

Pembridge
Neighbourhood Development Plan
Submission Version 2011 – 2031

Report of Examination

December 2018

**Undertaken for Herefordshire Council with the support of
Pembridge Parish Council on the submission version of the plan.**



Independent Examiner:

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Abbreviations used in the text of this report:

The Pembridge Neighbourhood Development Plan is referred to as ‘the Plan’ or ‘PNDP’.

Pembridge Parish Council is abbreviated to ‘Pembridge PC’.

Herefordshire Council is also referred to as the Local Planning Authority ‘LPA’.

The National Planning Policy Framework (2012 version) is abbreviated to ‘NPPF’.

The National Planning Practice Guidance is abbreviated to ‘NPPG’.

The Herefordshire Local Plan Core Strategy 2015 is abbreviated to ‘HCS’.

The Regulation 14 Consultation is abbreviated to ‘Reg14’ Consultation.

The Regulation 16 Consultation is abbreviated to ‘Reg16’ Consultation.

Summary

- I have undertaken the examination of the Pembridge Neighbourhood Development Plan during November and early December 2018 and detail the results of that examination in this report.
- The Pembridge Parish Council have undertaken extensive consultation on this Plan, and it complies with legislative requirements. The Plan is a generally well-written and formatted document, with a wide range of locally responsive policies included. The Herefordshire Local Plan Core Strategy 2011 – 2031 provides a comprehensive strategic policy framework.
- I have considered the comments made at the Regulation 16 Publicity Stage, and where relevant these have to an extent informed some of the recommended modifications.
- Subject to the modifications recommended, the Plan meets the basic conditions and may proceed to referendum.
- I recommend the referendum boundary is the designated neighbourhood plan area.

Acknowledgements: Thanks to Local Authority and qualifying body staff for their assistance with this examination. My compliments to the local community volunteers and Pembridge Parish Council, who have worked hard to produce a well-evidenced and comprehensive Plan.

1. Introduction and Background

1.1 Neighbourhood Development Plans

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

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

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

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

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

1.1.3 Neighbourhood plans can only be prepared by a ‘qualifying body’, and in Pembridge that is the Pembridge Parish Council. Drawing up the Neighbourhood Plan was undertaken by a Steering Group, formed from the Planning and Housing Committee of the Parish Council and interested volunteers.

1.2 Independent Examination

1.2.1 Once Pembridge PC had prepared their neighbourhood plan and consulted on it, they submitted it to Herefordshire Council (the LPA). After publicising the plan with a further opportunity for comment, the LPA were required to appoint an Independent Examiner, with the agreement of Pembridge PC to that appointment.

1.2.2 I have been appointed to be the Independent Examiner for this plan. I am a chartered Town Planner with over thirty years of local authority and voluntary sector planning experience in development management, planning policy and project management. I have been working with communities for many years, and have recently concentrated on supporting groups producing neighbourhood plans. I have been appointed through the Neighbourhood Plan Independent Examiners Referral Service (NPIERS). I am independent of any local connections to Pembridge and Herefordshire Council, and have no conflict of interest that would exclude me from examining this plan.

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

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

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

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

The Pembridge Neighbourhood Development Plan (PNDP) complies with the requirements of Paragraph 8(1). The Neighbourhood Area was designated on 28th August 2012 by the LPA. The Plan does not relate to land outside the designated Neighbourhood Area. It specifies the period during which it has effect as 2011 – 2031 and has been submitted and prepared by a qualifying body and people working to that qualifying body. With the modifications recommended, particularly with regard to Policy PEM11, It will not include policies about excluded development; effectively mineral and waste development or strategic infrastructure.

1.2.5 I made an unaccompanied site visit to Pembridge to familiarise myself with the area and visit relevant sites and areas affected by the policies. This examination has been dealt with by written representations, as I did not consider a hearing necessary.

1.2.6 I am also required to consider whether the referendum boundary should be extended beyond the designated area, should the Plan proceed to a referendum. I make my recommendation on this in section 5 at the end of this report.

1.3 Planning Policy Context

1.3.1 The Development Plan for Pembridge, not including documents relating to excluded mineral and waste development, is the Herefordshire Core Strategy 2011-31 adopted by the LPA in 2015 and some saved policies from the Herefordshire Unitary Development Plan. The latter are not relevant for the PNDP however being mainly concerned with minerals and waste issues, development that is excluded from consideration by neighbourhood plans. The Policies of the Core Strategy are considered 'strategic' for the purposes of the Basic Conditions.

1.3.2 The National Planning Policy Framework (NPPF) sets out government planning policy for England, and the National Planning Practice Guidance (NPPG) website offers guidance on how this policy should be implemented. Although the NPPF has been revised recently, that document makes clear (para 214 of Appendix 1 and footnote 69) that neighbourhood plans submitted to the LPA before January 2019 will need to have regard to the previous 2012 version of the NPPF.

