

Tarrington Neighbourhood Development Plan 2011 - 2031

Plan submitted to LPA for examination

September 2020

Report to the Herefordshire Council on the Independent Examination of the submission draft Tarrington Neighbourhood Development Plan

December 2021

Examiner: John R. Mattocks BSc DipTP MRTPI FRGS

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Summary of main findings

0.1 It is a requirement of the Localism Act that this report should contain a summary of its main findings. The reasons for each of the recommendations are given in the following sections of the report.

0.2 The principal findings in this report are that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in the Town and Country Planning 1990 Act (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

0.3 It is recommended that the plan, as modified, be submitted to a referendum and that the referendum area need not be extended beyond that of the neighbourhood area. My main recommendations for modifications to the individual plan policies and accompanying text are, in plan order:-

- that the plan period be amended to 2019-2031;
- that Table 1 in paragraph 5.3 be updated;
- that a definition of the term 'infill sites' is included in paragraph 5.6;
- that Policy TAR 2 be replaced
- that Policy TAR 7 be amended to make it more locally specific
- that the wording of Policy TAR 8 be amended in respect of the quantum of development; the treatment of hedgerows and the provision of pedestrian access together with consequential amendments to the plan text and policies map.

Section 1 - Introduction

Appointment

1.01 I have been appointed by the Herefordshire Council (HC), acting as the Local Planning Authority (LPA), under the provisions of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, to carry out an independent examination of the Tarrington Neighbourhood Development Plan (TNDP) as submitted to the LPA on 16th September 2020. The HC carried out publicity for the proposed plan for a period of 6 weeks between 28th September and 9th November 2020 giving details of how representations might be made, in accordance with Regulation 16 of the Neighbourhood Plans (General) Regulations 2012 ('the 2012 Regulations')¹. I was appointed and sent a link to the documentation required under Regulation 17 on 5th January 2021 including copies of all the representations received under Regulation 16. I have taken that documentation into account in carrying out the examination. Additional consultations and discussions took place between April and November 2021 following the preparation of an 'Appropriate Assessment' in accordance with the requirements of the Habitats Regulations². This process is dealt with in more detail in paragraphs 4.04-4.21 of this report.

1.02 I am a Chartered Town Planner (Member of the Royal Town Planning Institute) with 50 years' post-qualification professional experience in local and central government and latterly as a sole practitioner specialising in development plan policy work. I am independent of the Tarrington Parish Council ('the Parish Council' – TPC) and of the Local Planning Authority. I have no land interests in any part of the plan area.

My role as an examiner

1.03 The terms of reference for the independent examination of a Neighbourhood Development Plan are statutory. They are set out in the Localism Act 2011 and in the 2012 Regulations. As an examiner I must consider whether the plan meets what are called 'the basic conditions'³. In summary, these require me to consider:-

¹ All subsequent reference to a Regulation followed by a number is a reference to the 2012 Regulations.

² See footnote 5.

³ These are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (as introduced in Schedule 10 of the Localism Act 2011)

- whether, having regard to national policies and to advice contained in guidance issued by the Secretary of State, it would be appropriate to make the plan;
- whether the making of the plan would contribute to the achievement of sustainable development;
- whether the making of the plan would be in general conformity with the strategic policies contained in the development plan for the area; and to ensure that:-
- the making of the plan would not breach, and would otherwise be compatible with EU obligations⁴ relating to Strategic Environmental and Habitats Assessment and that the plan would be compatible with Convention rights, within the meaning of the Human Rights Act 1998; and
- that 'prescribed conditions' would be met and 'prescribed matters' would be complied with in plan preparation and submission⁵.

1.04 Legislation requires that my report on the draft plan should contain one of the following recommendations:-

- a) that the draft plan is submitted to a referendum, or
- b) that modifications are made to the draft plan and the modified plan is submitted to a referendum, or
- c) that the proposal for the plan is refused.

I may make recommendations for modifications which I consider need to be made to secure that the plan meets the basic conditions or for compatibility with EU obligations and (Human Rights) Convention Rights. The only other modifications which I may recommend are those to correct errors.

⁴ The UK has left the European Union and equivalent legislative provisions have been written into UK law. However, no information is currently available of any amendments in the legislation dealing with neighbourhood plans to provide an alternative to the term 'EU Obligation'. It is, therefore, used in this report to all requirements stemming from EU Directives.

⁵ One such prescribed condition is that the making of the plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 (hereafter referred to as the 'Habitats Regulations').

Section 2 – Statutory compliance and procedural matters

2.01 Following the statutory consultation period, the Herefordshire Council formally designated the Tarrington Neighbourhood Area on 9th January 2014. The plan has been submitted by the TPC as the 'qualifying body' and it relates solely to the designated Neighbourhood Area of Tarrington parish.

2.02 The title of the plan is given on the front sheet as the 'Tarrington Neighbourhood Development Plan 2011 – 2031' with a date of July 2020. Then in paragraph 1.11 it is stated that the plan 'covers the period 2011 to 2031, coterminous with the Local Plan Core Strategy.' However, the statutory requirement⁶ is that the plan 'must specify the period for which it is to have effect'. In that respect, it is sensible that time-related policies should take the Herefordshire Core Strategy (HCS) base date (April 2011) as their starting point for monitoring purposes, updated by the most recently available data, particularly for housing provision. Equally, making the plan 'end date' the same as that of the HCS ensures that general conformity with the strategic plan can be achieved. Nevertheless, a plan cannot possibly be said to 'have effect' years before it has been prepared. Indeed, in common parlance, for a neighbourhood plan to 'have effect' it has to have reached a stage by which its policies are at least a 'material consideration' and given weight⁷ in the determination of planning applications, which is not before statutory consultation has taken place. For this plan, such a stage was not reached until October 2019 and the plan will not take effect until the closure of this examination⁸. I conclude, therefore, that to comply with the statutory requirement for the period to be stated during which the plan is to have effect, paragraph 1.11 should be amended to read 2019 to 2031. The date of 2031 is correctly stated to be 'coterminous' with the HCS. It would then be confusing to leave the dates 2011 to 2031 in the plan title, and on the foot of each page. The date references in Policy TAR 5 should be deleted for consistency. I regard those as being in the nature of errors. Accordingly, I recommend corrections.

⁶ This statutory requirement is to be found in Section 38B of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011)

⁷ In accordance with paragraph 48 of the NPPF

⁸ Town and Country Planning Act 1990, section 70(2)(aza) introduced by the Neighbourhood Planning Act 2017.

Recommendation 1

Replace '2011' by '2019' in the first line of the paragraph 1.11 in the plan text; in the plan title on the front sheet and at the foot of each page in the document. In policy TAR 5, delete the words 'between 2011 and 2031' in the first line of the policy.

2.03 The plan does not include provision about development which is 'excluded development'⁹ and a plan showing the area to which the Neighbourhood Development Plan relates has been submitted as required by Regulation 15(1)(a). Accordingly, those statutory provisions are met.

2.04 The legislation states that the 'general rule' is that the examination of the issues by the examiner should take the form of the consideration of written representations. However, an examiner must hold a hearing 'for the purpose of receiving oral representations about an issue' where he or she considers a hearing 'is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case'¹⁰. Before deciding whether a hearing would be required, I issued¹¹ a list of written questions seeking clarification and further information by way of justification for plan policies. Only after receiving that clarification¹² was I able to conclude that I had adequate information to proceed with the examination without recourse to a hearing. I will be referring to my questions and the responses to them in sections 3 and 4 of this report.

