

Dorstone Parish Council

Dorstone Neighbourhood Development Plan

A Report to Herefordshire Council of the Independent
Examination of the Dorstone Neighbourhood Development Plan

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Overall Finding

This is the report of the Independent Examination of the Dorstone Neighbourhood Development Plan. The plan area is the entire Dorstone Parish area. The Plan period runs until 2031. The Neighbourhood Plan includes eleven policies relating to the development and use of land.

This report finds that subject to specified modifications the Neighbourhood Plan meets the basic conditions and other requirements to proceed to a local referendum based on the Plan area.

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”¹
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Dorstone Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Dorstone Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the Dorstone Neighbourhood Area which was formally designated by Herefordshire Council (the Local Planning Authority) on 7 September 2012.
4. The submission draft of the Neighbourhood Plan, along with the Consultation and Communication Statement, and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to the District Council. Herefordshire Council has submitted the Neighbourhood Plan to me for independent examination.

Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan.² The report makes recommendations to Herefordshire Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. Herefordshire Council will decide what action to take in response to the recommendations in this report.

¹ Paragraph 183 National Planning Policy Framework (2012)

² Paragraph 10 Schedule 4B Town and Country Planning Act 1990

6. Herefordshire Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will be 'made' by Herefordshire Council. If 'made' the Neighbourhood Plan will come into force and subsequently be used in the determination of planning applications and decisions on planning appeals in the plan area.
7. I have been appointed by Herefordshire Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and Herefordshire Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Neighbourhood Plan examiner. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.
8. As independent examiner I am required to produce this report and must recommend either:
 - that the Neighbourhood Plan is submitted to a referendum, or
 - that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
 - that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements
9. I make my recommendation in this respect and in respect to any extension to the referendum area,³ in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.⁴
10. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.⁵ The Guidance states "*it is expected that the examination of a draft*

³ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁴ Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

⁵ Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

Neighbourhood Plan will not include a public hearing.” The examiner has the ability to call a hearing for the purposes of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary I proceeded on the basis of written representations.

Basic conditions and other statutory requirements

11. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.⁶ A neighbourhood plan meets the basic conditions if:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the 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 of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.⁷

12. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.⁸ All of these matters are considered in the later sections of this report titled ‘The Neighbourhood Plan taken as a whole’ and ‘The Neighbourhood Plan policies’.

13. In addition to the basic conditions and Convention rights, I am also required to consider whether the Neighbourhood Plan complies with

⁶ Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

⁷ Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

⁸ The Convention rights has the same meaning as in the Human Rights Act 1998

the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.⁹ I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 which are made pursuant to the powers given in those sections.

14. The Neighbourhood Plan relates to the area that was designated by Herefordshire Council as a neighbourhood area on 7 September 2012. The first paragraph of the Submission Version of the Neighbourhood Plan confirms the Plan area is defined as the whole Dorstone Parish boundary. A map of the Neighbourhood and Parish Area is included as Map 1 of the Submission Version Plan. The Neighbourhood Plan does not relate to more than one neighbourhood area,¹⁰ and no other neighbourhood development plan has been made for the neighbourhood area.¹¹ All requirements relating to the plan area have been met.
15. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;¹² and the Neighbourhood Plan does not include provision about excluded development.¹³ I am able to confirm that I am satisfied that each of these requirements has been met.
16. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.¹⁴ The second paragraph of the Submission Version of the Neighbourhood Plan confirms the Plan period is 2011 to 2031 (the same period as the Herefordshire Core Strategy Local Plan).
17. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.¹⁵ It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan. I have been appointed to examine whether the

⁹ In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

¹⁰ Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

¹¹ Section 38B (2) Planning and Compulsory Purchase Act 2004

¹² Section 38A (2) Planning and Compulsory Purchase Act 2004

¹³ Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B (1)(b) Planning and Compulsory Purchase Act 2004

¹⁴ Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

¹⁵ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

submitted Neighbourhood Plan meets the basic conditions and Convention rights, and the other statutory requirements.

18. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.
19. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans are a reflection of thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.
20. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the basic conditions and the other requirements I have identified.¹⁶

Documents

21. I have given consideration to each of the following documents in so far as they have assisted me in considering whether the Neighbourhood Plan meets the basic conditions and other requirements:

- Dorstone Submission Draft Neighbourhood Development Plan April 2016
- Dorstone Submission Draft Neighbourhood Development Plan 2011-2031 Basic Conditions Statement October 2015
- Dorstone Neighbourhood Area Strategic Environmental Assessment Environmental Report May 2016
- Dorstone Neighbourhood Area Habitats Regulations Assessment October 2015
- Dorstone Neighbourhood Area Habitats Regulations Assessment Addendum Report May 2016
- Dorstone Submission Neighbourhood Development Plan Consultation and Communication Statement March 2016

¹⁶ See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

- Dorstone Policies Map
- Dorstone Village Policies Map
- Representations received during the Regulation 16 publicity period
- Herefordshire Local Plan Core Strategy 2011-2031 (and Appendices) Adopted October 2015
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Department for Communities and Local Government Permitted development for householders' technical guidance (April 2014) [*In this report referred to as the Permitted Development Guidance*]
- Department for Communities and Local Government Planning Practice Guidance web-based resource (first fully launched 6 March 2014) [*In this report referred to as the Guidance*]
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004 (as amended)
- Localism Act 2011
- Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations*]

