

WHITBOURNE NEIGHBOURHOOD PLAN

Whitbourne Neighbourhood Plan Examination,
A Report to Herefordshire Council

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1. Introduction

The Neighbourhood Plan

Where modifications are recommended, they are presented as bullet points and highlighted in bold print, with any proposed new wording in *italics*.

This Report provides the findings of the examination into the Whitbourne Neighbourhood Plan (referred to as the Neighbourhood Plan).

Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.

“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.”

(Paragraph 183, National Planning Policy Framework)

The Neighbourhood Plan was produced by a Working Party, set up by Whitbourne Parish Council, comprising Parish Councillors and members of the Parish. Whitbourne Parish Council is the *qualifying body* responsible for the production of this Neighbourhood Plan. This is in line with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012) and Planning Practice Guidance (2014).

This Examiner’s Report provides a recommendation as to whether or not the Neighbourhood Plan should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes in favour, then the Plan would be *made* by Herefordshire Council. The Neighbourhood Plan would then be used to determine planning applications and guide planning decisions in the Whitbourne Neighbourhood Area.

Role of the Independent Examiner

I was appointed by Herefordshire Council, with the consent of the qualifying body, to conduct an examination and provide this Report as an Independent Examiner. I am independent of the qualifying body and the local authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.

I am a chartered town planner and an experienced Independent Examiner of Neighbourhood Plans. I have extensive land, planning and development experience, gained across the public, private, partnership and community sectors.

As the Independent Examiner, I must make one of the following recommendations:

- a) that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
- b) that the Neighbourhood Plan, as modified, should proceed to Referendum;
- c) that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.

If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether or not the Referendum Area should extend beyond the Whitbourne Neighbourhood Area to which the Plan relates.

Neighbourhood Plan Period

A neighbourhood plan must specify the period during which it is to have effect. The front cover of the Neighbourhood Plan includes a reference to the plan period *"2011-2031."*

In addition, pages 5 and 7 of the Neighbourhood Plan refer to it covering the period:

"...up to 2031."

Taking the above into account, the Neighbourhood Plan satisfies the relevant requirement in this regard.

Public Hearing

According to the legislation, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.

However, the legislation establishes that it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.

Further to consideration of all of the relevant information, I confirmed to Herefordshire Council that I was satisfied that the Whitbourne Neighbourhood Plan could be examined without the need for a Public Hearing.

2. Basic Conditions and Development Plan Status

Basic Conditions

It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “basic conditions.” These were *set out in law*¹ following the Localism Act 2011. 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 neighbourhood plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (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.²

I have examined the Neighbourhood Plan against each of the basic conditions above.

In examining the Plan, I am also required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:

- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;
- the Neighbourhood Plan meets the requirements of Section 38B of the 2004 PCPA (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area);
- the Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted for examination by a qualifying body.

¹ Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.

² 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.

Subject to the content of this Report, I am satisfied that these three points have been met.

In line with legislative requirements, a Basic Conditions Statement was submitted alongside the Neighbourhood Plan. This sets out how, in the qualifying body's opinion, the Neighbourhood Plan meets the basic conditions.

The introduction to the Neighbourhood Plan itself is a little unclear, in that it seeks to paraphrase the basic conditions. The basic conditions are the result of very careful wording and paraphrasing can lead to incorrect interpretations. This in mind, I recommend:

- **Page 4, third paragraph, change to “It must *be in general conformity with the strategic policies of the Local Plan and have regard to national policy as set...(NPPF). It must also contribute to the achievement of sustainable development. The NPPF...*”**

European Convention on Human Rights (ECHR) Obligations

I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.

European Union (EU) Obligations

There is no legal requirement for a neighbourhood plan to have a sustainability appraisal³. However, in some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment.

With the above in mind, draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects.

“Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects.” (Planning Practice Guidance⁴).

This process is often referred to as a screening report, opinion, statement or assessment. If the screening report identifies likely significant effects, then an environmental report must be prepared.

Herefordshire Council undertook an initial screening assessment in 2013. This concluded that, despite the Neighbourhood Plan not allocating any land for development:

“...due to the range of environmental designations in and around the parish, there may be significant environmental effects and consequently an SEA would be required.”

