

Herefordshire Council

**Lea
Neighbourhood Development
Plan 2011-2031**

Independent Examiner's Report

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17 December 2018

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Summary

I have been appointed as the independent examiner of the Lea Neighbourhood Development Plan.

The village of Lea lies about 4 miles to the east of Ross-on-Wye and about 12 miles west of Gloucester with the A40 bisecting the Parish from west to east. It is located at the base of a rolling valley and has a number of valued services and facilities including a primary school, village hall, garage, public house and shop. The Parish has experienced recent development and the Plan's vision is to ensure that the Parish retains its integrity as a thriving community in harmony with its many local attributes.

Although no site allocations are made for housing, the Plan defines a settlement boundary for Lea. It contains eight policies covering a wide variety of topics including housing, environmental issues and issues of particular concern to the community such as surface and foul water drainage.

I have recommended a number of modifications which are intended to ensure that the basic conditions are met satisfactorily and that the Plan is a workable document that provides a practical and clear framework for decision-making. My reasoning is set out in detail in this report.

Subject to those modifications, I have concluded that the Plan does meet the basic conditions and all the other requirements I am obliged to examine. I am therefore pleased to recommend to Herefordshire Council that the Lea Neighbourhood Development Plan can go forward to a referendum.

In considering whether the referendum area should be extended beyond the Neighbourhood Plan area I see no reason to alter or extend this area for the purpose of holding a referendum.

Ann Skippers MRTPI
Ann Skippers Planning
17 December 2018



1.0 Introduction

This is the report of the independent examiner into the Lea Neighbourhood Development Plan (the Plan).

The Localism Act 2011 provides a welcome opportunity for communities to shape the future of the places where they live and work and to deliver the sustainable development they need. One way of achieving this is through the production of a neighbourhood plan.

I have been appointed by Herefordshire Council (HC) with the agreement of the Parish Council, to undertake this independent examination. I have been appointed through the Neighbourhood Planning Independent Examiner Referral Service (NPIERS).

I am independent of the qualifying body and the local authority. I have no interest in any land that may be affected by the Plan. I am a chartered town planner with over twenty-five years experience in planning and have worked in the public, private and academic sectors and am an experienced examiner of neighbourhood plans. I therefore have the appropriate qualifications and experience to carry out this independent examination.

2.0 The role of the independent examiner

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

The basic conditions¹ are:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan
- The making of the neighbourhood plan contributes to the achievement of sustainable development
- The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area
- The making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations
- Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

¹ Set out in paragraph 8 (2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to in the paragraph above. Only one is applicable to neighbourhood plans and is:

- The making of the neighbourhood plan is not likely to have a significant effect on a European site² or a European offshore marine site³ either alone or in combination with other plans or projects.

The examiner is also required to check⁴ whether the neighbourhood plan:

- Has been prepared and submitted for examination by a qualifying body
- Has been prepared for an area that has been properly designated for such plan preparation
- Meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one neighbourhood area and that
- Its policies relate to the development and use of land for a designated neighbourhood area.

I must also consider whether the draft neighbourhood plan is compatible with Convention rights.⁵

The examiner must then make one of the following recommendations:

- The neighbourhood plan can proceed to a referendum on the basis it meets all the necessary legal requirements
- The neighbourhood plan can proceed to a referendum subject to modifications or
- The neighbourhood plan should not proceed to a referendum on the basis it does not meet the necessary legal requirements.

If the plan can proceed to a referendum with or without modifications, the examiner must also consider whether the referendum area should be extended beyond the neighbourhood plan area to which it relates.

If the plan goes forward to referendum and more than 50% of those voting vote in favour of the plan then it is made by the relevant local authority, in this case Herefordshire Council. The plan then becomes part of the 'development plan' for the area and a statutory consideration in guiding future development and in the determination of planning applications within the plan area.

² As defined in the Conservation of Habitats and Species Regulations 2012

³ As defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

⁴ Set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act

⁵ The combined effect of the Town and Country Planning Act Schedule 4B para 8(6) and para 10 (3)(b) and the Human Rights Act 1998

3.0 Neighbourhood plan preparation

A Consultation Statement has been submitted which meets the requirements of Regulation 15(2) of the Neighbourhood Planning (General) Regulations 2012.

The idea of a Plan was mooted in 2013 with a Steering Group formally established in September 2016. In the meantime, a number of open meetings had been held and a questionnaire drafted during 2015. The household questionnaire was delivered by volunteers to all households in the Parish in the Autumn of 2015 prompting a good response rate. Preliminary analysis of the results was presented in January 2016 and following the development of four main themes, volunteers were sought to work on the emerging topics. A village walk was organised to help establish what people thought was most important for the village.

Work continued throughout 2016. Discussions with developers also took place. In October and November 2016, questionnaires for young people and businesses were developed and engagement with the primary school took place.

A range of engagement techniques have been used including use of the Parish Council website, articles in the bimonthly community publication Lea Lines, a display at the village fete, drop-in sessions and leaflet drops to all households to inform people of progress and to encourage their participation.

Pre-submission (Regulation 14) consultation took place between 4 September – 16 October 2017. A leaflet was delivered to all households and businesses, copies were available online and from the Garage and Church, various organisations were contacted by email. During the consultation period, two drop-in sessions were held at the Village Hall, posters were displayed around the village and at the Bingo night and a summary version produced.

The Consultation Statement summarises the comments received and how these were addressed.

I consider that the consultation and engagement carried out is satisfactory.

Submission (Regulation 16) consultation was carried out between 3 January – 14 February 2018.

The Regulation 16 stage resulted in 15 representations which I have considered and taken into account in preparing my report.

4.0 The examination process

I have set out my remit earlier in this report. It is useful to bear in mind that the examiner's role is limited to testing whether or not the submitted neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).⁶ PPG confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.⁷ Where I find that policies do meet the basic conditions, it is not necessary for me to consider if further amendments or additions are required.