Consultation

22. The submitted Neighbourhood Plan is accompanied by a Consultation and Communication Statement which details the process undertaken in the preparation of the Neighbourhood Plan. I outline here a number of the main stages of consultation in order to acknowledge the comprehensive and inclusive approach adopted.
23. Since the Neighbourhood Plan Steering Group was established it has ensured information regarding plan preparation has been available to local residents using a dedicated neighbourhood plan section of the Dorstone Community website; the Parish Council quarterly update; noticeboards; and Parish magazines. A Neighbourhood Forum comprising more than 40 parishioners has been utilised as a sounding board.
24. Early consultation utilised question prompt cards to gather local opinion at the annual Plant Day; on visits to local organisations; at a meeting with representatives of the farming community and small businesses; at the Annual Parish meeting in May 2013; as well as being left for completion at the Dorstone Front Room.

25. A questionnaire, with a shorter youth version targeting 10 to 15 year olds, was delivered by hand to each household leaving enough copies for every individual adult and youth to have their own copy. A response rate of 74% of adults and 63% of youths was achieved. The results were presented at an open Parish meeting in January 2014.
26. Working through three sub-groups the Steering Group produced several drafts in preparing the Neighbourhood Plan that were subject to consultation including: through the Forum; at the 2014 Annual Plant Day; at the Annual Parish meeting; and in a further meeting with farming and business representatives. A further questionnaire was distributed to all adults in July 2015 exploring three issues namely: development of intensive livestock installations; possible future development of commercial scale polytunnels; and development of new houses on existing dwelling sites outside the settlement boundary.
27. Pre-submission consultation in accordance with Regulation 14 was undertaken in the ten-week period 25 November 2015 to 31 January 2016. A total of 28 comments were submitted during this period. The Neighbourhood Plan Consultation and Communication Statement sets out comments received; the Parish Council response; and where appropriate, amendments to the Neighbourhood Plan.
28. The final draft of the Neighbourhood Plan was approved by the Parish Council on 29 March 2016 and has been submitted to Herefordshire Council. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 publicity period between 18 May and 29 June 2016. A total of 9 representations were submitted, which I have taken into consideration in preparing this report, even though they may not be referred to in whole, or in part.
29. Natural England notes the specific reference to the River Wye Special Area of Conservation and Moccas Park Site of Special Scientific Interest. The Coal Authority and Environmental Health (Pollution) service of Herefordshire Council have no specific comments, and National Grid state the high pressure Gas Transmission pipeline FM28 Three Cock to Tirley PRI “*does not interact with any proposed development site*”. The Environmental Health (Contamination) service of Herefordshire Council has confirmed it is unable to provide comment with regard to potential contamination as no specific sites for development have been identified in the Neighbourhood Plan. Historic England commends the undertaking of historic characterisation and the emphasis of the Plan on distinctiveness. I have considered matters

raised in other representations as appropriate when preparing the section of my report that examines the Neighbourhood Plan as a whole, and the section that examines the policies of the Neighbourhood Plan.

30. In a consultation Government had put forward a question as follows “*Do you agree with the introduction of a new statutory requirement (basic condition) to test the nature and adequacy of the consultation undertaken during the preparation of a neighbourhood plan or order? If you do not agree is there an alternative approach that you suggest that can achieve our objective?*” The published Government response to the consultation states “*We do not intend to take forward the proposals to introduce a new basic condition...*”¹⁷ The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which –
- a) Contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
 - b) Explains how they were consulted;
 - c) Summarises the main issues and concerns raised by the persons consulted; and
 - d) Describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.¹⁸
31. The Consultation and Communication Statement includes information in respect of each of the requirements set out in the Regulations. On this basis I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Steering Group that has prepared the plan has taken great care to ensure stakeholders have had considerable opportunity to influence the plan content.

The Neighbourhood Plan taken as a whole

32. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and human rights requirements; has regard to national policies and advice contained in

¹⁷ Department for Communities and Local Government Neighbourhood Planning Government response to consultation December 2014 ISBN 978-1-4098-4416-7

¹⁸ Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the development plan for the area. Each of the plan policies is considered in turn in the section of my report that follows this.

Consideration of Convention rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and the making of the Neighbourhood Plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects

33. The Basic Conditions Statement states *“The Neighbourhood Plan has regard to the fundamental rights and freedom guaranteed under the European Convention on Human Rights and complies with the Human Rights Act 1998.”* I have given consideration to the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).¹⁹ I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. Although no equalities impact assessment has been undertaken the submission draft of the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics.

34. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council to submit to Herefordshire Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.

