion c. conflicts with the guidance issued following the Housing Standards Review in 2015 which I have already referred to.<sup>25</sup> Criterion d. is consistent with the basic conditions, but it refers to a design guide in appendix 4, which I shall return to in paragraph 99. No evidence is provided in relation to criterion e. and in my experience this standard is too prescriptive as some forms of housing development may not require as much as two parking spaces per dwelling; one-person flats or old people’s dwellings for example. Others may well require more. In practice the exceptions to the policy would render it meaningless.
96. Criterion f. would only be applicable to larger developments and requires a modification to make this clear. Criterion g. meets the basic conditions subject to a modification to indicate

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<sup>24</sup> PPG Neighbourhood Planning How should the policies in a neighbourhood plan be drafted? Reference ID: 41-041-20140306

<sup>25</sup> Planning update: Ministerial statement issued by the Secretary of State for Communities and Local Government 25 March 2015

that “an appropriate mix” should be defined on the basis of up to date published information on housing need. Criteria h. and k. appear to duplicate or overlap, and, while it is appropriate to support opportunities for self-build, there is no justification for requiring it on all smaller schemes. The beginning and end of criterion i. effectively duplicates b., but I have recommended a modification to amplify criterion b. by referring to local distinctiveness. Criterion j. repeats the requirements of Policy SD4 and should be deleted for the same reason as Criterion n. in Policy LANP2.

97. It is not necessary to protect designated Local Green Spaces in the way proposed in criterion l. as Policy LANP11, that applies to them, does this, and, to avoid confusion, the term Local Green Spaces should only be used where this designation is made. More importantly, the general presumption against the development of any green space or garden land undermines the intention of this policy to allow for infilling within the settlement boundary. While the NPPF supports policies in relation to the inappropriate development of garden land, that does not mean that such development can be prevented in all circumstances and a blanket ban on development within gardens has not been justified. I have recommended modifications to Criterion l. to reflect all these points.
98. The first sentence of the last part of the policy is not necessary as it simply cross refers to other policies in this Plan and Local Plan policies. The second part seeks compensatory or mitigation measures where material considerations justify departure from any of these policies. I have modified this to relate to the criteria in this policy.
99. The supporting text to Policy LANP3 refers to the Design Guide in Appendix 1. It is phrased as a policy and should therefore form part of it. However, the wording of the reference together with the wording of the Design Guide itself are too prescriptive to conform to the approach set out in the NPPF<sup>26</sup>, which discourages “unnecessary prescription” and “the imposition of architectural styles or particular tastes.” Also, many of the bullet points in the design guide are not sentences and without an introductory clause or verb their meaning is not clear. For example, “characteristic weatherings such hoods and pentice boards” does not say whether these are required or encouraged or acceptable. A design guide is a guide to be applied with discretion and not a set of inflexible rules and, although the Design Guide is not itself part of the policy, several modifications to it are necessary to meet the basic conditions as the policy requires its application. The first bullet point implies that it is a requirement to liaise with the Town Council. The NPPF makes it clear that, while pre-application engagement is desirable, it cannot be required.<sup>27</sup> The final bullet point is too prescriptive and not enforceable in most circumstances. The reference in the supporting text to Policy R2 of the Core Strategy relating to rural exception sites is inappropriate as it does not apply to market towns such as Leominster.

## **Recommendations**

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<sup>26</sup> NPPF paragraphs 58-60

<sup>27</sup> NPPF paragraph 189

**In Policy LANP3:**

**Modify the first part of the policy to read: “In addition to the Sustainable Urban Extension and existing commitments, small scale developments of up to about 50 dwellings will be permitted within the Leominster settlement boundary (see map 3) or, where it can be demonstrated that additional housing is necessary to ensure that the requirement for 2300 dwellings during the Plan period is met, outside the settlement boundary, when they meet the following conditions:”**

**Delete criterion a.**

**In criterion b, after “...to its context”, insert “, locally distinctive”.**

**Delete criterion c.**

**In criterion d. delete “(; a design guide is provided in appendix 4) and insert “, having regard to the design guide in appendix 4.”**

**Delete criterion e.**

**Modify criterion f. to read “on estate scale development, planning for movement should follow the hierarchy of pedestrian, cycle, bus, car utilising footpaths.....off street parking.”**

**Modify criterion g. to read “There is an appropriate mix of housing types and tenures, which meets the requirements for affordable housing in Core Strategy policy and reflects the needs identified in the most up to date assessment of housing need.”**

**Modify criterion h. to read “Proposals which include opportunities for self-build or custom homes will be supported.”**

**In criterion i delete “be locally distinctive, enhance an area”, insert “and” after “...security” and delete “and exhibit high quality that enhances Leominster.”**

**Delete criterion j.**

**Delete criterion k.**

**Modify criterion l. to read: “Small-scale and infill development proposals should not result in the loss of small green areas or gardens that make an important contribution to the character of the area.**

**Re-number the criteria to reflect these modifications.**

**Delete the first sentence of the last paragraph of the policy and in the second sentence delete “...that indicate these policies should not be followed” and insert “that justify departure from these criteria”.**

**In the supporting text to Policy LANP3:**

**In the second paragraph delete “In exceptional circumstances”**

**Delete “The design of new dwellings should meet the design requirements contained in Appendix 4 of the Plan.”**

**In the fifth paragraph on page 30 delete “under the Herefordshire Core Strategy Policy H2 (Rural Exception Sites)” and insert “outside the settlement boundary”.**

**In the note at the bottom of 30 insert a full stop after “...suitable for development, delete “...given that the strategic sites can provide for all the expected demand for housing in Leominster. The table below indicates development commitments to date:” and the table**

itself, and insert: “Of the 800 dwellings required in addition to the SUE planning permission has been granted for 786; a table showing all the commitments is included in the Evidence Statement.”

**In the Design Guidance in Appendix 4:**

**Remove the bullet point from the first paragraph to make it an introductory section. In the first line delete “The developer should” and insert “Developers are encouraged to”, after “...architect,” insert “and” and after “...the local planning authority.” insert “The design process should have regard to the following design principles.”**

**in the third bullet point replace “must” with “should” and replace “avoidance of generic commercial solutions” with “generic commercial solutions are not encouraged”.**

**In the fourth bullet point replace “must” with “should”**

**Combine the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> bullet points with an introduction:**

**“design should have regard to:**

- the balance...**
- the distribution and proportion...**
- the relationship of the upper...”**

**Combine the 7<sup>th</sup> to the 13<sup>th</sup> bullet points in the same way with an introduction**

**“The following features will be encouraged to reinforce local distinctiveness:”**

**Delete the final bullet point.**

#### **Policy LANP4 – New housing in Brierley, Ivington and Wharton**

100. This policy sets out criteria for development in the small settlements of Brierley, Ivington and Wharton. It limits development to within the settlement boundary as defined in the Plan. Policy RA2 of the HCS sets out a proportionate approach to development in rural areas by identifying the percentage increase in housing stock required in separate housing market areas and using this percentage as an indicative requirement for new housing growth. In the Leominster housing market area, the indicative level is 14%. The villages in each housing market area are divided into two categories: settlements that are to be the main focus of proportionate growth, which are the larger villages with some services, and other settlements.
101. Brierley, Ivington and Wharton are all in the “other settlements category”. However, it has been clarified to me that, as these settlements lie within the parish of Leominster, the requirement for 2300 dwellings within the plan period includes these settlements and there is no requirement for them to meet a separate proportional growth target. All three settlements are very small and except for the small primary school in Ivington do not appear to have any local services. There are planning permissions for 9 dwellings in Ivington, 12 in Brierley and 6 in Wharton. There have also been 2 completions in Wharton and 1 in Ivington. Thus, in total the three settlements will contribute 30 new dwellings during the Plan period and these are taken into account in the figures given in paragraph 87. Moreover, the spacious settlement pattern in each of the villages offers some potential for further infill development.

