

**Wellington Parish Council**

# **Wellington Neighbourhood Development Plan**

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

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## Overall Finding

This is the report of the Independent Examination of the Wellington Neighbourhood Development Plan. The plan area is the entire Wellington Parish area. The Plan period runs until 2031. Following removal of one policy prior to submission the Neighbourhood Plan includes twelve 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.*”<sup>1</sup>
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 Wellington Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Wellington Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the Wellington Neighbourhood Area which was formally designated by Herefordshire Council (the Local Planning Authority) on 24 February 2014.
4. The submission draft of the Neighbourhood Plan, along with the Consultation 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.<sup>2</sup> The report makes recommendations to the 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.
6. Herefordshire Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area

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<sup>1</sup> Paragraph 183 National Planning Policy Framework (2012)

<sup>2</sup> Paragraph 10 Schedule 4B Town and Country Planning Act 1990

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 have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts. 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.
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,<sup>3</sup> 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.<sup>4</sup>
10. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.<sup>5</sup>
11. The examiner has the ability to call a hearing for the purposes of receiving oral representations about a particular issue in any case

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

<sup>4</sup> Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

<sup>5</sup> Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

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**

12. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.<sup>6</sup> 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.<sup>7</sup>

13. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.<sup>8</sup> 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’.

14. In addition to the basic conditions and Convention rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning

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<sup>6</sup> Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

<sup>7</sup> 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

<sup>8</sup> The Convention rights has the same meaning as in the Human Rights Act 1998

and Compulsory Purchase Act 2004.<sup>9</sup> 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.

15. The Neighbourhood Plan relates to the area that was designated by Herefordshire Council as a neighbourhood area on 24 February 2014. Paragraph 1.3 of the Submission Version of the Neighbourhood Plan confirms the Plan area is defined by the Wellington Parish boundary. A map of the Wellington Designated Plan Area is included as Figure 1 of the Submission Version Plan. The Neighbourhood Plan does not relate to more than one neighbourhood area,<sup>10</sup> and no other neighbourhood development plan has been made for the neighbourhood area.<sup>11</sup> All requirements relating to the plan area have been met.
16. 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;<sup>12</sup> and the Neighbourhood Plan does not include provision about excluded development.<sup>13</sup> I am able to confirm that I am satisfied that each of these requirements has been met.
17. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.<sup>14</sup> The front cover of the Submission Version clearly shows the plan period “to 2031”. The Basic Conditions Statement states the plan period “is from the Plan being made (2015) up to 2031 (the same period as the Herefordshire Core Strategy Local Plan). Even though the Core Strategy plan period is 2011-2031 and the Neighbourhood Plan has not been made in 2015 it is clear that Neighbourhood Plan period is intended to run from the date the plan is made up to 2031.
18. 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.<sup>15</sup> It is not within my role to

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<sup>9</sup> 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)).

<sup>10</sup> Section 38B(1)(c) Planning and Compulsory Purchase Act 2004

<sup>11</sup> Section 38B(2) Planning and Compulsory Purchase Act 2004

<sup>12</sup> Section 38A(2) Planning and Compulsory Purchase Act 2004

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

<sup>14</sup> Section 38B(1)(a) Planning and Compulsory Purchase Act 2004

<sup>15</sup> 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

examine or produce an alternative plan, or a potentially more sustainable plan. I have been appointed to examine whether the submitted Neighbourhood Plan meets the basic conditions and Convention rights, and the other statutory requirements.

19. 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.
20. 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.
21. 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.<sup>16</sup>

## Documents

22. 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:

- Wellington Submission Draft Neighbourhood Development Plan to 2031
- Wellington Submission Draft Neighbourhood Development Plan Basic Conditions Statement
- Wellington Neighbourhood Area Environmental Report September 2015
- Wellington Neighbourhood Area Habitats Regulations Assessment June 2015
- Wellington Neighbourhood Area Habitats Regulations Assessment Addendum Report September 2015

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



- Wellington Submission Neighbourhood Development Plan Consultation Statement September 2015
- Wellington Call for Sites Assessment Report December 2014
- 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*]
- Technical Guidance to the National Planning Policy Framework (27 March 2012) [*In this report referred to as the Technical Guidance*]
- 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

23. The submitted Neighbourhood Plan is accompanied by a comprehensive Consultation Statement which outlines 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.

24. The Neighbourhood Plan Steering Group was established in February 2013. A Community Led Plan Group undertook 'reach-out' activities involving meetings, and use of posters and the Parish website, leading to well thought out Planning for Real events held in July 2013. A questionnaire was distributed to every household in the Parish in Autumn 2014 the responses to which provided valuable information of views within the community across a wide range of topics. This information was used by the Steering Group as part of the evidence base for the Neighbourhood Plan.

25. A well-publicised Call for Sites exercise closed to submissions on 21

July 2014. This led to the preparation of a Call for Sites Assessment Report that considered five sites put forward by interested parties and four sites included in the Herefordshire SHLAA. Following independent assessment, the Steering Group presented three sites to the Parish Council for approval to be included in the Neighbourhood Plan to be subject to consultation.