35. The objective of EU Directive 2001/42²⁰ is *“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”* The Neighbourhood Plan falls within the definition of

¹⁹ The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

²⁰ Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

'plans and programmes'²¹ as the Local Planning Authority is obliged to 'make' the plan following a positive referendum result.²²

36. Herefordshire Council issued a Screening Notification on 14 May 2013 that concluded the Neighbourhood Plan will require further environmental assessment for Strategic Environmental Assessment.
37. The submission documents include an Environmental Report dated May 2016. This report confirms a Scoping Report had been made available to the statutory bodies for consultation from 18 June to 27 July 2014. The Environmental Report states responses from Natural England and English Heritage were incorporated where relevant. The draft Environmental Report was subject to consultation alongside the Pre-Submission Neighbourhood Plan, both of which were published for consultation with the statutory bodies as well as the general public. The final Environmental Report is published alongside the Submission Neighbourhood Plan document.
38. The Environmental Report sets out the assessment framework used to assess the sustainability performance of the Neighbourhood Plan. The Neighbourhood Plan objectives, options, and policies have been appraised with a generally positive outcome. The Environmental Report confirms "*None of the NDP policies are considered to be in direct conflict with or propose greater levels of growth and development than strategic policies contained in the Local Plan (Core Strategy) which themselves have undergone a full Sustainability Appraisal*".
39. There is a need to consider whether the SEA Report generates and assesses alternatives for a reasonable range of plan issues, and secondly for any given issue, whether the range of alternatives considered is reasonable. The method adopted includes assessment of five options, namely: do nothing; reintroduction of the settlement boundary; no settlement boundary; site allocations; and criteria based housing policy. Generation of alternatives for every conceivable issue and option is not a requirement of the EA Regulations and could be detrimental to efficient plan making; insufficiently focussed on the important issues within the specific plan area; and not well suited to community led plan making where processes benefit from being proportionate, transparent and easily understood. The EA Regulations acknowledge SEA is plan context dependent in terms of taking into account the objectives and geographical scope of a neighbourhood

²¹ Defined in Article 2(a) of Directive 2001/42

²² Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

plan. In *Gladman Developments Ltd v Aylesbury Vale DC [2014] EWHC 4323 (Admin)* it was confirmed that a report will satisfy the requirements of the Implementing Regulations, and hence the Directive, if the information included in the report is that which is “*reasonably required to evaluate the likely significant effects of the plan or programme and reasonable alternatives taking account the objectives and the geographical scope of the plan or programme.*” The SEA Report includes identification, description and evaluation of the likely significant effects on the environment of reasonable alternatives.

40. Alternatives have been assessed to the same level of detail against a consistent set of assessment criteria. Paragraph 8 of Schedule 2 to the EA Regulations requires an outline of the reasons for selecting the alternative dealt with. The explanation of why the preferred alternative was selected is brief and not well developed, but is capable of description as an outline. This requirement has been met in respect of the Neighbourhood Plan. The requirement for the Environmental Report to include a non-technical summary has also been met.
41. The Guidance states “*The strategic environmental assessment should only focus on what is needed to assess the likely significant effects of the neighbourhood plan proposal. It should focus on the environmental impacts which are likely to be significant. It does not need 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 neighbourhood plan.*”²³ I consider likely significant effects have been assessed. I am satisfied that the level of consideration of alternative strategies in the SEA is appropriate for the content of the plan and meets the requirements of the SEA Directive and the Regulations. It is confirmed in paragraph 7.3 of the Environmental Report that Herefordshire Council will monitor outcomes from the NDP policies. I am satisfied that the requirements in respect of Strategic Environmental Assessment have been met.
42. Herefordshire Council issued a Screening Notification on 14 May 2014 stating the River Wye is one kilometre away from the Parish boundary and therefore a European Site, River Wye (including River Lugg) Special Area of Conservation (SAC), will need to be taken into account in the future Dorstone Neighbourhood Plan, and the Neighbourhood Plan will require further environmental assessment for Habitats Regulations Assessment.

²³ National Planning Policy Guidance Revision date 09 02 2015 Paragraph 30 Reference ID:11-030-20150209

43. A Habitats Regulations Assessment (HRA) was undertaken in October 2015 concluding the Neighbourhood Plan will not have a likely significant effect on the River Wye SAC. An Addendum Report dated May 2016 considered whether the conclusions of the earlier report were affected by revisions to policies of the Neighbourhood Plan. The Addendum Report states “*the earlier conclusion that the Dorstone NDP will not have a likely significant effect on the River Wye SAC remains valid.*”

44. I conclude the Neighbourhood Plan meets the requirements of the EU Habitats Regulations. I have not seen anything that suggests the Neighbourhood Plan will have a significant effect on a European offshore marine site.

45. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.

46. I conclude that the Neighbourhood Plan:

- is compatible with the Convention rights
- does not breach, and is otherwise compatible with, EU obligations
- is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects

47. The Guidance²⁴ states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations (including obligations under the Strategic Environmental Assessment Directive):

- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).

²⁴ National Planning Policy Guidance paragraph 031 reference ID:11-031-20150209

Consideration whether having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan; and whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development

48. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans²⁵ which requires plans to be “*consistent with national policy*”.
49. Lord Goldsmith has provided guidance²⁶ that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”
50. The Basic Conditions Statement seeks to demonstrate that the Neighbourhood Plan has been prepared with regard to national policies as set out in the Framework. A Table is presented seeking to demonstrate the regard the Neighbourhood Plan has to listed paragraphs of the Framework. A statement is also made that the Neighbourhood Plan is mindful of the Guidance.
51. The Neighbourhood Plan includes a positive Vision that identifies six specific dimensions of the future that is envisaged. These dimensions include delivery of managed housing growth, and enhancement of facilities and services. The vision is underpinned with eight objectives that are also positively worded and which will be pursued to deliver the Vision for the Plan area. Historic England is supportive of the vision and objectives.