2.05 I visited the neighbourhood plan area on Monday 25th January 2021, a cold sunny day with snow on the ground. I walked around the main part of the village taking the footpath from the A438 west of the Tarrington Arms to School Road looking at the setting of the site proposed for housing; then proceeded along School Road to the Lady Emily Community Hall to look at the proposed local green space to the rear of the car park. I then walked up Church Lane, through the church yard and by way of Barrs Orchard to the main road and back again along School Road to the small car park by Church View. Afterwards I

⁹ Sections 61J(2) and 61K of the 1990 Act, introduced by section 2 of Schedule 9 to the Localism Act 2011

¹⁰ Paragraph 9 of Schedule 4B to the 1990 Act (as in reference 1 above)

¹¹ By email dated 18 January 2021

¹² Email from Tarrington PC 9 February 2021

drove to Little Tarrington noting that drainage works had commenced on Stocks Field and that the direct route under the railway bridge was closed.

2.06 The TPC have submitted a Basic Conditions Statement (BCS) in accordance with the Regulations¹³. It is a comprehensive document which deals first with legal requirements and then has separate chapters with tables providing an analysis of NDP policies against each of the basic conditions of the regard to national policy and advice¹⁴; the achievement of sustainable development and the general conformity of NDP policies with strategic local plan policies. Chapter 6 deals with compatibility with various EU obligations, as discussed below. The BCS is a helpful overall analysis which I have taken into account.

European Union (EU) Obligations

2.07 *Human Rights*. It is stated in Table 4, Chapter 6, of the BCS that the NDP is fully compatible with the European Convention on Human Rights as transposed into UK law by the Human Rights Act 1998 with the plan policies complying with those obligations. No representations have been made to suggest that any infringement of human rights would be likely to occur as the result of the application of the policies in the plan. Consequently, I have no reason to conclude other than that the approach taken in the plan is fully compatible with, and does not breach, Convention Rights.

2.08 Other requirements relate to Strategic Environmental Assessment (SEA),¹⁵ applied in England through the provisions of the Environmental Assessment Regulations¹⁶; the Water Framework¹⁷ and Habitats and Species Assessment (HRA)¹⁸. Initial desk-based screening was undertaken by the Herefordshire Council in December 2013 which advised that further assessment work for both SEA and HRA would be required. A scoping report followed which was made available to the statutory consultees in consultation from 18 June to 27 July

¹³ Regulation 15(1)(d)

¹⁴ As set out in the National Planning Policy Framework (NPPF) and in Planning Practice Guidance (PPG)

¹⁵ Directive 2001/42/EC

¹⁶ The Environmental Assessment of Plans and Programmes Regulations 2004 (Generally referred to as the 'SEA Regulations')

¹⁷ Directive 2000/60/EC

¹⁸ Article 6(3) of Council Directive 92/43/EEC

2015 in parallel with a number of other Herefordshire neighbourhood plans. Consequently, the comments received¹⁹ from Natural England and Historic England deal with all of the plans. There is no indication that a formal determination under Regulation 9(1) of the SEA Regulations was made but it is implicit in the decision to produce a full Environmental Report (ER) in accordance with Regulation 12²⁰. The first ER, dated February 2019, related to the Regulation 14 draft NDP and it evaluated the environmental effects of plan objectives, policies and proposals against SEA objectives and identified alternatives. Its conclusions were that the draft plan policies scored largely positive or neutral against SEA objectives. The report was formally consulted upon in conjunction with the Regulation 14 draft plan in October and November 2019 with no adverse comments by the statutory bodies.

2.09 A final Environmental Report was issued in July 2020. It is an update to reflect changes made to the plan as a result of the Regulation 16 consultation. This is covered in paragraphs 6.10 and 6.11 of the report. The overall conclusions remain as in the 2019 draft report. The updated ER was consulted upon in parallel with the plan²⁰ but no comments were received from the statutory consultees relating specifically to the SEA. From this I conclude that the final SEA demonstrates adequately that the plan provisions would assist in the achievement of environmental objectives. Consequently, I am satisfied that the submitted plan is compatible with the relevant EU obligation.

2.10 The extent to which the plan may, or may not, meet the basic conditions relating to the protection of habitats and species has become a major issue in this examination following representations made by both Natural England and the Environment Agency following consultation on the HRA in conjunction with the submitted plan. It resulted in a suspension of the examination for six months while further assessment work was undertaken, and further consultation and discussion took place. I set out the background to this and my conclusions in the first part of section 4 in this report.

¹⁹ Appendix 3 to the Environmental Report

²⁰ 28 September to 9 November 2020.

Section 3 - Preparation of the plan and the pre-submission consultation processes

3.01 As required by legislation²¹, the TPC have submitted a Consultation Statement. It sets out in detail the various approaches followed to consult the community during the initial preparation stages of the plan. Following designation, a steering group was established in January 2014 consisting of councillors and community representatives and a well-attended 'drop-in event' was held in May 2014 to discuss possible issues. A residents' survey elicited a 66% response and the results were considered in November 2014. Although that was some time ago it led to the identification of issues and options along with consultation by way of two open days in February 2015. The most significant issue identified was the selection of alternative sites for housing, which included a 'call for sites'. 18 candidate sites were assessed by the steering group and reviewed by a planning consultant, with independent landscape and visual assessments focussing on details for a site off School Road, the site allocated for development in the submitted plan. Public opinion about the site was canvassed by way of a questionnaire with a 69% response considered at the last steering group meeting in July 2016.

3.02 The initial phase of plan preparation, as summarised above, was clearly a very intensive one. It is impressive that so much work was undertaken under the auspices of the steering group in a period of only 30 months. The level of community involvement and the nature and extent of the consultation processes followed is commendable. However, there is a gap in the chronology of plan preparation between July 2016 and February 2019 when the draft plan was approved by the TPC for the purposes of formal consultation under Regulation 14.

3.03 In paragraph 41-047 of the Planning Practice Guidance it is stated that the preparation of a neighbourhood plan should be an open and inclusive process, keeping the wider community fully informed with opportunities to be fully involved in shaping the emerging plan. However, it is stated in a number of representations that no opportunities were given for members of the public to have any say in preparation of the draft plan during the period leading up to the

²¹ The Neighbourhood Development Planning (General) Regulations 2012, Regulations 15(1)(b) and 15(2)

publication of the consultative (Regulation 14) draft plan. Consequently, I requested the TPC to provide further information on what transpired during that period.

3.04 It appears that plan preparation was put on hold pending a decision by Herefordshire Council on planning application ref. P/171777/F for housing development on Stock's Field, Little Tarrington, which had been assessed as a part of site 8 in the 2015 Housing Site Assessment²². Permission was granted by HC in July 2018. In view of the significance of that decision for housing provision in the plan area, taking account of the provisions of HCS Policy RA2, it is understandable that plan work progressed little prior to that decision. Also, it is not unreasonable that an update of the Housing Site Assessment was commissioned which was presented to the TPC in May 2018 with the draft NDP itself being presented to the Parish Council in November 2018 and February 2019.

3.05 The task of writing the draft plan itself appears to have fallen largely to the TPC's appointed planning consultant although there are papers available on line suggesting that a draft of the plan was available as early as late 2016 before the steering group was wound up. Plan-writing, particularly in the wording of planning policies, is greatly assisted by a professional input. Once that stage had been passed, responsibility transferred to the Parish Council still working with the consultant. The public was kept informed of progress through regular Parish Council meetings. Although it is suggested that members of the public were denied an opportunity to comment that is not apparent from the PC minutes during that period. Most significantly, in my view, an extraordinary PC meeting was held on 11th February 2019 attended by the consultant who answered questions from members of the public before the plan was formally approved by the TPC for statutory consultation under Regulation 14.

3.06 The public consultation on the draft plan under Regulation 14 is not a formality. It provides a good opportunity for the wider community to engage with, and influence, elected councillors on plan content. It is in no-one's interest to proceed with a plan which does not attract popular majority support. For that reason, it is not unknown for a plan to be significantly re-written after such

²² Dr D J Nicholson, December 2015

consultation and the Regulation 14 stage to be re-run. That did not happen in Tarrington, where the changes made to the plan were relatively modest, but the Consultation Statement, as it is required to do, clearly states the consideration given to the representations made and the reasons for making amendments to the plan, or not, as the case may be. Those who are dissatisfied with the TPC's response have, in many cases, re-iterated their concerns in the further Regulation 16 consultation and it now falls to me to consider the representations in the context of the basic conditions.