A Strategic Environmental Assessment was subsequently undertaken, in line with the requirements of the EC Directive 2001/42/EC (the SEA Directive). The SEA was published in the form of an Environmental Report and submitted alongside the Neighbourhood Plan.

³ Paragraph 026, Ref: 11-027-20150209, Planning Practice Guidance.

⁴ Paragraph 027, *ibid*.

Further to consideration of the Environmental Report and its contents, the statutory consultee, Natural England, stated that:

“Natural England welcomes the production of an Environmental Report. Having reviewed the report Natural England confirms that it meets the requirements of the Strategic Environmental Assessment (SEA) European Directive and national regulations, and that we concur with its conclusions.”

A Habitats Regulations Assessment is required if the implementation of the Neighbourhood Plan may lead to likely negative significant effects on protected European sites. With regards to this, Herefordshire Council undertook a screening assessment. In considering the need for Habitats Regulations Assessment, the screening statement identifies that:

“...the Neighbourhood Area did not contain any European sites or their proximity would not be affected by policies and proposals within the Whitbourne NDP....a full Habitat Regulation Assessment will not be required for the Whitbourne NDP.”

In addition, Natural England, further to consultation, has stated that:

“We confirm that having read the Habitats Regulations Assessment Screening Report we agree with the conclusion that the Whitbourne Neighbourhood Plan will not require a full HRA.”

In addition to all of the above, national guidance establishes that ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations is placed on the local planning authority,

“The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations.” (Planning Practice Guidance⁵)

In undertaking the assessments and reports that it has, Herefordshire Council has considered the Neighbourhood Plan’s compatibility with EU obligations and, like Natural England, has raised no concerns in this regard.

Taking everything into account, I am satisfied that the Neighbourhood Plan is compatible with EU obligations.

⁵ Paragraph 031, Reference: 11-031-20150209, Planning Practice Guidance

3. Background Documents and the Whitbourne Neighbourhood Area

Background Documents

In undertaking this examination I have considered various information in addition to the Whitbourne Neighbourhood Plan and accompanying maps. This has included the following main documents:

- National Planning Policy Framework (the Framework) (2012)
- Planning Practice Guidance (2014)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- Herefordshire Local Plan Core Strategy 2011-2031 (Adopted October 2015)
- Basic Conditions Statement
- Consultation Statement
- Environmental Report

Also:

- Representations received

In addition, I spent an unaccompanied day visiting the Whitbourne Neighbourhood Area.

Whitbourne Neighbourhood Area

The Neighbourhood Plan provides a plan showing the boundary of the Whitbourne Neighbourhood Area on page 2. I note that this plan is not as clear as the “*Whitbourne Parish Policies Map*” which was submitted, in loose form, alongside the Neighbourhood Plan. However, this loose plan (for information purposes only, a “map” includes a north point) is not referenced in the Contents of the Neighbourhood Plan and does not form part of it.

I recommend:

- **Replace the “map” on page 2 with the “*Whitbourne Parish Policies Plan*”**

In the above regard, the “*Whitbourne Parish Policies Map*” does not relate directly to the Neighbourhood Plan itself and is unnecessarily confusing.

I recommend:

- **Delete the Key, title and all annotations of the Whitbourne Parish Policies Map, with the exception of the Neighbourhood Area boundary. Re-title as “*Whitbourne Neighbourhood Area*” and include annotations/references in the Key to “*Neighbourhood Area*,” “*Conservation Area*” and “*New Settlement Boundary*”**

The boundary of the Neighbourhood Area coincides with that of Whitbourne Parish.

Further to an application made by Whitbourne Parish Council, Herefordshire Council approved the designation of Whitbourne as a Neighbourhood Area on 7 November 2012.

This satisfied a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

4. Public Consultation

Introduction

As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.

Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

Whitbourne Neighbourhood Plan Consultation

A Consultation Statement was submitted to Herefordshire Council alongside the Neighbourhood Plan, in line with legislative requirements. As required by the neighbourhood planning *regulations*⁶, this sets out who was consulted and how, together with the outcome of the consultation.