²⁵ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

²⁶ The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the Lord’s Grand Committee on 6 October 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 October 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

52. The Neighbourhood Plan taken as a whole seeks to shape and direct development. This is precisely the role national policy envisages for a neighbourhood plan.
53. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that need to 'have regard to' national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition "*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.*"
54. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision-taking.²⁷ The Guidance states, "*This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions*"²⁸.
55. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.

²⁷ Paragraph 14 National Planning Policy Framework 2012

²⁸ National Planning Policy Guidance (Ref ID:41-072-20140306)

56. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes a Table that seeks to demonstrate the economic, social and environmental attributes of the Neighbourhood Plan.

57. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. The Neighbourhood Plan seeks to contribute to sustainable development by:

- Directing development to sites within a settlement boundary;
- Making provision for at least 21 new dwellings;
- Avoiding development of higher flood risk areas;
- Adopting a flexible approach to the location of any possible delivery of affordable housing;
- Promoting good quality design in new developments and protecting heritage assets;
- Supporting tourism proposals and the creation of business space, including live work accommodation;
- Promoting energy efficiency and renewable energy production;
- Protecting landscape character;
- Protecting existing local community facilities and supporting provision of new community facilities including high speed broadband infrastructure.

58. Subject to my recommended modifications of the Submission Plan including those relating to specific policies, as set out later in this report, I find that the Neighbourhood Plan, taken as a whole, has regard to national policies and advice contained in guidance issued by the Secretary of State and it is therefore appropriate to make the plan. I have also found the Neighbourhood Plan contributes to the achievement of sustainable development.

Consideration whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

59. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.²⁹ “*Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies*”.³⁰
60. The Guidance states, “*A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.*”³¹
61. In this independent examination I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). Herefordshire Council has informed me that the Development Plan applying in the Dorstone neighbourhood area and relevant to the Neighbourhood Plan comprises the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and that the whole of the Core Strategy is considered to be the strategic policy of the Development Plan.
62. There is no requirement for a neighbourhood plan to include particular types of development and land use policies, nor is there any requirement for a neighbourhood plan to deal with any particular development and land use issues.
63. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. In considering a now repealed provision that “*a local plan shall be in general conformity with the structure plan*” the Court of Appeal stated “*the adjective ‘general’ is there, to introduce a degree of*

²⁹ Paragraph 16 National Planning Policy Framework 2012

³⁰ Paragraph 184 National Planning Policy Framework 2012

³¹ National Planning Policy Guidance (ID: 41-04720 140306)

*flexibility.*³² The use of 'general' allows for the possibility of conflict. Obviously there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

64. The Guidance states, "*When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:*

- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with*
- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy*
- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy*
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.*³³

65. My approach to the examination of the Neighbourhood Plan policies has been in accordance with this guidance. If there were to be a conflict between a policy in a neighbourhood plan and a policy in a local plan the conflict must be resolved in favour of the policy contained in the last of those plans to become part of the Development Plan.³⁴

66. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole and each of the plan policies below. In *BDW Trading Limited, Wainholmes Developments Ltd v Cheshire West & Chester BC* [2014] EWHC1470 (Admin) it was held that the only statutory requirement imposed by basic condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted development plan as a whole. It is not necessary to demonstrate an absence of tension between each policy of the Neighbourhood Plan and each strategic policy of the Development Plan. I have concluded the making of the

³² *Persimmon Homes v. Stevenage BC* the Court of Appeal [2006] 1 P &CR 31

³³ National Planning Policy Guidance (ID ref: 41-074 201 40306)

³⁴ Section 38(5) Planning and Compulsory Purchase Act 2004

Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

The Neighbourhood Plan policies

67. The Neighbourhood Plan includes 11 policies as follows:

Policy DNP H1 Settlement Boundary: Dorstone Village

Policy DNP H2 Housing Site Criteria

Policy DNP H3 Housing Design Criteria

Policy DNP H4 Delivery of Affordable Housing

Policy DNP E1 Small Businesses, Farming and Employment

Policy DNP IN1 Infrastructure

Policy DNP T1 Tourism

Policy DNP RE1 Renewable Energy

Policy DNP ENV1 Conservation, Heritage and Landscape

Policy DNP F1 Flooding

Policy DNP CF1 Community Facilities

68. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.”* *“Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”*³⁵

69. The Guidance states *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and*

³⁵ Paragraphs 184 and 185 National Planning Policy Framework 2012

respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”

70. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.*

71. *“A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.”³⁶*

72. If to any extent a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is made they will be utilised in the determination of planning applications and appeals, I have examined each policy in detail:

Policy DNP H1 Settlement Boundary: Dorstone Village

Policy DNP H2 Housing Site Criteria

73. Policy DNP H1 seeks to direct development to appropriate sites within a defined settlement boundary. Supporting statements in the Neighbourhood Plan confirm the proposed settlement boundary includes three amendments to the previous boundary designated in 1997. It is also stated no settlement boundary was included in the statutory plan for Herefordshire adopted in 2007. Policy DNP H2 seeks to establish conditional support for at least 21 new dwellings.