Some representations offer useful suggestions. The Parish Council may wish to consider these suggestions in the final version of the Plan or when the Plan is reviewed as appropriate, but they are not modifications I need to make in respect of my role and remit. PPG confirms that neighbourhood plans are not obliged to contain policies addressing all types of development.⁸

PPG⁹ explains that it is expected that the examination will not include a public hearing. Rather the examiner should reach a view by considering written representations. Where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.¹⁰

I sought clarification on a number of matters from the Parish Council and HC in writing and my list of questions is attached to this report as Appendix 2. I am very grateful to both Councils who have provided me with answers to my questions. I also sought further clarification from HC after receiving those answers about the precise location of the site adjacent to Castle End and The Brambles referred to by Procuco Planning Services Ltd in their representation. After consideration of all the documentation I decided that it was not necessary to hold a hearing.

Earlier this year NPIERS published guidance to service users and examiners. Amongst other matters, the guidance indicates that the qualifying body, in this case, Lea Parish Council, will normally be given an opportunity to comment upon any representations made by other parties at the Regulation 16 consultation stage should they wish to do so. There is no obligation for the Parish Council to make any comments; it is only if they wish to do so. If a qualifying body wishes to make comments, the guidance indicates that any such comments should be made within two weeks after close of the Regulation 16 stage.

I therefore wrote to ask whether the Parish Council wished to make any comments on any or all of the representations received at Regulation 16 stage and asked for any

⁶ PPG para 055 ref id 41-055-20180222

⁷ *Ibid*

⁸ *Ibid* para 040 ref id 41-040-20160211

⁹ *Ibid* para 056 ref id 41-056-20180222

¹⁰ *Ibid*

comments by 27 April 2018. The Parish Council did send some comments to me which I have taken account of in preparing my report.

I am very grateful to HC for ensuring that the examination has run so smoothly.

I made an unaccompanied site visit to familiarise myself with the Plan area on 2 June 2018.

Where modifications are recommended they appear in **bold text**. Where I have suggested specific changes to the wording of the policies or new wording these appear in **bold italics**. As a result of some modifications consequential amendments may be required. These can include changing section headings, amending the contents page, renumbering paragraphs or pages, ensuring that supporting appendices and other documents align with the final version of the Plan and so on. I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be taken and such editing carried out.

5.0 Compliance with matters other than the basic conditions

I now check the various matters set out in section 2.0 of this report.

Qualifying body

Lea Parish Council is the qualifying body able to lead preparation of a neighbourhood plan. This requirement is met.

Plan area

The Plan area is coterminous with the administrative boundary for the Parish. HC approved the designation of the area on 13 May 2014. The Plan relates to this area and does not relate to more than one neighbourhood area and therefore complies with these requirements. The Plan area is shown on page 8 of the Plan.

Plan period

The Plan period is 2011 – 2031. This is clearly stated in the Plan itself and confirmed in the Basic Conditions Statement. The end date aligns with the Core Strategy. This requirement is therefore met.

Excluded development

The Plan does not include policies that relate to any of the categories of excluded development and therefore meets this requirement. This is also helpfully confirmed in the Basic Conditions Statement.

Development and use of land

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable.¹¹ Subject to any such recommendations, this requirement can be satisfactorily met.

6.0 The basic conditions

Regard to national policy and advice

The Government published a National Planning Policy Framework (NPPF) in 2012. On 24 July 2018, a revised NPPF was published. Paragraph 214 in Annex 1 of that document explains that:

“The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.”

Footnote 69 explains that for neighbourhood plans “submission” means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.

It is therefore clear that it is the previous NPPF published in 2012 that is relevant to this particular examination. I sent a note to this effect to the Parish Council and HC and this is included as Appendix 3.

Any references to the NPPF in this report refer to the NPPF published in 2012.

The NPPF is the main document that sets out national planning policy. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the strategic development needs set out in Local Plans, plan positively to support local development, shaping and directing development that is outside the strategic elements of the Local Plan and

¹¹ PPG para 004 ref id 41-004-20170728

identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with the neighbourhood plan to proceed.¹²

The NPPF also makes it clear that neighbourhood plans should be aligned with the strategic needs and priorities of the wider local area. In other words neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. They cannot promote less development than that set out in the Local Plan or undermine its strategic policies.¹³

The NPPF indicates that plans should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.¹⁴

On 6 March 2014, the Government published a suite of planning guidance referred to as Planning Practice Guidance (PPG). This is an online resource available at planningguidance.communities.gov.uk which is regularly updated. The planning guidance contains a wealth of information relating to neighbourhood planning. I have also had regard to PPG in preparing this report.

PPG indicates that a policy should be clear and unambiguous¹⁵ to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the context and the characteristics of the area.¹⁶

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.¹⁷ It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.¹⁸

Whilst this has formed part of my own assessment, the Basic Conditions Statement sets out how the Plan has responded to national policy and guidance in Table 1 which offers commentary on how the Plan aligns with the NPPF's core planning principles.

Contribute to the achievement of sustainable development

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development. The NPPF as a whole¹⁹ constitutes the Government's view of what sustainable development means in practice

¹² NPPF paras 14, 16

¹³ *Ibid* para 184

¹⁴ *Ibid* para 17

¹⁵ PPG para 041 ref id 41-041-20140306

¹⁶ *Ibid*

¹⁷ *Ibid* para 040 ref id 41-040-20160211

¹⁸ *Ibid*

¹⁹ NPPF para 6 which indicates paras 18 – 219 of the Framework constitute the Government's view of what sustainable development means in practice

for planning. The Framework explains that there are three dimensions to sustainable development: economic, social and environmental.²⁰

Whilst this has formed part of my own assessment, the Basic Conditions Statement contains a table which explains how the Plan aligns with each of the three components of sustainable development outlined in the NPPF.