In October 2012, a questionnaire was hand-delivered to every household in the parish, published on a dedicated page of the Whitbourne Parish Council website and printed in the Parish Magazine. A total of 113 questionnaires were returned and began to inform the plan-making process.

The five main landowners in the Parish were then consulted individually and in May 2013, the Vision and Objectives for Whitbourne were consulted on at a drop-in meeting held at the Village Hall. This was attended by 73 people and views were recorded.

The emerging document underwent several drafts and was distributed throughout the Parish for consideration during December 2013 and January 2014. This was followed up with a public consultation meeting in January 2014, which included a presentation and question/answer session led by an officer from Herefordshire Council. The meeting was attended by 60 residents.

Two six week consultation periods were then held. The first during March and April 2014 and the second during October and November of the same year. The emerging document then underwent two further six week consultation periods, the first during February and March 2015 and the second during December 2015 and January 2016. Responses were received during all of the consultation periods and these were recorded and taken into account.

⁶Neighbourhood Planning (General) Regulations 2012.

The plan-making process was supported by Working Party progress reports to every meeting of the Parish Council (every two months). Each meeting agenda was published prior to the meeting and included the opportunity for members of the public to comment.

In addition to the above, regular progress statements and related information were published and updated on the dedicated page of the website. Also, the Parish Magazine, letters and notices were used to publicise the plan-making process.

The Consultation Statement demonstrates that community engagement was encouraged, matters raised were considered and that the reporting process was transparent. There is evidence to demonstrate that the Policies of the Neighbourhood Plan emerged through significant public consultation.

Taking everything into account, I am satisfied that the consultation process was not only robust, but that it went well beyond that required by legislation.

5. The Neighbourhood Plan – Introductory Section

The policies of the Neighbourhood Plan are considered against the basic conditions in Chapter 6 of this Examiner’s Report. This Chapter considers the Introductory Section of the Neighbourhood Plan.

I comment on the submission of loose plans above. In this regard I am mindful that either a map forms part of the Neighbourhood Plan or it doesn’t. The submission of loose plans alongside the Neighbourhood Plan without reference in the Contents leads to confusion and the likelihood that plans will go missing. I make a recommendation regarding the Neighbourhood Area map earlier in this Report.

Taking the above into account and with reference to comments later in this Report with regards Policy LU11, I recommend:

- **Delete “Whitbourne Open Spaces Policies Map”**
- **Re-title “Whitbourne village Policies Plan” as “Whitborne village boundary and Conservation Area.” It should form part of the Neighbourhood Plan (ie, it should not comprise a loose insertion) and be referenced in the list of Contents. Delete the “Local Green Spaces” annotation and reference, currently shown in the Key. Delete “Site of Scientific Interest” and Local Wildlife Site (LWS)” references and related symbols, currently shown in the Key/. These does not relate to anything on the plan. Delete the “Land liable to Flood” annotation and symbol/reference, currently shown in the Key. There is no indication of the source of this information.**

A Neighbourhood Plan, if it is successful at Referendum, is “made” not “adopted.” I recommend:

- **Page 4, second paragraph, change to “If made, it...”**

The Neighbourhood Plan includes a somewhat unusual and imprecise reference to “incomers.” I recommend:

- **Page 4, fourth paragraph, penultimate line, change to “...all enterprises in which new and old residents have worked together to promote growth for the benefit...”**

I note that, at the bottom of page 4, the Neighbourhood Plan clearly establishes that it is separated into two parts. This allows for the separation of land use planning policies and general matters and is a neat way of dealing with all of the concerns raised during the plan-making process.

The Vision and Objectives section is clear and the Housing Calculations section, whilst it does not form a Policy of the Neighbourhood Plan, provides an indication of the number of houses likely to be required over the plan period, having regard to the Herefordshire Core Strategy.

No other recommendations are made with regards the Introductory Section of the Neighbourhood Plan.

6. The Neighbourhood Plan: Policies

The Policy section includes references to various Objectives and Core Strategy Policies after most Supporting Statements. These references are subjective, limited in their scope and their inclusion is unnecessary. I note that no reference is made to national planning policy or advice (which would also be unnecessary, but further emphasises the limited scope and unnecessary inclusion of references to Objectives and Core Strategy policies). The references are imprecise and their inclusion detracts from the clarity of the Neighbourhood Plan.