74. Policy DNP H1 refers to “*development*”, however the Policy is presented with a “*H1*” reference and grouped with Policies H2, H3, and H4 under the heading DNP Housing Policies. Supporting text indicates the Policy is directed to housing only. I recommend a modification to clarify this point. The policy includes the statement “*in accordance with*

³⁶ See section 38(6) of the Planning and Compulsory Purchase Act 2004.

other relevant policies of this Plan". This statement is unnecessary as all the policies of the Plan apply throughout the Plan area unless an alternative spatial application is specified. Policies should be capable of interpretation without cross-reference to other policies of the Neighbourhood Plan. I have recommended a modification in this respect so that the Policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

75. Policy DNP H1 states "*development will be directed to*" but no indication is given as to how proposals that do not follow this direction are to be determined. Policy DNP H2 includes the provision "*Development that does not meet the above will not be permitted*". Whilst there is an element of ambiguity arising from the juxtaposition I consider this statement is not referring to Policy DNP H1. Whilst the Framework states neighbourhoods should include "*directing and shaping development*" the Framework also includes a core planning principle that planning should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. I have recommended a modification to combine Policies DNP H1 and DNP H2 so that the synergy created will provide a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

76. Herefordshire Council has questioned whether there are any assurances that there are deliverable sites/opportunities within the settlement boundary. From my visit to the Plan area I am satisfied, particularly in the context of my proposed modifications to the Neighbourhood Plan, that there is sufficient potential and flexibility to achieve the necessary level of housing provision. Herefordshire Council has also stated that the delivery of a range of house sizes and tenures may prove difficult with only small scale proposals being sought. I agree that Core Strategy Policy H3 presents a challenge but I do not consider any modification of the Neighbourhood Plan in this respect is necessary to meet the basic conditions. I have noted the strong local support registered in respect of development schemes being small scale infill comprising up to three dwellings. The term "*small scale*" is imprecise but rendered unnecessary by the specification of numbers of dwellings. I have recommended a modification in this respect.

77. The approach of the Neighbourhood Plan to development outside the settlement boundary is to refer to policies of the Herefordshire Core

Strategy. I have noted Policies RA2 and RA3 of the Herefordshire Local Plan Core Strategy 2011 - 2031 provide a Framework compliant policy approach to be used in determining planning applications in the Neighbourhood Plan area. Core Strategy Policy RA3 specifically provides for the definition of settlements in Neighbourhood Development Plans. Whilst it is not necessary to refer to policies in other parts of the Development Plan deletion of the penultimate part of Policy DNP H2 is not a requirement in order to meet the Basic Conditions. Policies DNP H1 and DNP H2 are in general conformity with the strategic policies contained in the Development Plan for the area, the Herefordshire Local Plan Core Strategy 2011 - 2031.

78. Policy DNP H2 includes the phrase “*will only be permitted*”. With regard to the issue of decision making the Framework states “*the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise*”. This basis for decision making should be made clear. Policies should use the term “will be supported” or “not be supported” in recognition that the basis of decision making is the development plan unless material considerations indicate otherwise. The material considerations at the time of determination of a future planning application are unknown and therefore cannot be dismissed through a policy that states development will be permitted or not permitted. I have recommended a modification so that the basis of decision making on planning applications should be clarified.
79. I have also recommended a modification so that Policy DNP H2 has greater regard for the provisions of the Framework relating to heritage assets, distinguishing between designated and non-designated assets, and recognising circumstances where there is a need to weigh and balance considerations
80. The Framework introduced an opportunity for communities to designate land as Local Green Space within which, other than in very special circumstances, new development is ruled out. The Framework states the Local Green Space designation will not be appropriate for most green areas or open space and sets out criteria that must be met if a designation is to be pursued. The Dorstone Village Policies Map indicates, through its explanatory table of symbols, that a number of areas of land are being proposed as Local Green Space. No justification for such a designation is presented in any of the Plan documentation. Herefordshire Council has advised me that designation of Local Green Spaces is not intended and that the

indication is an error. I recommend a modification to amend the Dorstone Village Policies Map key accordingly.

81. Policy DNP H2 includes the term “*important open spaces*” that are not to be adversely affected, and which are linked, by association, with the character of Dorstone, that is to be respected, protected and safeguarded. The combination of respect, protection, and safeguarding, with the requirement to not be adversely affected, creates a policy environment where development is not ruled out, but is unlikely to be found to be acceptable. The Policy is seeking to establish a policy regime that is potentially marginally less restrictive than a Local Green Space designation, but without offering a similar or satisfactory basis for justification. The Characterisation Study referred to in Appendix E to the Neighbourhood Plan does not represent sufficient justification for the adoption of a regime that does not have sufficient regard for the presumption in favour of sustainable development that is central to the Framework. I recommend reference to “*important open spaces*” in the Policy text is deleted.