26. An Informal Consultation Event was held over two days in March 2015. Of 98 questionnaires handed out 78 were completed and returned. The response included 85% stating the Neighbourhood Plan met their wishes for the future of Wellington to 2031, and 83% agreeing the three sites recommended for housing development. The Consultation Statement presents the results in a comprehensive way and includes a response to representations made.
27. Pre-submission consultation in accordance with Regulation 14 was undertaken in the period 29 June to 9 August 2015. A total of 84 representations were submitted during this period. The Neighbourhood Plan Consultation Statement sets out comments received, the Parish Council response, and where appropriate amendments to, the Neighbourhood Plan. The Consultation Report also sets out responses from the Consultation Bodies to the SEA/HRA Report.
28. The final draft of the Neighbourhood Plan has been submitted to the District Council. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 publicity period between 8 October and 19 November 2015. One party submitted two representations that were almost identical which I have treated as a single representation. A total of 15 representations were submitted to the District Council which I have taken into consideration in preparing this report, even though they may not be referred to in whole, or in part.
29. Historic England, Severn Trent Water, the Office of Road and Rail, and Sport England have no specific comments and Welsh Water are content to rely on comments submitted at the Regulation 14 stage of plan preparation. I have taken into consideration the comments of Welsh Water when examining Policies W1 and W2 later in my report. One resident objects to all development on the basis it would compromise the rural character of the Parish, and the road network, and infrastructure for an inclusive community (absence of a play park is mentioned specifically) is not able to cope. A further representation states *“Whilst the Plan provides a generally positive vision, the objectives and suite of policies contained throughout the WNP are*

*based on a restrictive strategy which may limit the ability of future sustainable growth opportunities being delivered and is therefore in conflict with the basic conditions. Gladman consider that the WNP in its current form fails to comply with various key paragraphs of the Framework and PPG as well as failing to meet a number of basic conditions, specifically basic conditions (a), (d), (e) and (f) which will be addressed throughout this representation. The WNP as proposed is inflexible, ineffective and unable to respond rapidly to changes in the market i.e. in the event that the Council is unable to demonstrate a 5-year housing land supply. The plan requires significant amendments, redrafting and the removal of several policies before it is progressed to examination".* I have considered these matters 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. A number of other representations refer to specific policies. Where appropriate I refer to those representations when considering the relevant policy later in my report.

30. Consultation has satisfied the requirements of the Regulations involving engagement with stakeholders who have had opportunities to influence the content of the Neighbourhood Plan. The plan preparation process has been conducted in an inclusive and transparent manner, with good publicity throughout. It is clear that the Neighbourhood Plan has emerged with input of the local community and other stakeholders.

## **The Neighbourhood Plan taken as a whole**

31. 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 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

32. The Basic Conditions Statement states *“The Submission Neighbourhood Plan is fully compatible with the European Convention on Human Rights and complies with the Human Rights Act.”* 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).<sup>17</sup> 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.
33. The objective of EU Directive 2001/42<sup>18</sup> 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 ‘plans and programmes’<sup>19</sup> as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.<sup>20</sup>
34. Herefordshire Council issued a Screening Notification on 13 January 2014 that concluded the Neighbourhood Plan will require further environmental assessment for Strategic Environmental Assessment.
35. The submission documents include an Environmental Report dated September 2015. This report confirms a Scoping Report had been made available to the statutory bodies for consultation from 14 July to 18 August 2014. The Environmental Report states responses from Natural England and English Heritage were incorporated where relevant. The draft Environmental Report was subject to consultation for a six-week period from 29 June to 9 August 2015 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.

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<sup>17</sup> 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.

<sup>18</sup> Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

<sup>19</sup> Defined in Article 2(a) of Directive 2001/42

<sup>20</sup> Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

36. A representation states *“The assessment of plan alternatives contained at appendix 5 of the document only provides a simple overview of 5 options with no robust detail being considered. Further the plan has failed to include reasonable alternatives of whether a higher level of growth is capable of being delivered in line with the requirements of the Framework. Gladman submit that the SEA is fundamentally flawed and is therefore unable to meet basic condition (f). We recommend that the SEA it is revisited in order to identify, describe and evaluate all reasonable alternatives in an informative and robust manner.”*
37. 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 *“Overall the Wellington NDP will contribute towards the achievement of the SEA objectives and consequently there is no reason why it should have a negative impact on the baseline”* and *“Policies have been drafted in general conformity with the Core Strategy objectives and contain many policy safeguards to ensure that the potential adverse effects on environmental assets can be avoided or mitigated against. None of the policies are in direct conflict with those already assessed for the Core Strategy.”* The Environmental Report further 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”*. It is also stated *“no significant cumulative effects identified”*.
38. Whilst the Environmental Report findings themselves are clear and satisfactory I have noted the summary of recommendations for the Neighbourhood Development Plan is not well drafted and does not reflect the findings that it follows. I have, in the Annex to my report, identified this as a matter to be addressed.
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; allocate sites for housing; manage future housing using a settlement boundary; allocate sites and identify a settlement boundary; and manage future housing through a development management 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 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 alternatives dealt with. The explanation of why the preferred alternatives were 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.*”<sup>21</sup> 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 7.2 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.

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<sup>21</sup> National Planning Policy Guidance Revision date 09 02 2015 Paragraph 30 Reference ID:11-030-20150209



42. Herefordshire Council issued a Screening Notification on 13 January 2014 that concluded that a European Site, River Wye (including River Lugg) Special Area of Conservation (SAC), will need to be taken into account in the future Wellington Neighbourhood Plan and the Neighbourhood Plan will require further environmental assessment for Habitats Regulations Assessment.
43. A Habitats Regulations Assessment (HRA) was undertaken in June 2015 concluding the Neighbourhood Plan will not have a likely significant effect on the River Wye SAC. An Addendum Report dated September 2015 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 Wellington 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 Guidance<sup>22</sup> 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):

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<sup>22</sup> National Planning Policy Guidance paragraph 031 reference ID:11-031-20150209

- 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).

It is in this context of paragraph 031 of the Guidance that the Local Planning Authority must consider the content of paragraph 38 of my report.

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 Plans<sup>23</sup> which requires plans to be “*consistent with national policy*”.

