

Herefordshire Council

**Sutton St. Nicholas
Neighbourhood Development
Plan Review 2011 – 2031**

Independent Examiner's Report
on the Neighbourhood Development Plan Review

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8 February 2023

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Summary

I have been appointed by Herefordshire Council to carry out the independent examination of the review of the Sutton St. Nicholas Review Neighbourhood Plan.

I examined the made Plan and it was a pleasure to revisit the area and to see how the Review Plan has taken forward the commendable approach in the made Plan.

My first task was to determine that the Review Plan does not include modifications so significant or substantial as to change the nature of the made Plan. Accordingly, no referendum will take place.

I found the revised and new policies to be clearly worded and accompanied by supporting text that explains and justifies the policy stance. The clarity of thought and logical approach taken in the made Plan is retained in the Review Plan.

The Review Plan is accompanied by exemplary supporting documents including a clear Statement of Modifications, helpful Basic Conditions Statement and Consultation Statement.

As a result, there are a very few modifications to correct an error, to clarify one policy and to bring another to have closer regard to national policy.

From my examination of the Review Plan, its supporting documentation and the representations made, and subject to the modifications set out in this report, I have concluded that the Review Plan meets the basic conditions and all the necessary legal requirements.

I am therefore pleased to recommend that Herefordshire Council should make the Sutton St. Nicholas Review Plan subject to the modifications specified in this report.

Ann Skippers MRTPI
Ann Skippers Planning
8 February 2023



1.0 Introduction

This is the report of the independent examiner into the Sutton St. Nicholas Review Neighbourhood Development Plan (the Review Plan). The made Plan was made on 9 March 2017. I examined the made Plan.

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

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

2.0 The examination process and the role of the independent examiner

Determination under Paragraph 10(1) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended) Procedural Matters

My first task was to make a determination under paragraph 10(1) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended).

The purpose of this determination is to establish the appropriate examination process for the draft Plan which will, amongst other things, affect whether or not the draft Review Plan will need to be the subject of a referendum if it is to be made.

In this context, the draft Review Plan intends, amongst other things, to:

- Make changes to, and add to, the made Plan's objectives whilst the vision remains unchanged
- Make changes to all existing nine made policies through updating and/or making them clearer, more robust, specific or detailed, including the two existing site allocations which do not change in principle
- Include new policies (Policies SUT5, SUT7, SUT8, SUT10, SUT13 and SUT17) on a variety of topics which were either covered more briefly in existing made policies or the supporting text of the made Plan and/or are reflected in policies in the adopted Core Strategy and given a local interpretation.

The Parish Council has submitted a comprehensive and very helpful and easy to use

Statement of Modifications document that details the changes.

The Parish Council considers that the proposed modifications are not so significant or substantial as to change the nature of the made Plan. The local planning authority, HC, agree with this position.

I have considered the proposed modifications, the views of the Parish Council and the representations received as well as the advice on updating neighbourhood plans in Planning Practice Guidance (PPG). I also have reached the conclusion that the proposed modifications whilst material in some cases, are not so significant or substantial as to change the nature of the made Plan.

In reaching this conclusion, I have compared the whole made Plan with the whole Review Plan and find I have no reason to disagree with the views of the qualifying body and the local planning authority.

Therefore, the examination can proceed under the terms of paragraph 11 of Schedule A2 and, as a consequence, should I recommend that the draft Review Plan be made (with or without modifications), a referendum stage will not be necessary.

The Examination Note I sent on these matters, Examination Note 1, and dated 30 January 2023, is appended to this report as Appendix 2.

Scope of the Examination

It is important to recognise that the examination has considered the entirety of the Review Plan and not just those elements of the Review Plan that have been modified. Although my detailed comments sometimes focus on the changes to policies and text, I have considered the policies ‘in the round’.

Role of the Examiner

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

The basic conditions¹ are:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan
- The making of the neighbourhood plan contributes to the achievement of sustainable development
- The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area

¹ Set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended) and paragraph 11(2) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended)

- The making of the neighbourhood plan does not breach, and is otherwise compatible with, retained European Union (EU) obligations²
- Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to in the paragraph above. Only one is applicable to neighbourhood plans and was brought into effect on 28 December 2018.³ It states that:

- 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.

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

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

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

The examiner must then make one of the following recommendations⁶:

- The local planning authority should make the draft plan
- The local planning authority should make the draft plan with the modifications specified in the report or
- The local planning authority should not make the draft plan.

² Substituted by the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018/1232 which came into force on 31 December 2020

³ Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

⁴ Set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act and paragraph 11(2) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended)

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

⁶ Paragraph 13(2) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended)

Examination Process

It is useful to bear in mind that the examiner's role is limited to testing whether or not the submitted neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended) and paragraph 11 of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended).⁷

PPG confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.⁸ Often representations suggest amendments to policies or additional policies. Where I find that policies do meet the basic conditions, it is not necessary for me to consider if further amendments or additions are required.

