

# **Clifford Neighbourhood Plan**

## **Independent Examiner's Report**

July 2022

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## **Summary**

I have been appointed by Herefordshire Council to carry out an independent examination of the Clifford Neighbourhood Plan.

The examination was carried out in July 2022 and was undertaken by considering all the documents submitted to me, including the written representations. I visited the Neighbourhood Plan area on 5 July 2022.

Clifford Parish is one of the largest parishes in Herefordshire situated just to the north of Hay-on-Wye, set in a spectacular landscape between the foot of the Black Mountains National Park and the River Wye.

Subject to a number of modifications set out in this report, I conclude that the Neighbourhood Plan meets the Basic Conditions and I am pleased to recommend that it should proceed to referendum.

I recommend that the referendum should be confined to the Neighbourhood Plan area.

Barbara Maksymiw

Independent Examiner

July 2022

## **1. Introduction**

1. Neighbourhood planning is a relatively new process, introduced by the Localism Act 2011, which enables local communities to develop planning policies to guide development in their area and help to shape the places where they live and work.

2. Clifford Parish is one of the largest parishes in Herefordshire and is situated close to the Welsh border, just to the north of Hay-on-Wye. The River Wye forms much of the northern and western boundary of the parish. Its population is small – at around 530 people – and is scattered between Clifford Village and Priory Wood. It has no discernible centre and the small number of services are located two miles away from Clifford Village at Pen-y Parc. Its landscape is highly valued by the local community and it is a popular place for visitors and walkers, because of its close proximity to Hay-on-Wye and the Brecon Beacons National Park.

3. The plan has been prepared in the context of the Herefordshire Core Strategy, adopted in 2015. It takes the opportunity to define settlement boundaries for Clifford Village and Priory Wood, to ensure the development strategy set out in the Core Strategy is taken forward.

4. The purpose of this report is to assess whether the Clifford Neighbourhood Plan (NP) complies with the relevant legislation and meets the Basic Conditions. Where necessary, the report makes recommendations about changes or modifications to the plan to ensure that it meets the legislative requirements.

5. The report also makes a recommendation about whether the NP should proceed to the referendum stage. If there is a positive recommendation at referendum, the NP can be “made” by Herefordshire Council and so become part of the wider development plan and then used by Herefordshire Council to determine planning applications in the plan area.

## **2. Appointment of the independent examiner**

6. I have been appointed by Herefordshire Council, with the agreement of Clifford Parish Council, to carry out this independent examination. The Neighbourhood Planning Independent Referral Service (NPIERS) has facilitated my appointment. I am a chartered town planner with extensive planning experience in local government and therefore have the appropriate qualifications and experience to carry out this examination. I am independent of the qualifying body and have no land interest in the area that might be affected by the plan.

### 3. The role of the independent examiner

7. The role of the independent examiner is to ensure that the submitted NP meets the Basic Conditions together with a number of legal requirements.

8. In examining the NP I am required, under Paragraph 8(1) of Schedule 4B of the Town and Country Planning Act 1990, to check <sup>1</sup> that:

- the policies in the plan related to the development and use of land for a designated neighbourhood area; and
- the policies in the plan meets the requirements of Section 38 of the Planning and Compulsory Purchase Act (that is, it specifies the period to which it has effect, does not include provision about excluded development and does not relate to more than one neighbourhood area); and
- the plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted by a qualifying body.

9. I must also consider whether the NP meets the Basic Conditions set out in Schedule 4B of the Town and Country Planning Act 1990 (as amended). A plan meets the basic conditions<sup>2</sup> if:

- 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 plan contributes to the achievement of sustainable development
- the making of the neighbourhood plan is in general conformity with the strategic policies of the development plan for the area
- the making of the neighbourhood plan does not breach, and is otherwise compatible with European Union (EU) obligations

10. Regulations 32 and 33 of the Neighbourhood Planning Regulations 2012 (as amended) set out two additional basic conditions. These are:

- the making of the neighbourhood plan is not likely to have significant effects on a European site <sup>3</sup> or a European offshore marine site <sup>4</sup> either alone or in combination with other plans or

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<sup>1</sup> Set out in paragraph 8(1) of Schedule 4B of the Town and Country Planning Act (as amended)

<sup>2</sup> Set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act (as amended)

<sup>3</sup> As defined in the Conservation of Habitats and Species Regulations 2012

<sup>4</sup> As defined in the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007

projects and

- having regard to all material considerations, it is appropriate that the neighbourhood development order is made where the development described in an order proposal is Environmental Impact Assessment development (this does not apply to this examination as it is not about a neighbourhood development order).