General conformity with the strategic policies in the development plan

The development plan consists of the Herefordshire Local Plan Core Strategy 2011 – 2031 (CS) which was adopted on 16 October 2015 and various other documents including the saved policies of the Unitary Development Plan (UDP) (found in Appendix 1 of the CS). I have taken all the CS policies to be ‘strategic’.

Whilst this has formed part of my own assessment, the Basic Conditions Statement contains a table that gives an assessment of how each Plan policy generally confirms to the relevant CS policies.

European Union Obligations

A neighbourhood plan must be compatible with European Union (EU) obligations, as incorporated into United Kingdom law, in order to be legally compliant. A number of EU obligations may be of relevance including Directives 2001/42/EC (Strategic Environmental Assessment), 2011/92/EU (Environmental Impact Assessment), 92/43/EEC (Habitats), 2009/147/EC (Wild Birds), 2008/98/EC (Waste), 2008/50/EC (Air Quality) and 2000/60/EC (Water).

Strategic Environmental Assessment

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment is relevant. Its purpose is to provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes. This Directive is commonly referred to as the Strategic Environment Assessment (SEA) Directive. The Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR).

An Environmental Report (ER) dated November 2017 has been submitted as an earlier screening opinion in April 2014 concluded that a SEA would be required.

The ER confirms that a Scoping Report dated March 2015 was prepared and sent to the statutory consultees from 31 March – 5 May 2015. In response to my query on this, HC confirms that no responses were received from any of the statutory consultees in relation to either the screening opinion or the Scoping Report.

²⁰ NPPF para 7

A draft ER underwent a period of consultation alongside the pre-submission version of the Plan. No responses were received from the statutory consultees specifically on the ER.

Following some refinements to objective 7 and Policies 1, 2 and 8, the ER of November 2017 reassessed the revisions. It concludes that the changes made help to move the policies closer to the SEA baseline and that the Plan will not have a significant adverse impact on any SEA objectives and that no significant effect is likely from the implementation of the Plan. It was published for consultation alongside the submission version of the Plan.

HC will monitor the outcomes from the Plan's policies annually.

The ER is a comprehensive document that has dealt with the issues appropriately for the content and level of detail in the Plan. This in line with PPG advice which confirms the SEA does not have to be done in any more detail or using more resources than is considered to be appropriate for the content and level of detail in the Plan.²¹ In my view, it has been prepared in accordance with Regulation 12 of the Regulations. Therefore EU obligations in respect of SEA have been satisfied.

Habitats Regulations Assessment

Directive 92/43/EEC on the conservation of natural habitats, commonly referred to as the Habitats Directive, is also of relevance to this examination. A Habitats Regulations Assessment (HRA) identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects.²² The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

An initial screening assessment in April 2014 found that the Plan area was some 6.4km west of the River Wye, but fell within the hydrological catchment of the River Wye (including the River Lugg) Special Area of Conservation (SAC) and was within 0.5km of the Wye Valley and Forest of Dean Bat Sites SAC and within 10km of the Wye Valley Woodlands SAC. As a result, the screening indicated that a full screening assessment would be required.

A screening assessment of the draft Plan was undertaken in August 2017. This concluded that the draft Plan would not have a likely significant effect on the River Wye SAC, the Wye Valley and Forest of Dean Bat Sites SAC or the Wye Valley Woodlands SAC alone or in combination with other plans.

Following amendments to the draft Plan following the pre-submission stage, amendments were considered through the production of an addendum report dated November 2017. This affirmed the earlier conclusion.

²¹ PPG para 030 ref id 11-030-20150209

²² *Ibid* para 047 ref id 11-047-20150209

I wrote to HC on 10 July 2018 regarding the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*.²³ My letter to HC is attached at Appendix 4. I asked HC to consider any implications arising from the judgment that meant that measures intended to avoid or reduce effects could not be taken into account at the screening stage when considering whether a plan would be likely to have a significant effect on a European site.

As a result of the judgment HC rescreened the Plan. The HRA dated July 2018 concludes the Plan would not have any likely significant effects on the relevant SACs. The report offers a detailed discussion to support this conclusion and, amongst other things, highlights the characteristics of the River Wye SAC and the conclusions reached in the CS's HRA, the lack of site allocations in this Plan, the level of growth envisaged in the Plan and the policies in the CS.

HC have also issued a briefing note attached as Appendix 5 to this report. This explains that they have sought Counsel advice following the judgments and that revised screening reports rely on policies in the CS namely SD4 and LD2 to reach a conclusion that a Plan would not result in any likely significant effects. It explains that the key issue has been whether CS policies are classified as 'mitigation' and therefore cannot be taken into account at the screening stage.

The note states:

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

The July 2018 HRA was subject to consultation between 6 August – 10 September 2018. This resulted in one representation from Historic England who did not disagree with its conclusions.

Following on from this, HC has sought further Counsel advice regarding the case of *Cooperatie Mobilisation for the Environment v Vereniging Leefmilieu*²⁴ (the so called Dutch Nitrogen case). The update of 13 December 2018 is attached as Appendix 6 to this report. This explains that the neighbourhood plan does not give rise to any pathway to harm which is not prevented by the proper application of CS Policy SD4. It therefore confirms that there is no reason why neighbourhood plans cannot progress in Herefordshire following on from current case law.

²³ Case C-323/17

²⁴ Case C-293/17

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.²⁵ In undertaking a great deal of work on HRA, HC has considered the compatibility of the Plan in regard to EU obligations and does not raise any concerns in this regard.

Given the nature, characteristics and distances of the European sites concerned and the nature and contents of this Plan and taking the conclusions of the revised screening report undertaken by HC and the Counsel advice received by HC into account, I consider that the requisite requirements have been met.

European Convention on Human Rights (ECHR)

The Basic Conditions Statement contains a statement on human rights. There is nothing in the Plan that leads me to conclude there is any breach of the fundamental rights and freedoms guaranteed under the ECHR or that the Plan is otherwise incompatible with it or does not comply with the Human Rights Act 1998.