In addition, PPG is clear that neighbourhood plans are not obliged to include policies on all types of development.⁹

Schedule A2 of the Planning and Compulsory Purchase Act 2004 (as amended) explains that the general rule is that the examination of the issues is to take the form of written representations. A hearing can be held for the purpose of oral representation about a particular issue where there are exceptional reasons for doing so or in other prescribed cases. PPG¹⁰ explains that it is expected that the examination will not include a public hearing. However, where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.¹¹

After consideration of all the documentation and the representations made, I decided that it was not necessary to hold a hearing.

In 2018, the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) published guidance to service users and examiners. Amongst other matters, the guidance indicates that the qualifying body will normally be given an opportunity to comment upon any representations made by other parties at the Regulation 16 consultation stage should they wish to do so. There is no obligation for a qualifying body to make any comments; it is only if they wish to do so. The Parish Council did not make any comments.

I made an unaccompanied site visit to familiarise myself with the Plan area on 22 January 2023.

I am very grateful to everyone for ensuring that the examination has run so smoothly and in particular Sam Banks at HC.

⁷ Paragraph 11(3) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended) and PPG para 055 ref id 41-055-20180222,

⁸ PPG para 055 ref id 41-055-20180222

⁹ Ibid para 040 ref id 41-040-20160211

¹⁰ Ibid para 056 ref id 41-056-20180222

¹¹ Ibid

Modifications and how to read this report

Where modifications are recommended they appear in a bullet point list of **bold text**. Where I have suggested specific changes to the wording of the policies or new wording these appear in ***bold italics*** in the bullet point list of recommendations. Modifications will always appear in a bullet point list.

As a result of some modifications consequential amendments may be required. These can include changing policy numbering, section headings, amending the contents page, renumbering paragraphs or pages, ensuring that supporting appendices and other documents align with the final version of the Review Plan and so on.

I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be taken and any such necessary editing will be carried out and the Review Plan's presentation made consistent.

3.0 Compliance with matters other than the basic conditions

Qualifying body

The Review Plan has been prepared and submitted by Sutton St. Nicholas Parish Council which is the qualifying body able to lead preparation of a neighbourhood plan. This requirement is satisfactorily met.

Plan area

The Plan area covers all of the Parish and was designated by HC on 15 January 2014. The Plan relates to this area and does not relate to more than one neighbourhood area. It has not changed from the area covered by the made Plan. It is shown on page three of the Review Plan. It therefore complies with these requirements.

Plan period

The Review Plan period is 2011 – 2031. This is clearly stated in the Review Plan itself. This requirement is therefore satisfactorily met.

Excluded development

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

Development and use of land

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable.¹²

In this case, a separate section of the Review Plan contains community actions. The section and also a brief reference on page 7 of the Review Plan, explains well the status of the community actions. The approach taken is a good example of how to address these matters.

4.0 Neighbourhood plan preparation

A Consultation Statement has been submitted.

The Parish Council decided that a review should be undertaken in 2020.

A Project Group comprising Parish Councillors and local residents was established to take forward the review. Information was posted on the community website and articles published in the monthly community Sutton News. Regular updates were given at monthly Parish Council meetings.

Pre-submission (Regulation 14) consultation took place between 3 May – 15 June 2022. The consultation period was publicised through a flyer in the Sutton News sent to all households in the Parish rather than only to subscribers and posters as well as on the community website. Hard copies were available in two local locations and on request.

The consultation and engagement undertaken is satisfactory.

Submission (Regulation 16) consultation was carried out between 27 September – 8 November 2022.

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

¹² PPG para 004 ref id 41-004-20190509

5.0 The basic conditions

Regard to national policy and advice

The Government revised the National Planning Policy Framework (NPPF) on 20 July 2021. This revised Framework replaces the previous National Planning Policy Framework published in March 2012, revised in July 2018 and updated in February 2019.

The NPPF is the main document that sets out the Government's planning policies for England and how these are expected to be applied.

In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the delivery of strategic policies in local plans or spatial development strategies and should shape and direct development outside of these strategic policies.¹³

Non-strategic policies are more detailed for specific areas, neighbourhoods or types of development.¹⁴ They can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment as well as set out other development management policies.¹⁵

The NPPF also makes it clear that neighbourhood plans should not promote less development than that set out in strategic policies or undermine those strategic policies.¹⁶

The NPPF states that all policies should be underpinned by relevant and up to date evidence; evidence should be adequate and proportionate, focused tightly on supporting and justifying policies and take into account relevant market signals.¹⁷

Policies should be clearly written and unambiguous so that it is evident how a decision maker should react to development proposals. They should serve a clear purpose and avoid unnecessary duplication of policies that apply to a particular area including those in the NPPF.¹⁸

On 6 March 2014, the Government published a suite of planning guidance referred to as Planning Practice Guidance (PPG). This is an online resource available at www.gov.uk/government/collections/planning-practice-guidance which is regularly

¹³ NPPF para 13

¹⁴ Ibid para 28

¹⁵ Ibid

¹⁶ Ibid para 29

¹⁷ Ibid para 31

¹⁸ Ibid para 16

updated. The planning guidance contains a wealth of information relating to neighbourhood planning. I have also had regard to PPG in preparing this report.