11. A further Basic Condition was added by legislation on 28 December 2018. The Neighbourhood Planning (General) Regulations 2012 para 1 states:

- In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act
- The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

12. As independent examiner, having examined the plan, I am required to make one of the following recommendations:

- that the plan as submitted can proceed to a referendum; or
- that the plan with recommended modifications can proceed to referendum; or
- that the plan does not meet the necessary legal requirements and cannot proceed to referendum

13. If the plan can proceed to 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.

14. Herefordshire Council will consider the examiner's report and decide whether it is satisfied with the examiner's recommendations and will publicise its decision on whether the plan will be subject to referendum, with or without modifications. If a referendum is held and results in more than half of those voting in favour of the plan, the Council must "make" the neighbourhood plan a part of its development plan. The plan then becomes part of the development plan for the area and is a statutory consideration in guiding future development and determining planning applications in the area.

#### **4. Compliance with matters other than the basic conditions**

15. On 15 January 2013, Clifford Parish Council applied to Herefordshire Council to designate the parish as a Neighbourhood Area and the parish was formally designated as a Neighbourhood Area in accordance with the Neighbourhood Planning (General) Regulations 2012 on 25 March 2013. The designated area covers the whole parish and does not cover any other Neighbourhood Area. The plan covers the period from 2011 to 2031, which aligns with the timespan of the Herefordshire Core Strategy 2011 – 2031 which was adopted in October 2015.

16. The preparation of the plan has been managed by a Steering Group made up from a good cross-section of the community, including Parish Councillors nominated by the Parish Council and was supported by a professional planning consultant.

17. I am satisfied that the Neighbourhood Plan includes policies that relate to the development and use of land and does not include provision for any excluded development. The Clifford NP therefore meets the requirements set out in para 8 above.

#### **5. The examination process**

18. The documents which I considered during the course of the examination are listed in Appendix 1.

19. The general rule<sup>5</sup> is that an examination is undertaken by the consideration of written representations only. Having considered all the information before me, including the representations made to the submitted plan (the Regulation 16 responses), I was satisfied that the Clifford NP could be examined without the need for a public hearing.

20. I am also satisfied that I had all the information I required to carry out the examination.

21. As part of the Neighbourhood Plan Examination process, it is important for the examiner to understand the context of the neighbourhood plan in the wider area and its overall character, as these shape the issues and policies set out in the plan. I therefore made an unaccompanied site visit to the area on 5 July 2022.

22. The plan has been assessed against the guidance in the National Planning Policy Framework (NPPF) dated July 2021.

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<sup>5</sup> PPG para 004 ref id 41-004-20140306

23. As part of this examination, my report includes a series of recommended modifications to ensure that the policies are expressed concisely and precisely in order to comply with the basic conditions. Where I have suggested modifications, these are identified in **bold text**. The recommended modifications relate mainly to issues of clarity and precision and are designed to ensure that the plan fully accords with national and strategic policies. I have considered the policies in the order they appear in the plan, by section and comment on all of the policies, whether I have suggested modifications or not. Where I consider that the supporting paragraphs need amendment to help explain and justify the plan policy, I have made comments to that effect.

## 6. Consultation

### *Consultation process*

24. Effective consultation and engagement with the local community is an essential component of a successful neighbourhood plan, bringing a sense of public ownership to its proposals and helping to achieve consensus. The policies set out in the Neighbourhood Plan will be used as the basis for planning decisions – both on local planning and on planning applications – and, as such, legislation requires neighbourhood plans to be supported by public consultation.