3.07 In effect, I am asked in representations, to rule that there has been a lack of opportunity for the community to be fully involved in the shaping of the emerging plan. For a variety of reasons, progress may have faltered during 2017 and 2018, even into 2019, but additional background work was clearly required to take account of permissions granted. The Regulation 14 consultation, in itself, represents public involvement. The wording of the relevant basic condition is that it should be considered appropriate to make the plan 'having regard' to planning policies and 'advice given in guidance issued by the Secretary of State'. In this context, the most relevant guidance is that given in the PPG at paragraph 41-047. There is nothing in the documentation available to me, including the Consultation Statement and the further information provided in response to my written questions, to indicate that the consultation procedures followed in the preparation of this plan have fallen so far short of that guidance that they could be held not to have 'had regard' to it. It follows that public engagement during plan preparation satisfies the relevant basic condition.

Section 4 - The Plan: Consideration against the basic conditions

4.01 This section of my report sets out my conclusions on the extent to which the plan meets the basic conditions which are set out in the first three bullet points in paragraph 1.03 above.

4.02 There is a strong link between the matter of general conformity of the NDP with the strategic policies of the Herefordshire Local Plan Core Strategy (HCS) and that of the achievement of sustainable development in that the HCS, adopted in 2015, was formulated in the policy context provided by the NPPF (2012). I am satisfied that the plan is in general conformity with the strategic policies of the HCS and, particularly with the inclusion of revised policy TAR 2, will contribute to the achievement of sustainable development.

4.03 As indicated in paragraph 2.10 above a major issue has arisen on the effect proposals in the plan may have on water quality in the River Lugg catchment, which is part of the River Wye Special Area of Conservation.

Main Issue 1 - The effect of the plan on the River Wye SAC

4.04 A 2018 amendment to the Habitats Regulations altered the wording of the basic condition prescribed in paragraph 1 of Schedule 2 of the Neighbourhood Planning (General) Regulations 2012 ('the 2012 Regulations'). It now states that the making of the plan should not breach the requirements of Chapter 8 in part 6 of the 2017 Habitats Regulations. The most directly relevant Regulations are 105 and 106. The submitted Basic Conditions Statement refers to the latest statutory provisions but the 'screening' documents entitled 'Habitats Regulations Assessment' prepared by the Herefordshire Council have not been updated. They make reference to older Regulations superseded in 2017.

4.05 The initial screening work identified that the parish is within the hydrological catchment area for the River Frome which in turn brings it within the hydrological catchment area of the River Wye (including the River Lugg) Special Area of Conservation (SAC) and a 'European site'. As such Regulation 106 requires the qualifying body (the parish council), when submitting the plan, to 'provide such information as the competent authority may reasonably require for the purposes of the assessment under Regulation 105 or to enable it to determine whether that assessment is required'. The term 'competent authority'

is defined in Regulation 7 and is (post-submission) the Herefordshire Council. Regulation 105 sets out the responsibilities of the 'plan-making authority' which is defined in Regulation 111 as the Local Planning Authority (Herefordshire Council). The plan cannot be 'given effect' (otherwise 'made') unless the LPA has determined that it would not be 'likely to have a significant effect on a European site', either alone or in combination with other plans (the Herefordshire Core Strategy - HCS). If it is likely to have such an effect an 'Appropriate Assessment' (AA) must be undertaken.

4.06 The February 2019 'Habitats Regulations Assessment' consulted upon in conjunction with the Regulation 14 draft plan was amended in July 2020 to take account of amendments to the plan made prior to submission under Regulation 15, those amendments are assessed in section 6 which also includes reference to the implications of the People over Wind ECJ judgment. It was stated in paragraph 7.4 that no mitigation measures had been taken into account in the screening process. Section 8 dealt with 'in combination' effects with the Core Strategy and other neighbourhood plans, leading to an overall conclusion in paragraph 9.1 that 'the Tarrington NDP will not have a likely significant effect on the River Wye SAC'. It was also confirmed in paragraph 7.4 that, through the operation of policies in the HCS, the plan would meet the requirements of the Water Framework Directive.

4.07 The revised HRA was consulted upon in conjunction with the submitted NDP. That resulted in a representation by Natural England which, in paragraph 7.2 raised an issue in respect of the adequacy of the Nutrient Management Plan (NMP) in mitigating phosphate levels in the River Lugg. The NMP is referenced in paragraph 8.4 of the HRA report which states that the NMP has '... been considered as part of the in-combination assessment'. As the NMP is a form of mitigation, Natural England stated 'if the NMP is being relied upon, then the project must proceed to appropriate assessment. Mitigation can be considered at AA stage.'

4.08 The Herefordshire Council initially relied on Counsel's advice which indicated that the allocation of land for development in a neighbourhood plan was not a 'green light' and that the application of HCS Policy SD4 would mean that the possibility of any significant environmental effects would be removed.

NDPs did not rely on the NMP in mitigation. At the time, HC also drew my attention to a published briefing note.

4.09 Nevertheless, in view of the consultation response by Natural England, I requested additional information and HC sought further Counsel's advice. The outcome was the issue by HC on 1st March 2021 of a revised Position Statement which, taking account of rulings by the European Court of Justice, acknowledged that reliance could not be placed on HCS Policy SD4 or the NMP as mitigation. In short, that the plan as it stood could not meet the 'HRA' basic condition. In response I issued a note on 4th March suspending the examination until further notice and requesting that an Appropriate Assessment (AA) be undertaken and made subject to consultation with statutory bodies as required by Regulation 105 in the HRA Regulations.

4.10 That AA was completed in late April 2021 and the necessary statutory consultation took place. On 10 June I was informed that the responses received from the Environment Agency and Natural England had not been supportive. However, discussions continued focussing on a revised wording for Policy TAR 2 in the TNDP, during which time the examination remained suspended.

4.11 In early September I was informed that a revised AA, including the draft revised policy, would need to be consulted upon. As I could not receive additional evidence while the examination remained suspended, I issued a notice on 13th September 2021 re-opening the examination. Consultation on the revised AA took place between 6 October and 10 November 2021 although an extension was agreed until 15 November when I was sent copies of the representations made by Natural England and Environment Agency. A further email from Natural England followed on the 16th upon a request by HC for clarification of their position. Both bodies had expressed concerns about the extent to which the NDP, even with the inclusion of revised Policy TAR 2 and certain textual additions, would meet the requirements of the Habitats Regulations. I requested the Herefordshire Council to provide a final response to the representations made on the matter. That response was sent to me as an email attachment on 22 November 2021. Also, on 7 December, I received a copy, for information, of a 'Nutrient Certainty Update for Developers' relating to the treatment of phosphate concentrations.

4.12 In coming to a formal conclusion on this issue I have taken account of all the submissions made at the various stages of the assessment and consultation process. As indicated in paragraph 1.03 it is my task to consider those submissions in terms of the basic conditions.

4.13 The Habitats Regulations transposed the relevant EU Directive into UK law and Regulation 63 applies to all plans and projects. Thus, it appears that basic condition (f) relates to that. As Regulation 106 of the Habitats Regulations has, in so far as it is applicable, been complied with, and there is no indication by HC of an intention to invoke Regulation 107, I will focus on the extent to which the requirements of Regulation 105 have, or can be, satisfied.

4.14 For the reason given in the 1st March position statement, as outlined in paragraph 2.15 above, it is clear that the plan, as submitted, did not meet the basic conditions, specifically because an Appropriate Assessment had not been undertaken as required by Regulations 63 and 105(1). The plan cannot be 'given effect' in the absence of such an Assessment. Now that the Assessment(s) have been undertaken it is Regulations 63(4) and 105(4) which apply, the wording of which is that the plan must be 'given effect' only if it has been ascertained that the plan would not 'adversely affect the integrity' of the European site.