I am therefore satisfied that the limitation of new development to locations within the settlement boundary of Ivington, Brierley and Wharton does not undermine Policy RA2 as the three settlements will make an appropriate contribution to housing growth.

102. I am satisfied that the individual criteria meet the basic conditions, subject to modifications similar to those recommended in relation to Policy LANP3. In criterion d. there is a need to refer to published evidence of housing needs. Criterion e. is too imprecise to be meaningful and is effectively covered more explicitly by criteria a., c. and f.

**Recommendations**

**In Policy LANP4:**

**Modify criterion d. to read “by way of its house sizes, types and tenures reflects the needs identified in the most up to date published assessment of housing need.”**

**Delete criterion e. and renumber subsequent criteria.**

103. A representation notes that the settlement boundary to Brierley only includes part of the curtilage of Sunny Bank. However, Neighbourhood Planning Guidance Note 20 on the HC website indicates that settlement boundaries need not include the whole curtilage of a property and it is clear to me that the part of Sunny Bank that lies outside the settlement boundary is not part of the built-up area of the village. No reason has been given why its inclusion within the settlement boundary is necessary to meet the basic conditions.
104. No other representations have been received on the definition of the settlement boundaries and I am satisfied that they are consistent with sustainable development.

**Policy LANP5 - New Homes in the countryside**

105. The policy sets out criteria for new homes in the countryside, which closely follow those in the NPPF<sup>28</sup>. However, the criteria almost exactly mirror those in Paragraph RA3 of the HCS. The only differences relate to the last two criteria which are both numbered vii) (a departure from the a.b.c. notation used in most of the document). In the first vii) the reference to travellers’ sites sets a higher test than Policy H4 of the CS by requiring new sites for travellers or gypsies to make a positive contribution to the surrounding environment. Policy H4 provides criteria to protect the local environment, but a requirement to enhance it would be unduly onerous and no justification for this departure is provided. In the second vii) the reference to “*rural enterprise*” appears to be a mistake. As neither of the two differences from CS policy H4 are justified there is no purpose in the inclusion of a policy which simply replicates the CS Policy.

**Recommendation**

**Delete Policy LANP5**

**Policy LANP6 - Renewable energy**

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<sup>28</sup> NPPF paragraph 55

106. The policy generally supports renewable energy subject to criteria to prevent harm to the character of the area or local amenity. With regard to windfarms it replicates national guidance<sup>29</sup> that such proposals will only be supported where there is local support and it is demonstrated that any harmful impacts can be addressed. The policy does not add significantly to CS Policy SD2 and its criteria are less clearly worded. The additional point is the direct reference to biodiversity. However, while this is not specifically included in Policy SD2 it is covered in Policy LD2.

**Recommendation**

**Delete Policy LANP6**

**Prosperous Leominster**

**Policy LANP7 – New Business Development**

107. Policy LANP7 generally aims to encourage new business in Leominster. It sets out six categories of business development that will be encouraged and five criteria that they will be expected to meet. Its approach is in accordance with the support for a strong and competitive economy set out in section 1 of the NPPF. Part a. of the policy encourages further development on the Leominster Enterprise Park and Worcester Road/Southern Avenue area in accordance with HCS policies SS5 and LO1, which support business growth in Leominster, and the development of a further 10 hectares of land for employment uses. Part b. also supports the provision of live/work units and this also accords with Policy E1 of the HCS. There is not a clear read through from the introductory section to parts a. or b. as they repeat “will be encouraged”, which is also in the introductory section, and I have recommended modifications to address this. The second part of Part b. also replicates criterion v) in the second part of the policy and it is more appropriate there as it relates to all of the categories of business development in the first part of the policy. Part c. supports the provision of space for the sorting and storage of recyclable materials. No evidence is presented of the need for such space, but I find no conflict with the basic conditions. Part d. supports the improvement of existing business premises subject to criteria which include the use of low carbon building materials and renewable energy. This accords with the encouragement in the NPPF to support energy efficiency improvements in existing buildings<sup>30</sup>. Part e. supports development that will promote tourism, which reflects Policy E4 of the HCS and part f. promotes the diversification of agriculture.
108. The second section of the policy sets out five criteria which all of the types of development described in parts a. to e. will be required to meet. They relate to the use of renewable energy where appropriate, design, off-street parking and the avoidance of harmful effects on the environment and residential amenity. The policy meets the basic conditions subject to the

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<sup>29</sup> PPG Do people have the final say on windfarm applications Reference ID 5-033-150618

<sup>30</sup> NPPF paragraph 95

recommended modification to parts a. and b.

**Recommendation**

**In part a. of Policy LANP7 delete “will be actively encouraged” and in part b delete “will be encouraged” and “providing it is of small size and is not detrimental to the residential amenity of the area.”**

**Policy LANP8 - Protecting Existing Employment Sites**

109. The policy aims to protect existing employment sites from changes of use except where it can clearly be demonstrated that they are no longer viable for employment use. This approach is compatible with that in paragraph 22 of the NPPF. However, it is not in general conformity with Policy E2 of the HCS which applies a grading system to employment land to determine the approach to redevelopment and allows the redevelopment of employment sites rated moderate or poor subject to criteria<sup>31</sup>. Although all the sites assessed in Leominster are rated “good” or “best”, Policy E2 also refers to any successor study and this assessment could change. The policy does not add any local detail to Policy E2 but does not fully reflect its provisions.

**Recommendation**

**Delete Policy LANP8**

**Policy LANP9 – Development in Leominster Town Centre**

110. Policy LANP9 relates to development within Leominster Town Centre. In aiming to ensure that new retail, leisure, office, commercial, cultural and tourism uses takes place within or adjacent to the Town Centre, it is broadly consistent with the sequential approach to the development of town centre uses advocated in the NPPF<sup>32</sup>. However, when read in association with policies E5 and E6 of the HCS the policy creates some confusion as there are conflicts both within it and with the CS policies. There appears to be a conflict between the first and second paragraphs of the policy as the first refers to “within or adjacent to the boundary of the town centre” as the preferred location for retail development, while the second indicates that development “outside or adjacent to the primary and secondary town centre retail area” will only be permitted subject to the sequential test and impact assessment.” This is a more restrictive approach than that in CS Policy E5, which aims to promote town centre uses within the town centre. This confusion is exacerbated by the lack of definition of “the periphery” in the first part of the policy, which could be read as either the periphery of Leominster or the periphery of the Town Centre.
111. There is no need to replicate CS Policies E5 and E6 here and criteria a-c are effectively covered in Policy E5. Criteria d-n helpfully complement Policies E5 and E6. I have therefore recommended modifications to the first part of the policy to clarify this. The definition of the

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<sup>31</sup> In the Herefordshire Employment Land Study 2012

<sup>32</sup> NPPF paragraphs 23-27



primary and secondary retail frontages in Map 4 is valuable for the application of Policy E6. However, the map seems to omit areas that appear to be clearly primary retail shopping frontages on the north side of Corn Street, the east side of High Street (between Corn Street and Victoria Street) and the south side of Victoria Street. Having clarified that this is an error I have recommended modifications to correct it. The response I received also suggested several other changes, but it is not appropriate or necessary to propose these at this stage. I am satisfied that, subject to renumbering to reflect the earlier modifications, criteria d. to n. meet the basic conditions.