49. Lord Goldsmith has provided guidance<sup>24</sup> 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 statement is made to how the Neighbourhood Plan has specifically responded to paragraph 184 of the Framework and a Table is presented seeking to demonstrate the regard the Neighbourhood Plan has to the twelve core planning principles set out in paragraph 17 of the Framework.

<sup>23</sup> 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

<sup>24</sup> 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 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 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)



51. The Neighbourhood Plan includes a positive Vision *“to promote the sustainable development of Wellington Parish in order to maintain a safe and thriving environment with a vibrant community spirit.”* The vision is underpinned with five aims that are also positively worded. The submission plan sets out five objectives that it is stated are identified to achieve the vision and aims of the Neighbourhood Plan.
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.<sup>25</sup> 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”*<sup>26</sup>.
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

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<sup>25</sup> Paragraph 14 National Planning Policy Framework 2012

<sup>26</sup> National Planning Policy Guidance (Ref ID:41-072-20140306)

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.

56. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes a section 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:

- Seeking appropriate provision of new homes in terms of tenures, types and sizes, and scale of developments;
- Promoting good quality design in new developments and protecting heritage assets;
- Protecting landscape character and designation of Local Green Space;
- Protecting existing local community facilities and supporting provision of new community facilities including high speed broadband infrastructure;
- Promoting sustainable water management; sustainable transport and biodiversity.

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*”.<sup>27</sup> “*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*”.<sup>28</sup>
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.*”<sup>29</sup>
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 Wellington 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 flexibility.*”<sup>30</sup> 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.

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<sup>27</sup> Paragraph 16 National Planning Policy Framework 2012

<sup>28</sup> Paragraph 184 National Planning Policy Framework 2012

<sup>29</sup> National Planning Policy Guidance (ID: 41-04720 140306)

<sup>30</sup> *Persimmon Homes v. Stevenage BC* the Court of Appeal [2006] 1 P &CR 31

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.”<sup>31</sup>*
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.<sup>32</sup>
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 Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

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<sup>31</sup> National Planning Policy Guidance (ID ref: 41-074 201 40306)

<sup>32</sup> Section 38(5) Planning and Compulsory Purchase Act 2004

## The Neighbourhood Plan policies

67. With the removal of Policy W11 prior to submission of the Plan to Herefordshire Council the Neighbourhood Plan includes 12 policies:

Policy W1 Scale of New Residential Development

Policy W2 Phasing of New Housing Development

Policy W3 Ensuring an Appropriate Range of Tenures, Types, and Sizes of Houses

Policy W4 Protecting Heritage Assets

Policy W5 General Design Principles

Policy W6 Protecting Landscape Character

Policy W7 Protection of Local Green Spaces

Policy W8 Protection of Local Community Facilities

Policy W9 New Community Facilities

Policy W10 New Communications Technologies

Policy W11 Design for Flood Resilience and Resistance (Policy removed)

Policy W12 Design to Reduce Surface Water Run Off

Policy W13 Connectivity

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.”*<sup>33</sup>

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*

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<sup>33</sup> Paragraphs 184 and 185 National Planning Policy Framework 2012

*determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”*

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.”<sup>34</sup>*

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 individually in turn.

73. Several policies include the phrase *“will be permitted”* or *“will not 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 through use of 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.

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<sup>34</sup> See section 38(6) of the Planning and Compulsory Purchase Act 2004.



**Recommended modification 1:**

**Policies should use the term “be supported” or “not be supported” instead of “be permitted” or “not be permitted”**

**Policy W1 Scale of New Residential Development**

74. This policy includes three components. Firstly, the policy seeks to establish criteria to be met by proposals for new small scale housing development within the defined settlement boundary, and/or on an allocated site (as defined on Map 1). Secondly proposals for self-build on allocated and windfall sites, and live work units, are actively encouraged. Thirdly, *“proposals for new housing outside the settlement boundary, will only be permitted in accordance with the policies for Herefordshire Council.”* The intention of the second part of the policy is clear, subject to the inclusion of the word “homes” after self-build, and consistent with national and development plan policy. The first and third parts of the policy require further consideration.
75. The first part of the policy is directed to proposals *“within the defined settlement boundary, and/or on an allocated site”*. This wording fails to achieve clarity as all three allocated sites are clearly shown on Map 1 Proposals Map (also titled Policies Map) to lie within the proposed settlement boundary. I recommend a modification in this respect so that the policy will provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
76. The first part of the policy only applies to proposals for new small scale housing development. The term *‘small scale’* is not defined however the reference to Policy W3 in criterion ii. indicates an intention to include sites up to 10 dwellings and sites of more than 10 dwellings. In the absence of any other definition the practical constraint on the size of housing developments will be the physical size of sites available. The intention of the policy to limit density of development on sites to 25 dwellings per hectare or less would impact on the numbers of dwellings able to be delivered on any site. I consider the density requirement below.
77. Paragraph 47 of the Framework relates to actions to be undertaken by local planning authorities to boost significantly the supply of housing. Whilst there is specific reference to ‘Local Plan’ the paragraph is silent

with respect to neighbourhood plans. Policy W1 will not place any cap on the number of dwellings or the amount of development that can take place within the settlement boundary.

78. Herefordshire Council has stated that bullet point 5 which refers to the density of development *“could be viewed as too prescriptive, which could restrict some development proposals from coming forward. This could include infill schemes on smaller plots. Greater flexibility could be given to this- should be used more as a guide than a limit. The rationale behind setting this density should also be provided in supporting text.”* With respect to this latter point I have already in my report referred to the Guidance which states *“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”*. Appendix 3 of the Neighbourhood Plan provides a helpful analysis of the distinctiveness of Wellington. The Neighbourhood Plan is however silent with respect to the justification of the intention to establish a precise limit on density of development. I am aware the emerging plan has been subject to extensive consultation with stakeholders. Support within the local community alone however does not justify a policy approach that could prevent sustainable development that may be designed to respond to particular site characteristics and/or local housing needs. In the absence of a local reasoned justification the limitation on density of development is not consistent with national policy. I recommend a modification to remove the maximum density limit.