PPG²⁶ confirms that it is the responsibility of the local planning authority, in this case HC, to ensure that all the regulations appropriate to the nature and scope of the draft neighbourhood plan have been met. It is HC who must decide whether the draft plan is compatible with EU obligations when it takes the decision on whether the plan should proceed to referendum and when it takes the decision on whether or not to make the plan.

7.0 Detailed comments on the Plan and its policies

In this section I consider the Plan and its policies against the basic conditions. Where modifications are recommended they appear in **bold text**. As a reminder, where I suggest specific changes to the wording of the policies or new wording these appear in ***bold italics***.

The Plan is generally well presented and laid out with policies which are clearly differentiated in boxes from supporting text. There is a useful contents page at the start of the Plan.

Section 1: Introduction

This is a helpful introduction to the Plan which sets out background information as well as signposting other supporting documents and the evidence base.

²⁵ PPG para 031 ref id 11-031-20150209

²⁶ *Ibid*

The second and third paragraphs explain the relationship between the Plan, the CS and the NPPF, but are not quite correct in their wording. Therefore, in the interests of accuracy, the modifications below are recommended.

Some elements of the section will also of need some natural updating as the Plan progresses towards being made.

- **Reword the second paragraph on page 1 of the Plan to read: “Such NDPs allow a ‘local say’ in terms of future development proposals in the area, but the plan must *generally* conform to the *strategic policies* in the *development plan at local authority level* and *have regard to* the National Planning Policy Framework (NPPF).”**
- **Reword the third paragraph on page 1 of the Plan to read: “Once the plan has been made, following a favourable referendum, *the* Lea Neighbourhood Development Plan will have force of law and *will become part of the development plan*. *As such it will be used by those making decisions on planning applications* for deciding what development should and should not take place in the parish.”**

Section 2: Parish description

This informative section contains a wealth of background information about the Parish setting the scene well for the Plan.

Section 3: Plan methodology

A short informative section.

Section 4: Neighbourhood Development Plan issues

This section details the issues identified through community engagement. The issues are articulated well.

Section 5: Neighbourhood Development Plan vision

The vision for the area is:

“To preserve and enhance Lea’s unique rural settlements, up to 2031, as a thriving, cohesive, secure community set in open countryside in harmony with the landscape and nature.”

The vision is then supplemented by further information on its meaning. Of particular note is the welcome recognition that there is a need to adapt to changing circumstances and the support for a cohesive community.

Section 6: Neighbourhood Development Plan objectives

Nine objectives are identified in this section. All are clearly articulated and lead in to the next section of the Plan which contains the policies.

Section 7: Neighbourhood Development Plan policies

This section contains the eight policies of the Plan alongside explanatory text. The introduction to the section refers to the “Local Development Framework” and in the interests of accuracy this terminology should be corrected.

- **Change “Local Development Framework” in the third paragraph on page 20 of the Plan to “*planning policy context*”**

Section 7.1 The right housing in the right place

It is useful for me at this stage to set out the strategic context for the Plan.

The strategy for the rural areas in the CS²⁷ is positive growth. The strategy is based on seven housing market areas (HMA). This Plan falls within the Ross-on-Wye HMA. The Ross-on-Wye HMA has an indicative housing growth target of 14% according to CS Policy RA1.

This results in a target of 43 based on 2014 data rather than 2011 data. This should be updated in the Plan. At April 2017, there were 101 commitments within the Parish which included 11 mobile homes at Lea Villa.

²⁷ Core Strategy Section 4.8

The CS explains that this indicative growth target in CS Policy RA1 will form the basis for the minimum level of new housing to be accommodated in each neighbourhood plan across the County.

The main focus for development is within or adjacent to existing settlements listed in two figures, 4.14 and 4.15. CS Policy RA2 translates this into policy. Lea is identified in Figure 4.14 as a settlement which will be the main focus of proportionate housing development. The Parish does not have any settlements identified in Figure 4.15 as other settlements where proportionate housing is appropriate.

The Plan explains that any further development will need to demonstrate that additional growth is proportionate and appropriate. A settlement boundary for Lea has been defined and is shown on a map on page 21 of the Plan. The settlement boundary is in two parts. The larger part includes a site which has planning permission and another that was undertaken construction at the time of my site visit. The second and smaller part contains a tightly knit group of dwellings, but does not include the village hall and its environs or the primary school that adjoin the current boundary. HC has suggested that the school should be within the boundary and this suggestion could be usefully considered along with the village hall site should the Plan be reviewed.

I asked for up to date information about sites which had been granted planning permission in the intervening period since the settlement boundaries were defined. The Parish Council has indicated these generally on a map. It is clear that since the settlement boundary was defined a number of planning permissions have been granted. Again the opportunity could be taken to include these within the settlement boundary when the Plan is reviewed, but at this point in time I consider the boundaries defined are appropriate, particularly as the Parish has accommodated more than the minimum housing target and the Parish Council has indicated the need to address the boundaries when the Plan is reviewed.

- **Update the housing figures in paragraph six on page 20 of the Plan replacing “...290 properties in 2011...” with “307 properties in 2014...”**

Policy Lea 1 – The right housing in the right place

Policy Lea 1 is a long policy with a number of bullet points that cover everything from the number of homes to contamination. All are clearly worded. However, a number of matters arise.

The first bullet point supports existing planning permissions as at April 2017. Whilst I understand the intent of this bullet point given the Parish has already exceeded the minimum housing growth target, there is no need to support sites that already have permission. In addition, needs may change over time and the figure in the CS is an indicative growth target not a definitive or maximum figure.

Furthermore, the existing planning permissions may expire over the Plan period; if this is the case any applications would need to be assessed in the light of current policy at that time. However, this bullet point would effectively support them and grant permission again without any such safeguards. For these reasons, then it is not appropriate to retain the first bullet point.