25. In line with the Neighbourhood Planning (General) Regulations 2012<sup>6</sup>, the Steering Group has prepared a Consultation Statement for the NP which sets out how the group approached public consultation.

26. Throughout the plan preparation process, the Steering Group has sought to consult and engage with the local community and feedback has been used to inform the content and scope of the plan. This was initiated by a community event in July 2017, followed by a resident's questionnaire in October 2017, which received a very good response rate. Public meetings were held throughout the plan preparation process and regular updates were placed on the Parish Council website and Steering Group meetings were open to the public.

27. The Consultation Statement demonstrates that the Steering Group has fully engaged with the local community and kept people informed as the plan progressed. As a result, the community's vision for the parish reflects the views and priorities of the community. This is :

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<sup>6</sup> Regulation 15 of the Neighbourhood Planning (General) Regulations 2012



*To be a Parish where an excellent quality of life is available to all, where people feel valued and there are homes, businesses and facilities to meet the needs of a vibrant rural community.*

#### *Statutory consultations and representations received*

28. Preparing the NP has involved two statutory six-week periods of public consultation. The Regulation 14 consultation was held between from 26 October to 8 December 2020. In all, 13 representations were received – five from the local community and eight from statutory stakeholders.

29. The second consultation on the Submission Draft NP was managed by Herefordshire Council and took place between 14 December 2021 and 8 February 2022. This generated twelve responses – four from internal service providers at Herefordshire Council, seven from statutory consultees and one from a member of the community.

30. Occasionally in this report I refer to representations and identify the organisation making that particular comment. However, I have not referred to every representation in my report. Nonetheless, I can assure everyone that each comment made has been looked at and carefully considered.

31. From the evidence in front of me, it is apparent that the Clifford NP has been subject to all the necessary public consultation, involving much extended time and effort by the Steering Group. I am therefore satisfied that the consultation process which has been followed complies with the requirements of the Regulations.

#### **7. Compliance with the basic conditions**

32. In my role as independent examiner I must assess whether the Neighbourhood Plan meets the Basic Conditions<sup>7</sup> set out in the Regulations as described in paras 8-11 above.

33. I have considered the Clifford Neighbourhood Plan Basic Conditions Statement produced on behalf of the Steering Group to assist my assessment which is set out below.

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<sup>7</sup> Para 8(2) of Schedule 4B of the Town and Country Planning Act (as amended)

### *National Policy*

34. National planning policy is set out in the National Planning Policy Framework (NPPF) and in the supporting Planning Practice Guidance (PPG). At the heart of the planning system is a presumption in favour of sustainable development, which applies to all levels of plan making. For neighbourhood plans, this means that neighbourhood plans should support the strategic development needs set out in Local Plans and plan positively to shape local development. Planning Practice Guidance<sup>8</sup> states that all plans should be prepared positively, be shaped by effective engagement with the local community and contain policies which are clearly written and unambiguous. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.

### *Sustainable development*

35. The qualifying body also has to demonstrate how a neighbourhood plan contributes to the achievement of sustainable development as set out in the NPPF<sup>9</sup>. Section 2 of the Basic Conditions Statement sets out an assessment of the provisions of the Neighbourhood Plan meet the objectives of sustainable development and I therefore conclude that this Basic Condition is met.

### *Development Plan*

36. The NP also has to demonstrate that it accords with the strategic policies of the Development Plan and the NPPF. The Basic Conditions Statement contains a very comprehensive table in Section 3 which sets out how the policies in the NP comply both with the provisions of the NPPF and the adopted Core Strategy and which of the three strands of sustainable development they address - the economic, social and the environmental.

37. From my assessment of the plan's policies in the rest of my report, it is evident that the strategic policies of the adopted Herefordshire Core Strategy have generally been carried through to the NP. Therefore, subject to the recommended changes set out in Section 8 below, I conclude that the NP is in general conformity with the strategic policies of the development plan and therefore this basic

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<sup>8</sup> Planning Practice Guidance Paragraph: 041 Reference ID: 41-041-20140306

<sup>9</sup> NPPF paragraph 16

condition is met.