82. It remains the case that within a designated Conservation Area national policy set out in the Framework states, Local Planning Authorities should look for opportunities for new development “*to enhance or better reveal their significance*”. It is also stated “*proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably*”. The Policy as recommended to be modified does require proposals to conserve or enhance the significance of the Conservation Area. Policy DNP ENV1 of the Neighbourhood Plan, which I consider later in my report, establishes a policy framework for the evaluation and determination of development proposals that makes reference to the important open spaces but in a less restrictive context than had been proposed in Policy DNP H2 of the Submission Neighbourhood Plan. The recommended modifications of Policies DNP H1, DNP H2, and DNP ENV1 are together designed to remove the lack of clarity arising from overlap between the policies, as proposed in the Submission Version Neighbourhood Plan, so that a practical framework for decision making on planning applications as required by paragraph 17 of the Framework is achieved.

83. It is stated Map 3 illustrates sites and views identified in the Characterisation Study as key natural features that contribute to the character of the village. Map 3 does not illustrate all of the views listed in Appendix E. I recommend this omission should be rectified. I am satisfied the Regulation 16 consultation has not been jeopardised by

this omission as the Characterisation Study has been available for inspection by interested parties throughout the period for making representations.

84. Welsh Water has confirmed no issues arise in terms of providing clean water for the level of development proposed. The Environment Agency states that as there are no site specific proposals within areas at risk of flooding, and that windfall development will be located on land outside Flood Zones 2 and 3, no further comments are made. I have noted Herefordshire Council states in respect of Policy DNP F1 that relates to flooding *“proposals should also have regard to national guidance on flood risk. Development should be located in accordance with the Sequential and Exception tests (where appropriate) set out in paragraphs 100-104 of the NPPF. It should also take account of the Herefordshire Strategic Flood Risk Assessment (SFRA) 2009”*. Later in my report I state I am satisfied the requirement of Policy DNP F1 for a flood risk assessment to accompany any development proposal will present an opportunity for decision makers to consider proposals in the context of national and countywide policy.

85. The recommended modified Policy to replace Policy DNP H1 and DNP H2 seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The modified Policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy, as recommended to be modified, has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; requiring good design; promoting sustainable transport; meeting the challenge of climate change and flooding; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. The recommended modified policy meets the basic conditions.

Recommended modification 1:

Replace Policy DNP H1 and Policy DNP H2 with:

“The development of at least 21 new dwellings within the Dorstone settlement boundary, defined on the Village Policies Map, will be supported over the Plan period so long as proposals:

- **relate to infill sites accommodating one to three dwellings;**
- **are located to offer suitable residential amenity, and not adversely affect residential amenity of existing residents;**
- **are outside flood zone 2 and 3 areas;**
- **conserve or enhance the significance of the Dorstone Conservation Area;**

- do not substantially harm designated heritage assets, and where proposals will lead to less than substantial harm of designated heritage assets this should be weighed against public benefits;
- present a balanced judgement of the scale of harm to, and significance of, non-designated heritage assets;
- do not have significant adverse impact on the landscape features listed in Appendix E;
- do not have significant adverse impact on the important views from locations freely accessible by the general public identified in Appendix E and on Map 3;
- meet access standards required by the Highway Authority.

New homes will only be supported outside the defined settlement boundary where they comply with Herefordshire Core Strategy Policies H2 (rural exception sites), RA3 (dwellings in the countryside), RA4 (agriculture, forestry and rural enterprise dwellings), and RA5 (re-use of rural buildings)”

This recommended modification will necessitate renumbering of Policies DNP H3 and DNP H4

In the Dorstone Village Policies Map key delete “Local Green Spaces” and insert “Important Open Spaces”

In Appendix E Open Spaces section delete “the main” and insert “important”

All the important views should be identified on Map 3 using the reference listed in Appendix E

In Appendix E Landscape Features section delete “and spaces (see above)”

Policy DNP H3 Housing Design Criteria

86. This policy seeks to establish support for housing proposals that meet five specified criteria, and states development that does not meet these criteria will not be permitted. I have earlier in my report referred to the need to use the word “supported” rather than “permitted”. I have also recommended use of “to be supported” to replace “*will need to*” as the latter term does not offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

87. Herefordshire Council has stated *“that limiting the number of bedrooms allowed in all residential proposals is unnecessarily prescriptive, particularly as only small scale developments are being sought. This could hinder proposals from coming forward, particularly those for just single dwellings”*. Herefordshire Council has suggested a more flexible approach. I agree application of the policy should be linked to changing market conditions and need over time in order to remain relevant. I therefore recommend a modification so that the policy takes account of the needs of the residential community.

88. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; requiring good design; meeting the challenge of climate change and flooding; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 2:

In Policy DNP H3

- **delete “All new housing proposals will need to:” and insert “To be supported housing proposals must:”**
- **replace part 5 with “include a maximum of 3 bedrooms, unless the latest assessment of housing need in the Parish demonstrates such homes are no longer required. Otherwise proposals for new homes with more than 3 bedrooms will only exceptionally be supported to meet particular housing needs of local residents for example, to enable their caring for dependent or elderly relatives, or to cater for a large family.”**
- **delete the final sentence**

Policy DNP H4 Delivery of Affordable Housing

89. This policy seeks to establish support for development proposals for affordable housing outside but adjacent to the defined settlement boundary where those are justified through an up to date housing needs survey. I have earlier in my report referred to the need to use

the word “supported” rather than “permitted”. The explanation I have given also applies to the word “approved”.