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

- National Planning Policy Framework (NPPF) 2012
- National Planning Practice Guidance 2014 and as updated
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004
- The Localism Act 2011
- General Permitted Development (England) Order 2015 - [GDPO 2015]
- The Neighbourhood Planning Regulations 2012 (as amended)
- Written Ministerial Statement March 2015
- 'Decide if a material is waste or not: general guide' DEFRA/Environment Agency 2016
- Submission version of the Pembridge Neighbourhood Development Plan
- The Basic Conditions Statement submitted with the PNDP
- The Consultation Statement submitted with the PNDP
- The Environmental Report (SEA) for the PNDP
- Neighbourhood Area Designation (map) – in Basic Conditions Statement
- Site Assessment Report for Pembridge Data Orchard April 2017
- Herefordshire Core Strategy 2011 – 2031: Adopted 2015
- Herefordshire Unitary Development Plan (archive) 2007
- NP Guidance Note 20 Herefordshire Council 2015: "Guide to settlement boundaries"
- Herefordshire Renewable Energy Study 2010
- Representations received during the publicity period (reg16 consultation)

2. Plan Preparation and Consultation

2.1 Pre-submission Process and Consultation

2.1.1 Pembridge is a village in the County of Herefordshire, to the west of Leominster, located on the main A44 trunk road. The village is the only settlement of any size in the Parish of Pembridge. It is a mainly rural area, although on the edge of the parish a significant employment site is located adjacent to the Shobdon Airfield. The neighbourhood area includes the whole parish, an area with extensive historic and environmental assets.

2.1.2 A Steering Group made up of Parish Councillors and volunteers from the local community led the production of the Plan. They started slowly as they wished their Plan to be guided by strategic policy in the HCS – which was adopted in 2015. The local community was kept informed of progress via the parish council website, a facebook page, updates in the Parish Magazine and the events that were organised. Steering Group meetings were open to the public, who were able to ask questions in them and make comments.

2.1.3 The Consultation Statement sets out the nature and form of consultation prior to the formal Reg14 six week consultation. In 2014 two open meetings were held, the first to introduce the Plan and explain how people could get involved. The second meeting was to publicise and progress the questionnaire for the Residents' Survey, which achieved a 35% response rate. A call for sites was also undertaken at the end of 2014, and in 2015 as the results of the survey were worked into draft vision and objectives, topic working groups were set up to explore the issues for the Plan in greater detail.

2.1.4 Further consultation work and an extended call for sites was undertaken in 2016, and working with a planning consultant, the draft Plan and site allocations were the subject of further consultation until a draft was agreed by Pembridge PC for the Reg14 consultation.

2.1.5 As required by regulation 14 (Reg14) of the Neighbourhood Planning Regulations 2012, the formal consultation for six weeks on the pre-submission Pembridge Draft NDP ran from Friday 11th August 2017 to Monday the 25th September 2017. The draft Plan and SEA and HRA reports were available for this consultation online and in hardcopy at various locations in the village. The consultation was advertised in the Parish Magazine and on facebook.

2.1.6 Representations to the Reg14 consultation were received from residents, statutory bodies and developers. A considered response to each is detailed in the Consultation Statement, and

several amendments have been made to the Plan as a result of constructive suggestions for changes. I am satisfied that due process has been followed during the consultation undertaken on the Plan, and that it was extensive and aimed to reach as many people as possible. The Consultation Statement details all consultation activities, and the record of comments and objections received during the regulation 14 consultation shows that these were properly considered, and where appropriate resulted in amendments to the plan to accommodate points raised.

2.1.7 As required, the amended plan, together with a Basic Conditions Statement, a Consultation Statement, the SEA and HRA documentation and a plan showing the neighbourhood area was submitted to Herefordshire Council on the 24th July 2018.

2.2 Regulation 16 Consultation Responses

2.2.1 Herefordshire Council undertook the Reg 16 consultation and publicity on the PNDP for six weeks, from the 1st August to the 26th September 2018. Thirteen representations were received during this consultation; four from different sections of the LPA. Two statutory respondents had no specific comments to make on this plan but offered general guidance. Historic England indicated that they were pleased with the Plan. Issues raised in the other responses that are pertinent to this examination of whether the Plan meets the basic conditions, are considered in sections 3 and 4 of this report below.

2.2.2 A response from the National Farmers' Union (NFU) complained that they had not been consulted at Reg14 stage, and this meant the agricultural community's interests were not properly considered. However after enquiries of the LPA and qualifying body, I am satisfied that consultation undertaken prior to, and during, the Reg14 consultation offered sufficient opportunities for the farming community and relevant landowners to comment. Issues raised on the document by the NFU during the Reg16 consultation will be considered during the consideration of policies in Section 4 below, particularly Policy PEM11 and its justification.