4.15 Suggested modifications to the plan have been put to me by the Herefordshire Council as the 'competent authority', notified to the TPC, which would significantly strengthen the wording of Policy TAR 2 to ensure that development would not have an adverse effect on the River Wye SAC and provides that planning permission will only be granted if clear and convincing evidence is provided to show that the proposed development would not increase nutrient inputs to the SAC. 'Signposting references' to guidance provided to developers on achieving nutrient neutrality would be included in the supporting text to both policies TAR 2 and TAR 8. The second (October 2021) Appropriate Assessment included these suggested modifications.

4.16 The Natural England response to the revised AA is to accept that the revised policy TAR 2 would be a valid form of mitigation avoiding adverse effects on the integrity of the River Lugg part of the River Wye SAC, although still questioning the deliverability of the policy and allocation and requesting that

further detail be provided on the options available to deliver nutrient neutrality. NE requested that the plan should include reference to the intended measures. The Environment Agency response focusses on the deliverability issue referring to Government policy which stresses the need for plans to be deliverable.

4.17 Mitigation measures are likely to be considered over the river catchment as a whole, not necessarily within any one NDP area. The scope of NDPs is necessarily limited and it would be unrealistic to expect every QB to identify solutions within its own plan area. Bringing this NDP into effect, even though it includes a housing allocation, would result in greater certainty that development will not have an adverse effect on the SAC than does the current situation where 'windfall' (off-plan) developments might be permitted under the provisions of the existing statutory development plan (Core Strategy).

4.18 The 'signposting' (cross-referencing) within the plan to other documents where the most up-to-date information on possible mitigation measures is to be found, in my view represents a pragmatic and practical way forward. It is not necessary to satisfy the basic conditions for details of such measures to be included in the plan itself.

4.19 I concur with the approach that Herefordshire Council have taken in their response to these representations (see paragraph 4.11 above). When the NDP comes into effect and when it has been 'made' the provisions of s38(6) of the Planning and Compulsory Purchase Act 2004 will apply. Planning decisions are to be made in accordance with the statutory development plan. The suggested modified Policy TAR 2 is clear on its face. With the inclusion of that modified policy, the action of bringing the plan into effect could not have, in itself, an adverse effect on the integrity of the SAC.

4.20 For these reasons I conclude that the plan would meet the basic conditions if the modifications suggested by the Herefordshire Council to the wording of Policy TAR 2 are made, along with the addition of text in the reasoned justification of the policy and of policy TAR 8.

4.21 The Environment Agency refer to other aspects of Government policy with regard to the viability and deliverability of the plan allocation (Policy TAR 8) for housing. I agree that it is somewhat of a contradiction to include an allocation in

a plan but then to provide, through another policy, that permission will not be granted except when certain conditions are met. That would be particularly so if there was a significant degree of uncertainty as to when, or even if, those conditions could be satisfied. However, the wording of the relevant basic condition (a) is 'having regard to national policies and advice ... it is appropriate to make the plan'. This has to be interpreted in the widest sense. As the Herefordshire Council have stated, a planning application for the site has been under consideration for a significant period of time and all other issues relating to the development have been resolved. In view of the actions being taken by HC to find solutions to the nutrient problem, I consider there to be a reasonable prospect that permission may be granted once the terms of the modified policy are met. To delay bringing forward this plan pending further work to ensure deliverability of mitigation measures would stall the whole NDP process. That would run counter to the encouragement given by Government to the preparation of neighbourhood plans. To my mind, the HC's response to the Environment Agency's representation ably demonstrates the regard which has been had to Government guidance and policy on the issue of deliverability.

Recommendation 2.

Delete Policy TAR 2 and replace it by the following substantially revised policy:

Proposals for development must demonstrate that they protect, conserve and enhance the natural environment in accordance with the principles in Local Plan Core Strategy policies SD3, SD4, LD1, LD2 and LD3 or their replacements. This includes the following requirements:

- 1. The development would not have an adverse effect on the River Wye Special Area of Conservation ('SAC') and species of European importance. In particular, planning permission will only be granted if clear and convincing evidence is provided which shows that the proposed development would not increase nutrient inputs to the SAC. This could include through the delivery of mitigation measures to make a proposal nutrient neutral. Reference should be made to Herefordshire Council's Phosphate calculator and associated guidance, and**

2. The development should:

- a) conserve, restore and enhance sites and features of biodiversity interest in accordance with their status, including those identified in the Priority Habitats Inventory, local wildlife sites, woodland, veteran trees, hedgerows, roadside verges, ponds and watercourses;**
- b) maintain, restore and, where possible, enhance the contribution of habitats to the coherence and connectivity of the Herefordshire Ecological Network, and taking into account their role as green infrastructure;**
- c) ensure that proposals respect the prevailing landscape character, as defined in the County Landscape Character Assessment, including associated important views, trees and hedgerows and local features of interest;**
- d) protect and enhance the setting and character of Tarrington and Little Tarrington, including settlement pattern, tree cover and topography.**

Recommendation 3.

Expand the plan text in paragraph 4.6 and 5.24 (Policy TAR 8) to make appropriate references to the guidance notes on the necessary mitigation measures required to make the development 'nutrient neutral'

4.23 In the set of questions put to the TPC in my email of 18 January 2021 I raised a number of issues about certain aspects of the plan policies. I deal first with the main issues arising followed by an examination of more detailed aspects of policy wording and implementation. The latter is dealt with in plan order. If I conclude that the inclusion of a policy in the plan means that, as submitted, it does not meet one or more of the basic conditions, I recommend a modification to the plan policy to ensure that the plan, taken as a whole, does meet those conditions.

Main issue 2 – The need for housing allocation(s) to be made in the plan

4.24 The most significant issue in terms of general conformity with strategic policy is the provision of new housing. The approach taken in the HCS to housing provision in rural areas is related to Housing Market Areas (HMAs) with Tarrington lying within the Hereford Rural HMA. As explained in paragraph 5.2 of the NDP, HCS Policy RA1 provides an 'indicative housing growth target' in the HMA of 18% 2011-2031. Although termed 'indicative' HCS Policy RA2 makes clear that it is a minimum growth target to inform the level of housing development to be provided in each NDP with a requirement for housing allocations to be made to meet the minimum target. In terms of the PPG²³, therefore, it is a strategic policy requirement not an 'indicative' figure. Tarrington is listed in the table in HCS paragraph 4.14 whereas Little Tarrington is listed in paragraph 4.15 but, as explained in paragraph 4.8.21, neighbourhood planning bodies have flexibility to apportion growth between such settlements. It is clear from the HCS that there is a general expectation that neighbourhood plans for rural communities will identify sites for housing to meet the requirements for their areas.

4.25 Accordingly, the Tarrington NDP makes provision for housing. In such circumstances, it is stated in the PPG²⁴ that there is an expectation that a housing requirement figure, and its origin, should be set out. In paragraph 5.3 of the NDP it is explained that the HCS 18% growth target equates to 43 dwellings in the parish over the 2011-2031 period. As at 1st April 2019, taking account of housing completions since 2011 (5) and commitments (planning permissions) (25), there was a need to identify land for a further 13 dwellings to meet the minimum requirement although, as shown in the table, a permission was granted for a further 10 dwellings on 11th April 2019, leaving a 'balance' of three. As the equivalent statistics are now available for 1st April 2021 I asked for a revised table to be provided so that, as a matter of good practice, the plan might be as up-to-date as possible. The revised table, as recommended below, shows that there remains a need for the plan to provide for a minimum of 1 additional dwelling to be completed by 2031. However, this takes no account of the site allocated for development under policy TAR 8 as that is not a

²³ Reference ID: 41-104-20190509

²⁴ PPG para. 41-103

'commitment' at this point in time. Herefordshire Council have indicated that the plan is in general conformity with strategic policy in respect of the overall level of housing provision.