#### **Recommendations**

**Replace the first part of the Policy up to and including “Development proposals will be assessed against the following criteria with “Within Leominster Town Centre, see map 4, development for retail, office, commercial, cultural and tourism uses will be encouraged subject to Core Strategy Policies E5 and E6 and the following criteria:”**

**Renumber the remaining criteria d. to n. as a to k.**

**Modify Map 4 to show the south side of Victoria Street, the north side of Corn Street and the east side of High Street between Victoria Street and High Street as primary shopping frontage.**

#### **Greener Leominster**

##### **Policy LANP10 – Green Infrastructure**

112. Policy LANP10 aims to protect and enhance the Green Infrastructure Network identified in the HCS. It sets out a set of desirable improvements which new developments will be expected to contribute to, where appropriate. The term “contribute to” is ambiguous as it could mean a financial contribution, or it could mean that developments would include elements of these improvements and it is not clear whether it has either or both meanings. I have recommended a modification to clarify this. A representation has suggested that this breadth means that the policy is not clearly drafted, but the intentions of the Policy are clear, and it would not be possible to anticipate in detail all the possible scenarios in which it might be applied.

#### **Recommendation**

**Modify the first part of Policy LANP10 to read: “Proposals for new development will be required to have regard to the proposals of the Herefordshire Green Infrastructure Strategy shown on Map 5 and, where appropriate to incorporate or contribute to the following improvements to green infrastructure:”**

##### **Policy LANP11- Amenity Open spaces**

113. This policy identifies several amenity open spaces to be protected, and proposes the protection of several smaller, un-named green spaces unless they do not contribute to one of five criteria. It is not initially clear that the policy is proposing the designation of the named spaces as Local Green Spaces in accordance with paragraphs 76-78 of the NPPF, but the

Evidence Statement published following the completion of the regulation 16 consultation makes it clear that this is the intention. That is one reason why it is important that the Evidence Statement was subject to a further period of consultation.

114. Map 6 accompanying this policy is wholly inadequate. The named sites in Policy LANP11 are listed a.-s. but the map shows sites numerically with numbers in three different formats. There is no way of linking the numbers with the named sites and the list of numbers is incomplete with numbers 1,3 and 6-10 not shown on the map. The Map also does not define individual sites and includes many smaller green spaces which are not included in the list a-s and some larger areas of woodland some distance from the town. I sought clarification on this from HC to assist my site visit and was provided with a revised map using numerical numbering and a list which in most cases connected the site to the list in the Plan. A further issue is that the scale of Map 6 is too small for the location and extent of the individual green spaces to be clearly identified. They are more clearly defined on the Policies Maps produced by HC which are at a rather larger scale, but the sites are not numbered on these maps, so it is impossible to relate the policy to them.
115. During the examination, in response to this confusion I have been provided with replacement maps which show the areas proposed as Local Green Spaces numbered in accordance with the numbering in the policy, though using capitals rather than lower case lettering. These maps are attached as Appendix 2.
116. The evidence base lists the locations identified in the Plan and explains how each of them relates to the criteria for Local Green Spaces. I visited almost all the sites on my site visit and will consider them individually in the order they are presented in Policy LANP11. There were two sites that I was unable to identify clearly at the time, and I have made my judgement on them from the evidence base and photographic information provided since my visit.

a. The Grange

117. The Grange is a very attractive area of green space close to the centre of Leominster. It certainly makes an important contribution to the character of the town and to the setting of some of its important buildings as well as offering a pleasant walking area with access to adjoining green spaces and opportunities for both informal and informal recreation. It is a key element of the identity of Leominster and clearly meets the criteria for Local Green Spaces.

b. The Priory Precinct

118. The Priory Precinct is an area of green space to the south and east of the Priory. It is bordered by The Grange to the south-west. The Priory Precinct has some of the characteristics of a cathedral close, but generally has a more informal and semi-rural character which is distinctive and unusual so close to a town centre. It provides a network of footpaths and is a vital green lung for the town.

c. Cricket Pitch (off Mill Street)

119. The cricket pitch off Mill Lane lies between Mill Lane and the River Kenwater to the north of the town centre. It is a well-established compact space with mature trees on three sides and is appropriate for Local Green Space designation.

d. Playing fields and Sports Centre (off Bridge Street)

120. This is a large area of sports pitches on the north side of the River Kenwater which includes the ground of Leominster Town Football Club. It is clearly an important facility for the town and its riverside setting contributes to the character of the town as a whole. However, the sports centre, together with its car park cannot be considered green space. It is a substantial building and while, no doubt an important facility has no special character. The definition of the Local Green Space should therefore exclude the buildings and car park. The area defined on the map also includes an area of woodland to the west of the playing fields on the north bank of the River Kenwater to which there is public access, a footpath which runs north from this woodland to the River Lugg and a strip of green space including a footpath along the south bank of the River Lugg. Together with a short section of the road leading to the Leominster Transfer Station these spaces create a circular walk about one mile. The narrow strips on the north and west are essentially footpaths rather than green spaces. While clearly important as rights of way, I am not satisfied that they are demonstrably special as spaces and they are therefore not suitable for Local Green Space designation. However, the playing field and woodland together create an important green area with a varied character.

e. Cemetery, Hereford Road

121. The cemetery on Hereford Road is on the southern edge of the town. It is attractively laid out, clearly well managed and maintained, with distinct character areas within it. Its peace and tranquillity give it a special character and it is appropriate for Local Green Space designation.

f. Ginhall Green

122. Ginhall Green is a narrow strip of landscaped open space with a footpath running through it bordering the Buckfield Estate. At the western end it widens into a more spacious area with benches, a community orchard and wildflower meadow. The evidence statement refers after area p. to "Orchard at top of Green Lane" which is not referred to in the policy. This area is not referred to on the revised definitive map, but it has been clarified to me that it is actually at the eastern end of this area. While this space is long, about half a mile, it is not an extensive area because it is for the most part quite narrow; it is clearly a valuable and well-used informal recreational facility which is more than a footpath and well-integrated with the Buckland

Estate.

g. Recreation ground, Leisure Centre and school playing fields, east of South Street

123. The maps at Appendix 2 have helped to clarify the relationship between this area and area h. However, the description does not clearly relate to the map as the Leisure Centre lies to the north of the Earl Mortimer College and sixth form centre and the playing fields lie to the south. The description includes "Recreation Ground" but it is not clear what is meant by this or how it relates to the next listed green space "Skate Board Park and Sydonia Park". It has been clarified to me that "Recreation Ground" relates to area h. and is considered there. The leisure centre is a building and the school buildings and car park areas are clearly not a green space. The school playing fields are evidently an important facility, but I was unable to access the wild area to the west of the southern end of the playing field and a small area of allotments on my site visit. It has been clarified to me that there is community use of these areas and I am satisfied that taken as a whole the area defined as area g. in Map 1 of Appendix 2 is appropriate as a Local Green Space. The heading needs to be modified accordingly.

h. Skate Board Park, Recreation Ground and Sydonia Park

124. The Skate Board Park lies at the southern end of a grassed area, traversed by several useful footpaths which connect residential areas to the east and south with the town centre. It contains picnic areas and is evidently a valuable site for informal recreation. It was unclear from the documentation whether this area is Sydonia Park, or the Recreation Ground referred to in g. I have been advised that the term recreation ground refers to a small partly grassed area of about 20m x 20m between two car parks immediately north of the tennis courts. This is an area of no great character or significance which does not justify the term recreation ground or designation within an area of Local Green Space.

i. Millennium Green and Riverside Walk

125. This is a further element of the contiguous group of green spaces north and east of the town centre adjoining the Priory. It is a rectangular green space bordering the railway line to the east through which there is a winding footpath, and at the southern end a community orchard? It is a very attractive tranquil space with its own character, which is distinct from that of the neighbouring areas. It is appropriate for Local Green Space designation.

j. Cockcroft Hill

126. Cockcroft Hill<sup>33</sup> is described in the Evidence Statement as "*important landscape access and views, informal recreational area for residents and visitors alike.*" Appendix 1 to the Evidence

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<sup>33</sup> The terms Cockcroft Hill, Cock Croft Hill and Cock Croft appear to be used interchangeably in the evidence presented in Appendix 1. I have used the term Cockcroft Hill for consistency.