3. Compliance with the Basic Conditions Part 1.

3.1 General legislative requirements of the 1990 Town and Country Planning Act (TCPA) other than the Basic Conditions are set out in paragraph 1.2.4 above. The same section of this report considers that the PNDP has complied with these requirements. What this examination must now consider is whether the Plan complies with the Basic Conditions, which state it must:

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

3.2 The PNDP has a policy specifically promoting sustainable development (PEM1), and states in the justification for this policy that it forms the basis for the overall approach of the Plan. The sustainability of policies has been tested comprehensively in the Basic Conditions Statement. The vision for Pembridge into the future is a vibrant and flourishing community that is retaining its historic character and unique environment. The Plan has allocated more housing than the minimum required, and for all these reasons I find that it is promoting positive sustainable development. An objection to the principle of a settlement boundary was received due to this not being consistent with a positive approach to growth. However a settlement boundary is generally accepted as indicating and providing clarity on where countryside ends and a settlement, with its generally positive promotion of urban development, begins. The setting of settlement boundaries in neighbourhood plans is promoted in the HCS (para 4.8.23) and thus the PNDP is complying with the Basic Conditions in setting a settlement boundary.

3.3 The PNDP needed an environmental report undertaken for the purposes of Strategic Environmental Assessment (SEA), and a full Habitat Regulations Assessment (HRA). These environmental requirements in EU law are the main EU Directives that neighbourhood plans need to comply with. The SEA was required due to the range of environmental designations within and around the Parish. As the area is also within the catchment of the River Wye, a Special Area of Conservation (SAC), and 7.1km away from it, an HRA was also required. The River Arrow that flows through the parish is a tributary of the Lugg and Wye Rivers.

3.4 The Environmental Report for the SEA has concluded that the Plan is compliant with previously environmentally assessed strategic policy at the local level, and that there are no major potential conflicts between the PNDP's objectives and the SEA framework (para 4.5). The policies of the PNDP had mostly a positive environmental impact (para 6.5). A re-screening was undertaken of policies changed after the Reg14 consultation, and this concluded that these would have 'no significant effects towards the surrounding environment.'

3.5 A full screening and assessment of the Plan was required for the purposes of the Habitats Regulations legislation due to the proximity of the River Wye (and Lugg) SAC. None of the PNDP objectives and policies were considered to be likely to have a significant effect on the SAC (HRA para 6.4). Additionally the 2018 HRA Report has also considered whether further work is required in the light of the Sweetman judgement (para 10.1), and the conclusion is that the assessment is compliant with the implications of that judgement.

3.6 The PNDP in my view complies with Human Rights Legislation. It has not been challenged with regard to this, and the consultation statement showed that the need to consult with a wide cross-section of the community was appreciated.

4. Compliance with the Basic Conditions Part 2: National Policy and the Development Plan

4.1 The final and most complex aspect of the Basic Conditions to consider is whether the PNDP meets the requirements as regards national policy and the development plan. This means firstly that the Plan must have regard to national policy and guidance, which for this neighbourhood plan is the NPPF (2012 version) and the NPPG. Secondly the Plan must be in general conformity with the strategic policies of the development plan. The phrase 'general conformity' allows for some flexibility. If I determine that the Plan as submitted does not comply with the Basic Conditions, I may recommend modifications that would rectify the non-compliance.

4.2 The Plan and its policies are considered below in terms of whether they comply with the Basic Conditions as regards national policy and the development plan. If not, then modifications required to bring the plan into conformity are recommended.

Modifications are boxed in this report, with text to *remain in italics*, new text **highlighted in Bold** and text to be deleted ~~shown but struck through~~. Instructions for alterations are underlined.

4.3 The format of the PNDP is generally good. Policies are clearly distinguished, and a projects section is an appendix separate to the Plan. During consideration of the Consultation Statement I discovered that a third appendix to the draft PNDP for the Reg14 consultation was to be excluded from future versions of the Plan. This is acceptable as long as the Site Assessment Report from DataOrchard remains part of the documentation associated with the Plan. Government guidance in the NPPG [ID: 41-040-20160211] requires a neighbourhood plan to be based on robust, proportionate evidence. The Plan and its allocations need to be seen to be based on a criteria based selection process and sound evidence.

4.4 **Policy PEM1: Promoting Sustainable Development** Complies with the Basic Conditions.

4.5 Policy PEM2: Development Strategy This is a general policy setting out the approach to development. Policy PEM3 has further detail on the amended Settlement Boundary, but this policy states in the last line of criteria a) that ‘locations are defined where development would only be permitted should proposals involve enhancement measures to the Conservation Area’. In fact locations where this may apply are not clearly defined, all that is happened is that the settlement boundary has been extended, which would allow development on the same general basis as the rest of the settlement. The statement lacks the clarity required of policy in the NPPF (para 154), and the intent would be better served by a solution where the sites remain outside the designated settlement boundary, in line with what is actually found on the ground. The wording of the rest of criteria a) is not clear: for example is it within the settlement boundary that ‘other appropriate forms of development may take place’ or within the housing sites?

4.5.1 Criteria c) of this policy is not reasonable unless the restriction on traffic through Pembridge is specified as a significant increase. Any development is likely to generate some traffic, if only a few vehicle movements a day, and the NPPF (para173) requires any policy to not unreasonably restrict viability. Thus in order to comply with the Basic Conditions I recommend that criteria a) and c) are modified as shown in Modification 1.