As a consequence, the second bullet point requires some amendment.

Although the Plan has defined a settlement boundary for Lea, there is no mention of its definition in the policy. This then requires a modification in the interests of providing the practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency sought by the NPPF.²⁸

Bullet point 13 refers to the NPPF. The reference is unnecessary and should be removed.

Bullet point 15 prevents redevelopment of the Lea Garage, Post Office, Church or school sites for residential use. I consider this contradicts an earlier bullet point 4 which supports conversion opportunities. Furthermore there no explanation of why residential development at any of these sites would not be acceptable. This bullet point does not meet the basic conditions, in particular the achievement of sustainable development and should be deleted. I note that CS Policy SC1 retains existing social and community facilities and therefore offers some protection. In addition Policy Lea 8 specifically refers to these facilities.

In other respects, and subject to these modifications, the policy will meet the basic conditions and add a local flavour to CS Policies SS2, SS6, RA1, RA2, RA3, H3 and SD1 in particular.

- **Delete the first bullet point of the policy in its entirety**
- **Delete the words “Further applications for” from the (existing) second bullet point of the policy which should begin “New housing development...”**
- **Add at the beginning of the (existing) third bullet point of the policy: “A *settlement boundary for Lea has been defined and is shown on page [21] of the Plan.* [retain all of existing criterion]**
- **Delete “as specified in the NPPF” from (existing) bullet point 13 of the policy**
- **Delete (existing) bullet point 15 of the policy in its entirety**

²⁸ NPPF para 17

Policy Lea 2 – Surface and foul water drainage

The supporting text explains that Lea is situated in the Lower Wye catchment and has the highest risk fluvial flooding in the County. A specially commissioned study was produced, the Lea Flood Alleviation Study, in 2016 to try and find solutions to the issues.

There is little doubt that consideration of flood risk will proactively help to meet one of the challenges of climate change. The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.²⁹ It advocates a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property.³⁰

The policy seeks to help to address flood risk and encourage appropriate surface water and sustainable drainage systems. It is clearly worded. It takes account of national policy and guidance, generally conforms to CS Policies SD3 and SD4 and will help to achieve sustainable development. It therefore meets the basic conditions and no modifications are recommended.

7.2 A valued environment in which to live

The supporting text makes reference to “settled farmlands” on page 28 of the Plan. HC comments that it would be useful to change this reference to “Principal Settled Farmlands”. I agree this would be helpful in the interests of providing a practical framework as sought by the NPPF.

- **Change “settled farmlands” on page 28 of the Plan to “Principal Settled Farmlands”**

Policy Lea 3 – A valued environment in which to live

I saw at my visit that Lea is located at the base of a rolling valley and its landscape character and setting are integral to the uniqueness of the Parish. This policy seeks to ensure that new development protects and enhances the landscape character and setting of Lea mirroring one of the core planning principles in the NPPF³¹ and CS Policies SS6, LD1 and LD2.

The policy has seven bullet points.

The second bullet point refers to “panoramic views”. It cross references Appendix D which contains a list of views to be protected.

²⁹ NPPF para 100

³⁰ *Ibid*

³¹ *Ibid* para 17 and Section 11

Unfortunately none of the views were shown on a map and the list is quite generalised in nature. I requested the views to be mapped and this was duly provided in time for my site visit. I then requested further clarification suggesting that the views could be shown on a map clearly and photographs taken from each viewpoint. A map indicating the views was provided alongside corresponding photographs from each viewpoint. This provides a clear basis for this bullet point. The map and photographs should be included in the Plan as a replacement Appendix D. In addition it appears that viewpoint H2 has been missed off the map and this should be remedied.

Bullet point two then needs more clarity and flexibility.

The third bullet point needs a small amendment to ensure it has flexibility and would not prevent the achievement of sustainable development and to ensure it reads well.

The sixth bullet point also needs some revision to make sure it is clear.

There is no need to refer to CS policies in the final bullet point.

Subject to these modifications, the policy will meet the basic conditions.

- **Replace Appendix D of the Plan with the map and accompanying photographs of the views to be protected sent in response to my questions of clarification**
- **Ensure that all the viewpoints referred to in the photographs are mapped on the map**
- **Reword the second bullet point to read: “Development must protect or enhance *the key features of the panoramic views identified in Appendix D and the area’s landscape quality.*”**
- **Reword the third bullet point to read: “Development must conserve mature trees and hedgerows *wherever possible and appropriate to do so, incorporating these features into a landscaping scheme.*”**
- **Reword the sixth bullet point to read: “*New development should sustain local habitats and support biodiversity. The creation and maintenance of green infrastructure is particularly encouraged as it is important for bats.*”**
- **Delete the seventh bullet point in its entirety**

Policy Lea 4 – Large-scale polytunnels

Concern has been raised by the community about the visual impact of large-scale polytunnels. It is recognised that they are an important part of the economy. At my visit I saw a number of polytunnels in the Parish and wider vicinity and they can have a significant impact on the visual qualities of an area.

The policy refers to “large-scale”, but there is no explanation of what this might mean. I raised this as a query, but no definition was offered.

In addition, the policy does not offer support to large-scale polytunnels unless there is an economic need and satisfactory impact on various issues. The wording of the policy is contradictory. It refers to the CS which does not contain any specific policy on polytunnels. There is little explanation of the concerns about polytunnels specifically in this Parish.

Given that they could be important, as recognised in the CS, to enable farmers to diversify and even remain in business, this policy required more explanation and justification. Given that, it does not meet the basic conditions and particularly does not take account of the NPPF’s support for the rural economy sufficiently and will not help to achieve sustainable development. As a result, the policy should be deleted.

I understand that a new document entitled ‘Polytunnels Planning Guide’ was produced by HC in June 2018. The Parish Council has suggested that this is reflected in the Plan. I consider this would be useful for the sake of completeness and therefore make a modification in this respect.