Statement contains additional justification. The area described as Cockcroft Hill appears to be applied to a band of countryside on the south-western edge of the built-up area of the town about 1km long. It is divided into two parts connected by a narrow strip of land at the junction of Ivington Road and Ryelands Road. Ryelands Croft lies between Ivington Road and the rear gardens of properties in Baron's Cross Road. It consists of grazing land and the land rises steeply from Ivington Road to provide elevated views to the west from the highest land to the west of Newlands Drive and Stockenhill Drive. It then falls to a rectangular pasture which lies between Morrisons and Daneshill Drive and Westcroft. The other area to the east of Ryelands Road again rises to the summit of Cockcroft Hill which offers commanding views to the south and west. Apart from a small grassed area at the summit this is open arable land traversed by a number of footpaths. The whole area lies within the broad area identified as the Sustainable Urban Extension for 1500 new homes and within a broader area identified as a Green Infrastructure Enhancement Zone within the HCS.

127. Two representations have been received objecting to the proposed designation on the basis that it would effectively separate the proposed SUE from the existing town, thus preventing the development of some of the most sustainable land and that the designation of this area would not be consistent with the criteria in the NPPF.
128. Ryelands Croft and Cockcroft Hill are undoubtedly important landscape features and the proposals for the SUE include *“retention of the highly sensitive landscape areas and geological features of Cockcroft Hill (which encompasses Ryelands Croft) by retaining this site as natural open space;”*. I have no doubt therefore that it is important that parts of the extensive area identified on the policies map should be retained as open space and may well merit the designation of Local Green Space when they have been defined. However, I am not satisfied that the justification presented in Appendix 1 to the Evidence Statement makes a clear case for the entire area which is identified to be designated as a Local Green Space. The justification presented refers to the landscape significance of this area and the importance of geological features. It also refers to well-used permissive footpaths across the area as well as the importance of the Green Infrastructure Enhancement Zone. It does not however explain why an area of this size should be designated. I agree that parts of the area, notably the highest parts of Cockcroft Hill and Ryelands Croft are capable of meeting the criteria in the NPPF, but the large area of arable land east of Cockcroft Hill is not demonstrably special and the whole area defined amounts to an “extensive area of land” and is therefore not appropriate as a Local Green Space.
129. It is evident that the SUE, will require a masterplan that takes into account the need to accommodate 1500 dwellings, the Southern Link Road, the Green Infrastructure Enhancement Zone and the criteria of Policies LANP2 and LANP3 and the other requirements of Policy LO2 of the HCS. It would not be in the interests of sustainable development to constrain this process by designating an area of the scale proposed as Local Green Space as this may well compromise other important objectives. In particular, it will be important to achieve the

effective integration of this substantial new residential area with the existing town and the designation of this large area would tend to detach it. The masterplan will be required to include parts of this area as open space and any consideration of future designation as Local Green Space would need to be undertaken in a future Local Plan or review of the Neighbourhood Plan.

#### k. Easters Wood

130. Easters Wood is an area of woodland to the east of the Leominster Bypass, part of which borders the River Lugg. It is quite a large space, about 300m in depth from the bypass and up to 200m wide in parts. However, I do not consider it too large to be appropriate as a Local Green Space and it is clearly an attractive recreational asset which also contributes to biodiversity. It is appropriate for designation as a Local Green Space.

#### l. Riversides such as spaces in the former Priory lands on the south side of the River Kenwater

131. The description of this area is imprecise and the use of the term “such as” is inappropriate in the description of an area that needs to be clearly defined. The map recently provided shows this area as a small area on the south bank of the River Kenwater opposite the cricket ground and on the north side of the Broad Street Car Park. This is an attractive space offering pleasant views across the river and back to the Priory and is appropriate as a Local Green Space, but its description needs to be revised.

#### m. Picnic Area behind the Priory and Breathing Space Garden

132. This area lies to the north of the Priory and south of the River Kenwater. It provides an attractive and peaceful picnic site and garden and forms part of the network of green spaces which almost encircle the Priory. It is entirely appropriate as a Local Green Space.
133. While collectively the several spaces around the Priory make up quite an extensive area, there are several separate spaces each with their own character, they are clearly special and close to the community they serve. As each is justified individually, I do not consider that their collective area disqualifies them.

#### n. Booth Memorial Garden

134. This area was not clearly identified on the Map in the Plan but is described as being to the rear of B and Q. The area shown on the Map in Appendix 2 is a small triangular area to the south-east of the B & Q car park which has been confirmed as the correct location. I was unable to locate this area on my site visit from the information before me, but I have since been provided with a photograph and a plan, which are attached at Appendix 3, and I am satisfied

that it meets the criteria for Local Green Spaces.

o. Small Park on Rylands Road

135. This area is also not clearly identifiable of either Map 5 or the Map produced by HC. It is a narrow strip of land on the north-west side of Rylands Road, slightly elevated in relation to the road. The south western end is mainly grassed and crossed by footpaths but at the north-eastern end there are many mature trees. It is clearly an important space for local residents and creates a sense of space on this radial route into Leominster.

p. Areas of open space throughout Buckfields

136. This description is again imprecise, and the areas were not clearly defined on Map 6. There are several relatively small areas of open space within the Buckfields Estate. Some are more significant than others, but they are clearly of value to those living near them and make an important contribution to the character of the Buckfields Estate. The revised map clearly defines the areas that are covered by this designation and while a collective designation of this sort is unusual I am satisfied that it is consistent with the criteria.

r. Linear walk along river behind Ridgemoor

137. This is an attractive walk along the south bank of the River Lugg offering extensive views in the open countryside. It is however essentially a footpath with a narrow band of grass rather than an open space and is not under any realistic threat of development. It is not appropriate for Local Green Space designation.

s. Orchard south-west of Morrisons

138. This area is described as an area valued by the community and a “traditional orchard designated priority habitat”. I saw the area on my visit and there was no sign of an orchard. This rectangular area was fenced and padlocked and appeared of no significance as a public asset. It is not appropriate for Local Green Space designation.
139. The policy for the proposed green spaces is simply that they will be protected. This is not consistent with the guidance in the NPPF which requires that policies should be consistent with those for Green Belts. Green Belt policy does not preclude all development and defines certain categories of development as not inappropriate. These cannot be applied directly to Local Green Spaces because of the difference in scale but the principal can be used. For instance, there may well be types of development that complement the role played by a Local Green Space, a shelter in a cemetery or park, or a changing facility in association with pitches, for example, and I have recommended a recommendation to reflect this.
140. The second part of the policy aims to protect smaller green spaces and only to permit redevelopment where they do not meet at least one of the criteria for Local Green Spaces set

out in the NPPF. These spaces are not individually identified and, although map 6 includes many areas coloured green that are not in the list in Policy LANP11, on close examination with the assistance of Google Maps, many of these appear to be private gardens. This is clearly not a satisfactory basis for defining spaces to be protected and the NPPF makes it clear that *“Local Green Space Designation” will not be appropriate for most green spaces or open space.*<sup>34</sup> It is therefore not appropriate to use the term “local green spaces” (even without capital letters) in association with this element of the policy.