Modification 1: Policy PEM2 criteria a) and c) to be altered as shown:

a) *A settlement boundary is defined for Pembridge incorporating a number of housing sites. ~~and~~ Within this boundary ~~which other~~ appropriate forms of development may take place where this would retain the village’s local distinctiveness and the character and appearance of its Conservation Area. ~~In addition, locations are defined where development would only be permitted should proposals involve enhancement measures to the Conservation Area.~~*

... ..

c) *Economic development associated with the complex of Shobdon Airfield falling within ~~the~~ Pembridge Parish will be supported provided this does not result in **significant** increased traffic through Pembridge village.*

4.6 Policy PEM3: Housing Development in Pembridge Village This policy deals with the settlement boundary, but does not formally define it. It needs to make reference to the plan that shows the amended boundary for clarity. Additionally there is no need to make reference to the need to address policies in the Herefordshire Core Strategy. I accept that for emphasis and clarity policies in the PNDP relating to the conservation area should be mentioned. The phrase ‘will be permitted’ has been objected to as not a Parish Council action, but this Plan will form part of the development plan subject to a successful referendum, and the LPA will then use it and its policies.

4.6.1 The settlement boundary has been amended from the original boundary defined in the Unitary Development Plan and now incorporates sites allocated for housing and current planning permissions that have sometimes already been built out. There is also a proposal to alter the settlement boundary to include land that is currently agricultural and not allocated for housing. These sites are discussed in the Plan at paras 5.8 – 5.9, together with detailed design criteria. However this land is included within the conservation area boundary, indicating that it is an important part of the setting of the conservation area.

4.6.2 I asked a question of the qualifying body and LPA with regard to the alteration of the settlement boundary to include these two sites, and although I now understand the thinking behind this action, I do not feel able to support it. A settlement boundary should indicate the natural limits of existing and planned development in a settlement, it is not a vehicle to indirectly allocate land for housing or indeed any other development. Given the sensitivity of the sites as open land deliberately included within the conservation area, I do not accept that the proposed solution to encouraging suitable development on these sites has paid sufficient regard to the need to protect heritage assets (NPPF section 12). Inclusion within the settlement boundary would have a similar effect to an outline planning permission, but this is something the Plan, and general practice, discourages within conservation areas.

4.6.3 Thus in order to comply with government guidance on the protection and conservation of heritage assets, I recommend that the proposed boundary is re-drawn to exclude site 8 (Land to the east of Oak View) and site 9 (Land to the north of Trafford Cottages). Modification to the text of the Plan can mention these areas as being potentially available for development as they are adjacent to the settlement boundary and policy RA2 of the HCS allows for development ‘in or adjacent’ to certain settlements including Pembridge. The description of the sites, and the design guidance, can

remain as a useful indication of development potential should constraints to development be overcome or opportunities arise for joint development.

Modification 2: Policy PEM3, the Village Map and its associated justification text is recommended to be amended as shown in order that the Plan meets the Basic Conditions with regard to the clarity and protection of heritage assets requirements of government policy:-

Policy PEM3: Housing Development in Pembridge Village

*New housing within Pembridge will primarily be restricted to sensitive infilling within ~~a~~ the settlement boundary **defined on the Pembridge Village Map** and sites identified for development shown on **the Pembridge Village Map**.*

Within the settlement boundary infilling will be permitted where it meets appropriate design and other criteria set out within relevant policies contained within this plan, in particular, PEM6 and PEM20, ~~and also address policies set out in Herefordshire Local Plan Core Strategy.~~

The Pembridge Village Map to be altered so that site 8 (Land to the east of Oak View) and site 9 (Land to the north of Trafford Cottages) are excluded from being within the settlement boundary.

Paragraph 5.7 is to be amended as follows:

~~A limited number of other areas forming extensions to the previous settlement boundary, although not shown as allocated sites, are also included within the new boundary. These include Land to the east of Oak View and land to the north of Trafford Cottages~~ **may be suitable for development under Policy RA2 of the HCS as land adjacent to the settlement of Pembridge.** *These sites should only be developed however if suitably sensitive access arrangements can be provided and they incorporate measures to enhance the Conservation Area, as discussed in paragraphs 5.8 and 5.9 below.*

4.7 Policy PEM4: Housing Sites in Pembridge This policy allocates sites for development within the village, altering the settlement boundary to accommodate them. A site selection exercise was undertaken by consultants and is separately documented. A call for sites was undertaken to supplement the Herefordshire 2012 SHLAA, and I am satisfied that an adequate site selection process has been undertaken. The Plan is very positive, in that sites have been allocated for more than the required minimum number of dwellings to be accommodated.