PPG indicates that a policy should be clear and unambiguous¹⁹ to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the planning context and the characteristics of the area.²⁰

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.²¹ It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.²²

Whilst this has formed part of my own assessment, the Basic Conditions Statement contains a comprehensive assessment of how the Review Plan has responded to national policy and guidance.

Contribute to the achievement of sustainable development

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development.

The NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development.²³ This means that the planning system has three overarching and interdependent objectives which should be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the different objectives.²⁴ The three overarching objectives are:²⁵

- a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
- b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

¹⁹ PPG para 041 ref id 41-041-20140306

²⁰ Ibid

²¹ Ibid para 040 ref id 41-040-20160211

²² Ibid

²³ Ibid para 7

²⁴ Ibid para 8

²⁵ Ibid

- c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

The NPPF confirms that planning policies should play an active role in guiding development towards sustainable solutions, but should take local circumstances into account to reflect the character, needs and opportunities of each area.²⁶

Whilst this has formed part of my own assessment, the Basic Conditions Statement includes detailed information that helps demonstrate how the Review Plan contributes to meeting this basic condition.

General conformity with the strategic policies in the development plan

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

Section 5 of the BCS contains a table that lists the Review Plan’s policies with a helpful commentary about how the Review Plan generally conforms to the relevant policies of the CS it identifies.

Update to the Core Strategy

HC took the decision in late 2020 to update the CS. Work is progressing but is at an early stage.

Retained European Union Obligations

A neighbourhood plan must be compatible with retained European Union (EU) obligations. A number of retained EU obligations may be of relevance for these purposes including those obligations in respect of Strategic Environmental Assessment, Environmental Impact Assessment, Habitats, Wild Birds, Waste, Air Quality and Water matters.

Strategic Environmental Assessment and Habitats Regulations Assessment

The provisions of the Environmental Assessment of Plans and Programmes Regulations 2004 (the ‘SEA Regulations’) concerning the assessment of the effects of certain plans and programmes on the environment are relevant. The purpose of the SEA Regulations, which transposed into domestic law Directive 2001/42/EC (‘SEA Directive’), are to

²⁶ NPPF para 9

provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes.

The provisions of the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'), which transposed into domestic law Directive 92/43/EEC (the 'Habitats Directive'), are also of relevance to this examination.

Regulation 63 of the Habitats Regulations requires a Habitats Regulations Assessment (HRA) to be undertaken to determine whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects. The HRA assessment determines whether the Review Plan is likely to have significant effects on a European site considering the potential effects both of the Review Plan itself and in combination with other plans or projects. Where the potential for likely significant effects cannot be excluded, an appropriate assessment of the implications of the Review Plan for that European Site, in view of the Site's conservation objectives, must be carried out.

Earlier screening opinions determined that both SEA and HRA would be required. The Parish falls within the catchment for the River Lugg, which is a European site; the River Wye Special Area of Conservation (SAC).

An Environmental Report (ER) dated August 2022 has been submitted. The ER confirms that a Scoping Report was prepared and sent to the statutory consultees.

The ER was published alongside the pre-submission version of the Review Plan and was subsequently reassessed after changes following that stage. The revised ER was published for consultation alongside the submission version of the Review Plan.

The ER concludes that "On the whole, it is considered that the modified Sutton St. Nicholas NDP is in general conformity with both national planning policy....and strategic policies...."

Once made, the Review Plan will be monitored every year by HC.

The ER is a comprehensive document that deals with the issues appropriately for the content and level of detail in the Plan. This in line with PPG advice that confirms the SEA does not have to be done in any more detail or using more resources than is considered to be appropriate for the content and level of detail in the Plan.²⁷ In my view, it has been prepared in accordance with Regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004. Therefore I consider that retained EU obligations in respect of SEA have been satisfied.

On 28 December 2018, the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) was substituted by a new basic condition brought into force by the Conservation of Habitats

²⁷ PPG para 030 ref id 11-030-20150209

and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 which provides that the making of the plan does not breach the requirements of Chapter 8 of Part 6 of the Habitats Regulations.

An Appropriate Assessment (AA) has been prepared to specifically consider the impact of the Review Plan on water quality within the catchment. It concludes that "...there will not be any likely significant effect on the integrity of the River Wye (including River Lugg) SAC.". The AA has also taken the duty under the Water Framework Directive into account.

I note that Natural England in its representation also agrees that the Review Plan will have no adverse effects on the integrity of the River Wye SAC.

Accordingly I consider that the prescribed basic condition is complied with, namely that the making of the Plan does not breach the requirements of Chapter 8 of Part 6 of the Habitats Regulations.

Conclusion on retained EU obligations

PPG establishes that the ultimate responsibility for determining whether a plan meets retained EU obligations lies with the local planning authority.²⁸ HC does not raise any concerns in this regard.

European Convention on Human Rights (ECHR)

The Basic Conditions Statement contains a statement in relation to human rights. Having regard to the Basic Conditions Statement, there is nothing in the Review Plan that leads me to conclude there is any breach or incompatibility with Convention rights.