141. This part of the policy states that “infilling will be discouraged”. Although the NPPF encourages policies to prevent the inappropriate development of garden land<sup>35</sup>, this policy coupled with a map showing most garden land is excessively restrictive and potentially in conflict with Policy LANP3 which supports residential development within the Settlement boundary.
142. Despite these concerns a policy to generally protect local amenity spaces from development is consistent with sustainable development and with paragraph 74 of the NPPF. The clear distinction from the designation of Local Green Spaces is that the level of protection for Local Green Spaces is stronger and is expected to be endure beyond the Plan period. I have recommended modifications to reflect this.

#### **Recommendations**

**Replace Map 6 with the three maps which have been supplied to me and are attached at Appendix 2 Leominster Local Green Spaces 1, Leominster Local Green Spaces 2 and Leominster Local Green Spaces 3, numbered in the Plan Maps 6,7 and 8 and in the Policy use capital letters for consistency with the maps.**

**Reword the start of Policy LANP11 to read:**

**“The spaces identified on Maps 6, 7 and 8 and listed below are designated as Local Green Spaces. Development in these areas will only be permitted in exceptional circumstances unless it is compatible with the function performed by them:”**

**From the list of Local Green Spaces proposed: in d. delete “and sports centre” and on Map Local Greens Spaces 1 delete the sports centre and car park and the footpath sections along the Lugg and leading south from it to the west of the former waste disposal site.**

**Change the heading of g. to “school playing fields and adjoining allotments and wild area”.**

**Delete “j. Cockcroft Hill”.**

**Change the heading of l. to “Small green space between Broad Street Car Park and River Kenwater”.**

**Delete “r. Linear Walk behind Ridgemoor” and “s. Orchard south-west of Morrison’s”.**

**Remove the deleted spaces from the relevant maps and renumber the spaces so that there is a continuous list.**

**Modify the second part of the policy, after the list of spaces to read:**

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<sup>34</sup> NPPF paragraph 77

<sup>35</sup> NPPF paragraph 53



**“Development on smaller areas of amenity space will only be permitted when the space fails to perform at least one of the following functions (list existing bullet points) or the space can be demonstrated to be surplus to requirements or will be replaced by equivalent or better provision.”**

#### **Policy LANP 12 – Greening the Town (Centre)**

143. Policy LANP12 aims to support several measures that would contribute to the “greening” of the town centre. There is an ambiguity in the title of the policy as “centre” is in brackets, whereas the Policy itself applies to the centre, and the brackets should therefore be removed. In relation to f. it is unclear how, in responding to planning applications, greener cycleways and footpaths “will be prioritised”. The policy states that it will protect small open spaces. This overlaps with the second part of Policy LANP11.

#### **Recommendation**

**In Policy LANP12, delete the brackets in the title, delete “will be prioritised” in f. and delete “the Plan will protect small open spaces”.**

#### **Policy LANP – 13 Dark skies**

144. This policy aims to reduce light pollution and improve views of night time skies. It provides no specific justification for the policy. Leominster is a substantial market town, where inevitably there is extensive street lighting and the concentration of buildings means that there is significant light pollution. Moreover, in most cases the installation of external lighting is permitted development. While a large part of the plan area is rural, where outside lighting is more limited, the policy makes no distinction between the town and the countryside. I am not satisfied that there is a justification for the policy as presented and modification to it would require evidence on the existing extent of light pollution which is not available.

#### **Recommendation**

**Delete Policy LANP13**

#### **Healthy Leominster**

#### **Policy LANP14 - Promoting a Healthy community**

145. Policy LANP14 is very broad and indicates that major development proposals will be subject to an assessment of the contribution they make to Leominster becoming a healthier community. This approach is very much in line with section 8 of the NPPF and there can be no objection to the measures identified as desirable. However, the policy does not provide any clear guidance on how the assessment that is carried out will be applied by decision makers. Not all applications will be able to demonstrate positive effects against all the measures, but it is reasonable to expect that realistic opportunities to contribute to these measures will be taken. I have therefore recommended a modification to this effect.

### **Recommendation**

**At the end of Policy LANP14 add:**

**“Applications which respond positively to realistic opportunities to contribute positively to these aims will be supported”.**

### **Policy LANP15 - Provision for a new Health Centre**

146. This policy supports the establishment of a new health centre to meet the needs of the population increase of around 40% that is anticipated. The first part of the policy is background information and justification rather than policy and it should therefore be in supporting text rather than the policy. It would also have been helpful to provide information on the capacity available, if any, in existing facilities to meet the needs of the growing population. The criteria identified for the new centre are consistent with sustainable development but there is not a clear read through from the introductory sentence to the criteria and I have therefore recommended a modification to address this.

### **Recommendation**

**Remove the first part of Policy LANP15 up to “...each of the 2300 properties” from the policy itself and insert it as a paragraph of supporting text prior to the policy.**

**Reword the remaining part of the policy to read:**

**“A proposal for a new Health Centre to meet the demands of the growing population of Leominster will be supported provided that it:**

- a. is capable, together with existing facilities, of meeting the need for health services of the planned new development and**
- b. is suitably located to provide access to users by public transport, cyclists and pedestrians as well as cars and**
- c. includes sufficient car parking for both staff and patients.”**

### **Policy LANP16 – Assets of Community Value**

147. Policy LANP16 aims to protect important community facilities unless they can be shown to be no longer needed and there is alternative provision. The policy uses the term “Assets of Community Value” which has a specific legal meaning and I have established that of the facilities listed in Appendix 3 only the Chequers and the White Lion have been designated as Assets of Community Value.<sup>36</sup> For the avoidance of confusion this term should be changed. HC has rightly pointed out that in the last sentence “and” should be replaced by “or” as where there is no longer a proven need there is not a need for alternative provision.

### **Recommendation**

**Change the heading to the policy to “Community Facilities and Services” and in the first line replace “Assets of community and public value” with “Community facilities and services”.**

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<sup>36</sup> [https://www.herefordshire.gov.uk/info/200139/community/612/list\\_of\\_assets\\_of\\_community\\_value](https://www.herefordshire.gov.uk/info/200139/community/612/list_of_assets_of_community_value)

**In the last line of the policy delete “and” and insert “or”.**

### **Distinctive Leominster**

148. Under this heading there are several policies which each aim to retain and reinforce aspects of the distinctive identity of Leominster.