4.7.1 The Plan allocates seven sites for residential development. The passage of time has resulted in site iii) having been partially built out already, and for accuracy this site should now be shown with the reduced allocation size for the remaining site not yet developed. Paragraph 5.2 may need correction, although as it jointly mentions 'completions and outstanding planning permissions' it is possible there is no updating correction needed, with regard to this site anyway. For the avoidance of doubt the allocation is described as a continuation of site iii) and not a new allocation.

4.7.2 Consultation responses during Reg16 indicated that incorrect information had been supplied concerning sites within a known closed landfill site, and that in para 5.13 sites v) and vi) should not be included in this statement. In fact the paragraph also needs to refer to the sites that are affected by name, site numbers have changed from the site assessment to those used in Policy PEM4, and confusion could therefore arise with the use of numbers only.

Modification 3: In order that Policy PEM4 meets the Basic Conditions and complies with government guidance with regards to clarity and accuracy of policy, I recommend that it is amended as follows:-

The following areas of land are identified on the Pembridge Village Map where new housing development may take place, provided they meet the requirements set out in relevant design and detailed policies within this plan:

- i) Land of approximately 1.80 hectares to rear and south of the Village Hall, Bearwood Lane;*
- ii) Land of approximately 0.8 hectares off Manley Crescent;*
- iii) Land of approximately **0.2 hectares being the continuation of an original allocation of 0.6 hectares off Sandiford Ploc;***

... ..

The Village Map to be altered to show the reduced allocation outstanding on site iii).

Paragraph 5.2 of the PNDP to be altered if necessary to update the current figure of completions and outstanding planning permissions.

The last two sentences of paragraph 5.13 to be altered as follows:

*Developers should note that housing sites ii) **Land off Manley Crescent;** iii) **Land off Sandiford Ploc;** ~~iv), vi)~~ and vii) **Land west of Manley Lane;** are within 250m of a known closed landfill site which is a use that may be considered potentially contaminative. Policy PEM23 (f) is especially relevant to these sites.*

4.8 Policy PEM5: Meeting Housing Needs There was a request for an additional qualifier to be added to criteria g) with regard to not being ‘adversely impacted by existing agricultural or commercial activities’. However this qualifier has been added to the general design policy PEM6, and in Policy PEM6 it will impact on all proposed new housing. In Policy PEM5 it would only apply to live/work units if added as requested, which is not appropriate. The policy complies with the Basic Conditions as currently written therefore.

4.9 Policy PEM6 – Design Criteria for Residential Development The Policy has been criticised in the Reg16 consultation as being overly prescriptive in places, but I do not agree with this assessment, and find the policy sufficiently flexible to comply with government guidance in this regard. The policy is setting out the quality of development that will be expected in the area, in line with the NPPF para58, and complies with the Basic Conditions.

4.10 Policy PEM7: Affordable and Intermediate Homes Complies with the Basic Conditions.

4.11 Policy PEM8: Reuse of Rural Buildings and Brownfield Land for Employment Enterprises
Complies with the Basic Conditions.

4.12 Policy PEM9: Working from Home Complies with the Basic Conditions when for clarity the following amendment is made to criteria e):

Modification 4: I recommend for clarity criteria e) reads as follows:

... ..

(e) They include dwellings and associated enterprises permitted through Policy PEM8 and Herefordshire Core Strategy policies RA3 and RA4.

4.13 **PEM10: Agricultural Diversification and Tourism Enterprises** Complies with the Basic Conditions.

4.14 **Policy PEM11: Intensive Livestock Units** This policy has attracted several responses during the Reg16 consultation, and I am grateful to the qualifying body for their response to these comments. The policy deals with development proposals for intensive livestock units and associated infrastructure. Criticism has been made that the policy is effectively duplicating environmental controls on agricultural practices, but I accept arguments that there are planning issues with this development that are separate to environmental controls, and that government guidance acknowledges this. These arguments need to be summarised in the justification for the policy however; they are currently in an annex to the Consultation Statement.

4.14.1 I have considered how far the policy is dealing with waste issues, which as excluded development for the purposes of neighbourhood planning cannot be dealt with in this Plan. The Environment Agency has produced useful guidance in this regard, which I reproduce below from the website accessed on the 4th december:

For example, when manure or slurry is used to spread to land as fertiliser it isn't classified as waste as long as it's used as part of a lawful operation – for example it complies with the [Nitrates Directive](#) and takes place on clearly identified parcels of land without prior processing. The reason for this is that animal faeces are a by-product of keeping animals and make up a traditional fertiliser where other fertilisers may be regarded as a substitute.

However, where manure or slurry is spread in such a way that it exceeds crop requirements, is of [no benefit to the land](#) or provides no ecological improvement, then it'll be waste and spreading it to land simply to get rid of it is classified as a disposal operation.

<https://www.gov.uk/government/publications/legal-definition-of-waste-guidance/decide-if-a-material-is-waste-or-not>

The situation with manure and slurry from an intensive livestock unit is complex therefore in any consideration of whether it is waste or not. But this suggests that there is a planning issue with where and how it is spread, although the nearest a neighbourhood plan can come to dealing with it is to require details of the working method including disposal of manure and slurry to be submitted with any planning application for the LPA to engage with. The detailed requirements of Policy

PEM11 criteria e) may be dealing with waste issues, and if so they could not be included in a neighbourhood plan. This criteria is considered further in para 4.14.4 below.