6.0 Detailed comments on the Plan and its policies

In this section I consider the Review Plan and its policies against the basic conditions. Where modifications are recommended they appear in **bold or bold and italics text**.

The Plan begins with a helpful contents page and list of policies.

Initial sections

The Plan begins with a helpful executive summary that explains the review. This is preceded by a useful contents page.

²⁸ PPG para 031 ref id 11-031-20150209

1. Setting the Scene

This is a useful section full of information about the review, some contextual information on the Parish and details on the format of the Plan. This section has been updated.

2. Vision and Objectives

The vision for the Plan remains unchanged from the original document and reads:

“In 2031, Sutton St. Nicholas will be a sustainable and thriving local community, with the distinctive local environment of the village and surrounding countryside robustly and successfully safeguarded with new development in place to meet requirements for housing, jobs and local services.”

The clearly articulated vision is underpinned by 15 objectives. These have either been amended or new ones added to ensure the approach taken by the Review Plan is clear and that there is alignment between the key issues identified and specified in this section of the Review Plan, its vision, objectives and policies. All of the objectives are articulated well and relate to the development and use of land.

3. Housing

Policies SUT1, SUT2, SUT3, SUT4 and SUT5

The NPPF states that the needs of groups with specific housing requirements should be addressed to support the Government’s objective of significantly boosting housing supply.²⁹ Within this context, self-build and the need for different sizes, types and tenures of homes is clear.³⁰ PPG³¹ is clear that the need to provide housing for older people is critical.

In rural areas, the NPPF explains that policies should be responsive to local circumstances and support housing developments that reflect local needs.³²

The strategy for the rural areas in the CS³³ is positive growth. The strategy is based on seven housing market areas (HMA) and the Parish falls within the Hereford HMA which has an indicative housing growth target of 18% according to CS Policy RA1. The CS explains that this proportional growth target in CS Policy RA1 will form the basis for the

²⁹ NPPF para 60

³⁰ Ibid para 62

³¹ PPG para 001 ref id 63-001-20190626

³² NPPF para 78

³³ Core Strategy Section 4.8

minimum level of new housing to be accommodated in each neighbourhood plan across the County.

The main focus for development is within or adjacent to existing settlements listed in two figures, 4.14 and 4.15. CS Policy RA2 translates this into policy.

Sutton St. Nicholas is identified in Figure 4.14 as a settlement which will be the main focus of proportionate housing development. The Plan explains that the CS's indicative housing growth target equates to 72 new dwellings. Taking into account dwellings which have been built or have obtained permission since 2011 (the start of the Review Plan period) this means that a minimum of 16 dwellings are required.

The CS explains that, where appropriate, settlement boundaries can be defined in neighbourhood plans for those settlements listed in CS Policy RA2. The CS states that outside such settlements new housing will be restricted to avoid unsustainable patterns of development and limited to those proposals meeting the criteria in CS Policy RA3 which include rural exception housing, replacement dwellings and the appropriate reuse of buildings.

Policy SUT1 Sutton St. Nicholas settlement boundary is an updated policy which defines a settlement boundary for the village. This is shown on Plan 4 in the Review Plan.

The policy wording has been modified to support appropriate development within the boundary and refers to CS Policy RA3 or its replacement.

The settlement boundary has been slightly adjusted, but builds on the approach of the made Plan to include existing built up areas and the proposed site allocations.

The rationale for the policy and boundary seems to be sensible and supports the strategy in the CS.

Policies SUT2 Land at The Lane and SUT3 Land adjacent to The Linnings are two site allocation policies. In the made Plan, both sites were allocated for around 20 and 18 dwellings respectively, but were contained in one housing policy. The allocations have now been separated out. The site allocations remain the same as the made Plan both in terms of the extent of land concerned and the expected site capacity.

The separation into two policies has allowed the inclusion of more detailed cross references to other policies in the Review Plan, for example in respect of affordable housing provision, effect on nearby properties and in the case of Land at The Lane to refer to an area to be kept free of development because of flooding issues. These matters were included one way or the other in the made Plan, but the Review Plan brings them together in a clearer and more logical way.

The two allocations have a potential for a total of approximately 38 dwellings. Windfalls are then estimated at 10 dwellings. The overall figure provided for by the

Review Plan is therefore around 104 dwellings, in excess of the minimum proportional growth target sought by the CS.

Policy SUT4 Housing mix is a new separated, more detailed policy. It seeks to ensure that development takes account of the latest evidence on local housing needs and supports bungalows, live/work units and self-build housing. In relation to affordable housing, it requires this to be indistinguishable from market housing.

This policy is a local interpretation on CS Policy H3 which plans for a range and mix of housing. Housing Market Area Needs Assessment detailed in the Review Plan indicates that smaller homes are needed in respect of affordable housing and larger homes for market housing.

Policy SUT5 Householder development is a new policy on householder development. Given that around a third of planning applications in the Review Plan area were for householder applications, it is felt that a policy should be included to guide this type of development.

The policy sets out a number of criteria to ensure that the scale and design is appropriate, the effect on the occupiers of nearby properties is acceptable and that satisfactory parking and garden are either retained or provided.