I recommend:

- **Delete all of the references to Objectives and Core Strategy Policies in the Policy Section at the end of each Supporting Statement**

Policy LU1 – Settlement Boundary

As set out, part of Policy LU1 does not comprise a land use planning policy. The second sentence is simply a statement, providing an unnecessary cross-reference to other Policies in the Neighbourhood Plan. The Policies of the development plan should be taken as a whole when considering an application for development. This negates the need for statements to the effect of “this Policy should be considered alongside other policies” or “other Policies should be taken into account.” Relevant adopted and made planning policies that form part of the development plan must, in any case, be taken into account.

The final sentence of Policy LU1 seeks to apply other policies from another planning document not controlled by the Neighbourhood Plan (the countryside policies of the Herefordshire Core Strategy). It is not the role of neighbourhood plans to seek to impose other policies from other documents over which they have no control.

Whilst Policy LU1 establishes a settlement boundary, it does not comprise a positive land use planning policy that, for example, sets out clear support for development within the settlement boundary.

National planning policy states that the:

“...purpose of the planning system is to contribute to the achievement of sustainable development” (Paragraph 6, National Planning Policy Framework (the Framework))

and it establishes an assumption in favour of sustainable development⁷. In addition, Planning Practice Guidance requires land use planning policies to be precise and concise⁸.

Taking the above into account, I recommend:

- **Policy LU1, change first sentence to “...Page 8, within which will be the main focus for new development in the Neighbourhood Area.”**
- **Policy LU1, delete “New housing...outside the boundary.”**

The second paragraph of the Supporting Statements on page 7 refers to historic information. I find that this detracts from the clarity and precision of the Neighbourhood Plan. The fact that some people objected to something that now has planning permission is not unusual and nor, in this case, does it provide relevant information to support the Neighbourhood Plan’s Policies.

⁷ Ministerial Foreword, National Planning Policy Framework: “Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision.”

⁸ Ref: Planning Practice Guidance 41-041020140306.

Furthermore, I note above that national planning policy is founded on an assumption in favour of sustainable development. In this regard, the statement that:

“The Parish Council opposes any development or scheme outside the Settlement Boundary...”

fails to have regard to national policy and advice.

In addition, the third paragraph of the Supporting Statements refers to preventing *“more development on agricultural land.”* This bears no relation to the content of Policy LU1. This paragraph and the one following it, go on to read as though they comprised Policies, which they do not. This is confusing and detracts from the clarity of the Neighbourhood Plan.

I recommend:

- **Delete the 2nd to 4th paragraphs of Supporting Statements on pages 7 and 8 (“On 29th...being assessed.”)**

Subject to the recommendations above, Policy LU1 contributes to the achievement of sustainable development and meets the basic conditions.

Policy LU2 – Redundant Rural Buildings

Policy LU2 is a partially positive land use planning Policy. There is no need for it to commence with the phrase “*Where planning permission is required*” as the Policies of the Neighbourhood Plan will not be relevant if planning permission is not required.

The Policy then presents an onerous requirement whereby the conversion of rural buildings will not be supported unless it can be demonstrated that they are no longer appropriate for agricultural use. No substantive evidence has been provided to demonstrate that the conversion of a rural building would not be sustainable if that building was appropriate for agricultural use. Agricultural use might comprise the storage of hay or equipment. Consequently, just about any rural building may be appropriate for agricultural use.

Consequently, I find that the approach set out in Policy LU2 could serve to prevent sustainable development from coming forward. As such, the Policy fails to contribute to the achievement of sustainable development.

Whilst it might be a benefit that weighs in favour of a proposal, it is not clear why the conversion of a rural building should necessarily “*support the local economy.*” The Neighbourhood Plan provides no indication of what such support might comprise, how it will be measured and who will measure it. This part of the Policy is unclear and imprecise.

Further, it is not clear how and why the conversion of a rural building should “*respect*” its “*layout.*” The internal layout of an open barn might be inappropriate for conversion to, say, a house. Such a requirement could prevent sustainable development from coming forward.

