

Upton Bishop NDP

Submission Version 2021 – 2031

Report of Examination

August 2022

Undertaken for Herefordshire Council with the support of Upton Bishop Parish Council on the submission version of the plan.



Independent Examiner:

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Abbreviations used in the text of this report:

The Upton Bishop Neighbourhood Development Plan is referred to as ‘the Plan’ or ‘UBNDP’.

Upton Bishop Parish Council is abbreviated to ‘Upton Bishop PC’ or just ‘Parish Council’.

Herefordshire Council is also the Local Planning Authority, which is abbreviated to ‘LPA’.

The National Planning Policy Framework is abbreviated to ‘NPPF’.

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

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

Strategic Environmental Assessment is abbreviated to ‘SEA’.

Habitats Regulations Assessment is abbreviated to ‘HRA’.

Regulations 14 and 16 are abbreviated to ‘Reg14’ and ‘Reg16’ respectively.

Summary

- I have undertaken the examination of the UBNDP during July and August 2022 and detail the results of that examination in this report.
- The Upton Bishop PC have undertaken extensive consultation on this Plan, and with modifications it complies with legislative requirements. The Plan is locally relevant and well-written. The HCS provides a clear strategic policy framework.
- I have considered the comments made at the Regulation 16 Publicity Stage, and where relevant these have to an extent informed some of the recommended modifications.
- Subject to the modifications recommended, the Plan meets the basic conditions and may proceed to referendum.
- I recommend the referendum boundary is the designated neighbourhood plan area.

Acknowledgements: Thanks to Local Authority and qualifying body staff and consultants for their assistance with this examination. My compliments to the local community volunteers and Upton Bishop Parish Council, who have produced an excellent neighbourhood plan with little need for modifications!

1. Introduction and Background

1.1 Neighbourhood Development Plans

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

1.1.2 Giving communities greater control over planning policy in this way is intended to encourage positive planning for sustainable development. The National Planning Policy Framework (NPPF para 29) states that:

“neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood Plans can ... help to deliver sustainable development”.

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

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

1.1.3 Neighbourhood plans can only be prepared by a ‘qualifying body’, and in Upton Bishop that is the Upton Bishop Parish Council. Drawing up the Neighbourhood Plan was undertaken by a Steering Group working to the Parish Council.

1.2 Independent Examination

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

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

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

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

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

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

The UBNDP complies with the requirements of Paragraph 8(1). The Neighbourhood Area was designated on the 18th March 2013 by Herefordshire Council. With a minor change detailed in Modification 2 of section 4 below, the plan will not relate to land outside the designated Neighbourhood Area. It specifies the period during which it has effect as 2021 – 2031 and has been submitted and prepared by a qualifying body and people working to that qualifying body. It does not include policies about excluded development; effectively mineral and waste development or strategic infrastructure.

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

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

1.3 Planning Policy Context

1.3.1 The Development Plan for Upton Bishop is the Herefordshire Local Plan Core Strategy (HCS) adopted in 2015. The Development Plan still includes some saved policies from the Unitary Development Plan 2007, but they are not relevant for the UBNDP. The saved policies mainly relate to mineral and waste development, issues that are specifically excluded from consideration in neighbourhood plans. All the policies of the HCS are 'strategic policies' for neighbourhood planning purposes.

1.3.2 The National Planning Policy Framework 2021 (NPPF) sets out government planning policy for England, and the National Planning Practice Guidance (NPPG) website offers guidance on how this policy should be implemented.

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

- National Planning Policy Framework (NPPF) 2021
- National Planning Practice Guidance 2014 and as updated
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004
- The Localism Act 2011
- The Neighbourhood Planning Regulations 2012 (as amended)
- Submission version of the Upton Bishop Neighbourhood Development Plan (UBNDP)
- The Basic Conditions Statement submitted with the UBNDP
- The Consultation Statement submitted with the UBNDP
- UBNDP Housing Site Assessment and Addendum DJN Planning Ltd March 2021
- The Strategic Environmental Assessment Screening Decision for the UBNDP
- The SEA Environmental Report for the UBNDP
- The HRA Appropriate Assessment Report for the UBNDP
- Neighbourhood Area Designation (map)
- The Herefordshire Local Plan Core Strategy adopted October 2015
- Representations received during the publicity period (reg16 consultation)

2. Plan Preparation and Consultation

2.1 Pre-submission Process and Consultation

2.1.1 Upton Bishop is a rural parish in the County of Herefordshire. It includes several small settlements, of which Crow Hill is the most significant with about 125 dwellings. The total number of households in the Parish was 246 in 2011, and the estimated population for 2019 was 614. There is a population density of 0.4 persons per hectare – compared with an English average of 4.1. The Parish is approximately 3 miles to the NE of Ross on Wye, mostly to the north of the M50 and adjacent to the Wye Valley AONB on its western boundary. Woodland and mixed agricultural are the main land uses.