Achieving well-designed places is a key facet of the NPPF. Policies should ensure that development functions well and adds to the overall quality of the area including being sympathetic to local character and history.³⁴

I consider **Policies SUT1 – SUT5** meet the basic conditions by having regard to the NPPF, being in general conformity with, and adding a layer of local detail, to strategic policies, particularly CS Policies RA1, RA2, RA3, H1, H3, SD1 and LD4 and will help to achieve sustainable development.

4. Jobs, Services and Infrastructure

The Review Plan explains that farming remains the principal economic activity in the Parish. Other sources of employment are the school, public house and retirement housing as well as home working and village services.

The NPPF places significant weight on the need to support economic growth and productivity, taking into account local needs and wider opportunities.³⁵ In rural areas, it indicates that policies should enable the sustainable growth and expansion of all types of business through conversion and new build, the development and diversification of agricultural and other land-based rural businesses and sustainable tourism and leisure.³⁶

³⁴ NPPF para 130

³⁵ Ibid para 81

³⁶ Ibid para 84

In rural areas, the NPPF explains that sites to meet local business and community needs may have to be found adjacent to or beyond existing settlements.³⁷

The NPPF is clear that advanced, high quality and reliable communications infrastructure is essential for economic growth and social wellbeing.³⁸ It explains that planning policies should support such provision.

The NPPF supports the provision of social, recreational and cultural facilities and services needed by a community.³⁹ It promotes planning positively for such facilities and guarding against the loss of such facilities.⁴⁰ It refers to the importance of retaining accessible local services and facilities in supporting a prosperous rural economy.⁴¹

The transition to a low carbon future is supported by the NPPF.⁴² This includes support for renewable and low carbon energy and associated infrastructure. In particular it encourages plans to have a positive strategy which maximizes the potential for suitable development whilst ensuring that adverse impacts including cumulative landscape and visual impacts are addressed satisfactorily.⁴³

It continues that community-led initiatives should be supported where these are taken forward through neighbourhood planning.⁴⁴

Policy SUT6 Small-scale employment is an updated and more detailed policy supporting appropriate small-scale employment subject to satisfactory effects on local residents and the local highway network and active travel. It reflects CS Policies RA5, RA6, E3 and E4 and local circumstances including the rise of home working, rural diversification and tourism.

HC raises some concern about the first criterion which supports extensions to existing dwellings to enable home working. I consider that some additional wording would be helpful to ensure that any such extensions do not overcome the primary residential purpose of the dwelling.

Policy SUT7 Agricultural and forestry development is a new policy. It supports such development subject to a number of criteria which essentially seek to ensure there are no adverse impacts on the local highway network, local residents, design, biodiversity and landscape perspectives and surface water.

Policy SUT8 Communications infrastructure is a new policy which supports such infrastructure subject to ensuring that the opportunity for mast sharing and using

³⁷ NPPF para 85

³⁸ Ibid para 114

³⁹ Ibid para 93

⁴⁰ Ibid

⁴¹ Ibid para 84

⁴² Ibid para 152

⁴³ Ibid para 155

⁴⁴ Ibid para 156

existing structures has been explored, siting and design and impact on the Conservation Area, heritage assets and landscape character including key views.

New development is encouraged to provide full fibre connections.

The policy reflects the stance in the NPPF, including on mast sharing and sympathetic design.⁴⁵

Policy SUT9 Community facilities is an updated policy. It now specifically refers to the village hall, the two Churches and the public house. The policy seeks to protect, retain and enhance these community facilities.

The second part of the policy supports new facilities within or adjacent to the village where they are in an accessible location. Co-location, subject to viability, is supported.

A village shop is particularly welcomed.

National policy promotes the retention and development of local services and community facilities as explained above as does CS Policy SC1.

Policy SUT10 Renewable and low carbon energy is a new policy. It supports development of an appropriate scale to its surroundings, traffic generation and visual and residential amenity considerations.

Community-led proposals are encouraged where benefits can be demonstrated.

The policy is a local expression of CS Policy SD2.

With this modification, I consider that **Policies SUT6 – SUT10** will meet the basic conditions by having regard to national policy as set out above, being in general conformity with the CS policies referred to above and helping to achieve sustainable development.

- **Add to the end of the first bullet point of Policy SUT6, the words: “*where this does not affect the primary residential nature of the property and accords with Policy SUT5;*”**

5. Environment

CS Policy SS6 seeks to conserve and enhance environmental assets that contribute to distinctiveness. This includes the historic environment, local amenity, renewable energy and local amenity such as light pollution.

⁴⁵ NPPF para 115

Policy SUT11 Water quality in the River Lugg is a new separate policy. The River Lugg to the southwest of the village falls within the River Wye SAC. The river's target levels for phosphate are being exceeded. This means that only development which demonstrates there will be no adverse effects can go ahead.

This policy therefore sets out this latest position and refers to HC's Phosphate Calculator Tool and guidance. It also refers to the Moreton-on-Lugg wastewater treatment works to ensure that development does not overload capacity.

This policy is specifically designed to help address issues around water quality. It is in generally conformity with CS Policy SD4 which also focuses on issues of water quality and wastewater treatment.