### **Policy LANP 17 – Landscapes**

149. This is a very broad policy which identifies some of the defining features of the natural and built environment which should be protected and enhanced. Because of its breadth it can only provide the most general guidance to decision makers on planning applications. For example, the first feature identified is the “low lying river corridors to the north, east and south of the town. This is undoubtedly a defining characteristic of the landscape in and around Leominster, but the policy does not give any specific guidance on what protecting and enhancing mean in relation to them. It does not, and it would be inappropriate to, preclude development in these low-lying areas, though flood risk will be an important consideration, but it does not provide any detail on what is important about these low-lying areas.
150. Other features mentioned in the policy, such as field boundaries, mature trees and hedgerows may normally be removed without planning permission and so, while the policy offers encouragement, it may lack teeth. The protection and enhancement of listed buildings and those of local importance is a very simplified statement of national policy on heritage assets, but the reference to the importance of traditional “black and white” buildings does add a distinctive local feature. For all these reasons the policy lacks the precision and guidance encouraged in PPG<sup>37</sup>. Although the policy is rather general it does provide some local guidance to add to national and strategic guidance and I am therefore satisfied that it meets the basic conditions.

### **Policy LANP 18 – Protecting and enhancing the character of Leominster Town centre**

151. This policy is similar to Policy LANP17 in setting out some general considerations for applications relating to development in the town centre. However, in saying that “proposals...will be permitted when:” it does not make it clear whether proposals will be required to meet all or any of the criteria. The policy also does not say what will happen if one or more of the criteria are not met. For example, a proposal could propose a suitable town centre use without bringing a building back into use. It also may or may not improve the streetscape. There is also considerable overlap between criteria a.b.and d. In practice the policy is so broad that decisions will need to balance the effects of proposals on these criteria. This applies particularly in relation to any harmful effect on the heritage of the town where the

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<sup>37</sup> PPG Neighbourhood Planning How should the policies in a neighbourhood plan be drafted? Reference ID: 41-041-20140306

NPPF clearly requires a balanced approach in which any harm to a heritage asset takes account of the extent of the harm, the significance of the asset and the public benefits of the proposal. I have recommended modifications to reflect these points in order to clarify how the policy should be applied and thus meet the basic conditions.

#### **Recommendation**

##### **In Policy LANP18**

**modify the first section to read:**

**“Development proposals in Leominster town centre will be permitted if they meet the following criteria, where they are applicable:”**

**At the end of the policy add:**

**“Where proposals conflict with one or more of these criteria, permission will only be granted where the public benefits of the proposal clearly outweigh any harm.”**

##### **Policy LANP19 - New Building in Leominster**

152. The Policy requires adherence to national sustainable development standards and requires developers to justify their proposals having regard to the Design Guide attached at Appendix 4 and a list of factors in supporting text.
153. I have already pointed out that the requirement to adhere to national standards is inappropriate.<sup>38</sup> For the same reason, the requirement to meet the BREEAM excellent standard is not in accordance with national policy. The Ministerial Statement also referred to optional new technical standards which may be adopted by local planning authorities but stated that *“Neighbourhood plans should not be used to apply the new national technical standards.”*
154. The extensive design considerations listed on page 46 are expressed as policy and should therefore be included within the highlighted policy section. I have already commented on the Design Guide and recommended modifications to it in relation to Policy LANP3.

#### **Recommendations**

**In Policy LANP19 delete the first sentence and replace the third sentence with the following addition to the second sentence “and have regard to the design guide in Appendix 4. Include the introductory sentence and points a. to f on page 46 within the policy.**

##### **Policy LANP20 – New extensions in Leominster**

155. This policy acknowledges the need for residential extensions and sets out criteria to be met. However, the first four bullet points describe types of extension that are identified in the General Permitted Development Order as requiring planning permission. It does not follow from this that extensions with these characteristics should not be permitted. There may be circumstances where extensions with these characteristics would be acceptable and it would

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<sup>38</sup> “Planning Update” presented to parliament 25 March 2015

be inconsistent with the presumption in favour of sustainable development to refuse them in principle. Similarly, while it may well be appropriate for the materials used in extensions to be similar to those in the original building, there may be exceptions to this.

#### **Recommendation**

**Delete Policy LANP 20.**

#### **Policy LANP21 – Agricultural Development**

156. This policy aims to encourage agricultural development which is not harmful to the landscape. The first two paragraphs of the policy are background reasoning and justification; they should therefore precede the policy as supporting text. The policy itself sets out several criteria to be met by new proposals which require planning permission. I am satisfied that the first seven bullet points meet the basic conditions.
157. The eighth bullet point relates to traffic generation and road safety. It may be argued that any new agricultural development will generate additional traffic which could affect road safety. Paragraph 32 of the NPPF states that *“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe”*. I have therefore recommended a modification to reflect this.
158. The last three bullet points relate to conditions that may be attached to permissions. They add little to the rest of the policy as they relate to the application of previously stated criteria but do not conflict with the basic conditions. The last two bullet points are subordinate to the ninth bullet point rather than separate points and this should be reflected in the formatting.

#### **Recommendations**

**Delete the first two paragraphs of policy LANP21 and insert them as supporting text prior to the policy.**

**Modify the eighth bullet point to read: “the development would not have a severe effect on the free flow of traffic or highway safety that cannot be effectively mitigated”.**

**Modify the formatting of the last two bullet points so that they are clearly subordinate to the ninth one.**

#### **Policy LANP22 - Intensive Livestock Unit Policy**

159. This policy relates specifically to development associated with intensive livestock units. It supports such developments where that meet criteria related to residential amenity, the disposal of waste, landscape and traffic generation. The policy and the criteria are clearly worded and meet the basic criteria subject to a modification to the one relating to traffic generation for the same reasons as in Policy LANP21.

#### **Recommendation**

**In Policy LANP22 modify the fourth bullet point to read “do not have a severe effect on the free flow of traffic or highway safety that cannot be effectively mitigated.”**

### **Policy LANP23 – Tourism**

160. Policy LANP23 seeks to promote tourism related development in and around Leominster. The policy lists several types of development that will be encouraged. All of them meet the basic conditions, except that the meaning of c. is ambiguous. It is not clear whether “in the town” means that developments should be on the A49 and A44 and in the town or on the A49 and A44 or in the town. I have sought clarification on this and the intention is the latter meaning. I have therefore recommended an amendment to clarify this.

#### **Recommendation**

**In Policy LANP23 modify part c. to read “Proposals for a hotel and conference centre, either on the main routes through the parish (A49, A44) or within the settlement boundary, and improvements to existing hotels.**

### **Policy LANP24 – River Wye Special Area of Conservation**

161. This policy is designed to ensure that new development proposals do not cause nutrient levels in the River Wye Special Area of Conservation to exceed the limits for conservation objectives. However, the policy adds nothing to Policy SD4 of the HCS and is less explicit both in terms of the policy itself and the evidence provided in its support. The requirement that all development proposals should include a Nutrient Management Plan to deliver the necessary overall reductions in nutrient levels is unreasonable as individual developments cannot be separately responsible for resolving an existing problem that relates to a very wide area. Moreover the inclusion of the policy could be considered as “mitigation” in relations to the Habitats Screening Assessment.