2.1.2 A Steering Group organised the work of developing the UBNDP, made up of Parish Councillors and volunteers from the local community. The first meeting was held in June 2018. Regular updates on the work of the Steering Group were posted on the Parish Council website, the local newsletter and on Facebook. Meetings were open to all residents.

2.1.3 The Consultation Statement sets out the nature and form of consultation prior to the formal Reg14 six week consultation. A drop-in event and Open Day were held to assess community views on the issues and concerns to address. From this a questionnaire was drawn up and sent to all households in the Parish, included within a pack that explained process and offered a point of contact for any queries. A response rate of 56% was achieved, with 278 completed questionnaires.

2.1.4 In 2020 a call for sites in the Parish began a process of considering allocations of residential sites in the UBNDP. 12 sites were submitted for consideration, and independent consultants assessed them and made resulting recommendations for two possible sites and settlement boundaries. These recommendations were then consulted on with another questionnaire, delivered to all households in the neighbourhood area. As a result of feedback from this consultation, the site with most local support was progressed.

2.1.5 As required by regulation 14 (Reg14) of the Neighbourhood Planning Regulations 2012, the formal consultation on the pre-submission UBNDP ran from the 20th September to the 2nd November 2021, just over six weeks. The Environmental Reports were also available. The consultation was advertised in a flyer included in the local newsletter, as well as on social media and the Parish Notice Board. Hard copies of the draft UBNDP were available locally and all documentation was available on the Parish website. Comments could be written and delivered to

a local collection point, made by email or at a drop-in event organised during the Reg14 dates. Statutory bodies were notified of the consultation by letter or email, as were other stakeholders considered to have an interest including local businesses.

2.1.6 Representations were received from eighteen residents, six statutory bodies and four from Herefordshire Council departments during the Reg14 consultation period. Several amendments have been made to the Plan as a result of constructive suggestions for changes. I am satisfied that due process has been followed during the consultation undertaken on the Plan. The Consultation Statement details all consultation activities, and the record of comments and objections received during the regulation 14 consultation shows that these were properly considered, and where appropriate resulted in amendments to the plan to accommodate points raised.

2.1.7 As required, the amended plan, together with a Basic Conditions Statement, a Consultation Statement, the Environmental Reports and a plan showing the neighbourhood area was submitted to the LPA on the 15th March 2022.

2.2 Regulation 16 Consultation Responses

2.2.1 Herefordshire Council undertook the Reg 16 consultation and publicity on the UBNDP for six weeks, from the 25th March to the 6th May 2022. Thirteen representations were received during this consultation: three from departments of Herefordshire Council; ten from Statutory Consultees, of which four had no specific comments to make on this Plan but offered general guidance. Most comments were supportive of the Plan and specific policies in particular. Where appropriate, comments made have been incorporated into any modifications necessary.

3. Compliance with the Basic Conditions Part 1

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

- Have regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contribute to the achievement of sustainable development;
- Be in general conformity with the strategic policies of the development plan for the area;
- Be compatible with and not breach European Union (EU) obligations and comply with human rights law; and
- Not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 (*prescribed basic condition since December 2018*).

3.2 The Basic Conditions Statement (Section 4) discusses how the UBNDP addresses the social, economic and environmental objectives of sustainable development, and the need for these objectives to be considered holistically. How policies meet each of these objectives is set out in Table 2 of this document. The Vision of the Plan looks to promote an ‘increasingly sustainable way of life’, and I accept that the Plan does contribute to sustainable development in line with the Basic Conditions.

3.3 Upton Bishop Parish is partly within the catchment of the River Wye Special Area of Conservation (SAC) (which includes the River Lugg), and within 10km of the Wye Valley and Forest of Dean Bat sites SAC. It is a requirement of the Basic Conditions that a neighbourhood plan is compatible with and does not breach European Union (EU) obligations, which are still incorporated into UK law. For environmental assessment the relevant legislation is the Environmental Assessment of Plans and Programmes Regulations 2004. The assessment of the UBNDP has also had to consider the EU Water Framework Directive and impacts on the River Wye SAC carefully, as there are parts of the catchment (River Lugg) that are currently breaching water quality standards. An initial screening exercise determined that the UBNDP would need Strategic Environmental Assessment (SEA) and an Appropriate Assessment under the Habitats Regulations. Thus an

Environmental Report and HRA Appropriate Assessment Report have been submitted with the UBNDP.

3.4 The Environmental Report assesses the policies and site allocation in the UBNDP before and after the Reg14 consultation. Appendix 7 notes that additions to Policies as suggested will help to ensure development draining into the Wye catchment is nutrient neutral (Policy UBP6). Other changes are also felt to have a positive impact on SEA objectives generally. No evidence is produced of likely significant environmental impact arising from the policies and allocation in the UBNDP, which are generally assessed as being in line with the Core Strategy.

3.5 The HRA Appropriate Assessment Report has considered the site allocation and policies for likely significant effect on the European sites (SACs), and found there were none. It states that

“The results of this Appropriate Assessment indicate that there will not be an adverse effect on the integrity of the River Wye (including River Lugg) SAC and Wye Valley and Forest of Dean Bat sites SAC when the mitigation and avoidance measures have been taken into account.”