It is not clear what is meant by “*be compatible with the uses of neighbouring land.*” No definitions are provided in this regard and I find that this part of Policy LU2 fails to provide a decision maker with a clear indication of how to react to a development proposal and thus fails to have regard to paragraph 154 of the Framework.

Also, it is not clear how or why the conversion of rural buildings must ensure that *all* species and habitats are protected. Such an onerous requirement does not relate to any national or local planning policy. Further, the lack of precision in this regard effectively sets out an impossible requirement. I am also mindful that a survey, in itself, does not protect anything.

Taking all of the above into account, I recommend:

- **Policy LU2, change start to “*The conversion of redundant agricultural buildings into dwellings will be supported. Proposals should:*”**

- **Policy LU2, delete “...and their layout”**
- **Policy LU2, delete criteria ii., iii. and iv.**
- **Policy LU2, delete “(reference Part Two, Item 6)” which obfuscates the Policy**

The first sentence of the Supporting Statements is a subjective statement and is not based on substantive evidence.

The final part of the Supporting Statements provides information that adds little to the Neighbourhood Plan and which will quickly become out of date. It provides considerable potential for confusion and detracts from the clarity of the Neighbourhood Plan.

The map on page 10 is confusing. It includes reference to places where development may or may not occur at some stage in the future and does not form part of any Policy. The reference on page 11 to the possibility of buildings becoming available for conversion in the future is unnecessary, given the whole purpose of Policy LU2.

I recommend:

- **Page 9, delete first sentence of Supporting Statement. Begin next sentence “*The re-use of redundant rural buildings can benefit the environment...*”**
- **Pages 9 and 10, delete “It is worthy...available as dwellings.”**
- **Delete map on page 10**
- **Page 11 delete “There are...future.”**

Policy LU3 – Conservation Area

Chapter 12 of the Framework, “*Conserving and enhancing the historic environment*,” establishes that the nation’s heritage assets are irreplaceable and sets out a policy approach to conserving them in a manner appropriate to their significance.

Policy LU3 has regard to this and is also in general conformity with Herefordshire Core Strategy Policy LD4 (*Historic environment and heritage assets*), which seeks to protect and conserve heritage assets.

In considering Policy LU3, I am mindful that it is worded in a sufficiently flexible manner to allow for the carefully balanced approach to protecting heritage assets established in the Framework and detailed in the Herefordshire Core Strategy.

Policy LU3 has regard to national policy, is in general conformity with the Herefordshire Core Strategy and contributes to the achievement of sustainable development. It meets the basic conditions.

No changes to Policy LU3 are recommended.

Part of the supporting text reads as though it were a Policy, which it is not. The final sentence of the supporting text does not make sense and also reads as though it were a Policy, which it is not. I note that this last sentence largely repeats the intent of the Policy.

I recommend:

- **Page 12, Supporting Statements second paragraph, change to “...environs, *the Parish Council will seek to encourage proposals (including...Area) to safeguard the beauty...and its setting. The Parish Council will look to discourage proposals that will lead to an increase...adjacent countryside.*”**
- **Page 12, delete “Planning applications...proposed development.”**

Policy LU4 – Housing Strategy

Policy LU4 is confusing. It states that:

“a minimum of 39 houses will be provided by 2031.”

This fails to properly reflect the information provided earlier in the Neighbourhood Plan, which clearly sets out a requirement for 50 dwellings over the plan period. Planning is dynamic and applications may be made at any time. In this regard, the plan period exists for an important reason – it provides for clarity and certainty.

Further to the above, the first sentence of Policy LU4 states *“will be provided.”* The Neighbourhood Plan will not provide any houses. Rather, it provides the land use planning Policy basis for their provision. This is an important distinction, as the Neighbourhood Plan itself does not physically deliver houses.

Taking the above into account, I recommend:

- **Policy LU4 change first line to *“The Neighbourhood Plan supports the delivery of a minimum of 50 houses in the Neighbourhood Area over the plan period.”***

The second sentence of Policy LU4 is unnecessary and does not provide any clarity. It is also, inappropriately, dependant upon the policies of another planning document not under the control of the Neighbourhood Plan.