I note the policy is welcomed by the Environment Agency and Welsh Water.

Policy SUT12 Landscape character is an updated version of made Policy 6. It now makes reference to the County Landscape Character Assessment.

The NPPF supports well-designed places including those that are sympathetic to local character and history including the surrounding built environment and landscape setting.⁴⁶

The NPPF indicates that policies should contribute to and enhance the natural and local environment including through the recognition of the intrinsic character and beauty of the countryside.⁴⁷

The policy takes its lead from CS Policy LD1 by ensuring the character of the landscape and its key attributes, including the open countryside setting of the village, are taken into account and influence new development. It resists proposals that would adversely impact upon the landscape character. It seeks to ensure that any landscaping included within schemes is appropriate and consolidates the particular attributes of the area.

Policy SUT13 Key views is a new policy. It details 11 key views which are shown on Plan 5 on page 30 of the Review Plan. Photographs of each key view are also included.

The policy lists the 11 views indicating that development proposals must not harm the views and this could be demonstrated through the submission of a landscape and visual impact assessment.

I saw the key views at my visit. I consider they have been appropriately selected given the topography and landscape of the area which affords both short and longer distance views and given the plethora of viewpoints that could have been chosen.

There is one error to correct in the supporting text.

⁴⁶ NPPF para 130

⁴⁷ Ibid para 174

Policy SUT14 Local Green Space and public open space is an updated policy.

Two LGSs are identified; land at the old Post Office Orchard and land west of Upper House Farm. Both were identified in the made Plan. An alteration is made to the extent of the land west of Upper House Farm LGS to correctly map the northern boundary.

The NPPF explains that LGSs are green areas of particular importance to local communities.⁴⁸ The designation of LGSs should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.⁴⁹ It is only possible to designate LGSs when a plan is prepared or updated and LGSs should be capable of enduring beyond the end of the plan period.⁵⁰ The NPPF sets out three criteria for green spaces.⁵¹ Further guidance about LGSs is given in PPG.

Both LGSs are clearly shown on Plan 6 on page 35 of the Review Plan. I viewed both areas on my site visit. I consider both LGSs continue to meet the criteria in the NPPF satisfactorily. Both are demonstrably important to the local community, both are capable of enduring beyond the Review Plan period, are in close proximity to the community they serve, are of historic significance in terms of their use and in relation to the development and layout of the village. Both add to the setting, character, appearance and feel of the village. As a result both are local in character. Neither are extensive tracts of land. Their designation is consistent with the local planning of sustainable development and investment in sufficient homes, jobs and other essential services given other policies in the development plan and this Review Plan.

The NPPF states that policies for managing development in LGSs should be consistent with those for Green Belts.⁵² Although the wording in Policy SUT14 is the same as in the made Plan, I consider a modification should be made to bring the wording in line with the NPPF.

The second element of Policy SUT14 relates to the protection of three areas of public open space, all are clearly identified on Plan 6. These are the same areas which were identified in the made Plan and are the setting of the village hall, the play area at Orchard Lane and the open space at Millway/Willowrise.

The wording of this part of the policy remains the same as in the made Plan. It reflects the stance of the NPPF which indicates that open spaces should not be built on unless there is an assessment that shows it is surplus to requirements or the loss would be replaced by equivalent or better provision in a suitable location or it is replaced by alternative sports provision the needs for which clearly outweigh the loss.⁵³

⁴⁸ NPPF para 101

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid para 102

⁵² Ibid para 103

⁵³ Ibid para 99

The importance of open space is a recurrent theme throughout the NPPF. Access to a network of high quality space is recognised as being important for the health and wellbeing of communities.⁵⁴ Local provision of open space which is accessible to rural communities is important.⁵⁵ This stance on the loss of open space is reflected in CS Policy OS3.

Policy SUT15 Green infrastructure is updated to include a reference to the Herefordshire Ecological Network.

The NPPF is clear that planning policies should contribute to and enhance the natural environment including through minimising impacts on and providing net gains for biodiversity through establishing environmental networks.⁵⁶

The NPPF defines green infrastructure as a network of multi-functional green and blue spaces and other natural features, capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity.⁵⁷ Green infrastructure can help to achieve a number of things; these include enabling and supporting healthy lifestyles,⁵⁸ and as an integral part of planning for climate change.⁵⁹

This policy complements CS Policy LD3 which seeks to protect and enhance green infrastructure. At this local level, the policy provides a practical framework for proposals to consider and address green infrastructure issues.

Policy SUT16 Building design replaces made Policy 7 and criteria in other made policies. This criteria based policy seeks to ensure that proposals are of a high quality design and respect and enhance local distinctiveness as well as ensuring adverse effects including on such issues as dark skies and the local highway network are avoided.