4.14.2 Criteria a) is not clear on what is referred to as ‘full mitigation’. As the criteria is dealing with landscape issues, the second sentence should refer to landscape and visual effects and mitigation of these. Criteria b) is confused in that the sentence does not read well with the overall qualifier of where units can be sited. Beyond this, other criteria in the policy do not relate back well to the first sentence apart from criteria d). Modification 5 sets out alternative wording and ordering of these criteria, and reformats the policy, so that national guidance on the need for clarity in policy will be met (NPPF para154), and thus the Basic Conditions complied with with regards to clarity.

4.14.3 Criteria c) sets out distances from Pembridge village and other (unconnected) residential property that need to be met in order that any intensive unit and associated infrastructure will protect residential amenity. These distances have been criticised by the LPA as not being justified by evidence, and therefore hard to implement in practice. They have accepted that the policy is in general conformity with strategic policy in the development plan overall. The qualifying body are relying on work undertaken for The Beverley Borough Local Plan (now superseded) in the East Riding. This policy used a distance of 400m separation in the rural areas, or 800m from settlement boundaries for selected settlements – the implication being that these settlements are not considered rural. It should be noted that both the links to the relevant website for this material in the Plan seem to be broken. I have noted that the previous Herefordshire UDP (Policy E16 now superseded) considered development within 400m of intensive livestock units as sensitive to adverse impact to amenity from the units. Additionally the GPDO 2015 [Schedule 2 Part 6 Class A: A1(i)] removes PD rights for intensive livestock development within 400m of a ‘protected building’ (one normally occupied by people). I consider therefore that the case for this distance restriction has been made in accepted practice and other policy. I do not find adequate and robust evidence however to justify the use of the 600m distance required from Pembridge Village. There is a need for some flexibility in this policy restriction around factors such as the size of the unit, the direction of prevailing winds and other site-specific considerations so that the policy is adaptable to individual development circumstances and does not impose unnecessary restrictions on development viability (NPPF para173). Modification 5 sets out alterations to criteria c) so that it is based on a robust evidence base, as required by the NPPG [ID: 41-040-20160211], and does not unreasonably impact on the viability of development.

4.14.4 As noted above, criteria e) is dealing with issues that will sometimes be likely to be waste matters. When they are not however, the criteria is still attempting to impose restrictions and controls on actions that are not subject to planning permission. This is beyond the purpose and remit of a development plan, which must concern itself with land-use issues. Where a new development proposal for an intensive livestock unit is the subject of a planning application however, then a working method statement would be an acceptable requirement and assist the LPA in properly implementing government guidance with regard to potentially polluting development (NPPF para120). It will also be useful in determining whether or not the disposal of manure and slurry is waste disposal or the application of fertiliser. Requiring a working method statement is currently stated in the text of the Plan (para 6.8), but will be more effective included within the policy. Para 6.8 in the Plan also has comments about the potential requirement for hours of working restrictions on a unit. As this is not a policy requirement given its location in the justification text, it can only be seen as informal advice that the LPA may wish to consider when dealing with planning applications where residential amenity is a particular issue. Criteria f) is protecting nationally important environmental assets that are vulnerable to nitrate pollution, which is a land-use issue.

4.14.5 Modification 5 amends Policy PEM11 so that it complies with the Basic Conditions with regard to government guidance on robust evidence, viability and curbing pollution. Amendments also ensure that the Plan deals with issues a neighbourhood plan is entitled to, namely land-use that is not excluded development. I therefore recommend that Policy PEM11 is amended as shown in Modification 5 in order that it complies with the Basic Conditions.

Modification 5: Policy PEM11 to be amended as follows:

Proposals for intensive livestock units and associated structures should be sited where:

*a) They do not intrude unacceptably into the landscape or adversely affect important views or landscape character more generally. Proposals seeking to utilise tree screening and choice of materials to reduce **adverse visual and landscape** ~~the environmental~~ effects should only be permitted where these can achieve **effective full** mitigation **of the adverse impact**.*

*b) Any traffic generated can be accommodated safely upon the local highway network, ~~should~~ **does** not adversely affect residential amenity and avoids adverse effects upon the historic environment.*

*~~c)~~ There are no other potentially polluting effects upon local amenity **and the environment**, including from outside lighting.*

Modification 5 cont.

Proposals, including associated earth walled storage compounds or lagoons, should normally be sited no closer than 600 metres from Pembridge village. Elsewhere, such development should be no closer than 400m from a protected building or residential property not associated with the operation, measurements to be taken between the nearest point of the proposed development and the nearest point of the residential property or protected building. Where an operation can be demonstrated to have no impact at a nearer distance due to the small scale of the operation or other site specific factors then this distance requirement may be reduced.

