

Orcop Neighbourhood Development Plan

Submission Version 2021 – 2031

Report of Examination

October 2022

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



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Abbreviations used in the text of this report:

The Orcop Neighbourhood Development Plan is referred to as ‘the Plan’ or ‘ONDP’.

Orcop Parish Council is abbreviated to ‘Orcop PC’.

Herefordshire Council is also referred to as the Local Planning Authority - 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 2015 is abbreviated to ‘HCS’.

Strategic Environmental Assessment is abbreviated to ‘SEA’.

Habitats Appropriate Assessment is abbreviated to ‘HAA’.

Special Area of Conservation is abbreviated to ‘SAC’.

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

Summary

- I have undertaken the examination of the Orcop Neighbourhood Development Plan during September and October 2022, and detail the results of that examination in this report.
- The Qualifying Body have undertaken thorough consultation on this Plan, and it complies with legislative requirements. The Plan is a well-produced document, dealing with local issues and providing the local detail for the development plan. The Herefordshire Local Plan Core Strategy provides a comprehensive strategic policy framework.
- I have considered the comments made at the Regulation 16 Publicity Stage, and where relevant these have to an extent informed some of the recommended modifications.
- Subject to the modifications recommended, the Plan meets the basic conditions and may proceed to referendum.
- I recommend the referendum boundary is the designated neighbourhood plan area.

Acknowledgements: Thanks to Local Authority and qualifying body staff for their assistance with this examination. My compliments to the local community volunteers and Orcop Parish Council, who have produced, with their consultant, a good example of a neighbourhood development plan proportionate and relevant to their area.

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 Orcop that is the Orcop Parish Council. Drawing up the Neighbourhood Plan was undertaken firstly by a steering group of councillors and local volunteers, and in the latter stages by the Parish Council directly.

1.2 Independent Examination

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

1.2.2 I have been appointed to be the Independent Examiner for this Plan. I am a chartered Town Planner with over thirty years of local authority and voluntary sector planning experience in development management, planning policy and project management. I have been working with communities for many years, and have recently concentrated on supporting groups producing neighbourhood plans. I have been appointed through the Neighbourhood Plan Independent Examiners Referral Service (NPIERS). I am independent of any local connections to Orcop 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 ONDP complies with the requirements of Paragraph 8(1). The Neighbourhood Area was designated on 18th July 2013 by Herefordshire Council. The plan does 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 Orcop 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 Orcop 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 ONDP. 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 ONDP 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 Orcop Neighbourhood Development Plan (ONDP)
- The Basic Conditions Statement submitted with the ONDP
- The Consultation Statement submitted with the ONDP
- The SEA Environmental Report for the ONDP
- The HRA Appropriate Assessment Report for the ONDP
- Neighbourhood Area Designation (map)
- Orcop NDP Site Options and Assessment – AECOM June 2019
- Orcop NDP Housing delivery report – DJN Planning Ltd September 2020
- Land Registry details for Copywell LGS
- 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 Orcop Parish in the County of Herefordshire, is a wooded and rural valley enclosed by surrounding higher land. It has a dispersed settlement pattern and low population density; the population was estimated at 441 people in 2019. There are some designated County biodiversity sites in the Parish, and the watercourses within it drain into the River Wye catchment. The River Wye SAC itself is outside of the neighbourhood area. Orcop Hill is listed in the HCS (fig 4.14 page 109) as the settlement to be the main focus of proportionate housing development, where policy RA2 of the HCS will apply.

2.1.2 Steering Groups made up of Parish Councillors and volunteers from the local community, along with direct work from the Parish Council and professional consultants, have developed the Plan to this submission version. Steering Group notes and monthly updates were posted on the Parish Council website.

2.1.3 A questionnaire was delivered by post to households in the Parish with a freepost return envelope, and advertised on the website, parish notice boards and local media. A 38% return rate was obtained, and results of the questionnaire reported and available on the website. The Pandemic precluded any public meeting taking place, as had been planned originally. Consultation has informed policy development focused on site allocation – with both potential site owners and local residents being consulted on the results of the commissioned assessment study of site options.

2.1.4 As required by regulation 14 of the Neighbourhood Planning Regulations 2012, the formal consultation for six weeks on the pre-submission Draft Orcop Neighbourhood Plan ran from the 6th December 2021 to the 31st January 2022. The draft Plan was available on the website and at several locations in hard copy for inspection, as were the SEA and HRA documents. Notification of the consultation was sent in advance to residents and businesses in the Parish. Comments could be emailed or written and posted in collection boxes locally, and there was a drop-in event for comments and discussion during the Reg14 consultation as well. Statutory bodies were notified of the consultation by letter or email.