Recommendation 4

Update the statistics on housing provision in paragraph 5.3 to include the following revised Table 1:

Number of new houses required to 2031 (min)	Housing completions (net) 2011 2021	Housing commitments (net) as at 1 April 2021	Housing remaining to be delivered
43	10	32	1

4.26 It has been questioned by some whether, in view of the level of commitments, there remains a need for additional land to be allocated for housing. Although, as indicated in paragraph 5.6 of the NDP, additional dwellings may be delivered in accordance with Policy TAR 5 there cannot be certainty that such 'windfall' development will occur. It should not be relied upon to meet the minimum target. The permissions granted for sites off the A438 at Little Tarrington will, once implemented, do much to help meet the strategic target, but without the allocation of additional land there would be a risk that the plan would not meet that target especially as there may be some doubt about the deliverability of barn conversions at Alders End Farm²⁵. Moreover, it is stated in the NPPF²⁶ that neighbourhood plans should not promote less development than provided for in strategic policies for the area and the PPG³² encourages neighbourhood planning bodies to exceed the housing requirement figure where possible. In this respect the plan has clearly been prepared with regard to Government policy and guidance.

²⁵ Representation by the Stoke Edith Estate.

²⁶ NPPF para. 29

Main issue 3 – The allocation for housing on land off School Road (Policy TAR 8)

4.27 *Justification for the area allocated for housing and the adequacy of the evidence base.* There is just one site allocated for housing in the plan under Policy TAR 8, off School Road. It is shown on the 'Tarrington village Policies Map' shaded in brown and the settlement boundary (policy TAR 6) is drawn around it. In paragraph 5.14 of the NDP it is stated that the site area is 0.65 hectares and the following paragraphs detail the work done to support the allocation including site characteristics and constraints. Details of evidence base documents are given in Appendix A to the plan, the most relevant to this allocation being the Housing Site Assessment Report 2018 update (HSA 2018), to which I make reference in paragraph 3.04 above, and a landscape assessment of the School Road site undertaken by consultant Carly Tinkler in July 2016.

4.28 Planning Practice Guidance²⁷ is that there should be 'proportionate, robust evidence' to support the choices made and approach taken in the plan and that 'evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan'. A representation, also made at the Regulation 14 stage, is that nowhere in the evidence base is there any justification for the actual area of 0.65 ha. or, in particular, the (settlement boundary) line shown on the village policies map on the northern site edge.

4.29 HSA 2018 provides a comprehensive analysis of the development potential of what was then termed 'site 6'. The available evidence which informed the analysis is listed in paragraph 3.3.4 of that report includes reference to supporting material and consultation responses in connection with an earlier planning application²⁸ for development of the site which had been refused. The conclusion is that development should be restricted to 0.44 ha. in extent in the south-eastern corner of the site, as shown on the plan under paragraph 3.3.23,²⁹ 'which indicates a potential capacity for around six dwellings' although there is no detail of how that estimate was derived³⁰. In so far as that is the main piece of evidence in support of the allocation it does not explain or justify the larger area shown on the submitted policies map or the stated area of 0.65 hectare.

²⁷ Reference ID: 41-040-20160211. NPPF para. 31 is also relevant

²⁸ Application ref. no. P171165/O refused June 2017

²⁹ Similar to Carly Tinkler Zone Plan C

³⁰ Neither site area nor the number of dwellings is mentioned in the Carly Tinkler report

4.30 I queried the status of an initial draft of the neighbourhood plan dated September 2018 because it was in that version of the plan, referred to in representations, that the Station Road allocation was stated to be only 0.44 ha. in line with the conclusion in HSA 2018. Also, the policies map in that draft shows an area approximating to that shown in the plan under paragraph 3.3.23 of HSA 2018. I am advised that the initial draft was amended after consideration by the Parish Council in November 2018. The minute of that meeting refers to the TPC support for a second planning application³¹ on the School Road site even though an illustrative site layout plan shows one dwelling somewhat further north than the area shown for site 6 in the initial draft. By that date officer consultation responses on that application had been submitted. Most significantly, the Landscape Officer sought amendments either to the northern site boundary or orchard planting to the north. Here opinion was that a traditional linear hedgerow feature would be more appropriate along the northern boundary and it is that which, as the TPC have illustrated by the diagram in their response to my question, led to the change to the northern boundary, and site area, prior to publication of the draft plan for consultation under Regulation 14.

4.31 The TPC response to the Regulation 14 representation on this issue is given in Table C of the submitted Consultation Statement on pages 25 and 26. The TPC have confirmed that the comments of the Historic Buildings Officer (September 2018); the Landscape Officer (September and November 2018) and the Area Engineer (Highways) (September 2019) are relied upon in support of the plan. As such, they should have been listed in Appendix A as part of the evidence base. I will treat that as an error and recommend the additional references. As the Consultation Statement was available along with the submission plan an adequate opportunity was provided by the Regulation 16 consultation for interested parties to comment on that specific aspect.

4.32 It is evident from HSA 2018³² that the primary concern in limiting development on the site to the south-east corner was to minimise the wider landscape impact of built development in terms of the potential breach of the 'skyline' to the north and north-west. I observed the site characteristics myself when I walked the footpath from the A438 to School Road.

³¹ Application ref. no. P181943/O submitted May 2018, not yet determined

³² Paragraph 3.3.24

4.33 Care is needed when seeking to rely on comments specifically related to a planning application because those comments are influenced by details, such as on a possible site layout, when other options might present themselves which meet the criteria in a plan policy. Furthermore, an important difference is that planning conditions can be imposed on land outside an application site³³, as long as the land is 'within the ownership and control of the applicant'³⁴, whereas the area shown on the policies map³⁵ should cover all of the land to which the relevant plan policy is intended to apply. That is especially pertinent for this site allocation where other land is under the same ownership³⁶.

4.34 For these reasons, it might be expected that a plan site allocation will include areas beyond that to be built upon. In essence, it is the difference between the 'net' and 'gross' area. Therefore, taking account of the Landscape Officer's comments it was a reasonable conclusion that, to accommodate requirements for landscaping, the northern site boundary should be drawn differently to that shown in HSA 2018. With the clarification provided of what has been taken into account by way of evidence I am satisfied that the allocated area has been adequately justified and the plan meets the relevant basic condition in that regard.

4.35 Representations by residents raise concerns about the suitability of the site for development and its capacity from the point of view of the effect on the setting of listed buildings, traffic generation and possible flooding of the Tarrington Brook. Very similar or identical points were raised during the Regulation 14 consultation and I am satisfied from the TPC responses, both in Table C of the Consultation Statement and in their written response to the Regulation 16 representations, that those concerns have been adequately addressed. The relevant officer responses to the current planning application demonstrate that development may take place within the allocated area without causing undue harm. I consider that the inclusion of this site allocation in the plan contributes to the achievement of sustainable development through the provision of housing to help meet strategic requirements.

³³ Commonly termed 'red line boundary'

³⁴ Commonly termed 'blue line boundary'

³⁵ Once the NDP is 'made' this becomes part of the 'adopted policies map' for the LPA area.

³⁶ As confirmed in the planning application(s)

4.36 *Number of dwellings to be permitted on the site.* The first part of Policy TAR 8 states that the site is allocated for 'around six dwellings'. In the Regulation 14 draft the wording was 'a minimum of six dwellings' but that gave rise to representations from residents concerned about the nature and scale of the development which might occur. The current wording is intended to give assurance on the likely scale of development as well as to provide a degree of flexibility to allow a design-led solution although some residents who would wish the policy to specify just six.