Any planning application for an intensive livestock unit should be accompanied by a working method statement that includes clear details on the number and quantity of animals and by-products, methods of dealing with inputs and outputs from the process and pollution controls, transportation requirements and any other aspect of the development specified by the LPA.

~~e) Where the disposal of manure waste is proposed within any operational holding through spreading on land then sufficient suitable land should be available for this which is under the applicant's own control in a location where this will not adversely affect residential amenity. The installation and use of an effective purification system will be taken into account when assessing the suitability of available land. Should manure waste disposal be through spreading on land within another ownership or through another means then this should be agreed with the local planning authority whose area is to receive the waste.~~

~~f) Proposals or their related slurry or manure waste spreading areas, should not be sited where they would have a significant adverse effect on the River Lugg SSSI or River Wye Special Area of Conservation, including tributary streams.~~

The 'in combination effect' of such operations in terms of aerial emissions and deposition, including acid and nitrogen will be a consideration. In all these respects, the cumulative effect of such units upon the environment within the Parish should be taken into account, especially the potential polluting effects on residential amenity and biodiversity.

Para 6.8 to include a summary of the evidence supporting the policy currently quoted at length as an Annex to the Consultation Statement and reference the Annex.

4.15 **Policy PEM12: Supporting Infrastructure** Complies with the Basic Conditions.

4.16 **Policy PEM13: Development on Shobdon Airfield** Complies with the Basic Conditions.

4.17 **Policy PEM14: Renewable and Low Carbon Energy Generation** The policy is encouraging appropriate renewable and low carbon energy development. In the case of wind energy, no areas are designated as suitable for large or medium scale generation, but the area is considered suitable for individual small-scale turbines subject to criteria given in the policy. Thus for individual small-scale wind development the requirements of the Written Ministerial Statement March 2015 are met, but there is a need to define what is meant by 'small scale'. I made an enquiry to the qualifying body regarding this point, and they felt that the best definition was that used in the Herefordshire Renewable Energy Study 2010, a maximum power generation rating of 15kW. Thus in order that Policy PEM14 meets the requirements of the Basic Conditions with regard to government guidance on policy clarity, I recommend that it is amended as shown in Modification 6.

Modification 6: The last paragraph of Policy PEM14 to be amended as follows:

... ..

No sites are identified as suitable within the parish for large or medium scale energy generation through wind power but Individual small-scale turbines serving a local need may be permitted where they meet the above criteria and have a maximum power generation rating no greater than 15kW.

4.18 **Policy PEM15: Protection and Enhancement of Community Facilities and Services**

The policy is protecting valued community facilities, that are indicated by name in the text of the Plan, but not in the policy. In order that the Policy has the clarity required of by the NPPF, it should be altered to indicate the facilities that it relates to. I asked the question of the qualifying body as to which facilities it was seen to cover, and the response has informed Modification 7. Areas that

are to be designated as Local Green Space are excluded, as this would set up a conflict of level of protection. The school playing field has been included with the school as a community facility. Sport England indicated, in their Reg16 response, concern that it was not protected. Should the school wish to extend then Policy PEM15 does not preclude some use of open land around the school, as long as a playing field is left, as it would be development enhancing the school's viability.

Modification 7: The first paragraph of Policy PEM15 is recommended to be altered as shown in order that it complies with the Basic Conditions:

*Existing community facilities listed in this policy shall be retained and protected from development that might restrict unnecessarily their current use unless alternative provision is made in accordance with this policy. The retention of key services will be supported where possible through enabling development that would enhance their viability. **Community facilities to be protected are:-***

- Pembridge Primary School and Play Area
- St Mary's Church
- The Village Hall and Community Open Space adjacent to the Village Hall
- The Kings House High Street
- New Inn High Street
- Red Lion High Street
- The current range of village shops as at December 2018

... ..

4.19 Policy PEM16: Safeguarding Local Green Space I visited all the proposed Local Green Space, and could see from my visit and evidence presented in the Plan that they were all worthy of designation with the exception of the Community Open Space adjacent to the Village Hall. There is a need for Local Green Space to be special, as required by the NPPF para77, and this space has no attributes that make such a designation legitimate. It has therefore been transferred to Policy PEM15 and given some protection as a community facility together with the Village Hall. Future development on it that could render the Village Hall more viable is not ruled out by Policy PEM15.

4.19.1 The wording of the policy does not currently give the protection this designation is to be awarded (NPPF para78). A comment from the Strategic Planning section of the LPA has also

indicated concerns with regard to the wording. For reasons of complying with government guidance with regard to the designation of Local Green Space and thus complying with the Basic Conditions, I recommend that Policy PEM16 is amended as set out in Modification 8.