#### **Recommendation**

**Delete Policy LANP24**

### **Policy LANP25 – Protecting Important Views**

162. Policy LANP25 aims to protect important views in and around Leominster. The first part of the policy refers to Special Areas of Conservation (SAC). This is not relevant as SAC is a designation under the Habitats Directive and does not relate to landscape. The policy lists several views which are expressed in very general terms and are not defined on a map. In many cases, there is no attempt to define the direction of the view and there is no explanation of why these views are important. Because of the breadth of the description, the views are so extensive that they encompass most of the countryside around Leominster, views of Leominster from elevated positions around the town and any view within the town centre. Policies to protect views of particular significance are frequently appropriate in neighbourhood plans, but when the policy is expressed as it is here and without any supporting maps, photographs or evidence it becomes meaningless. I am in no doubt that within the very extensive views listed, there are

views of particular significance, but I am not satisfied that the policy meets the requirement to *“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.”*<sup>39</sup>

## **Recommendation**

### **Delete Policy LANP25**

## **Accessible Leominster**

### **Policy LANP26 – Community and Highway Infrastructure**

163. This policy has three main parts. The first relates to a requirement for development proposals to reduce the need to travel and to give priority to pedestrians and cyclists. It also refers more specifically to the need for the SUE to incorporate measures to facilitate walking and cycling to and from Leominster. I am satisfied that it meets the basic conditions subject to two small but significant points. Part a. requires all development proposals to include measures aimed at reducing the need to travel. It would not be realistic to expect this from many small-scale proposals such as residential extensions or even individual dwellings. Part c. refers to links between the SUE and Leominster. It is important to refer to the SUE as part of Leominster rather than a separate appendage and to contribute to sustainable development it needs to be effectively integrated with the existing community. I have recommended modifications to reflect both these points.
164. The second part of the policy highlights improvements that will be sought for pedestrians, cyclists and public transport. The second of these duplicates part c. of the first part of the policy in relation to the SUE without adding anything to it.
165. The third part of the policy requires the preparation of a comprehensive Travel Plan for Leominster. This was referred to in Policy LANP1, and I indicated that this is an aspiration and not a land use policy. Reference to it should therefore be deleted from the policy but it could be referred to in the supporting text. It is unnecessary and misleading to refer to Herefordshire Council and the Highway Authority separately as Herefordshire Council is the Highways Authority. This part of the policy also relates to development proposals in and around the town centre and it supports development proposals which would deliver several specific measures which would improve conditions for pedestrians and cyclists in the town centre. Taken on their own, most of these measures are traffic management rather than land use proposals but it is appropriate to seek to achieve them in association with development proposals where appropriate. However, the second part of a. and all of b. are clearly traffic management measures that would be the responsibility of the Highways Authority and should therefore be expressed as aspirations in the supporting text rather than as land use policies.

## **Recommendations**

### **In Policy LANP26:**

**In the first line delete “All” and insert “Where appropriate”.**

**In c. of the first section of the policy delete “to, and from the SUE and Leominster” and insert “the**

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<sup>39</sup> PPG Neighbourhood Planning How should the policies in a neighbourhood plan be drafted? Reference ID: 41-041-20140306

**SUE and between the SUE, neighbouring residential areas and Leominster Town Centre.”**

**In the second part of the policy delete the second bullet point.**

**In the third part of the policy delete “A comprehensive Travel Plan should be prepared for Leominster in partnership with Leominster Town council, Highway Authority, Herefordshire Council and other appropriate bodies and organisations (See LANP1).”**

**In the list of proposals sought in the town centre, in a. delete “(e.g. by designating Broad Street, High Street, west Street, Victoria Street and Corn Street as pedestrian priority zones) (to be explored in the Travel Plan)”, delete b and renumber the remaining criteria.**

**In the supporting text which precedes the policy insert after the existing supporting text:**

**“Policy LANP1 referred to an aspiration for a comprehensive Traffic Management Plan. The Town Council will seek to ensure that this plan explores the measures listed at a. to e. in the last section of this policy and more specifically:**

- designating Broad Street, High Street, west Street, Victoria Street and Corn Street as pedestrian priority zones, and**
- designating Corn Square as a motorised traffic free zone (except for disabled drivers and collections/ deliveries.”**

## **Conclusion and Referendum**

166. It is clear that the preparation of the Leominster Neighbourhood Plan has been an onerous task for the qualifying body. The need to re-submit the Plan following the regulation 16 consultation in early 2016 and the preparation of an Evidence Statement after the second regulation 16 consultation in late 2017 demonstrate this.
167. The timescale for my examination has been extended by: the need to clarify the intentions of the policies and the evidence supporting them, the need to allow consultation on the Evidence Statement when the information contained in it had been corrected, and finally by the need for the examination to be suspended to allow for the Habitats Regulation Assessment to be reviewed in the light of a recent legal judgement and then be subject to consultation.
168. Many of the policies in the Plan are long and detailed and, in some cases, poorly drafted. I have found it necessary to recommend quite a large number of modifications to them for four main reasons. In some cases, there is insufficient evidence or justification to demonstrate the need for the policies. In others the policies do not add significantly to national or strategic policy and it is unhelpful to decision makers to repeat essentially the same policy with different wording. Some of the policies go beyond the scope of policies for the development and use of land or ministerial guidance on what can be included in neighbourhood plan policies and others are poorly drafted.
169. Subject to the modifications which I have recommended I have concluded that:
  - The Leominster Neighbourhood Development Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012 (as amended) and that;



- Having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;
- The making of the Plan would contribute to the achievement of sustainable development;
- The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;
- The Plan would not breach and would be otherwise compatible with European Union obligations and the European Convention on Human Rights.

170. I am therefore pleased to **recommend that the Leominster Neighbourhood Development Plan should proceed to a referendum subject to the modifications that I have recommended.**

171. I am also required to consider whether or not the referendum area should extend beyond the Neighbourhood Plan Area. The Plan includes the whole Parish of Leominster and I have seen nothing to suggest that the policies of the Plan will have “a substantial, direct and demonstrable impact beyond the neighbourhood area”.<sup>40</sup> **I therefore conclude that there is no need to extend the referendum area.**

*Richard High*

Independent Examiner 10 December 2018

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<sup>40</sup> PPG Reference ID: 41-059-20140306



## Habitat Regulation Assessments (HRA) of Neighbourhood Development Plans

Statement in relation to CASE 323/1/COURT OF JUSTICE OF THE EUROPEAN UNION

People over Wind and Peter Sweetman v Coillte

### Update following Counsel Advice

**13 September 2018**

Herefordshire Council has sought Counsel advice in light of the implication of the recent European judgment *the case of People Over Wind and Sweetman v Coillte Teoranta (C-323/17)* ("*Sweetman*") and the representations from Natural England to a number of Habitat Regulation Assessment consultations undertaken post the judgment.