79. Herefordshire Council also states *“For bullet points 6 and 7, some kind of reference could be made to being in accordance with Policy W8.”* Whilst consistency of approach across the Neighbourhood Plan is important in establishing a practical framework for decision making in accordance with paragraph 17 of the Framework there is no requirement for policies of a neighbourhood plan to make reference to one another.

80. With respect to the third part of the policy a representation states *“Gladman would object to the use of a settlement boundary if it is to be used as a method to otherwise preclude the delivery of sustainable growth opportunities from coming forward. The Framework makes clear that development which is sustainable should go ahead without delay, in accordance with the presumption in favour of sustainable development. The use of a tightly drawn settlement boundary will act to arbitrarily restrict the delivery of sustainable growth outside of those*



*sites which have been allocated for residential development. An overly restrictive approach such as the one presented cannot be considered consistent with the positive approach required by the Framework nor will it result in a plan that is able to demonstrate the achievement of sustainable development. This policy is contrary to basic conditions (a) and (d) in its current form. Gladman submit that the Neighbourhood Plan will need to take a more positive stance to further greenfield development. The level of housing identified will not provide the necessary level of affordable housing, which is clearly an important issue in planning policy terms for the assessment of appropriateness under 8(2)(a). In light of the above, Gladman recommend that Policy W1 be deleted in its entirety and replaced with the following wording to ensure it is consistent with the requirements of national planning policy and guidance: “When considering development proposals, the Parish Council will take a positive approach to new development that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. Planning applications adjoining the existing settlement boundary will be permitted provided that the adverse impacts do not significantly and demonstrably outweigh the benefits of development.”*

81. The representation also states “*The recent Woodcock High Court judgment demonstrates the implications for progressing a neighbourhood plan where there is no local plan in place or a five-year housing land supply*”. The representation also refers to an appeal decision where there was not a five-year housing land supply. I am undertaking this independent examination of the Wellington Neighbourhood Plan in the context of a Local Plan Core Strategy that has been adopted in October 2015 and where the latest calculation by Herefordshire Council shows the local planning authority can demonstrate a five-year supply of deliverable housing sites.<sup>35</sup> The representation also refers to Paragraph 49 of the Framework. Paragraph 49 of the Framework states how relevant policies should be considered in the context of the then current supply situation; it does not relate to the formulation or establishment of policy. In the context of Paragraph 49 of the Framework whenever a five-year supply can be demonstrated during the plan period, Policy W1 once part of a made Neighbourhood Plan, should be regarded as up to date.

82. Paragraph 16 of the Framework includes “*neighbourhoods should plan positively to support local development, shaping and directing*

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<sup>35</sup> Herefordshire Council Five Year Housing Land Supply position statement at 1 April 2015 (January 2016)

*development in their area that is outside the strategic elements of the Local Plan*". The calculation of a housing growth target included in the Wellington Call for Sites Assessment Report December 2014 has been recalculated in the Submission Plan which states "*Applying the housing growth target of 18% for the plan period, Wellington is required to find in the region of 77 dwellings. However, planning commitments to date account for 47 dwellings in total. This requires a figure of 30 dwellings to be accounted for within the Neighbourhood Plan*". The settlement boundary has been drawn to include sites allocated for housing development in Policy W2. Provision on those sites for approximately 31 dwellings, in addition to other housing development occurring within the settlement boundary, is in general conformity with the strategic policies contained in the Development Plan and represents a significant boost to local housing supply.

83. The approach of the Neighbourhood Plan to development outside the settlement boundary is to refer to the policies "*for Herefordshire Council*". 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 third part of Policy W1 is not a requirement in order to meet the Basic Conditions. The policy is in general conformity with the strategic policies contained in the Development Plan for the area, the Herefordshire Local Plan Core Strategy 2011 - 2031.

84. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. I consider that subject to the modification recommended this policy meets the basic conditions.

#### **Recommended modification 2:**

##### **In Policy W1**

- **Delete “,and/or on an allocated site,”**
- **Delete bullet point v. and re-number subsequent bullet points**
- **After “self-build” insert “homes”**

## Policy W2 Phasing of New Housing Development

85. This policy seeks to establish phasing of new housing over the plan period to avoid over provision at the beginning of the plan period and to meet future demand, and to enable drainage capacity works to be undertaken. The policy also allocates three sites for housing development in assigned time periods.
86. A representation states *“In order to assist the Council in delivering affordable housing and to boost significant the supply of housing, MM036 makes clear that proportionate growth from within each HMA provides an indicative figure. The Inspector’s Report makes clear at paragraph 106 that the overall figure of 5,300 dwellings is a minimum target and therefore the indicative figures are not meant to be read as a cap on housing numbers. In order to assist with the provision of affordable housing and to boost the supply of housing, the market towns and rural areas are required to express housing targets as a minimum. This approach is not reflected in the WNP, this is evident in Policy W2 which sets a ceiling to housing figures and is at odds with the Herefordshire Core Strategy Main Modifications, and therefore cannot be consistent with basic conditions (a), (d) and (e).”*
87. Herefordshire Council has stated *“setting maximum figures for housing on the designated sites could be restrictive to proposals coming forward. To present these figures as an approximate target would give greater flexibility for proposals coming forward on these sites”*. I have recommended a modification in this respect. Without this modification the Neighbourhood Plan could prevent sustainable development proposals proceeding, which would be contrary to the intention of the Framework. The recommended modification of Policy W2 is also consistent with the increase in flexibility arising from deletion of the site density requirement arising from my recommended modification of Policy W1.
88. When considering Policy W1 I referred to a representation that states *“The recent Woodcock High Court judgment demonstrates the implications for progressing a neighbourhood plan where there is no local plan in place or a five-year housing land supply”*. Reference is also made to an appeal decision where there was not a five-year housing land supply. I stated I am undertaking this independent examination of the Wellington Neighbourhood Plan in the context of a Local Plan Core Strategy that has been adopted in October 2015 and where the latest calculation by Herefordshire Council shows the local planning authority can demonstrate a five-year supply of deliverable