2.1.6 Representations were received from 12 residents, 6 statutory bodies including several from Herefordshire Council and an agent for potential development sites during the Reg14 consultation period. Several amendments have been made to the Plan as a result of constructive suggestions for

changes, and reasons given where amendments were not made to the Plan. I am satisfied that due process has been followed during the consultation undertaken on the Plan which was proportionate to the size and scale of the locality. 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 Herefordshire Council on the 27th May.

2.2 Regulation 16 Consultation Responses

2.2.1 Herefordshire Council undertook the Reg 16 consultation and publicity on the ONDP for six weeks, from the 15th June to the 27th July 2022. Thirteen Representations were received during this consultation, nine from statutory consultees, four from different sections of Herefordshire Council. Four statutory consultees had no specific comments to make on this Plan but offered general guidance. Where consultees have raised issues that are pertinent to my consideration of whether the Plan meets the basic conditions, they are considered in sections 3 and 4 of this report below.

2.2.2 I am specifically limited by legislation to correcting with recommended modifications the Plan's compliance with the Basic Conditions and other legal requirements. As the LPA and Parish Council are aware, the LPA is authorised to correct minor errors that may have been missed so far [Town and Country Planning Act 1990 Schedule 4B section 12(6)].

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 ONDP 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 explains in section 4 and table 2 how the Plan and its vision and policies promote the social, economic and environmental goals of sustainable development. I accept that the Plan does contribute to sustainable development in line with the Basic Conditions.

3.3 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. The relevant legislation for the ONDP is the Environmental Assessment of Plans and Programmes Regulations 2004. An initial screening exercise determined that the Plan would need Strategic Environmental Assessment (SEA) and an Appropriate Assessment under the Habitats Regulations.

3.4 An Environmental Report and Habitat Appropriate Assessment (HAA) Report have been submitted with the ONDP as both were considered necessary for the Plan. Orcop Parish is within the hydrological catchment of the River Wye (including the River Lugg) Special Area of Conservation (SAC), the border of which is 6.5km from the Parish. Water quality is an issue within this catchment and SAC. The HAA report considers that as no planning permissions are granted by a development plan, there will be more detailed assessment of mitigation necessary for impact on the SAC done later in the planning process. The ONDP contains specific nutrient neutrality criteria in Policies ORC1, ORC4 and ORC8 and this is considered adequate policy protection for the SAC and issues of

water quality in Orcop Parish. The Environment Report has been reviewed and amended prior to submission of the Plan to the LPA. It has assessed the site allocation as well as policies and objectives, and finds them to be in general conformity with the NPPF, strategic policy and the objectives of SEA, and not in need of any further amendment.

3.5 The ONDP in my view complies with Human Rights Legislation. It has not been challenged with regard to any Human Rights issues. The Basic Conditions Statement has assessed this aspect of the plan, and the consultation statement demonstrates consultation with the 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 ONDP 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 ONDP is a well-presented and easy to read document, with policies that are locally relevant. Community Actions have been included, but are properly separated. A review process is set out for the Plan going forward, and justification text is to the point, with clear maps and diagrams.

4.4 **Policy ORC1 Landscape and biodiversity:** The policy is in general conformity with strategic policy, as agreed by the LPA. They have commented however that criteria 3 of the policy lacks clarity and includes repetition. The Qualifying Body agree with this assessment, and in order that Policy ORC1 has due regard to national policy in the NPPF with regard to policy clarity (para 16d) and complies with the Basic Conditions, I recommend it is amended as shown in Modification 1 below.

Modification 1: The first two sentences of criteria 3 of Policy ORC1 to be deleted and the policy amended as follows:

..... **3. not having 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 the delivery of mitigation measures to make a proposal nutrient neutral. Reference should be made to Herefordshire Council's Phosphate Calculator and associated guidance. There should be no adverse effects on the water quality of the Garren Brook and its tributaries; and*

4.5 Policy ORC2 Key views: The policy and survey work has identified views taken from public vantage points that are worthy of protection. The policy wording however requires a Landscape and Visual Impact Assessment (LVIA) to be undertaken in most instances where development lies within site of the view. The LPA has indicated concerns that this will be too onerous in some circumstances, and I agree with these concerns. The NPPG requires neighbourhood plans to be positive (ID: 41-005-20190509), and as currently worded this policy is too restrictive: views in this parish are extensive and take in most of the parish. In order that Policy ORC2 has due regard to government guidance and complies with the Basic Conditions, I recommend it is amended as shown in Modification 2.