The NPPF states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.⁶⁰ It continues that neighbourhood plans can play an important role in identifying the special qualities of an area and explaining how this should be reflected in development.⁶¹

The NPPF continues that planning policies should ensure developments function well and add to the overall quality of the area, are visually attractive, are sympathetic to local character and history whilst not preventing change or innovation, establish or maintain a strong sense of place and optimise site potential.⁶²

⁵⁴ NPPF para 98

⁵⁵ Ibid para 84

⁵⁶ Ibid para 174

⁵⁷ Ibid Glossary

⁵⁸ Ibid para 92

⁵⁹ Ibid para 154

⁶⁰ Ibid para 126

⁶¹ Ibid para 127

⁶² Ibid para 130

The policy reflects the NPPF's aim for neighbourhood plans to set out the quality of development that will be expected for the area.⁶³ It provides a more local interpretation of CS Policies SS6 and SD1.

Policy SUT17 Heritage is a new policy. The Review Plan area has a Conservation Area and a number of listed buildings. In addition, a number of buildings of local interest have been identified in the 2006 Sutton Conservation Area Appraisal.

The NPPF is clear that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.⁶⁴ In relation to designated heritage assets such as listed buildings or Conservation Areas, it continues⁶⁵ that great weight should be given to the assets' conservation when considering the impact of development on the significance of the asset.

In relation to non-designated heritage assets, the NPPF is clear that the effect of any development on its significance should be taken into account and that a balanced judgment will be needed having regard to the scale of any harm or loss and the significance of the heritage asset.⁶⁶

Non-designated heritage assets are buildings, monuments, sites, places, areas or landscapes which have heritage significance, but do not meet the criteria for designated heritage assets.

This policy seeks to ensure that the rich heritage of the Review Plan area is recognised and respected. It covers a number of different aspects including historic farmsteads. It has regard to the NPPF and is a local expression of CS Policy LD4.

I note the policy is supported by Historic England.

Policies SUT11- SUT17 seek to deliver locally distinctive development of a high quality that protects, reflects and enhances local character. With these modifications, they will meet the basic conditions by having regard to national policy, being in general conformity with the CS, particularly those policies referred to above adding a local layer of detail to the CS and helping to achieve sustainable development.

- **Change the word "eight" in paragraph 5.6 to "Eleven"**
- **Change paragraph two in Policy SUT14 to read: "*Development in the Local Green Spaces will be consistent with national policy for Green Belts.*"**

⁶³ NPPF para 127

⁶⁴ Ibid para 189

⁶⁵ Ibid para 199

⁶⁶ Ibid para 203

6. Delivering the Neighbourhood Development Plan

This section sets out how the Plan will be implemented by indicating some of the actions that the Parish Council will undertake including working with other organisations such as HC.

7. Community Actions

This section contains a number of community actions; these are matters not related to the development and use of land, but nonetheless are important to the local community and can be delivered in other ways.

The approach to setting out the community actions as a separate section with a clearly worded explanation of their status alongside a comprehensive Table 3 is to be commended.

Appendix A – Evidence Base

This section sets out the evidence used to inform the Review Plan.

7.0 Conclusions and recommendations

Subject to a limited number of recommended modifications, I find that the Sutton St. Nicholas Review Plan complies with the basic conditions and other statutory requirements outlined earlier in this report.

I am therefore pleased to conclude and recommend that Herefordshire Council should make the Sutton St. Nicholas Review Plan subject to the modifications specified in this report.

Ann Skippers MRTPI

Ann Skippers Planning
8 February 2023

Appendix 1 List of key documents specific to this examination

Neighbourhood Development Plan Review 2011 – 2031 Submission draft

Review Statement of Modifications September 2022 (DJN Planning Limited)

Progression to Examination Decision Document Review of an Existing Made NDP
November 2022 (HC)

Basic Conditions Statement September 2022 (DJN Planning Limited)

Consultation Statement September 2022 (DJN Planning Limited)

Environmental Report April 2022 (HC)

Appropriate Assessment August 2022 (HC)

Sutton St. Nicholas Parish Policies Map

Sutton St. Nicholas Village Policies Map

Herefordshire Core Strategy 2011-2031 October 2015 and Appendices

Sutton St. Nicholas Neighbourhood Development Plan December 2016

List ends

Appendix 2 Examination Note 1

Sutton St. Nicholas Review Neighbourhood Plan Examination Examination Note 1

Following the submission of the Sutton St. Nicholas Review Submission draft Neighbourhood Development Plan 2011 – 2031 for examination, I write to advise on initial procedural issues.

Initial matters

I confirm receipt of the Review Submission draft Neighbourhood Development Plan (the Plan) and accompanying documents. These include statements from the local planning authority, Herefordshire Council (HC) and the Parish Council regarding the proposed modifications and whether they are so significant or substantial as to change the nature of the neighbourhood development plan which the draft Plan would replace, giving reasons why, and the Regulation 16 consultation responses.

This has provided sufficient information to undertake my initial determination under paragraph 10(1) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended).

Determination under Paragraph 10(1) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended)

I am required to determine to whether the modifications contained in the draft Plan are so significant or substantial as to change the nature of the neighbourhood development plan which the draft Plan would replace. The purpose of this determination is to establish the appropriate examination process for the draft Plan which will, amongst other things, affect whether or not the draft Plan will need to be the subject of a referendum if it is to be made.