90. The policy includes the word “appropriate” without any explanation of meaning. This word introduces uncertainty such that the Policy does not offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. The reference to Core Strategy Policy H2 is sufficient to establish the criteria that sites must meet. I recommend the word “appropriate” is deleted.

91. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes and conserving and enhancing the natural environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 3:

In Policy DNP H4

- delete “allowed” and insert “supported”
- delete “appropriate”

Policy DNP E1 Small Businesses, Farming and Employment

92. This policy seeks to establish conditional support for small scale new business space including live work units.

93. The policy includes reference to policies of the Herefordshire Core Strategy. Whilst it is not necessary to refer to policies in other parts of the Development Plan deletion of such references from Policy DNP E1 is not a requirement in order to meet the Basic Conditions.

94. I recommend modification of part 5 of the Policy in order to make it clear support is not limited to one live/work unit only, and to improve clarity for decision makers. The policy is imprecise in its use of the phrase small scale in several contexts. I am however not recommending a modification of the plan in this respect as the policy provides satisfactory safeguards for residential and visual amenity whatever the scale of a proposal.

95. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with supporting a prosperous rural economy and delivering a wide choice of high quality homes. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 4:

In Policy DNP E1 delete “a live /work unit” and insert “live work units”

Policy DNP IN1 Infrastructure

96. This policy seeks to establish support for communications infrastructure proposals.

97. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with supporting high quality communications infrastructure; supporting a prosperous rural economy; requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. This policy meets the basic conditions.

Policy DNP T1 Tourism

98. This policy seeks to establish conditional support for sustainable rural tourism proposals.

99. I recommend minor modifications in respect of parts 3 and 4 to improve clarity so that they offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. There is no need to include the phrase “*in the Parish*” as the Neighbourhood Plan policies apply across the neighbourhood area and to include a statement of spatial application in respect of one policy introduces uncertainty.

100. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with supporting a prosperous rural economy; promoting sustainable transport; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 5:

In Policy DNP T1

- delete “which are supported by” and insert “where they demonstrate”
- delete “bridleways” and insert “bridleway”
- delete “in the Parish”

Policy DNP RE1 Renewable Energy

101. This policy seeks to establish support for measures to respond to climate change including renewable energy proposals.

102. I have recommended modification of the opening statement so that it offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. The requirement for new development to reduce the use of fossil fuels is imprecise. Part 5 of the policy includes a disconnection that requires adjustment to achieve clarity. I recommend modifications in these respects.

103. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with meeting the challenge of climate change and flooding, and conserving and enhancing the natural environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 6:

In Policy DNP RE1

- replace “All new development will need to:” with “To be supported development proposals must:”
- commence part 1 with “Incorporate measures to”
- in part 5 delete “. Avoids” and insert “and avoids”

Policy DNP ENV1 Conservation, Heritage and Landscape

104. This policy seeks to ensure development proposals protect and enhance heritage assets and protect the natural and built environment.

105. I have recommended modification of the opening statement so that it is positively framed and offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. There is no need to include the phrase “*within the Parish*” as the Neighbourhood Plan policies apply across the neighbourhood area and to include a statement of spatial application in respect of one policy introduces uncertainty. The statement referring to Appendix C in part 2 requires clarification and correction. Minor adjustment of part 7 is necessary to assist understanding. I recommend modifications in these respects.

106. Part 5 of the Policy lists actions that do not directly relate to the development and use of land and as such cannot serve a role in the determination of planning applications. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. However, the Guidance states, “*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. For example, set out in a companion document or annex.*” I recommend a modification in accordance with the Guidance so that part 5 of the Policy is transferred to a separate community aspirations appendix to the Neighbourhood Plan.

107. I have, earlier in my report when considering Policy DNP H2 recommended a modification to delete a requirement that “*important open spaces*” should not be adversely affected in the context of respecting, protecting and safeguarding the character of Dorstone. It is however appropriate that Policy DNP ENV1 should include reference to open spaces that have been identified as important in the context of the Characterisation Study of the Conservation Area. Part 1 of the Policy requires modification so that it more clearly has regard for the presumption in favour of sustainable development, and the approach

to conserving and enhancing the historic environment, in the Framework.

108. The Framework states development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. I therefore recommend modification of part 6a, and deletion of part 7c, of the Policy. I consider the Policy adequately reflects the approach of the Framework in terms of seeking to ensure developments respond to local character and history, and reflect the identity of local surroundings and materials, whilst not preventing or discouraging appropriate innovation. The requirement to include specific heritage features does, however, not have regard for the approach of the Framework that states design policies should avoid unnecessary prescription or detail. I have recommended a modification in this respect so that proposals can reflect the identified heritage features.
109. It is necessary to establish a clear policy framework to enable each development proposal to be determined at the time it is submitted. Cumulative impact in association with development that is anticipated is not a basis upon which to determine a proposal. I recommend a modification in order to clarify cumulative impact is to be assessed in respect of a proposal and existing development.
110. As Planning policy needs to serve the public interest I recommend a modification to clarify important views to be protected are restricted to those visible from locations that are freely accessible to the general public. In the context of a view, and in particular a wide view, the use of the word "*protect*" does not establish a practical framework for decision making on planning applications as required by paragraph 17 of the Framework nor does it adequately reflect the presumption in favour of sustainable development established by the Framework. Deletion of the word "*protect*" from part 1 of the Policy is also appropriate so that the Policy has closer regard for the approach of the Framework with respect to conserving and enhancing Conservation Areas. I recommend a modification in this respect.
111. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with requiring good design; conserving and enhancing the natural environment; and conserving

and enhancing the historic environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 7:

Replace Policy DNP ENV1 with:

“Development proposals will be supported where they:

- 1. conserve or enhance the character of the Conservation Area, including its listed buildings, archaeological sites, and heritage features; as well as its important open spaces, main views from locations freely accessible by the general public, and landscape features identified in Appendix E;**
- 2. are of a scale and design which ensures new build will merge seamlessly with the existing landscape, the main features of which are identified in Appendix E;**
- 3. reflect heritage features identified in Appendix B;**
- 4. protect ancient woodlands, the River Wye SAC, and the Moccas Park SSSI;**
- 5. improve access through the creation of new pathways and opening of green lanes and tracks;**
- 6. propose intensive livestock units that demonstrate no significant adverse landscape, environmental or amenity impact, and with access arrangements that fully satisfy the requirements of the Highway Authority;**
- 7. propose commercial scale polytunnel developments that demonstrate no significant adverse impact on visual and residential amenity, and do not result in significant adverse environmental or landscape impacts either alone or cumulatively with existing developments”**

The reference to planting should be transferred to a separate community aspirations Appendix to the Neighbourhood Plan

Policy DNP F1 Flooding

112. This policy seeks to establish no development should be permitted within higher risk flood zones and that development proposals should include a flood risk assessment and drainage strategy.

113. The Environment Agency states that as there are no site specific proposals within areas at risk of flooding and that windfall development will be located on land outside Flood Zones 2 and 3 no further comments are made. Welsh Water has expressed support for the

Policy and stated “*there are no public sewerage provision in the parish, new development will require alternative foul drainage under the provisions of (Core Strategy) Policy SD4*”. Herefordshire Council states “*proposals should also have regard to national guidance on flood risk. Development should be located in accordance with the Sequential and Exception tests (where appropriate) set out in paragraphs 100-104 of the NPPF. It should also take account of the Herefordshire Strategic Flood Risk Assessment (SFRA) 2009*”. I am satisfied the requirement of the Policy for a flood risk assessment to accompany any development proposal will present an opportunity for decision makers to consider the proposal in the context of national and countywide policy.

114. The policy includes an incomplete reference to another Neighbourhood Plan policy. There is no need to include cross-referencing between policies and it is not consistent with providing a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. I recommend modification in this respect.

115. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with meeting the challenge of climate change and flooding. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 8:

In Policy DNP F1 delete “(See also DNP Policy H1xx)”

Policy DNP CF1 Community Facilities

116. This policy seeks to establish support for retention and enhancement of identified community facilities unless it can be demonstrated they are no longer required or viable, or that they are being replaced with a facility of equal community value. Conditional support is also established for provision of new community facilities.

117. In order to have greater regard for the “promoting healthy communities” component of the Framework the requirement to demonstrate alternative provision or that a facility is no longer required or viable should be limited only to circumstances where adverse effect

is proposed. The policy includes the word “including” introducing uncertainty such that the Policy does not offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. I recommend modifications in these respects.

118. The list at Appendix D includes mobile post office and public transport. These items do not relate directly to the development and use of land and as such cannot serve a role in the determination of planning applications. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. However, the Guidance states, *“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. For example, set out in a companion document or annex.”* I recommend a modification in accordance with the Guidance so that the mobile post office and public transport items are transferred to a separate community aspirations appendix to the Neighbourhood Plan.

119. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with supporting a prosperous rural economy and promoting healthy communities. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 9:

In Policy DNP CF1

- **delete “including”**
- **insert “adversely” before “affect”**
- **also transfer “mobile post office” and “public transport” from Appendix D to a separate community aspirations Appendix to the Neighbourhood Plan**

Summary of main findings and Referendum

120. I have recommended 9 modifications to the Submission Version Plan and also made a recommendation of modification in the Annex below.

121. I am satisfied that the Neighbourhood Plan³⁷:

- is compatible with the Convention rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the statutory requirements set out in paragraph 8(1) of schedule 4B of the Town and Country Planning Act 1990 and meets the basic conditions:
 - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the 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 of the authority (or any part of that area);
 - does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
 - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.³⁸

I recommend to Herefordshire Council that the Dorstone Neighbourhood Development Plan for the plan period up to 2031 should, subject to the modifications I have put forward, be submitted to referendum.

³⁷ The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

³⁸ Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

122. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.³⁹ I have seen nothing to suggest the referendum area should be extended beyond the designated Neighbourhood Area.

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Herefordshire Council as a Neighbourhood Area on 7 September 2012.

Annex: Minor Corrections to the Neighbourhood Plan

I am able to recommend modification of the Neighbourhood Plan in order to correct errors.⁴⁰

A number of consequential modifications to the general text of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies.

**Recommended modification 10:
Modification of general text will be necessary to achieve consistency with the modified policies**

Chris Collison
Planning and Management Ltd
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29 September 2016
REPORT ENDS

³⁹ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁴⁰ Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990