- **Delete Policy Lea 4 in its entirety**
- **Add the words: “A new document was produced by Herefordshire Council in June 2018 called ‘Polytunnels Planning Guide’. This guide will provide invaluable planning advice and is a material consideration in the determination of planning applications.”**

Policy Lea 5 – Sustaining open green spaces

This policy seeks to achieve a number of things.

First of all it seeks to designate five areas of Local Green Space (LGS).

The NPPF explains that LGSs are green areas of particular importance to local communities.³² The effect of such a designation is that new development will be ruled

³² NPPF paras 76, 77 and 78

out other than in very special circumstances. The identification of LGSs should be consistent with local planning of sustainable development and complement investment. The NPPF makes it clear that this designation will not be appropriate for most green areas or open space. Further guidance about LGSs is given in PPG.

The proposed LGSs are clearly shown on page 36 of the Plan.

There is a helpful table in the Plan (pages 34 and 35) that explains the how each of the proposed areas meets the criteria in the NPPF and I commend this approach to others.

I visited all five areas on my site visit. Taking each one in turn:

1. **Village Hall and surrounding grounds** This area contains a grassed area with swings and provides an area for recreation. It is used for the Fete and other activities at the Village Hall and is well located close to the Hall, School and residential properties. On the Policies Map the Village Hall and car park are included within the proposed designation. In answer to my query on this, it is confirmed that this was not the intention. I agree that the Village Hall and car park should be excluded and a modification is made to address this.
2. **Gypsy Lane** is a linear path that follows the line of the old A140. It provides a green corridor, is tranquil and is a popular walking route.
3. **Triangle of land at the bottom of Rock Lane** is at the heart of the village. It is a well-defined area, visually prominent on the corner. New trees have been planted on it. It is valued by the community for its visual characteristics, but also for its historic value and the sense of identity it gives. It is also a priority habitat.
4. **Play Area Rudhall View** provides recreational facilities in this part of the village including a play area.
5. **Village Allotments** adjoin the Church. They are valued for their tranquility and for the opportunity they provide for the community to grow fruit, vegetables and flowers. A public footpath adjoins the site.

In my view, all of the proposed LGSs meet the criteria in the NPPF satisfactorily. Turning now to the policy itself, the policy does not specify the areas themselves and should do; it only refers to “the areas listed above” and this is too imprecise in my view. In addition it refers to the NPPF which is unnecessary and has in any case changed since the Plan was drafted. Therefore to ensure the policy provides a practical framework and will stand on its own two feet, a modification is needed.

The second bullet point refers to the scenario where archaeological remains are found and applies CS Policy LD4 which refers to the historic environment and heritage assets. I have assumed that this bullet point refers to any green space and not only the five proposed LGSs given the title of the policy. However, the bullet point simply applies a policy of the CS if relevant and indicates that the remains will be considered as potential

future LGS. The first part of the bullet point is therefore unnecessary and the second part an aspiration rather than a development and use of land matter. As a result this bullet point should be deleted.

The third bullet point requires developers to provide open space in accordance with HC standards. This again then simply repeats HC level policy and duplicates rather than adds anything to HC level policy. It should therefore be deleted.

The last bullet point requires a contribution to be made to the Parish Council where on-site open space cannot be provided. This is in line with CS Policy OS2. It is therefore unnecessary to repeat in this Plan. It should therefore be deleted.

With these modifications, the policy will meet the basic conditions.

- **Amend the Policies Map and map on page 36 of the Plan to exclude the Village Hall and car park from the Local Green Space designation**
- **Change the first bullet point of the policy to read: *“The five areas listed below and shown on the map are designated as Local Green Spaces. Within the Local Green Spaces any new development will be managed in line with national policy on green belts.”***
- **Delete bullet point two of the policy in its entirety**
- **Delete bullet point three of the policy in its entirety**
- **Delete bullet point four of the policy in its entirety**

7.3 Supporting a thriving rural economy

Policy Lea 6 – Supporting a thriving rural economy

Policy Lea 6 has a number of bullet points.

The first refers to CS Policies RA6, E1, E2, E3 and E4. There is no need to repeat support for these policies in the policy itself, but this could be retained as part of the supporting text.

The third bullet point refers to existing employment sites “as listed earlier. It was unclear to me what these were and I asked for them to be identified. The bullet point simply repeats CS Policy E2. It does not add any locally distinctive layer to this CS policy and therefore it is unnecessary. It should be deleted.

Bullet point four supports the conversion of existing buildings to employment uses including tourism. However the next bullet point then seeks to balance this with protection of the local environment. In order to provide the practical framework sought

by the NPPF, a modification is made to amalgamate these two bullet points and to reword them for more clarity.

The sixth bullet point contains a number of issues to consider when assessing any such applications, but does not require applicants to do anything. This then does not provide the practical framework sought by the NPPF and may inadvertently prevent the achievement of sustainable development. A modification is therefore made to address these points.

The last bullet point seeks to ensure impacts are minimal and that the Parish Council is satisfied. On the first point, it could be argued that impacts are minimal, but might still be harmful to an unacceptable extent and the modification suggested to the preceding bullet points will address this and ensure any impacts are acceptable rather than minimal thereby providing the practical framework required by the NPPF. On the second matter, the Parish Council is not the determining authority and this is not a development and use of land matter and so cannot be included.

Subject to these modifications, the policy will meet the basic conditions. The policy will help to achieve sustainable development and is in line with national policy's support for the rural economy and the general thrust of CS Policies SS5, RA5, RA6, E1, E4, LD1 and MT1.