4.37 On the other hand, a representation on behalf of the landowners³⁷ draws attention to the fact that HCS Policy RA1, in line with national policy³⁸, requires a minimum housing provision. See also para. 4.25 above. Furthermore, national policy³⁹ encourages making the most effective use of land considered suitable for housing development. However, for a policy to specify any number of dwellings whether it be as a minimum or 'around' there should be 'proportionate, robust' evidence to support such a figure. As I state in paragraph 4.08 above it is not explicitly stated what assumptions have been made to derive the estimate of 'around six'. It appears to be a professional judgment focussed on landscape considerations. It is not clear what consideration has been given to development viability, including the implications of delivering particular house types in accordance with policy TAR 7 or the other infrastructure improvements specified in the policy criteria. Although PPG⁴⁰ advises that an allocation policy should indicate the quantum of development on a site, in this instance the 'quantum' has not been justified sufficiently for it to be included as a matter of policy, even with the qualification 'around' and certainly not as a minimum despite the TPC acknowledgement that there is no intended 'cap' on development.

4.38 The estimate of capacity derived from HSA 2018 is given in the text of the submitted plan at paragraph 5.18. Indeed, in response to my written question (3b) on this issue, the TPC acknowledge that including the estimate of site capacity only in the supporting text would introduce additional flexibility which could be to the benefit of a 'design led solution'. I consider that to be the correct approach reflecting the thrust of Government policy and thus meet the basic conditions. I therefore, recommend the removal of the reference to the development capacity from policy.

³⁷ Rural Solutions for the Stoke Edith Estate

³⁸ NPPF para. 11(b)

³⁹ NPPF para. 117

⁴⁰ Reference ID: 41-098-20190509

4.39 *Policy criteria.* Policy TAR 8 includes a number of detailed criteria which are intended to shape and influence the nature and form of development on the site. These have given rise to representations by Rural Solutions acting on behalf of the Stoke Edith Estate. I also had questions about the justification for certain of the provisions and their means to implementation. In dealing with these matters it needs to be clear that the context for my observations is that, although the policy wording is that development will be 'supported' provided the criteria are met, in the implementation of the policy by the Local Planning Authority that phrase can only be interpreted as an indication that planning permission is expected to be granted if the criteria are met.

4.40 Criterion 3 – the use of traditional building materials. It is very much within the philosophy of neighbourhood planning that local communities should have an input on design matters; to see the kind of development considered most appropriate in the locality⁴¹. It is a 'non-strategic' policy matter. As currently worded the criterion requires that 'traditional building materials are specified' and then qualifies that with 'including stone and timber'. That does not mean that the external materials used should only be stone and timber nor does it say, explicitly, that some non-traditional materials might not form part of the mix. Rural Solutions have provided information on the additional costs of using stone rather than brick and the TPC have accepted that brick has also been used locally. That is evident on the ground with 'The Vine' being a brick house. In view of this I consider that only to mention stone and timber would be unduly constraining on development options, clearly costing more, and thus not having sufficient regard for Government policy and advice on viability considerations. The TPC suggest revised wording drawing in part from the text at paragraph 5.20. It is an approach I recommend to meet the points raised.

4.41 Criterion 4. Boundary treatment and strategic landscaping. There are three elements to the landscaping with the justification for such provisions derived from the 2016 Carly Tinkler report, HSA 2018 and the comments of the HC Landscape Officer on the current planning application. Those are strategic landscaping and hedgerow planting along the northern and western boundaries.

⁴¹ See NPPF paragraph 125

4.42 It is correct that the Landscape Officer's original (September 2018) comments called for either a linear hedgerow feature along the northern site boundary OR orchard planting in the field to the north, not both. None of the reports call for 'strategic planting' in the northern part of the field, besides which that would be outside the allocated area. The desire for orchard planting appears to be largely for historical reasons rather than anything which is required to 'mitigate' the visual impact of development and thus be reasonably related to it.

4.43 The suggestion for re-instating a hedgerow along the western site boundary comes from HSA 2018, paragraph 3.3.24. To my mind, such a feature would assist in providing a soft transition between development and countryside, important on what is a well-used public footpath. It is a reasonable requirement to mitigate the impact of the development. As for the northern boundary, I consider that, for similar reasons, there is adequate justification for there to be a policy requirement for hedgerow planting but whether or not it should be 'linear' has to depend upon factors relating to site layout, not a development plan matter. It is for detailed consideration as part of a planning application. The inclusion of the word 'linear' is not justified in context and should be deleted along with the reference to strategic planting. There will need to be consequential amendments to paragraph 5.17 in the plan text.

4.44 Criterion 5. Translocation of the frontage hedgerow to School Road. There is no doubt that the frontage hedgerow is an important visual feature which, along with the wide grass verge in front of it (see below) contributes to the rural character of the area. However, as pointed out in the Carly Tinkler report, it badly overgrown and requires management.

4.45 Although variable, the hedge is well set back from the carriageway edge, of the order of 3-5 m., which means that it may be possible to provide satisfactory visibility splays involving minimal hedgerow removal. There appears to have been no analysis of the practical implications of 'translocation' nor would there be any obvious advantage over simply planting appropriate native hedgerow species to the rear of any visibility splay. The TPC response indicates that it is the intention that the frontage hedge should be retained as far as possible unless alternative frontage treatment can be agreed. That is more appropriate wording. It is the concept of 'translocation' which has not been adequately justified.

4.46 Criterion 6. Pedestrian access. There are three bullet points under this criterion all setting requirements for pedestrian access (footways) to and from the site. The first specifies that there shall be a 2 m. wide footway along the School Road frontage. I have ascertained that the grass verge is highway land and the Highway Authority have indicated that they would seek an agreement with the developers under s278 of the Highways Act to secure payment for its construction. In turn, for it to be achieved there would need to be a 'grampian' type condition on any planning permission which would need to satisfy the tests in paragraph 55 of the NPPF⁴².

4.47 School Road is a lightly traffic village road without footways for the most part, even in the village centre. The upgrading of the public right of way leading directly to the A438 (see below) would much reduce any need for people to walk through the main part of the village. The Lady Emily Community Hall and adjacent open space and recreational/play area is further west along School Road but, as the representation by Rural Solutions indicates, any footfall derived from housing development on the site would not greatly alter the existing situation. A path would only marginally improve pedestrian safety. That is because, even with a footway along the entire site frontage it would still be an isolated section not connected to other footways. I am, therefore, unconvinced that a footway in this location is either necessary or reasonably related to the development, which means it could not be secured by planning condition. It is a different situation to the Bartestree appeal decision to which my attention has been drawn. For these reasons I regard a policy stipulation requiring provision of a footway as unreasonable and undeliverable.

4.48 Furthermore, the TPC have stated that the footway envisaged would be 144 metres long and adjacent to the highway edge. As such it would undoubtedly appear to be in marked contrast to the green swarth which is otherwise a characteristic feature of School Road. That is clearly the main justification for defining those verges, including this frontage, under Policy TAR 13(5). I have noted what is said in paragraph 7.6 of the NDP but such a footway would totally negate the purpose of defining the area as Local Green Space, even if the footway is regarded as 'local transport infrastructure' and thus 'not

⁴² Also, PPG Reference ID: 21a-003-20190723

inappropriate'. However, the deletion of the first part of criterion 6 in Policy TAR 8 would remove any conflict. Paragraph 5.22 will require amendment accordingly.

4.49 The second bullet point makes permission dependent on the 'upgrading' of the public right of way which runs from the A438 near bus stops, just to the west of the allocation site, to link to School Road. Although the planning application includes the 'upgrading' as part the proposal and the path is all on land within the ownership and control of the Stoke Edith Estate it is not shown on the plan policies map and lies entirely outside the allocated area.

4.50 Even though the Estate have agreed to this aspect of the plan, for it to meet the basic conditions it must still be necessary and reasonably related to the development which may take place on the allocated land. In contrast to the footway on School Road, I consider that this path would directly assist in providing direct and safe (at least in the day, I assume lighting is not envisaged) access to the bus route between Hereford and Ledbury and thus encourage the use of sustainable transport modes. It would reduce the need for pedestrian access to School Road. For those reasons, its inclusion in the plan is justified but for clarity it needs to be shown on the Policies Map for the requisite length and referenced to Policy TAR 8(6).