Modification 2: The final paragraph of Policy ORC2 to read as follows:

~~...Where A development proposal (other than householder development) within the Neighbourhood Area lies~~ **likely to have significant impact on that view, will be required to provide** *a Landscape and Visual Impact Assessment or similar study should be provided to demonstrate that the levels of effects are acceptable, and that the scheme has been sited and designed sensitively and appropriately reflecting, respecting, and where possible, enhancing the landscape context within which it is situated. ...*

4.6 Policy ORC3 Heritage: Complies with the Basic Conditions.

4.7 Policy ORC4 Design: Complies with the Basic Conditions.

4.8 Policy ORC5 Wastewater treatment: The LPA have indicated that they consider the policy to not be in general conformity with Policy SD4 in the HCS. The strategic policy requires the treatment of wastewater to not undermine water quality targets and sets out a hierarchy of provision of treatment solutions where connection to mains sewerage is not possible. It states that the use of cesspools “will only be considered in exceptional circumstances”. Policy ORC5 states that cesspools may be acceptable for existing dwellings in exceptional circumstances, but will not be acceptable as a sewerage solution for new dwellings.

4.8.1 The ONDP does therefore extend slightly the restrictions of Policy SD4, but this does not necessarily imply that Policy ORC5 is not in ‘general conformity’ with the development plan. Evidence is provided that the use of cesspools in the neighbourhood area causes adverse environmental impact during emptying operations. Failing cesspools are a potential threat to water quality, and given the current sensitivity of water quality in the catchment of the River Wye SAC I consider the minor tightening of restrictions regarding cesspools in Policy ORC4 reasonable and proportionate, supported by evidence and in general conformity with strategic Policy SD4. Policy ORC5 complies with the Basic Conditions.

4.9 Policy ORC6 Surface water and flood risk: Complies with the Basic Conditions.

4.10 Policy ORC7 Renewable and low carbon energy projects: The wording “small-scale” has been criticised for not being specific enough. However I consider the further qualification of “to meet domestic needs” gives enough clarity to the policy, which also has criteria regarding impact on the natural and historic environment. Policy ORC7 complies with the Basic Conditions.

4.11 Policy ORC8 Settlement boundaries and site allocation: The policy refers to settlement boundaries being ‘defined’ in plans. For clarity however the policy should clearly designate the settlement boundaries as they are defined in the plans. Clarity of policy is a requirement of the NPPF (para 16d), and in order that Policy ORC8 has paid due regard to national policy and thus complies with the Basic Conditions, I recommend that it is amended as shown in Modification 3.

Modification 3: The first sentence of Policy ORC8 to be amended as follows:

*Settlement boundaries are **designated for Orcop Hill and Orcop, as defined and shown on Plan 6 for Orcop Hill (~~Plan 6~~) and Plan 7 for Orcop (~~Plan 7~~).** ...*

4.12 Policy ORC9 Housing mix: Complies with the Basic Conditions.

4.13 Policy ORC10 Community facilities: Complies with the Basic Conditions.

4.14 Policy ORC11 Copywell Local Green Space: The designation of this Local Green Space (LGS) was done as a result of suggestions during the Reg14 consultation. It was therefore consulted on only during the Reg16 consultation, and would only be an acceptable designation if it can be demonstrated that the owner of the land was specifically consulted about the proposed designation. The LPA and Parish Council have provided evidence that the site is owned by the Parish Council, and indeed they have been improving this small site for many years.

4.14.1 The site is small, and in some contexts there would be a question as to whether it could be considered special enough to justify a designation as a Local Green Space (LGS). It is a modest area of public green space in the settlement of Orcop Hill, but it is the only one. It is located centrally and provides amenities such as the attractive stone shelter. There is evidence of community improvements provided in the past, and planned, and I am content that circumstances justify its designation as a LGS. Policy ORC11 complies with the Basic Conditions.

4.15 **Policy ORC12 Rural businesses:** Complies with the Basic Conditions.

4.16 **Policy ORC13 Holiday accommodation:** Complies with the Basic Conditions.

4.17 **Policy ORC14 Agricultural and forestry development:** Complies with the Basic Conditions.

5. The Referendum Boundary

5.1 The Orcop Neighbourhood Development Plan (ONDP) 2021-2031 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 ONDP shall be the boundary of the designated Neighbourhood Area for the Plan.