### *European obligations and Human Rights Requirements*

#### *Strategic Environmental Assessment (SEA)*

38. The SEA Directive aims to provide a high level of protection to the environment by ensuring that environmental considerations are included in the process of preparing plans and programmes. A neighbourhood plan must be compatible with European Union obligations as incorporated into UK law, in order to be legally compliant. Key directives relate to the Strategic Environmental Assessment Directive and the Habitats and Wild Birds Directives. Regulation 15 of the Neighbourhood Planning Regulations as amended in 2015 requires either that a Strategic Environmental Assessment is submitted with a Neighbourhood Plan proposal or a determination is made by the responsible authority that the plan is not likely to have “significant effects”.

39. An initial Screening Opinion was carried out by Herefordshire Council for the Clifford Neighbourhood Plan in July 2016 to assess whether a Strategic Environmental Assessment (SEA) and/or a Habitats Regulations Assessment (HRA) was required. The initial Screening Report dated June 2016 found that the River Wye (including the River Lugg) SAC is located along the northern and the western border of the parish and Neighbourhood Area. The report published in July 2020 concluded that a Habitat Regulations Assessment (HRA) was not required. However, recent advice, responses from Natural England and the legal advice on the Dutch Case obtained by Herefordshire Council suggested that a Stage 2 Appropriate Assessment was, in fact, required. The Appropriate Assessment report subsequently published in November 2021 concluded that there will not be a significant effect on the integrity of the River Wye (including River Lugg) SAC when the mitigation and avoidance measures have been taken into account.

40. As the Environmental Report and the Appropriate Assessment prepared to support the NP been prepared in light of the updated basic condition referred to in para 11 above and local advice obtained by Herefordshire Council, I conclude that the necessary legislative requirements have been met and that the basic condition is complied with.

#### *Human rights requirements*

41. The Basic Conditions Statement, in Section 4, briefly explains how the plan fulfils other EU obligations including human rights.

42. I am satisfied, therefore, that the NP is compatible with the requirements of EU obligations in relation to human rights and no evidence has been submitted to me to suggest otherwise. I am satisfied, then, that the Plan does not breach the European Convention on Human Rights obligations and therefore meets the Basic Conditions.

#### *Other Directives*

43. I am not aware of any other European Directives that would apply to this NP, and in the absence of any evidence to the contrary, I am satisfied that the plan is compatible with EU obligations.

#### *Basic Conditions Statement – conclusions*

44. I have considered the Basic Conditions Statement and the supporting evidence and representations made to the Clifford NP and I am satisfied that the Plan as submitted follows the general principles set out in national planning policy and contributes to the achievement of sustainable development. It sets out a positive vision for the parish and policies to protect its distinctive character while accommodating development needs.

45. At a practical level, however, a few of the policies in the Submission NP need some minor adjustment to ensure that they comply with the NPPF and the strategic guidance in the adopted Core Strategy. I have therefore suggested a number of modifications in Section 8 below, to help ensure that the plan accords with national and strategic guidance and therefore meets the basic conditions.

### **8. Neighbourhood Plan policies**

46. This section of my report considers the NP policies against the basic conditions.

47. The Plan is well presented and illustrated with photographs, with a clear structure distinguished by separate sections. The plan's policies are set out in sections 4-11 and are grouped into eight distinct topics. The policies are presented in a consistent way, each with a short context and some supporting text. The policy itself is shown as separate text box. There are clear maps for each settlement, showing the new settlement boundaries and other relevant policies; these will be very useful for future users of the plan.

48. The plan is also supported by a comprehensive evidence base which is presented as Appendices to the document.

49. All of the policies relate to the development and use of land and none cover excluded development, such as minerals and waste, so the statutory requirements and guidance set out in Planning Practice Guidance<sup>10</sup> are met.

#### *1. Introduction, 2. Clifford and 3. Vision and Objectives*

50. These sections introduce the Neighbourhood Plan, explain why a NP is being prepared, the planning context in which it is set as well as some useful background information about the parish. They also summarise the community consultation activities that have informed the preparation of the plan and set out its vision and objectives.