I accept that the Basic Condition with regard to EU obligations has been met, and the UBNDP will not breach EU obligations.

3.6 The UBNDP in my view complies with Human Rights Legislation. It has not been challenged with regard to this, and undertook extensive consultation with the local community.

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

4.1 The final and most complex aspect of the Basic Conditions to consider is whether the UBNDP meets the requirements as regards national policy and the development plan. This means firstly that the Plan must have regard to national policy and guidance, which for this neighbourhood plan is the NPPF 2021 and the NPPG. Secondly the Plan must be in general conformity with the strategic policies of the development plan. The phrase 'general conformity' allows for some flexibility. If I determine that the Plan as submitted does not comply with the Basic Conditions, I may recommend modifications that would rectify the non-compliance.

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

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

4.3 The format and layout of this document is excellent – Policies clearly defined, content focused on the defined issues, with well-written background and justification for policies. The evidence base is proportionate and clearly identified in Appendix A.

4.4 **Policy UBP1 Settlement boundaries:** Complies with the Basic Conditions.

4.5 **Policy UBP2: Land south of Spring Meadow, Crow Hill** Additional information and highway requirements have been sought to this policy by National Highways and the Transportation section of Herefordshire Council. Response to these comments from the Qualifying Body Upton Bishop PC have also been received, and I found these helpful. I accept that reference to the need for a Transport Assessment to accompany any future planning application is necessary guidance in this site allocation policy in order that the clarity of policy required by the NPPF para 16d is reached.

What that Assessment should include is however not a matter for a landuse plan, and should be determined as part of negotiations on any future planning application.

4.5.1 The suggestion that more reference should be made to traffic-calming features has rightly been stated to stray from land-use issues into those of highway matters. However the dividing line is not always clear. For example it is quite acceptable for a land-use plan to require speed reduction measures on a road and refer to traffic calming. What that plan cannot do is set out what highway techniques should be applied. As this policy is only concerned with the impact of traffic generated by development on the site it cannot specify general improvement to the entire village road network. It will however be helpful for the Transport Assessment to also consider improvements for accessibility to the wider settlement for pedestrians and cyclists, and traffic calming measures that will be needed to ensure development does not worsen the traffic environment of the village. Although I understand that traffic speeds and volume is a significant local concern, it is outside my remit to add a policy at this stage that is not required in order that the Plan meets the Basic Conditions.

4.5.2 In order that Policy UBP2 has the clarity of intent required by national planning policy, and thereby complies with the Basic Conditions, I recommend that it is modified as shown in Modification 1.

Modification 1: As set out below, The final criteria of Policy UDP2, are to be amended as shown:

6. the implications of the proposal for the local and strategic road networks are demonstrated in a Transport Assessment accompanying any future planning application for the development which is to include consideration of any impacts anticipated on the Travellers Rest/M50 J4 junction; and

7. The Transport Assessment to include proposals to improve and maximise pedestrian and cycle connectivity to village facilities is maximised and a traffic calming proposals including a scheme to the B4224. The Proposals to ensure that the traffic environment of the village is not adversely impacted by the development and be ~~These provisions are to be proposed and delivered as part of the development; and~~

8. provision is made for land and car parking for allotments subject to viability and an assessment of demand.

4.6 **Policy UBP3: Housing mix** Complies with the Basic Conditions.

4.7 **Policy UBP4: Community facilities** Complies with the Basic Conditions.

4.8 **Policy UBP5: Development requirements** Complies with the Basic Conditions.

4.9 **Policy UBP6: Landscape, biodiversity and geodiversity** Complies with the Basic Conditions.

4.10 **Policy UBP7: Key views** The Policy identifies views that are worthy of protection from intrusive development. There is however a problem with Key View one (KV1), in that it is currently shown on Plan 7 as being taken from a road that is outside of the neighbourhood area. The UBNDP can only legally deal with land within the neighbourhood area. This is easily rectified however, as the view is also obtained from a public footpath just south of the road and leading off it – footpath UB1. Indeed I understand this was the original intent. In order that the UBNDP deals only with land within its defined neighbourhood area as required by legislation (*Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990*), I recommend Plan 7 is amended as set out in Modification 2:

Modification 2: <u>Plan 7 to show KV1 taken from footpath UB1.</u>

4.11 **Policy UBP8: Crow Hill/Upton Crews gap** Complies with the Basic Conditions.

4.12 **Policy UBP9: Rural businesses** Complies with the Basic Conditions.

4.13 **Policy UBP10: Agricultural and forestry development** Complies with the Basic Conditions.

5. The Referendum Boundary

5.1 The Upton Bishop Neighbourhood Development Plan (UBNDP) has no policy or proposals that have a significant enough impact beyond the designated Neighbourhood Plan Boundary that would require the referendum boundary to extend beyond the Plan boundary. Therefore I recommend that the boundary for the purposes of any future referendum on the UBNDP 2021 – 2031 shall be the boundary of the designated Neighbourhood Area for the Plan.