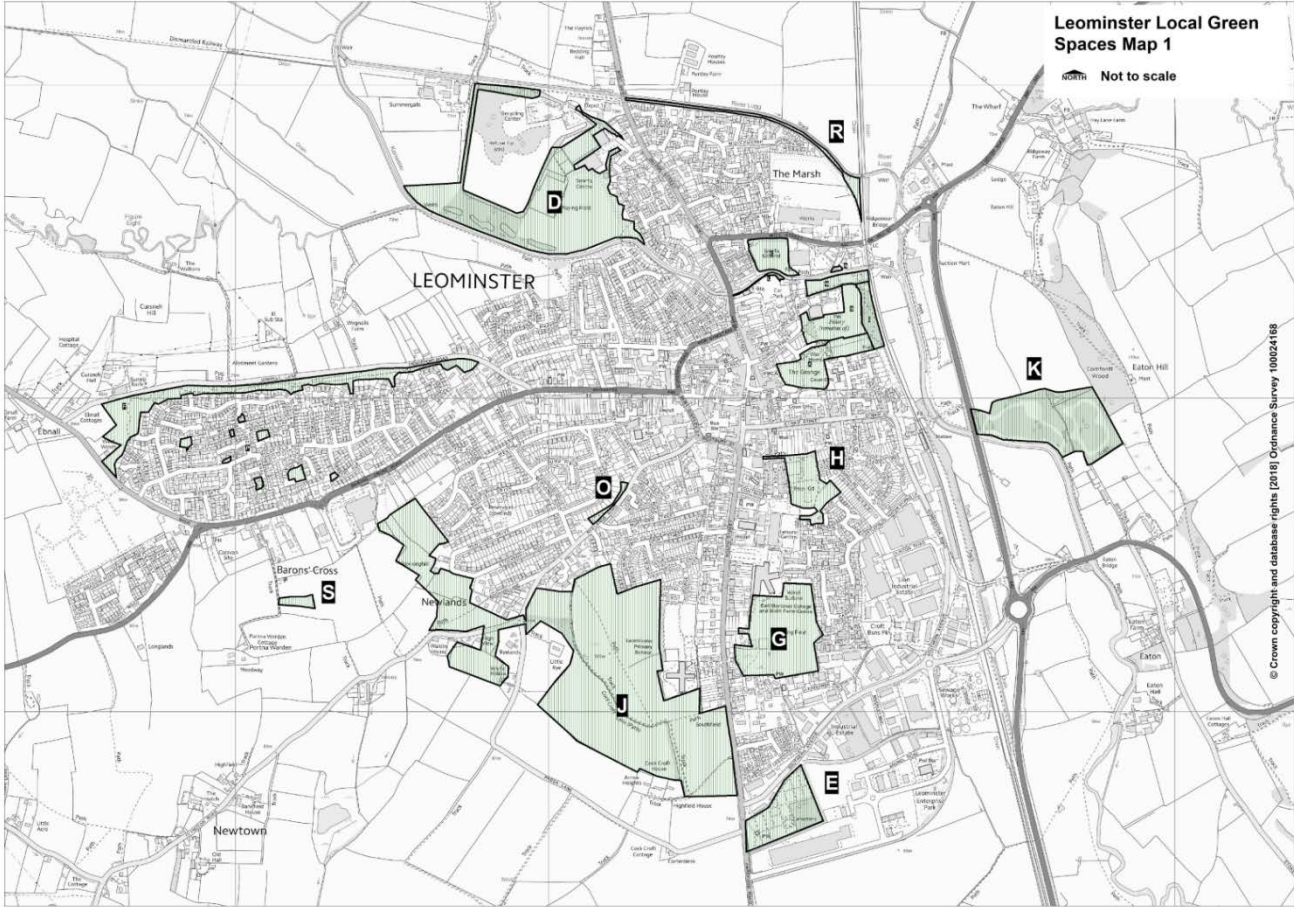
These revised Habitat Regulations Assessments (post *Sweetman*) relied on policies within the Core Strategy; namely policy SD4 and LD2 to indicate that there was unlikely to be any 'likely significant effects' and that an Appropriate Assessment would not be required and the NDPs met the EU obligations.

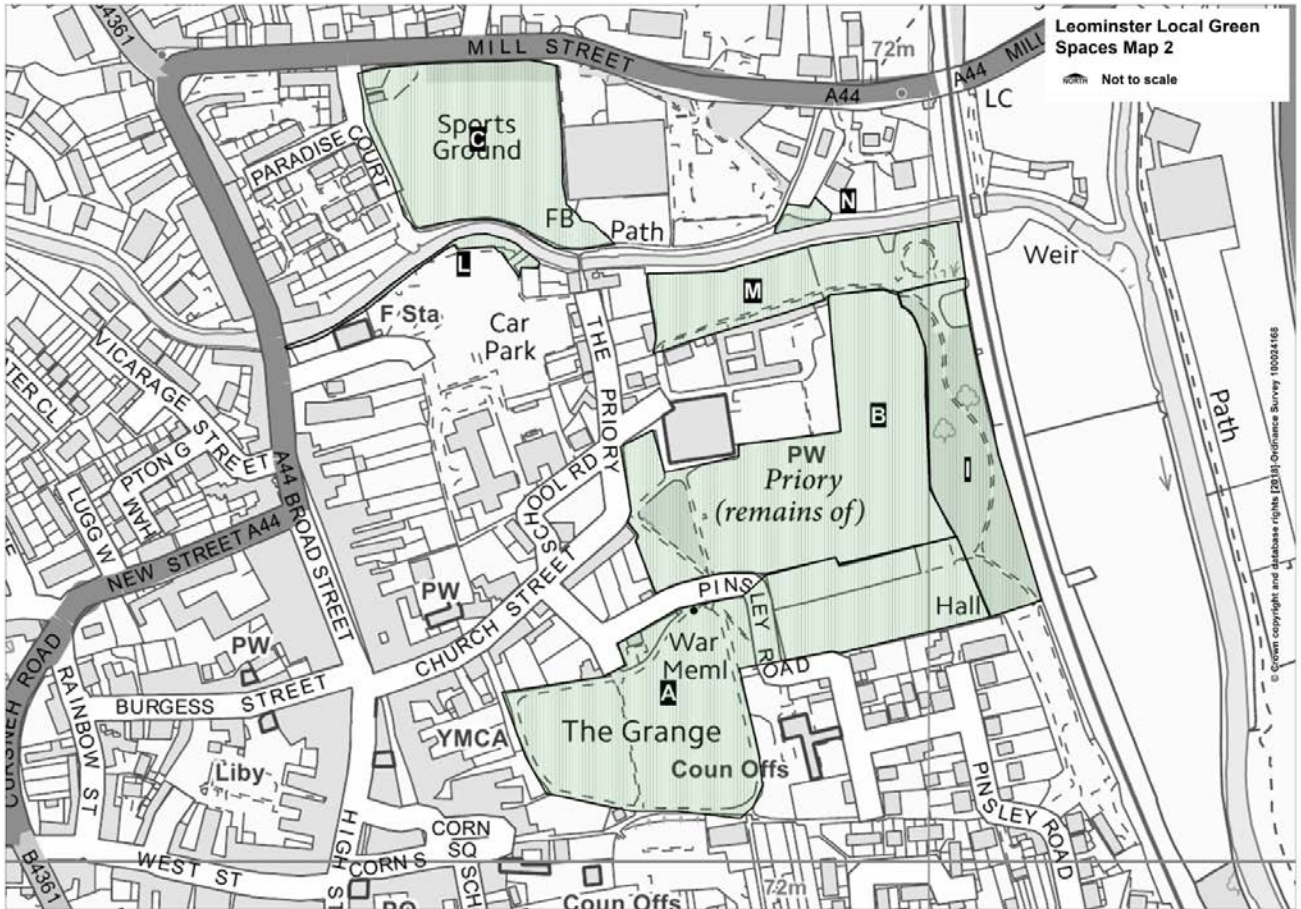
The key issue has been whether policies within the Core Strategy are classified as 'mitigation' and therefore cannot be used within an initial screening. Resulting in the need for Appropriate Assessment which NDPs cannot be subject to.

Counsel advice has indicated that Policy SD4 (for example) is part of the development plan and importantly it has been considered through the Core Strategy assessment as removing the pathway to harm and 'likely significant effects'. As all neighbourhood plans need to be in conformity with the Core Strategy and the policies of the development plan read as a whole, there is no need for the NDPs to include additional mitigation covered within these policies as it is within the higher level plan (the Core Strategy).

The advice gives a clear conclusion that the Council can and should make the NDPs and examinations could be concluded, where either there is an adequate sewerage treatment capacity; or there is not but SD4 applies.

Appendix 2







# Appendix 3

## Booth Memorial Gardens