4.51 The third bullet in criterion 6 also relates to a proposed link outside the allocation site. However, the wording used 'consideration of the feasibility of providing a footway link' does not provide necessary clarity for a decision-maker to apply it in determining a planning application⁴³. The TPC acknowledge that the feasibility of providing such a link has not been investigated and that is more in the nature of a community aspiration than a planning policy. As advised in the PPG⁴⁴ a community aspiration may be included in a neighbourhood plan but should be clearly distinguished from planning policy, ideally in a separate document or annex. However, in view of the format of this plan I agree that additional text making clear that the aspiration is not part of the statutory plan would be within the spirit of Government guidance.

⁴³ PPG, Reference ID: 41-041-20140306

⁴⁴ Reference ID: 41-004-20190509

4.52 Criterion 7. Buffer zone on eastern boundary. Although the policy criterion no longer⁴⁵ refers to a possible footpath link along the eastern boundary, the text in paragraph 5.23 does. I regard that as an error, especially given the removal of the footbridge proposal from policy.

4.53 Rural Solutions have raised concerns that the creation of a 'buffer zone' along the eastern boundary would push development to the west on to higher ground with greater visual harm. Not only would any such proposal need to be judged in the context of criterion 2 but paragraph 5.23 details the measures which are envisaged within the 'buffer zone'. Those are not dissimilar to those envisaged by the Estate to enhance biodiversity and protect the brook and bankside habitat. A sustainable drainage scheme is also important to minimise flooding risk. I find nothing in these provisions to suggest that this aspect of the policy fails to meet any of the basic conditions.

Recommendation 5

Modify Policy TAR 8 as follows:-

In the first paragraph, delete the words 'for around six dwellings';

Replace criterion 3 by the following: 'Materials are specified which reflect the local character and vernacular, including the appropriate use of stone, timber and brick; and';

Revise the wording of criterion 4 to read: 'provision of hedgerows to the western and northern boundaries of the site which protect the rural character of public right of way TR3; and';

Delete the word 'translocation' in the second line of criterion 5 and replace by 'retained as far as possible, with new hedgerow planting';

Delete the first and third bullet points in criterion 6 with the revised criterion to read: 'safe and suitable access for all users is provided to village facilities and to assist integrated transport to include upgrading of public right of way TR3 to provide access to the bus stops on the A438, as shown on the Policies Map; and'

⁴⁵ This was included in the Regulation 14 draft.

Recommendation 6

Make revisions to paragraphs 5.5, 5.7, 5.17, 5.18, 5.20, 5.21 and 5.22 to take account of the recommended modifications to Policy TAR 8 and delete the third bullet point in paragraph 5.23; add a new paragraph to follow paragraph 5.23 explaining the position with regard to a possible footpath link to the TPC car park and making clear that it is not part of the statutory plan.

Recommendation 7

Amend the policies map to show public right of way TR3 annotated to reference policy TAR 8(6).

Recommendation 8

In Appendix A to the plan, add references to the comments made by the Historic Buildings Officer (September 2018); the Landscape Officer (September and November 2018) and the Area Engineer (Highways) (September 2019).

Main Issue 4. Whether NDP policies TAR 2, 4 and 7 lack local distinction and add little to the policies in the adopted Local Plan Core Strategy.

4.54 This issue has been raised by the Herefordshire Council. Policy TAR 2 cross-references to policies in the Core Strategy whereas Policy TAR 4 contains a list of policy requirements which also largely duplicate those in the Core Strategy or, indeed, reflect principles covered in the NPPF and PPG. Policy TAR 7 refers to meeting local housing needs, including affordable housing, again cross-referencing to HCS Policy H1, with more detail only in the plan text (but see paragraph 4.60 below). To some extent Policy TAR 1 is a very generalised 'scene setter' defining what is meant by sustainable development and policy TAR 3 largely reflects national policy relating to the protection of heritage assets although with some local context in the reference to the Stoke Edith registered park and garden.

4.55 National Planning Practice Guidance is that policies in neighbourhood plans should be 'distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been

prepared.⁴⁶ I agree with the HC that neither policy TAR 2 nor 4 is related to any specifically local planning context. They cannot be termed 'distinct'. However, the TPC response is that the inclusion of these policies provides for a coherent document to reflect the plan's vision and objectives and taking account of the views and concerns of residents.

4.56 It is not necessary for neighbourhood plans to seek to cover every aspect of policy, especially where there is an adequate context for decision making provided in the local plan. However, the general advice in the PPG does not deal with the question of 'ownership', that is of a document produced by the Parish Council for the residents of the area. There are advantages in the NDP being read as a coherent whole alongside the local plan provided there is no conflict. The HC have not suggested that there is any actual conflict of policy and I do not read any. Most importantly it cannot be said that the TPC have not 'had regard' to the Planning Practice Guidance, which is the wording of the basic condition. They have clearly done so and put forward a reasonable case for retaining the policies in question.

Main Issue 5. Clarity of policy wording to assist implementation

4.57 The examination of the plan under this issue is primarily related to the advice in Planning Practice Guidance that policies in neighbourhood plans should be worded clearly and unambiguously so that they may be used consistently and with confidence by decision-makers when determining planning applications.⁴⁷

4.58 Policy TAR 5. This policy provides for housing development within settlement boundaries on 'suitable infill sites' without defining what is meant by the term 'infill'. The term is not used in HCS Policy RA2. For clarification, the TPC have provided a definition which I recommend be included in a slightly expanded paragraph 5.6. The policy intent will then be unambiguous.

⁴⁶ PPG Reference ID: 41-041-20140306

⁴⁷ PPG Reference ID: 41-041-20140306

Recommendation 9

Replace the third sentence in paragraph 5.6 by the following text:-

‘Such dwellings may arise within the settlement boundaries on suitable infill sites, defined as sites for one or two dwellings within a substantially built-up frontage, or outside the boundaries where they meet the requirements of Local Plan Core Strategy policies RA3, RA4 and RA5.’

4.59 Policy TAR 6. I raised a question about the appropriateness of the settlement boundaries at Little Tarrington, specifically in relation to the recent permissions at Stocks Field and Garbrook, because the boundaries are shown on the policies map as straight lines. In response, the TPC have agreed a revision to the policies map to show boundaries which more accurately relate to the permitted areas. That will aid in the interpretation of the area to which the policy is intended to relate and is recommended to provide clarity. The revised policies map extract is reproduced as Appendix A to this report.

Recommendation 10

Amend the policies map to show the settlement boundary at Little Tarrington as on the extract included as Appendix A to this report.

4.60 Policy TAR 7. As mentioned in paragraph 4.54 above, as drafted this policy is not locally specific and simply applies HCS Policy H1 for affordable housing, which is not necessary. However, more information is given in paragraph 5.12 of the plan text on the nature of local housing need which may usefully be imported into policy to make it more distinctive to accord with practice guidance. It is recommended.

4.61 The strategic context for a policy on housing mix is provided by HCS Policy H3 although it primarily relates to developments of 50 dwellings or more. As accepted by the TPC, a reference to HCS Policy H3 should be included. The omission is an error. An additional footnote would be appropriate. The statistics on the need for particular house types included in NDP paragraph 5.12 have been superseded by a July 2021 update of the HMA level Housing Needs Assessment to which footnote 9 should now refer if the plan is to be as up-to-date as possible. The house types as recommended in the second part policy TAR 7 also reflect this.

Recommendation 11

Replace policy TAR 7 by the following revised policy:-

Proposals for new housing must demonstrate, subject to viability considerations, that they provide dwellings of a type, size and tenure that positively contribute to meeting the latest assessment of housing needs, and include affordable housing in accordance with the requirements of Local Plan Core Strategy policy H1 or its replacement.

There is a particular requirement in the Neighbourhood Area for:

- **Market housing with three bedrooms and affordable housing with one, two or three bedrooms;**
- **Housing designed to meet the needs of older people including bungalows;**
- **Starter homes and other affordable routes to home ownership.**

Recommendation 12

Update paragraph 5.12 to include statistics on housing need taken from the 2021 HMA level Housing Needs Assessment and amend footnote 9 to reference that document

Recommendation 13

Add a footnote to paragraph 5.12 referring to policy H3 in the Herefordshire Local Plan Core Strategy.