The list of criteria set out in Policy LU4, as worded, do not allow for a balanced consideration of planning proposals. A development where harm is outweighed by benefits may be sustainable. As set out, Policy LU4 states that development should not result in any harm. This fails to provide for sustainable development and may serve to prevent sustainable development from coming forward, contrary to the basic conditions.

No indication of what *“inappropriate development in residential gardens”* entails is provided. Consequently, this part of the Policy is imprecise and does not provide a decision maker with a clear indication of how to react to a development proposal.

Taking the above into account, I recommend:

- **Policy LU4, delete second sentence (“No sites...Local Plan.”)**
- **Policy LU4, change next sentence to “Housing or development proposals *should seek to:*”**
- **Policy LU4, change criterion iii. to “*Respect* the amenity and...”**
- **Policy LU4, delete criterion v.**

The Supporting Statements contains historical information that already appears out of date. I recommend:

- **Page 14, delete Supporting Statements**

Policy LU5 – Affordable Housing

The Framework supports the delivery of:

“...a wide choice of high quality homes, (and to) widen opportunities for home ownership” (Paragraph 50)

The first part of Policy LU5 has regard to this and meets the basic conditions. However, the end of the Policy relies on other policies in another planning document not under the control of the Neighbourhood Plan.

I recommend:

- **Policy LU5, delete “..., in accordance...Local Plan.”**

The Supporting Statements provides information that is now out of date. I recommend:

- **Page 15, delete Supporting Statements**

Policy LU6 – Land Protection

Policy LU6 relies on other policies in another planning document. Furthermore and fundamentally, it seeks to actively prevent any development in the countryside or on agricultural land (other than the conversion of rural buildings and limited development in areas of forestry).

Neither national nor local policies seek to prevent any development in the countryside or on agricultural land in this way. In this regard, Policy LU6 fails to have regard to national policy and is not in general conformity with the strategic policies of the Herefordshire Core Strategy.

Even if a proposal for development in the countryside, could demonstrate that it met with national and local policy requirements, and/or that any harm arising would be significantly outweighed by benefits, Policy LU6 would prevent it from coming forward. In this way, Policy LU6 would fail to contribute to the achievement of sustainable development.

I note that Policy LU6 is also in direct conflict with Policies LU8 and LU14.

Policy LU6 does not meet the basic conditions. I recommend:

- **Delete Policy LU6 and Supporting Statements**

Policy LU7 – Open Spaces and Amenity Areas

Paragraph 28 of the Framework supports the development of community facilities in villages. In addition, Chapter 8 of the Framework, *“Promoting healthy communities,”* states that planning policies should:

“...plan positively for the provision and use of...community facilities” (Paragraph 70).

Policy LU7, as worded, is vague and imprecise. It refers to *“continuing”* to protect and enhance various places. However, no indication is provided as to what protection and enhancement already takes place in respect of each of the places listed.

Furthermore, the Policy fails to provide any mechanism for the enhancement of any of the places, or set out any detail in respect of how they will be protected.

Policy LU7 does not provide a decision maker with a clear indication of how to react to a development proposal. It is imprecise. The Policy does not meet the basic conditions.

I recommend:

- **Delete Policy LU7**
- **Page 18, delete Supporting Statements and map. Delete photographs on page 19, or move them to Part Two of the Neighbourhood Plan (see below).**

I acknowledge that the places listed in Policy LU7 are special to the local community. Taking this into account, I recommend:

- **Replace the deleted Policy with a new reference in Part Two of the Neighbourhood Plan to *“Open Spaces and Amenity Areas.”* Add the following text *“The Parish Council will seek to work with landowners, developers and other parties with the intention of ensuring the protection and enhancement of the churchyard...to the village shop.”***

Policy LU8 – Renewable Energy

Chapter 10 of the Framework, “*Meeting the challenge of climate change, flooding and coastal change,*” establishes planning’s key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy.

Paragraph 97 of the Framework states that policies should be designed to:

“...maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts...”

Further to the above, Herefordshire Core Strategy Policy SD2 (*Renewable and low carbon energy generation*) supports proposals that seek to deliver renewable and low carbon energy.