#### *4. Sustainable Community*

##### *Policy CNP1 Promoting Sustainable Development*

51. This is a wide-ranging policy which sets out what sustainable development means for Clifford Parish. It aligns with guidance in the NPPF and the strategic policies in the Herefordshire Core Strategy and therefore meets the basic conditions. I have no comments to make.

##### *Policy CNP2 Development Strategy*

52. My only comment on this policy is that the second paragraph is imprecise and requires fine tuning. The term “necessary development” is also rather vague and should be removed.

- **Recommendation : Reword second paragraph of Policy CNP2 to read “Business needs, infrastructure provision and associated development will be accommodated within Clifford Parish primarily through the conversion of redundant farm and other rural buildings and limited new buildings and extensions”**

#### *5. Character, Environment and Heritage*

##### *Policy CNP3 Conserving and enhancing the landscape of the parish*

53. I have no comments on this policy.

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<sup>10</sup> Planning Practice Guidance PPG para 004

*Policy CNP4 Protecting the scenic beauty of the parish*

54. I have no comments on this policy.

*Policy CNP5 Conserving and enhancing the natural environment of the parish*

55. I have no comments on this policy.

*Policy CNP6 Protecting and enhancing the heritage assets of the parish*

56. I have no comments on this policy.

*Policy CNP7 Protection of Local Green Space*

57. This policy identifies two areas in Priory Wood as local green spaces. Evidence to support the designation of both locations is set out in a Report on Local Green Space Site Assessments prepared in February 2020. I note that a larger number of sites were originally proposed as Local Green Spaces, but these were reduced to two as a result of consultation at the Regulation 14 stage.

58. Priory Wood Playground Common is a triangular shaped area located just outside the main grouping of houses which comprise the hamlet of Priory Wood. I saw on my site visit that it had distinct boundaries and was equipped with play equipment and goal posts.

59. Malthouse Common comprises three distinctive, but associated areas closer to the heart of the hamlet and I could see that they were well used as walking routes within and through the village. The area to the west of The Malthouse appeared to be a well maintained focal green space for the village.

60. Both sites meet the criteria for designation as LGS and so I have no comments on this policy.

*6. Housing*

61. In recent years, housing development in the NP area has primarily taken the form of very minor infilling on small plots, appropriate to the parish's designation as open countryside. However, the strategic policies in the Core Strategy now mean that greater certainty is needed to ensure that its housing growth targets can be achieved. The parish is situated in the Golden Valley Housing Market Area and Clifford village is identified as a location which will be the main focus of proportionate housing development, while Priory Wood is identified as a smaller settlement where proportionate

housing growth is appropriate, provided it is of a suitable form and layout and respects the character and local setting.

62. Through the preparation of the NP, the community recognises that a target of up to 30 dwellings could be achieved and therefore settlement boundaries have been defined for both Clifford and Priory Wood. Three housing sites have also been allocated in Clifford.

63. This proactive approach ensures that the overall development strategy (CNP1) and associated policies (CNP 8-10) comply with the strategic guidance of the development plan and therefore with the basic conditions. It also has the benefit of providing certainty for both settlements for the future.

*Policy CNP8 Housing development in Priory Wood*

64. I have no comments on this policy.

*Policy CNP8 Housing development in Clifford Village*

65. I have no comments on this policy.

*Policy CNP10 Housing Sites in Clifford Village*

66. This policy allocates three housing sites within the Clifford village settlement boundary for housing development. I saw from my site visit that the site north of Wellfield Bungalow was already under construction, with two dwellings well under way.

67. The site at Lower Court Farm is particularly large – at 1.5ha – and could accommodate a minimum of 10 dwellings (Table 1 on page 33). I saw from my site visit that it is a prominent position in the village and comprises existing agricultural buildings, lying adjacent to a complex of striking listed barns and other buildings.

68. Historic England has commented that it has concerns about the potential impact of the development of the site on adjacent and nearby heritage assets. While these constraints are recognised in the supporting text 6.13(iii), they should also be referred to in policy CNP10 and appropriate guidance provided to steer any development on the site.