The original Plan was made in March 2017. The Parish Council has submitted a comprehensive and helpful Statement of Modifications document that details the changes. The Parish Council considers that a number of changes to the Plan are material, but do not change the nature of the neighbourhood plan.

The local planning authority, HC, has reached the same conclusion.

I have considered the proposed modifications, the views of the Parish Council and the local planning authority and the representations received as well as the advice on updating neighbourhood plans in Planning Practice Guidance. I have reached the conclusion that the proposed modifications, whilst material in some cases, are not so significant or substantial as to change the nature of the made Plan. In this context, the draft Review Plan intends, amongst other things, to:

- Make changes to, and add to, the made Plan's objectives whilst the vision remains unchanged
- Make changes to all existing nine made policies through updating and/or making them clearer, more robust, specific or detailed, including the two existing site allocations which do not change in principle
- Include new policies (Policies SUT5, SUT7, SUT8, SUT10, SUT13 and SUT17) on a variety of topics which were either covered more briefly in existing made policies or the

supporting text of the made Plan and/or are reflected in policies in the adopted Core Strategy and given a local interpretation.

In reaching this conclusion, I have compared the whole made Plan with the whole Review Plan and find I have no reason to disagree with the views of the qualifying body and the local planning authority.

Therefore, the examination can proceed under the terms of Paragraph 11 of Schedule A2 and, as a consequence, should I recommend that the draft Plan be made (with or without modifications), a referendum stage will not be necessary.

Procedural matters

I now set out some general information about how I intend to conduct the examination.

My role is to determine whether the Plan meets the basic conditions and other legal requirements.

1. Communication

It is important that the examination process is open and transparent to all interested parties. I hope to ensure that the Parish Council feels part of the process. My main point of contact will be the designated local planning authority contact, Samantha Banks.

Any correspondence (other than that relating to contractual matters) should be published on the local planning authority's website and the Parish Council's website in a timely manner.

If anyone else who is not the designated point of contact gets in touch with me direct, for example a local resident or planning consultant, I will refer them to the local planning authority contact in the first instance for assistance.

2. Late representations

As a general rule of thumb late or additional representations will not be accepted. The only time when I will consider accepting a representation submitted after the consultation period has ended is in those cases where there has been a material change in circumstances since the six week consultation period has ended. For example national planning policy changes or a judgement may be handed down from the Courts. In these circumstances anyone wishing to introduce new evidence should fully justify why and in the case of substantial documents, indicate which parts of the document are relevant and why.

However, if a meeting or hearing is held, there may be further opportunities for comments to be made at my request to assist me in ensuring adequate examination of an issue.

3. Clarification procedures

I may at any time during the examination seek written clarification of any matters that I consider necessary. This is quite common and should not be regarded as anything out of the ordinary. The usual time for response to any clarification queries is one to two weeks.

If I find that there are significant issues which may prevent the Review Plan meeting the basic conditions I will let you know during the course of the examination as soon as I can so that options on how best to proceed can be considered. Whilst this situation can usually be dealt with through an exchange of written correspondence, if it would be helpful to hold a meeting, I will suggest this and be in touch to make suitable arrangements. Any such meeting will be held in public and at the present time, be held virtually.

4. Visit to the Plan area

I expect to be visiting the Plan area during the examination. Visits, where necessary, help me to understand the nature of the Plan and the representations. It will also help me decide if there are any issues to be clarified. I will not need to be accompanied on any visit. If however, I feel it is essential to gain access onto private land then I will be in touch to seek permission to do that and at that point an accompanied site visit may need to be arranged.

If I am 'spotted' during my visit, I would appreciate it if I am not approached, but allowed to continue the visit unheeded.

5. Examination timetable

The main determinants of how long the examination will take are firstly the number and complexity of the policies in the Neighbourhood Plan, the clarity of supporting documentation and evidence and the number and nature of any representations.

It may be there is very little correspondence from me during the examination. I will however endeavour to keep you updated on the progress of the examination. Please do not hesitate to contact me if you wish to know progress and have not heard from me.

6. The need for a hearing

At the present time, I do not envisage there will be a need for a hearing. However, at any time before final report is issued, I may decide to call a hearing if I consider this is necessary to ensure adequate examination of any issue or to allow a person a fair chance to put a case.

If a hearing is necessary, I will let you know as soon as I can and be in touch to discuss the procedure and to make suitable arrangements at that time.

The period of notice for hearings is not prescribed, but typically 21 days notice is given.

7. The 'Fact Check' stage

A confidential draft of my report will be sent to the Parish Council and local planning authority to allow both parties to check whether there are any factual errors such as dates, sequence of events, names and so on. This is not an opportunity for further representations to be made. A period of a week or so is usually set aside for this purpose.

I find it very helpful if the local planning authority collates its own comments with those of the Parish Council into a single response or both separate responses are sent to me at the same time.

I will endeavour to issue my final report shortly after the fact check stage.

8. Procedural questions

I hope this information is helpful. If the Parish Council or HC have any questions relating to the examination process at this stage, please do not hesitate to get in touch and I will do my best to answer any such queries.

Ann Skippers MRTPI
Independent examiner
30 January 2023