- **Remove bullet point one from the policy and add it to the supporting text as a new paragraph**
- **Delete bullet point three of the policy in its entirety**
- **Combine bullet points four and five to read: “Conversion of existing buildings to employment uses will be supported *where the impact on the local environment is acceptable. Sustainable* tourism opportunities *including the provision of sensitively located small-scale B and B or self catering tourist accommodation will be encouraged.*”**
- **Reword bullet point six to read: “*In considering any development proposals, the impact on the landscape and historic environment of the area, flooding and drainage, access and highway safety, ecology and residential amenity must be acceptable.*”**
- **Delete bullet point seven of the policy in its entirety**

7.4 Delivery of local infrastructure

Policy Lea 7 - Delivery of local infrastructure

The policy seeks to cover a number of different aspects of infrastructure. It seeks to ensure that development is accompanied by necessary infrastructure including footpaths and cycleways.

The second and third elements support broadband infrastructure and telecommunications subject to appropriate location and design.

Low carbon renewable energy initiatives are also supported including community schemes subject to location. Commercially led renewable energy schemes are not supported unless any impacts including those on landscape and transport are satisfactory.

The policy is clearly worded. It meets the basic conditions and in particular is in general conformity with CS Policies SC1, SD1, SD2 and ID1. No modifications are recommended.

7.5 Community facilities

Policy Lea 8 – Community facilities

Policy Lea 8 encourages the retention and enhancement of a variety of existing community facilities listed in the policy itself. These range from the village shop to the Village Hall. The policy also supports new facilities in principle.

The NPPF³³ promotes the retention of and development of local services and community facilities. Amongst other things, CS Policy SC1 protects, retains and enhances existing social and community infrastructure. The policy meets the basic conditions and no modifications are recommended.

Section 8: Plan implementation and monitoring

Although monitoring is not a requirement for neighbourhood plans, the Plan will be reviewed every five years recognising the need to respond to changing circumstances. This is to be welcomed and I regard this as an example of good practice.

³³ NPPF para 28

Section 9: Next steps

This section will of course require natural updating or even removal as the Plan moves forward.

Appendices

A number of appendices are contained in the Plan. Appendix A contains information on listed buildings. It would be useful to ensure that the Plan is future proofed and readers are encouraged to seek out the most up to date information available. For this reason, a modification is recommended.

Appendices B, C and E are respectively a list of local businesses, planning permissions as at April 2017 and organisations and activities and are referred to in the Plan by way of background and contextual information.

Appendix D lists view to be protected. I have already made a recommendation in respect of Appendix D in relation to Policy Lea 3 and I do not repeat it here.

Appendix F is a list of facilities which are sought by the community and a list of community projects.

- **Add to Appendix A: *“Readers are encouraged to seek the most up to date list of heritage assets and information about listed buildings in the Parish from Historic England or the local planning authority.”***

Glossary

A helpful glossary is included. There is a simple typo to correct.

- **Change “(SSI)” on page 64 of the Plan to “(SSSI)”**

8.0 Conclusions and recommendations

I am satisfied that the Lea Neighbourhood Development Plan, subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined earlier in this report.

I am therefore pleased to recommend to Herefordshire Council that, subject to the modifications proposed in this report, the Lea Neighbourhood Development Plan can proceed to a referendum.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Neighbourhood Plan area. I see no reason to alter or extend the Plan area for the purpose of holding a referendum and no representations have been made that would lead me to reach a different conclusion.

I therefore consider that the Lea Neighbourhood Development Plan should proceed to a referendum based on the Lea Neighbourhood Plan area as approved by Herefordshire Council on 13 May 2014.

Ann Skippers MRTPI

Ann Skippers Planning
17 December 2018

Appendix 1 List of key documents specific to this examination

Lea Draft Neighbourhood Development Plan 2011 – 2031 Submission Version
November 2017

Basic Conditions Statement November 2017

Consultation Statement November 2017

Environmental Report November 2017

Habitats Regulations Assessment Report August 2017

Habitats Regulations Assessment Addendum Report November 2017

Habitats Regulations Assessment Report July 2018

Lea Parish Policies Map

Lea Village Policies Map

Herefordshire Core Strategy 2011-2031 October 2015 and Appendices

Saved Policies of the Unitary Development Plan 2007

Other supporting documents on the joint neighbourhood plan website
<http://www.theleaparishcouncil.org.uk/neighbourhood-plan/>

Comments from Lea Parish Council on the Regulation 16 representations submitted by
email of 26 April 2018 via HC

List ends

Appendix 2

Questions of clarification to the Parish Council and HC

Lea Neighbourhood Plan Examination

Questions of clarification from the Examiner to the Parish Council and HC

Having completed my initial review of the Neighbourhood Plan (the Plan), I would be grateful if both Councils could kindly assist me as appropriate in answering the following questions which either relate to matters of fact or are areas in which I seek clarification or further information. Please do not send or direct me to evidence that is not already publicly available.

1. Please confirm that representations from 14 organisations were received during the submission stage (I include reps from different departments of HC separately).
2. Please confirm whether or not any responses were received from the statutory consultees on either the Strategic Environmental Assessment/Habitats Assessment (HRA) Screening or Scoping stages and if so please provide copies of any responses.
3. Page 20 of the Plan refers to a housing requirement of 43 dwellings. Please could this be confirmed as the correct figure as it seems that based on 290 properties in 2011, the figure would be 41? Please could HC confirm the housing target and provide me with the most up to date figures available?
4. A representation from HC (Development Management) indicates that Castle End farm complex and the intervening field has planning permission for 10 dwellings and that the school should also be included in the settlement boundary. In addition the Parish Council's comments on the Submission (Regulation 16) representations refer to another site for 10 units that has also subsequently received planning permission. In addition the representation from Procuco Planning Services Ltd refers to a site adjacent to Castle End and The Brambles. A number of related questions arise:
 - a) Please could I be updated on any permissions that have been granted (not applications) since the settlement boundary was drawn up and
 - b) could any such sites be indicated on a map
 - c) I also invite the Parish Council's comments on whether any such sites should now be included in the settlement boundary together with any comments on the merits or otherwise of including the school within the boundary? I note that the comments on the submission documents indicate this is "quite wrong" in relation to the sites with planning permission, but I am not clear as to why this might be hence the invitation to expand on the earlier statement and the school is not mentioned in the earlier statement
 - d) Could the site referred to in the representation from Procuco please be indicated on a map to ensure that I have the correct site
5. In relation to Policy Lea 1, redevelopment of the Lea Garage, Post Office, Church or school sites for residential use is not supported. This appears to contradict another

bullet point in the same policy and whilst I appreciate Policy Lea 8 supports their retention, why is residential development in particular not supported?