housing sites.<sup>36</sup> The representation also includes *“This policy states that new housing will be phased over the plan period. The supporting text to this policy also suggests that if development comes forward earlier than expected then it will be required to undertake a feasibility study to identify the required improvements to sewerage infrastructure, and provide funding improvements through a planning agreement. Gladman submit that the Framework makes clear that development that is sustainable should go ahead without delay, in accordance with the presumption in favour of sustainable development. This policy does not have regard to the presumption in favour of sustainable development nor the requirement which seeks to boost significantly the supply of housing. This approach is completely inflexible and will not assist the Council in maintaining its 5-year housing land supply position. Furthermore, it is the responsibility of the sewerage undertaker to manage the capacity of this facility and not developers who are only required to mitigate the impact of their development and not solve existing problems. Gladman note paragraph 204 of the Framework which states that ‘Planning obligations should only be sought where they meet all of the following tests:*

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonable related in scale and kind to the development.

*This policy is inconsistent with basic conditions (a), (d) and (e) in its current form and should therefore be deleted.”*

89. The Neighbourhood Plan seeks to limit the pace of development to avoid over provision at the beginning of the plan period and to meet future demand; and to ensure that sufficient necessary capacity of sewerage infrastructure is in place. The Consultation Statement details the care that has been taken in plan preparation to explore the issue of overloading at the Moreton-On-Lugg Wastewater Treatment Works with the Environment Agency and Welsh Water. A foul drainage capacity constraint has been identified. Policy W2 states *“New housing will be provided in a phased manner...”*. There is no automatic or definite direct relationship between planning permissions granted and completion of dwellings. The housing market will normally be the strongest determinant of build-out rates. There is no certainty that sites 2 and 3 will be developed in the period 2014 to 2025. Under these circumstances there is no basis to delay development of site 1. There is no clear mechanism to implement the policy and therefore it could

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<sup>36</sup> Herefordshire Council Five Year Housing Land Supply position statement at 1 April 2015 (January 2016)

not be used to shape and direct development and on this basis it fails to meet the basic conditions.

90. Paragraph 14 of the Framework establishes a presumption in favour of sustainable development. National policy is to boost significantly the supply of housing. The Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development. All plans should be based upon and reflect this presumption. Neighbourhood plans should plan positively to support local development. The phasing aspect of Policy W2 has the effect of restricting development and represents an inappropriate constrained approach to sustainable development that may potentially be proposed during the plan period. The wording of Policy W2 is in conflict with the presumption in favour of sustainable development established in the Framework.
91. On the basis there is no clear mechanism to implement the phasing aspect of Policy W2 and because it is in conflict with the presumption in favour of sustainable development established in the Framework I recommend modification to remove the phasing aspect of the policy. The implication of the modification is that co-ordination of housing site development with the achievement of infrastructure capacity will occur through the Development Management process.
92. The Environmental Health service of Herefordshire Council has submitted information drawing attention to contamination issues relating to proposed development sites 1,2 and 3. These matters could appropriately be drawn to the attention of future applicants proposing development of the sites through the Local Planning Authority Development Management function.
93. One representation states consideration should be given to the potential for further housing in Wellington Marsh. It is not within my role to recommend additional housing allocation sites. My role is to consider whether the submitted Neighbourhood Plan meets the Basic Conditions and other requirements.
94. Three representations object to the development of site 3 each raising one or more points including location; impact and access; green space considerations; and continued farmland use. Another representation objects to any building of dwellings on the site of Mill Lane opposite Millway citing issues of flooding, drainage, traffic and access, and loss of biodiversity.

95. The site selection process adopted in the preparation of the Neighbourhood Plan is set out in the Wellington Call for Sites Assessment Report December 2014. This report describes the well-publicised and open process to identify and assess sites which is stated to be in accordance with the Herefordshire Neighbourhood Planning Guidance Note 21: Guide to site assessment and choosing allocation sites. A total of 9 sites were assessed in terms of an appropriate set of criteria. The scoring resulted in 3 sites being recommended as the best sites. Whilst parties object to development of two of the recommended sites the process of site identification and assessment has been open and appropriate. The Guidance states *“Proportionate, robust evidence should support the choices made and the approach taken”*. I consider this guidance has been followed.
96. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031.
97. Subject to modification as indicated the policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. I consider that subject to the modification recommended this policy meets the basic conditions.

**Recommended modification 3:**

**In Policy W2**

**Retitle the policy “Housing Site Allocations”**

**Delete the first paragraph**

**Delete “From 2014 to 2025 a maximum of” and insert “Approximately”**

**Delete “From 2026 to 2031 a maximum of” and insert “approximately”**

**After “Graveyard” insert a new paragraph “To be supported proposals must demonstrate sufficient mains foul drainage capacity to serve the development.”**

**Policy W3 Ensuring an Appropriate Range of Tenures, Types, and Sizes of Houses**

98. This policy seeks to establish a requirement for proposals for new housing development to demonstrate how they contribute to



maintaining a mix of tenures, types and size of dwellings in the Parish. The policy also seeks to ensure integration of tenure types and to establish minimum space standards for dwellings.