4.62 Policy TAR 13. I am satisfied that the additional information supplied by the TPC on the criteria used to evaluate the areas identified in the policy as Local Green Spaces provides adequate justification for their identification in consideration of NPPF paragraph 100 and section 37 of the PPG.

4.63 Paragraph 101 in the NPPF indicates that a policy for managing development within a Local Green Space should be consistent with that for Green Belts; that policy is given in paragraph 143 of the NPPF. Policy TAR 13 does not make clear that it is only necessary for there to be 'very special circumstances' if proposed development would be 'inappropriate'. For the NDP policy to be fully consistent with national Green Belt policy that word should be inserted before 'development'.

Recommendation 14

Insert the word 'inappropriate' before 'development' in the first line of policy TAR 13.

4.64 CIL and Policy TAR 15. Herefordshire Council has indicated that a decision on progressing a Community Infrastructure Levy (CIL) scheme will be subject to review after a further Government policy announcement. It cannot, therefore, be assumed, as the text in paragraphs 7.12 and 7.13 indicates, that CIL will be available in the future. A similar point arises in the inclusion of the fifth bullet point in the section on Community infrastructure under paragraph 8.1 of the plan. These references are, therefore, in error and require adjustment to recognise the current uncertainty.

4.65 Finally, I questioned the meaning of the reference to 'diversification proposals' in the last sentence of NDP Policy TAR 15. Without clarification of the meaning of the term that aspect of the policy cannot be said to be clear and unambiguous. The TPC response is to suggest deletion of the sentence. With that, the inclusion of the remaining policy meets with the basic conditions.

Recommendation 15

Remove references to a Community Infrastructure Levy from paragraphs 7.12, 7.13 and 8.1 of the plan text.

Recommendation 16

Delete the last sentence in policy TAR 15.

Section 5 - Formal conclusion and overall recommendations including consideration of the referendum area

Formal Conclusion

5.01 I conclude that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in Schedule 4B to the Town and Country Act 1990 (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

Overall Recommendation A.

I recommend that the modifications recommended in this report be made to the Tarrington Neighbourhood Development Plan 2011 - 2031 and that the draft plan as modified be submitted to a referendum.

The referendum area

5.02 As I have recommended that the draft plan as modified be submitted to a referendum I am also required under s10(5)(a) of Schedule 4B to the Town and Country Planning Act 1990 to recommend whether the area for the referendum should extend beyond the neighbourhood area.

5.03 There have been no representations to suggest that the referendum area should be other than the parish of Tarrington. The parish has well defined boundaries and I see no need for the referendum area to be other than the plan area.

Overall Recommendation B.

The referendum area should not be extended beyond that of the neighbourhood area.

Signed:

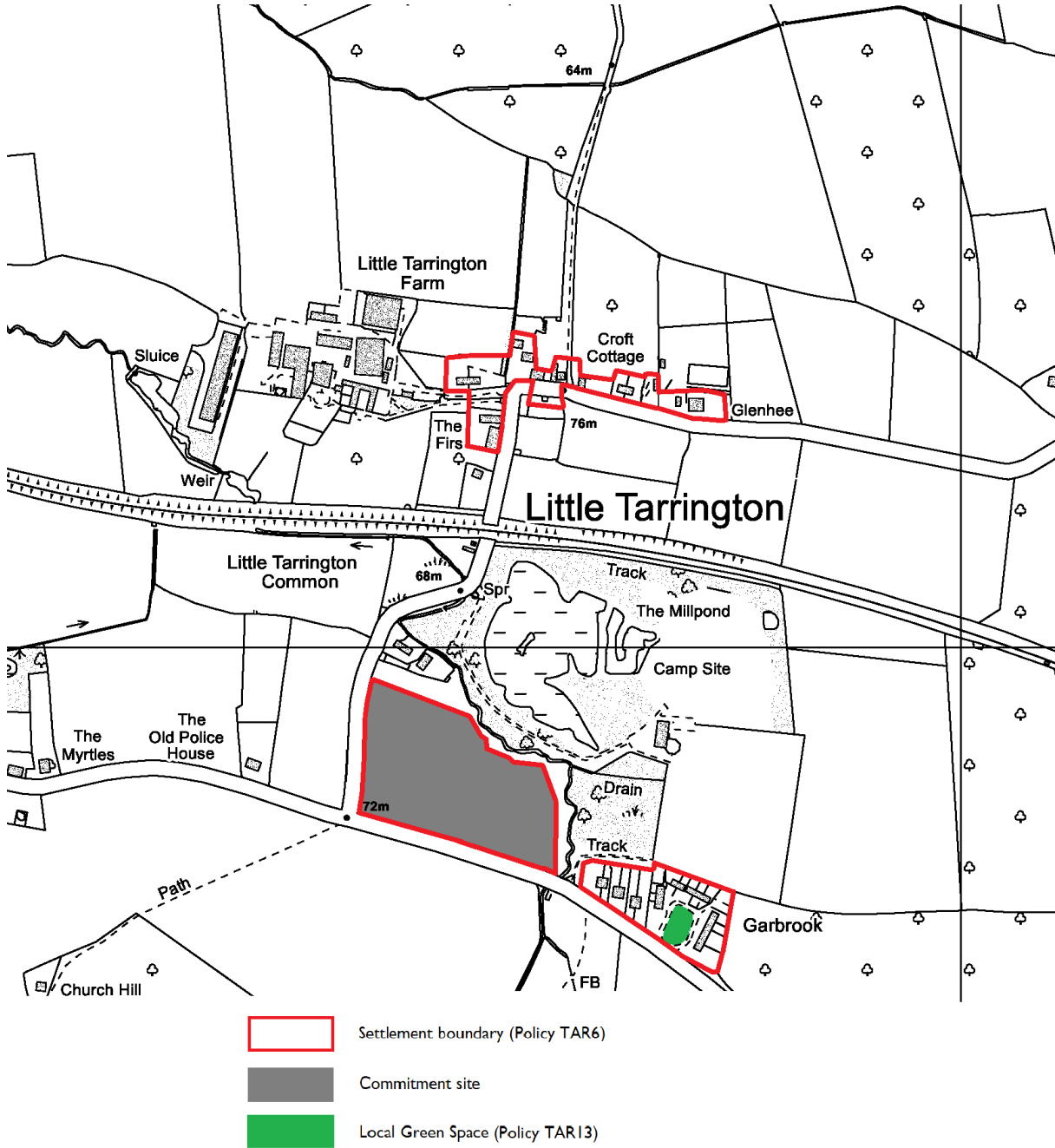
John R Mattocks

JOHN R MATTOCKS BSc DipTP MRTPI FRGS

26 December 2021

APPENDIX A

Policies map showing revised settlement boundary for Little Tarrington as per recommendation 10 in this report.



APPENDIX B

Abbreviations used in this report

the 2012 Regulations	The Neighbourhood Plans (General) Regulations 2012
AA	Appropriate Assessment (HRA)
BSC	Basic Conditions Statement
CIL	Community Infrastructure Levy
CS	Core Strategy
DPD	Development Plan Document
ER	Environmental Report
EU	European Union
HC	Herefordshire Council ('the LPA')
HCS	Herefordshire Core Strategy
HMA	Housing Market Assessment
HRA	Habitats Regulations Assessment
HAS	Housing Site Assessment
LGS	Local Green Space
LP	Local Plan
LPA	Local Planning Authority (HC)
NDP	Neighbourhood Development Plan (generic term)
NMP	Nutrient Management Plan
NPPF	The National Planning Policy Framework
PPG	Planning Practice Guidance
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
TNDP	Tarrington Neighbourhood Plan
TPC	Tarrington Parish Council ('the parish council')