- **Recommendation : Add a new paragraph at the end of Policy CNP10 to read “Any development proposals for the development of the Lower Court Farm site should protect the settings of the Listed Buildings within the complex and full consideration given to the**

**relationship with and potential impact on the Clifford Castle SAM. Development proposals should be accompanied by a Heritage Impact Assessment and full landscape scheme”**

69. It would assist future users of the plan if the three allocated sites, which are shown hatched brown on the Clifford Village Policies Map, could be identified using a suitable notation – such as CNP10(i),CNP10(ii) and CNP10(iii).

- **Recommendation : Add a suitable notation to the Clifford Village Policies Map to denote the three allocated housing sites and amend the key accordingly.**

*Policy CNP11 Community led housing*

70. I have no comments on this policy

*Policy CNP12 Design of housing development within settlement boundaries*

71. This policy requires some minor rewording to ensure that it is clear that it only applies to housing development and to improve the wording of the clause regarding housing for young families.

- **Recommendation : Add “ housing” between “new” and “development” in the first line of Policy CNP12. In clause CNP12(i) , after “Housing to provide for”, add the “the needs of”**

## *7. Supporting local businesses*

*Policy CNP13 Supporting local business*

72. I have no comments on this policy.

*Policy CNP14 Farming diversification*

73. I have no comments on this policy.

*Policy CNP15 Tourism development*

74. I have no comments on this policy.

*Policy CNP16 Working from home*

75. This policy expands a little on the relevant policy (E3) in the Core Strategy, in that it supports the development of a new building to support home working, as well as the erection of an extension or



re use of an existing building. This means that the policy duplicates and runs contrary to the policies in the development plan. The policy and supporting text should therefore be deleted.

- **Delete policy CNP16 and paragraph 7.8. Renumber subsequent policies and paragraphs accordingly.**

*Policy CNP17 Polytunnel proposals*

76. I have no comments on this policy.

*Policy CNP18 Intensive livestock units*

77. I have no comments on this policy.

#### *8. Renewable Energy and climate change impact*

*Policy CNP19 Sustainable Design*

78. I have no comments on this policy.

*Policy CNP20 Renewable energy and climate change impact*

79. I have no comments on this policy.

#### *9. Community Facilities*

*Policy CNP21 Community facilities*

80. I have no comments on this policy.

#### *10. Highways and Transportation*

*Policy CNP22 Highways and transport*

81. I have no comments on this policy.

*10. Drainage and environmental protection*

*Policy CNP23 Assessing flood risk and drainage*

82. I have no comments on this policy.

*Policy CNP24 Protecting the environment and amenity*

83. I have no comments on this policy.

**9. Conclusions and Recommendations**

84. I have examined the Clifford Neighbourhood Plan and I have concluded that, subject to the modifications set out in my report, it meets the basic conditions and other statutory requirements.

85. I am therefore pleased to recommend to Herefordshire Council that, subject to the modifications set out in my report, the Clifford Neighbourhood Plan should proceed to referendum.

86. I am also required to consider whether the referendum area should be extended beyond the Clifford Parish Council area. I see no reason why it would be necessary to alter or extend the plan area for the purposes of holding a referendum, nor have I received any representations to that effect. I therefore conclude that the plan should proceed to referendum based on the neighbourhood area approved by Herefordshire Council in March 2013.

## **APPENDIX 1: Background Documents**

In undertaking this examination, I have considered the following documents:

- Clifford (Herefordshire) Neighbourhood Plan : Submission Draft Plan 2011-31 – October 2021
- Environmental Report for Clifford Neighbourhood Area : Herefordshire Council - November 2021
- Appropriate Assessment Report for Clifford Neighbourhood Area : Herefordshire Council - November 2021
- Clifford (Herefordshire) Neighbourhood Development Plan : Consultation Statement – October 2021
- Clifford Neighbourhood Development Plan Basic Conditions Statement (November 2021)
- Clifford Neighbourhood Plan : Report on Local Green Space Site Assessments : February 2020
- Progression to Examination Decision Document : Herefordshire Council – February 2022
- Herefordshire Local Plan Core Strategy: Adopted October 2015
- National Planning Policy Framework (NPPF) July 2021
- Planning Practice Guidance March 2014 and subsequent updates