6. Policy Lea 3 refers to views. I am grateful to the very quick response to a request to show these views on a map which was very helpful for my site visit. I consider that some of the views as indicated on the map were difficult to ascertain on the ground and therefore I would like to invite the Parish Council to reflect on the views listed in Appendix D and to provide a more 'worked up' map (as suggested by the Parish Council that could be included in a final version of the Plan) and a photograph taken from each of the viewpoints (for inclusion in Appendix D alongside the map).
7. Policy Lea 4 refers to "large-scale" polytunnels. Please could a definition or further explanation be provided?
8. Policy Lea 5 seeks to designate a number of Local Green Spaces (LGS) including the Village Hall and surrounds. The designation on the map includes the Village Hall itself and an area of car parking. Was it the intention to include these elements within the LGS designation (which would then be subject to policy consistent with managing development in the Green Belt)?
9. Policy Lea 6 refers to "existing employment sites as listed earlier". To ensure I fully understand the intention, please provide a list of the employment sites referred to. In addition, bullet point 3 refers to Core Strategy Policy E2. Is this the correct reference; does CS Policy E2 apply to the sites referred to?

It may be the case that on receipt of your anticipated assistance on these matters that I may need to ask for further clarification or that further queries will occur as the examination progresses. Please note that this list of clarification questions is a public document and that your answers will also be in the public domain. Both my questions and your responses should be placed on the Councils' websites as appropriate.

With many thanks.
Ann Skippers
18 June 2018

Appendix 3

Information note on NPPF

Independent Examination of the Lea Neighbourhood Plan

Information Note from the Independent Examiner on the publication of a revised National Planning Policy Framework

The Government published a revised National Planning Policy Framework (NPPF) on 24 July 2018.

I would like to draw your attention to paragraph 214 of the document which states:

“The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted⁶⁹ on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.”

The accompanying footnote 69 explains that:

“For neighbourhood plans, ‘submission’ in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.”

It is therefore not my intention to invite or accept any representations or comments on the revised NPPF in relation to this examination.

This note is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI
Ann Skippers Planning
Independent Examiner

Appendix 4

Letter to HC on Habitats

Letter to Karla Johnson
Senior Planning Officer
Neighbourhood Planning
Economy, Communities and Corporate Services
Herefordshire Council
Plough Lane Offices
Plough Lane
Hereford HR4 0LE
cc Lea Parish Council

10 July 2018

Dear Karla,

Examination of the Lea Neighbourhood Plan

I am writing to draw your attention to a recent judgment of the Court of Justice of the European Union.

In the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Court ruled that Article 6 (3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of appropriate assessment (AA) and that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage.

Earlier case law had established that reduction or avoidance measures could be taken into account when considering whether a plan or proposal would be likely to have a significant effect on a European site. However, the implications of the more recent judgment is that this is no longer the case.

I would therefore be grateful if the Council could consider the HRA Screening Report and advise me on whether it considers it to be legally compliant in the light of the judgment. If it is considered not to be legally compliant and to have fallen foul of the judgment, I would ask that the Council advises me of what further work would be required to rectify this, together with an indicative timescale for that work, including any further consultation.

I will clearly reach my own view on this matter as well. Once you have had an opportunity to consider what, if any, further work needs to be undertaken, I suggest that we agree a way forward for the examination of the Neighbourhood Plan.

Your early response would be appreciated. This letter is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI
Independent Examiner

Appendix 5 HC Briefing Note on HRA



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 addition 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.



Habitat Regulation Assessments (HRA) of Neighbourhood Development Plans

Statement in relation to CASE 293/17 COURT OF JUSTICE OF THE EUROPEAN UNION

Cooperation Mobilisation for the Environment v Verenigin Leefmilieu (Dutch Nitrogen)

Update following Counsel Advice

13 December 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.

Additional advice has now been sought regarding the judgment on *Cooperation Mobilisation for the Environment v Verenigin Leefmilieu (Dutch Nitrogen)* which was published on the 7 November 2018 (after the previous advice was issued).

The Herefordshire Core Strategy was subject to a detailed Appropriate Assessment (AA). Being prior to *Sweetman* the various stage of the AA addressed mitigation and built that mitigation into the Core Strategy to avoid significant effect including Policy SD4. It assessed the position of Policy RA1 and RA2 given Policy SD4 and assumes that SD4 will be applied correctly to any application including the provision of phasing and Appropriate Assessments of individual planning applications.

However, in stark contrast to *Dutch Nitrogen* the Core Strategy does not given a green light to the development envisaged in it. Development under the Core Strategy is expressed subject to specific restrictions which will remove any likely significant effects, this is the whole premise of Policy SD4. No permission could be granted (reg 63(5)) without meeting the requirements of Policy SD4.

The advice indicates that Policy SD4 as a measure to prevent harm is sufficiently certain to meet the Dutch Nitrogen tests. Compliance with it is a fundamental requirement before any permission could be granted.

The proposed Neighbourhood Development Plans do not undermine or change this and in screening the NDPs, the proper application under current case law of Policy SD4 (under s38(6) and reg 63(5)) will ensure that the NDP provides no pathway to adverse effects on the integrity.

The advice concludes that the overall package will ensure that the NDP is not adopted in breach of reg 63(5) and that, assuming SD4 is properly applied, any permission under Policy RA1, RA2, SD4 and compliant neighbourhood development plans would not breach reg 63(5).