99. Requirements for sites accommodating up to 10 dwellings and those accommodating over 10 dwellings are specified separately although no justification for this approach is stated. The policy proposes the cumulative effect of proposals on sites of up to 10 dwellings over time should be assessed and that this could lead to a proposal not being permitted. It is necessary to establish a clear policy framework to enable each proposal to be determined at the time it is submitted. Cumulative impact, whether retrospective, anticipated, or a combination of both, is not a basis upon which to determine a proposal. I recommend a modification in this respect requiring proposals to demonstrate they contribute to maintaining an appropriate mix of tenures, types and sizes of dwellings in the Parish.

100. A representation states "*Whilst recognising the importance of delivering Wellington's housing needs, this matter will be appropriately dealt with by the local planning authority at the strategic level, we therefore recommend the deletion of Policy W3.*" I consider it is appropriate for the Neighbourhood Plan to seek to shape and direct sustainable development to ensure that local people get the right type of development for their community.

101. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031.

102. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. I consider that subject to the modification recommended this policy meets the basic conditions.

#### **Recommended modification 4:**

##### **In Policy W3**

- **After "maintaining" delete "a" and insert "an appropriate"**
- **In the second sentence delete "appropriate" and insert "encouraged"**
- **Delete paragraphs 2 and 3**

## Policy W4 Protecting Heritage Assets

103. This policy seeks to ensure new development within the Conservation Area or within the setting of a Listed Building will be expected to enhance the positive attributes of the heritage asset. The policy also seeks to establish that development will not be permitted where it has a detrimental impact on specified heritage assets. The policy also seeks to establish criteria that all new development will be expected to meet. A statement of expectation does not provide a practical framework for decision taking. I recommend a modification in this respect as it is necessary to state requirements or criteria to be met.
104. A representation states *“Gladman consider that the evidence base supporting this policy is insufficient. To be clear it does not appear that any robust Landscape Visual Impact Assessment has been undertaken to support the provisions of this policy. This policy relating to landscape matters does not provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included within the plan. Gladman submit that this policy be deleted as this matter will be appropriately dealt with by the local planning authority at the strategic level.”*
105. In order to reflect the approach adopted in the Framework to the sustaining or enhancing of the significance of heritage assets, Policy W4 should be directed to the balancing of harm to the asset or to the setting of the asset. The term “heritage asset” is broad and includes a Conservation Area, a Listed Building, a locally listed building, and other buildings and features that have a heritage significance. The protection of important views is established in Policy W6 and overlap between policies is contrary to the establishment of a practical framework for decision making in respect of development proposals, as required by paragraph 17 of the Framework.
106. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. Subject to the recommended modification the policy has regard to the components of the Framework concerned with requiring good design, and conserving and enhancing the historic environment. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of



development for their community. I consider that subject to the modification recommended this policy meets the basic conditions.

**Recommended modification 5:  
In Policy W4**

- **Replace the second paragraph with “Development that will harm a heritage asset or the setting of a heritage asset will not be supported unless substantial public benefits outweigh the harm.”**
- **Delete “All new development will be expected to” and insert “Development proposals will be supported where they”**

**Policy W5 General Design Principles**

107. This policy seeks to establish general design principles so that new development will enhance the character of the locality and not have a detrimental impact. In order to achieve a practical framework for decision making I recommend that it is made clear that all of the 15 criteria do not have to be met in the case of every planning proposal.

108. Herefordshire Council has in respect to bullet point (n) questioned the basis for a 100m exclusion zone from the SAC and stated the bullet point would be less restrictive without the first sentence. I agree that the policy should be modified so its application is not limited to a 100 metre zone.

109. The inclusion of the phrase “within the designated area” is unnecessary and is contrary to the achievement of clarity. I recommend this phrase should be deleted. The priority to be attached to the use of brownfield land does not reflect the approach adopted in the Framework where such use is encouraged. I recommend a modification in this respect. Criterion (c) does not provide a practical framework for decision making in accordance with paragraph 17 of the Framework. I recommend a modification in the interests of clarity.

110. The reference to efficient operation of transport and road infrastructure does not adequately reflect the Framework where development should only be refused on transport grounds where the residual cumulative impacts of development are severe. The Framework does not make reference to any requirement for garaging as a distinct form of car parking provision. Walking and cycling would

provide greater clarity than the phrase “active travel”. I recommend modifications in these respects.

111. I consider criterion (i) adequately reflects the approach of the Framework which seeks to ensure developments respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation.

112. A representation states “*Gladman recognise the importance of good design measures. However, this policy should not be prescriptive in detail, and should instead be consistent with the requirements of national planning policy and guidance. Whilst supporting the principle of good design, Gladman are concerned that the requirements of this policy may place undue policy burdens on the ability of future sustainable growth being delivered. In this regard we refer the Parish Council to the requirements set out in paragraph 173 of the Framework which states, ‘Plans should be deliverable therefore the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be delivered viably is threatened.’ Planning policies should not attempt to impose architectural styles of particular tastes which could stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. Gladman recommend that any future design policies contained in the plan be made in strict accordance to paragraph 59 and 60 of the Framework.*” I consider the policy avoids unnecessary prescription and burden. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.

113. 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; promoting sustainable transport; meeting the challenge of climate change and flooding; conserving and enhancing the natural environment; conserving and enhancing the historic environment; and promoting healthy communities. I consider that subject to the modification recommended this policy meets the basic conditions.