Modification 8: Policy PEM16 to be amended as follows:

The following areas ~~also identified upon~~ in the Pembridge village Map are designated Local Green Space. Development that would result in the loss or damage of these sites or ~~unnecessarily restrict~~ reduce their current use or value will not be permitted. Proposals that will benefit their current utility will ~~however~~ be supported provided they comply with all policies in the development plan including this policy. ~~permitted provided there is no significant adverse effect on residential amenity:~~

- i) Churchyard at St Mary's Church.
- ii) The Millennium Meadow.
- iii) Pembridge Village Green.
- iv) Riverside Walk.
- ~~v) Community Open Space adjacent to the Village Hall.~~
- ~~vi~~ v) The Green surrounding the War Memorial in West Street.

4.20 Policy PEM17: Contributions to Community Services, Youth Provision and Recreation Facilities

The policy complies with the Basic Conditions.

4.21 Policy PEM18: Retaining the Natural Environment and Landscape The policy has been criticised in the Reg16 responses as not differentiating between different levels of protection for national and local environmental assets, as required by the NPPF (para 113). Generally the criteria within the policy distinguish between local and national features well, but criteria e) and f) should have appropriate qualifiers fitting to the status of the local wildlife sites they protect. Criteria a) deals with landscape issues rather than ecological protection and is acceptable as it stands. Criteria b) did not have acceptable clarity, and with reference back to the qualifying body and LPA I have proposed a modification that improves it. Criteria e) did not read well within the format of the policy, and I have thus also recommended a modification for clarity here.

Modification 9: In order that the policy complies with government policy with regard to the hierarchy of protection of environmental sites, and the clarity required of policy, I recommend Policy PEM18 is amended as follows:

... ..

b) *Contribute towards the wider ecological network within the Parish through measures to enhance the ecological corridors and stepping stones identified by the LPA in the Ecological Network Map 2013. In particular ~~to maintain and of~~ the ecological corridors of the River Arrow's tributaries ~~and stepping stones elsewhere throughout the Parish and within Pembridge Village should be Protected and enhanced wherever possible; through its centre;~~*

... ..

e) ~~In addition,~~ **Protect** the biodiversity value of local wildlife sites and green infrastructure within the parish, and in particular around and within Pembridge village, ~~should be protected from unacceptable harm to the asset, particularly~~ from the adverse effects of development. New development should also seek to add to the green infrastructure network where possible;

f) *Retain **wherever possible** important features such as ponds, orchards and hedgerows, and maintain and preferably extend tree cover, adding to the natural assets of the Parish where opportunities are available.*

4.22 **Policy PEM19: Protecting Heritage Assets** This policy has also been criticised for not distinguishing between different levels of protection at a national and local level, and ruling out development even where there is less than substantial harm on assets of lesser value. The response draws attention to policy in the NPPF (paras 133-4) that set out this requirement. I find the qualifier 'where appropriate' in the first sentence of the policy allows this distinction to be made between assets of varying quality, and the nature of any threat from a development proposal. However criteria d) is vague in the mention of 'other similar heritage assets' as these may not have the status of nationally listed heritage assets. Otherwise I find the policy complies with government guidance in this regard and is suitably more flexible with regard to local heritage assets in criteria e), g) and h).

4.22.1 In order that Policy PEM19 complies with the Basic Conditions with regard to government guidance in the NPPF I recommend that it is amended as shown in Modification 10.

Modification 10: Criteria d) of Policy PEM19 to be amended as follows:

... ..

d) Resisting development that adversely affects features or the setting of Listed Buildings. ~~and other similar heritage assets~~. In particular, the Market Hall and its setting should be protected, including from the impacts of traffic upon its fabric.

... ..

4.23 Policy PEM20: Development within Pembridge Conservation Area Complies with the Basic Conditions.

4.24 Policy PEM21: Protection from Flood Risk Complies with the Basic Conditions.

4.25 Policy PEM22: Sewage and Sewerage Infrastructure Complies with the Basic Conditions and is supported by Welsh Water (Dwr Cymru).

4.26 Policy PEM23: Sustainable Design Complies with the Basic Conditions.

4.27 Policy PEM24: Traffic Measures within the Parish Complies with the Basic Conditions

4.28 **Policy PEM25: Highway Design Requirements** The policy complies with the Basic Conditions, but clarification of the justification text is required in order that the Plan meets the requirements of the NPPF with regard to clarity, and thus complies with the Basic Conditions.

Modification 11: I recommend the second sentence of paragraph 9.3 of the PNDP is amended as follows in order that the document has the clarity required and complies with the Basic Conditions.

*This applies not only in ~~the~~ **Pembridge Village** where growth is proposed, but also elsewhere in the Parish.*

4.29 **Policy PEM26: Protection and Development of Public Rights of Way** Complies with the Basic Conditions.

5. The Referendum Boundary

5.1 The Pembridge Neighbourhood Development Plan has no policy or proposals that have a significant enough impact beyond the designated Neighbourhood Plan Boundary that would require the referendum boundary to extend beyond the Plan boundary. Therefore I recommend that the boundary for the purposes of any future referendum on the Pembridge Neighbourhood Development Plan 2011 – 2031 shall be the boundary of the designated Neighbourhood Area for the Plan.