The general intent of Policy LU8 has regard to national policy and is in general conformity with the Herefordshire Core Strategy.

However, as worded, the Policy is imprecise. It refers to “*no undue adverse impacts*” but provides no indication of what these may be and it is ambiguous with regards whether the criteria set out apply to all schemes or only small-scale schemes. Furthermore, the Policy relates to any form of development, so long as it encourages the use of renewable energy. This could lead to unforeseen circumstances and to conflict with other Policies in the development plan.

No definition or detail as to what “*the existing green infrastructure*” comprises is provided.

For clarity, taking the above into account, and recognising that the Policy is intended as a positive land use planning policy, I recommend:

- **Policy LU8, change to “*Small scale renewable energy schemes that respect local character and residential amenity will be supported.*”**

The Supporting Statements comprise references to things that the Plan does not include and things that have not occurred. They add little but confusion and detract from the clarity of the Neighbourhood Plan. I recommend:

- **Page 20, delete Supporting Statements**

Policy LU9 - Flooding

The Framework states that:

“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk” (Paragraph 100).

Chapter 10 of the Framework, *“Meeting the challenge of climate change, flooding and coastal change,”* goes on to require land use planning policies to apply a sequential, risk-based approach to the location of development, to avoid, where possible, flood risk to people and property.

Policy LU9 has regard to the above, but includes imprecise references. In criterion ii., the Policy refers to demonstrating that development is *“suitably resilient and resistant.”* No indication of what this means is provided in the Neighbourhood Plan and consequently, the Policy fails to provide a decision maker with a clear indication of how to react to a development proposal in this regard.

The last criterion contained in the Policy is unclear. It states that development proposals with flood risk implications should be located in areas of low flood risk. This provides for significant confusion and detracts from the clarity of the Policy.

Criterion iv. of Policy LU9 sets out a requirement for proposals to meet Paragraphs 100 to 104 of the Framework. It is not the role of neighbourhood planning policies to simply refer to policies that already exist.

Taking the above into account, I recommend:

- **Policy LU9, delete criteria ii., iv. and v.**

The first sentence of the Supporting Statements does not support the Policy but, rather, seeks to place a requirement on other bodies. I recommend:

- **Page 21, delete “Periodic flooding...authorities.”**

Policy LU10 – Forestry

The first part of Policy LU10 is not a land use planning policy. It simply states that forestry should be encouraged and that existing areas of forestry should be protected. The Policy does not provide any indication as to how forestry will be encouraged, or how existing areas of forestry will be protected. The Policy fails to provide a decision maker with a clear indication of how to react to a development proposal and does not contribute to the achievement of sustainable development.

The Policy then goes on to refer to any development proposals (for anything, anywhere in the Parish). It does not relate only to forestry. This latter part of the Policy is imprecise and does not meet the basic conditions.

Even if the list of criteria set out in Policy LU10 related only to proposals on existing forestry land (which they do not), no definition of what “*a sustained and functional need*” comprises is provided and the subsequent criteria are vague and imprecise.

Policy LU10 does not meet the basic conditions. I recommend:

- **Delete Policy LU10**
- **Page 23, delete Supporting Statements**

Policy LU11 – Local Green Spaces

The Framework enables local communities to identify, for special protection, green areas of particular importance to them. Paragraph 76 states that

“By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.”

Local Green Space is a restrictive and significant policy designation. The Framework requires the managing of development within Local Green Space to be consistent with policy for Green Belts. Effectively, Local Green Spaces, once designated, provide protection that is comparable to that for Green Belt land. Notably, the Framework is explicit in stating that

“The Local Green Space designation will not be appropriate for most green areas or open space.” (Para 77)

Consequently, when designating Local Green Space, plan-makers should demonstrate that the requirements for its designation are met in full. These requirements are that the green space is in reasonably close proximity to the community it serves; it is demonstrably special to a local community and holds a particular local significance; and it is local in character and is not an extensive tract of land. Furthermore, identifying Local Green Space must be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

Policy LU11 seeks to designate three areas of Local Green Space. Both Bringsty Common and Bradley Wood cover extensive tracts of land. Consequently, their designation as Local Green Space fails to meet all of the tests set out in the Framework. Furthermore, both of these sites are some distance away from Whitbourne and Meadow Green and in this regard, it is questionable whether they are in close proximity to the community they serve. However, notwithstanding this latter point, neither site meets all of the tests set out in the Framework and consequently, their designation does not meet the basic conditions.