#### **Recommended modification 6:**

##### **In Policy W5:**

- **Delete “within the designated area”**

- After “criteria” add “,where relevant”
- In criterion (b) delete “Gives priority” and insert “Demonstrates consideration has been given”
- Delete criterion (c) and insert “is capable of being connected to essential infrastructure services with capacity”
- In criterion (e) delete “detrimental effect” and insert “severe cumulative adverse impact”
- In criterion (g) delete “the use of active travel” and insert “walking and cycling”
- In criterion (l) delete “,garaging”
- In criterion (n) delete the first sentence.

### **Policy W6 Protecting Landscape Character**

114. This policy seeks to ensure development proposals have regard to local landscape character with respect to settlement form; building materials; field patterns and boundaries; protecting identified important views; and protecting and enhancing areas of woodland.

115. Protected views within and close to Wellington are identified on Map 3 and wider views are identified on Map 4. The inclusion of photographs taken from viewpoints is a helpful feature of the Submission Plan providing additional clarity to assist decision making. Viewpoints 1 and 2 on Map 4 are outside the Plan area. The policies of the Neighbourhood Plan do not apply to land outside the Designated Neighbourhood Area. I recommend a modification in this respect. 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 “protecting” 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. I recommend a modification in this respect also.

116. 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 conserving and enhancing the natural environment. The policy seeks to shape and direct sustainable

development to ensure that local people get the right type of development for their community. I consider that subject to the modification recommended this policy meets the basic conditions.

**Recommended modification 7:**

**In Policy W6 replace the fourth bullet point with “Preserving and not significantly detracting from those parts of the important views identified on Map 3 and Map 4 that are within the Neighbourhood Plan area, and that are visible from locations that are freely accessible to members of the general public”**

**Policy W7 Protection of Local Green Spaces**

117. This policy seeks to designate two areas of land as Local Green Space at the Playing Fields, and on land adjacent to Millway, as shown on Map1 in the Neighbourhood Plan.
118. The Framework states *“Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.”*
119. I find the Local Green Space designations are being made when a neighbourhood plan is being prepared, and I have seen nothing to suggest the designations are not capable of enduring beyond the end of the plan period. The intended designations have regard to the local planning of sustainable development contributing to the promotion of healthy communities, and conserving and enhancing the natural environment, as set out in the Framework.
120. The final sentence of the Policy attempts to establish a locally defined regime for the assessment of development proposals. The implications of Local Green Space designation are set out in the Framework and are not open to local variation. I recommend a modification in this respect.

121. The Framework states that: *“Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:*

- *where the green space is in reasonably close proximity to the community it serves;*
- *where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- *where the green area concerned is local in character and is not an extensive tract of land.*

I find the intended Local Green Space designations relate to green spaces that are in reasonably close proximity to the community they serve; and the green areas are local in character and are not extensive tracts of land.

122. The fact that the Submission Plan includes the criteria for designation within the supporting text to the policy confirms that the basis for designation has been clearly recognised by the Steering Group. There is reference in Parish Council minutes to the addition of land adjacent to Millway arising from community interest. The Playing Fields are clearly a much used facility. Further the policy has been subject to considerable public consultation which has not surfaced any disagreement that the stated criteria are met. Subject to the recommended modification I consider this policy meets the basic conditions.

**Recommended modification 8:**

**In Policy W7**

**Delete the final sentence and insert “Development will be ruled out except in very special circumstances, for example, where essential public utility infrastructure is necessary that cannot be located elsewhere”**

**Policy W8 Protection of Local Community Facilities**

123. This policy seeks to establish protection of existing community facilities unless equivalent or enhanced alternative provision is made locally or evidence is produced demonstrating there is no longer a need for the facility.

124. The policy is in general conformity with the strategic policies contained in the Development Plan, Herefordshire Local Plan Core

Strategy 2011-2031. The policy has regard to the components of the Framework concerned with promoting healthy communities. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. This policy meets the basic conditions.

### **Policy W9 New Community Facilities**

125. This policy seeks to establish support for new community facilities and improvements to existing community facilities. The policy also makes reference to the allocation of a new community facility. In this latter respect there has been a long standing proposal to create a new open space. This proposal dates from the Herefordshire Unitary Development Plan and is referred to in paragraphs 5.5.6 and 5.5.7 of the Neighbourhood Plan. I recommend the wording of this element of the policy should be modified in this respect so that it corresponds with Map 1 the Proposals Map (also titled Policies Map).
126. Herefordshire Council has stated there is an opportunity to possibly identify particular community facilities or infrastructure that there may be an evidence-based demand for the Parish – that could potentially be brought forward with a development proposal. It is beyond my role to recommend modification of the Neighbourhood Plan to introduce new elements of policy.
127. The policy includes the words “wherever possible” and “where possible”. These phrases leave a degree of 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. In addition, the requirement to make space for allotments would, for example, represent an unreasonable burden on the development of a single dwelling. I recommend modifications in these respects.
128. 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 promoting healthy communities. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. I consider that subject to the modification recommended this policy meets the basic conditions.

### **Recommended modification 9:**

#### **In Policy W9**

- **After “allocation” insert “of Proposed Green Space as defined” and**
- **In the first bullet point delete “, wherever possible,” and continue after boundary “unless it can be clearly demonstrated that this is not physically or functionally possible” and**
- **In the final sentence delete “possible” and the brackets and insert “that is physically possible and this would not represent an unreasonable burden on the development in accordance with paragraph 173 of the Framework and”**

### **Policy W10 New Communications Technologies**

129. This policy seeks to establish conditional support for the development of high speed broadband infrastructure and requires new development to make provision for broadband and other communication networks.

130. A representation states “*Whilst Gladman recognise the importance of improving broadband connections, we question the necessity of this policy given that the majority of in-home connections are now made through Wi-Fi enabled devices.*” I consider in-home distribution facilities are not relevant to this policy.

131. 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. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. This policy meets the basic conditions.

### **Policy W11 Design for Flood Resilience and Resistance**

132. The Neighbourhood Plan states this policy is now removed. A representation states “*The WNP states that this policy has now been removed from the plan. This policy serves no purpose being included within the plan and should therefore be deleted in its entirety.*” I recommend this policy should be deleted in the interests of clarity.



**Recommended Modification 10:  
Policy W11 should be deleted**

**Policy W12 Design to Reduce Surface Water Run Off**

133. This policy seeks to establish requirements to ensure satisfactory water management measures

134. 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 climate change and flood risk. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. This policy meets the basic conditions.

**Policy W13 Connectivity**

135. This policy seeks to establish support for proposals for improved linkages and accessibility within Wellington and to other areas. The policy relates to movement of people as well as seeking to achieve extension of wildlife corridors.

136. 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 promoting sustainable transport and conserving and enhancing the natural environment. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. This policy meets the basic conditions.

## **Summary of main findings and Referendum**

137. I have recommended the following modifications to the Submission Version Plan:

**Recommended modification 1:**

**Policies should use the term “be supported” or “not be supported” instead of “be permitted” or “not be permitted”**



**Recommended modification 2:**

**In Policy W1**

- Delete “,and/or on an allocated site,”
- Delete bullet point v. and re-number subsequent bullet points
- After “self-build” insert “homes”

**Recommended modification 3:**

**In Policy W2**

**Retitle the policy “Housing Site Allocations”**

**Delete the first paragraph**

**Delete “From 2014 to 2025 a maximum of” and insert “Approximately”**

**Delete “From 2026 to 2031 a maximum of” and insert “approximately”**

**After “Graveyard” insert a new paragraph “To be supported proposals must demonstrate sufficient mains foul drainage capacity to serve the development.”**

**Recommended modification 4:**

**In Policy W3**

- After “maintaining” delete “a” and insert “an appropriate”
- In the second sentence delete “appropriate” and insert “encouraged”
- Delete paragraphs 2 and 3

**Recommended modification 5:**

**In Policy W4**

- Replace the second paragraph with “Development will be opposed where the harm to a heritage asset or the setting of a heritage asset is not outweighed by substantial public benefits”.
- Delete “All new development will be expected to” and insert “Development proposals will be supported where they”

**Recommended modification 6:**

**In Policy W5:**

- Delete “within the designated area”
- After “criteria” add “,where relevant”
- In criterion (b) delete “Gives priority” and insert “Demonstrates consideration has been given”

- Delete criterion (c) and insert “is capable of being connected to essential infrastructure services with capacity”
- In criterion (e) delete “detrimental effect” and insert “severe cumulative adverse impact”
- In criterion (g) delete “the use of active travel” and insert “walking and cycling”
- In criterion (l) delete “,garaging”
- In criterion (n) delete the first sentence.

**Recommended modification 7:**

In Policy W6 replace the fourth bullet point with “Preserving and not significantly detracting from those parts of the important views identified on Map 3 and Map 4 that are within the Neighbourhood Plan area, and that are visible from locations that are freely accessible to members of the general public”

**Recommended modification 8:**

In Policy W7

Delete the final sentence and insert “Development will be ruled out except in very special circumstances, for example, where essential public utility infrastructure is necessary that cannot be located elsewhere”

**Recommended modification 9:**

In Policy W9

- After “allocation” insert “of Proposed Green Space as defined” and
- In the first bullet point delete “, wherever possible,” and continue after boundary “unless it can be clearly demonstrated that this is not physically or functionally possible” and
- In the final sentence delete “possible” and the brackets and insert “that is physically possible and this would not represent an unreasonable burden on the development in accordance with paragraph 173 of the Framework and”

**Recommended Modification 10:**

Policy W11 should be deleted

138. I also make the following recommendation in the Annex below.

**Recommended modification 11:  
Identified errors that are typographical in nature or arising from updates should be corrected. Modification of general text will be necessary to achieve consistency with the modified policies**

139. I am satisfied that the Neighbourhood Plan<sup>37</sup>:

- 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.<sup>38</sup>

**I recommend to Herefordshire Council that the Wellington Neighbourhood Development Plan for the plan period up to 2031**

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

<sup>38</sup> 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

**should, subject to the modifications I have put forward, be submitted to referendum.**

140. 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.<sup>39</sup> 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 24 February 2014.**

#### Annex: Minor Corrections to the Neighbourhood Plan

I am able to recommend modification of the Neighbourhood Plan in order to correct errors.<sup>40</sup> The Neighbourhood Plan includes a number of errors that are typographical in nature or arising from updates. I recommend these are corrected as follows:

Map1 carries the title Proposals Map but also includes the title Policies Map. Use of one title would assist the achievement of clarity.

Map 4 and associated photographs of views should be marked to make it clear that Policy W6 only applies to land within the Designated Neighbourhood Plan area.

The Summary of recommendations for the Neighbourhood Development Plan presented at paragraph 6.9 of the Environmental Report (September 2015) should be adjusted to reflect the findings that it follows.

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 11:  
Identified errors that are typographical in nature or arising from updates should be corrected. Modification of general text will be necessary to achieve consistency with the modified policies**

Chris Collison  
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[collisonchris@aol.com](mailto:collisonchris@aol.com)  
16 February 2016  
REPORT ENDS

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

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