The policy requirements of Local Green Space are clearly established in the Framework. Nowhere does the Framework state that Local Green Space *“must be preserved and protected from development proposals”* and this is a matter I address in the recommendations below.

I recommend:

- **Policy LU11, change to *“Land at The Glebe, as shown on the plan below, is designated as local green space where new development is ruled out other than in very special circumstances.”***

- Policy LU11, change title to *“Local Green Space”*
- Delete the map on page 25 and replace it with a large scale plan, clearly identifying the boundary of the Glebe open space on an Ordnance Survey background
- Page 24, delete Supporting Statements *“These are...Chairman, Manorial Court.”*
- Top of Page 24 delete *“Bradley...wildlife.”*
- Second line, Page 24, change to *“...quiet retreat. Volunteers do much to preserve it.”*
- Fourth line, Page 24, delete *“All three...Spaces.”*

Policy LU12 – Building Standards

With regards building standards, a recent Ministerial Statement⁹ establishes that:

“Neighbourhood plans should not be used to apply...new national technical standards.”

The Neighbourhood Plan provides no indication of what best practice in either construction or sustainability actually comprises, how it would be measured and who by. The Policy fails to have regard to national advice and does not provide a clear indication of how to react to a development proposal.

In making the recommendation below, I am mindful that, to a considerable extent, the latter part of Policy LU12 repeats part of Policy LU13 and is therefore unnecessary in any case.

I recommend:

- **Delete Policy LU12**
- **Page 26, delete Supporting Statements**

⁹ Ref: Ministerial Statement 25th March 2016.

Policy LU13 – Environmental Considerations

Policy LU13 has regard to the Framework and is in general conformity with Herefordshire Core Strategy Policies LD1 and LD2 (*Biodiversity and geodiversity*). Together, the Framework and Policy LD1 protect local character and biodiversity.

Policy LU13 criterion iii. is imprecise, in that it does not provide any indication of what an “*adverse effect on the natural environment*” might comprise. Furthermore, it is not clear how this part of the Policy contributes to the achievement of sustainable development, as it does not provide for a balanced consideration of possible harm against possible benefits. Also, with regard to criterion iii., in making the recommendations below, I am mindful that designated sites are already protected.

I recommend:

- **Policy LU13, delete criterion iii.**

Policy LU14 - Employment

As presented, Policy LU14 supports types of employment, rather than development related to types of employment and is not therefore worded as a land use planning policy. Notwithstanding this point, the Framework is clear that, in supporting a prosperous rural economy, neighbourhood plans should:

“support the sustainable growth and expansion of all types of business and enterprise in rural areas...” (Paragraph 28).

As a result of its restrictive approach, which focuses on specific types of employment, Policy LU14 fails to have regard to national policy.

The final paragraph of Policy LU14 seeks to prevent any development that would reduce agricultural farming land. There is no evidence to demonstrate that such an onerous approach to development has regard to national policy, or is in general conformity with the strategic policies of the Herefordshire Core Strategy. Furthermore, I find that the approach set out could prevent sustainable development from coming forward and there is no substantive evidence to the contrary.

The final paragraph goes on to seek to prevent development *“which removes the prospect of employment for a small-scale farmer.”* No indication of what this means, how it can be controlled, or how it contributes to the achievement of sustainable development, is provided. This part of Policy LU14 is imprecise.

Taking all of the above into account, Policy LU14 fails to meet the basic conditions. I recommend:

- **Delete Policy LU14**
- **Page 28, delete Supporting Statements**

Policy LU15 – Road Surfaces

The wording of Policy LU15 is grammatically incorrect and this results in a Policy that is entirely unclear. Part of the Policy appears to suggest that development proposals should ensure that means of access do not harm other road users. The Policy also seems to be stating that “*the volume of traffic*” to a development should not harm other road users.

The Framework and the Herefordshire Core Strategy already set out requirements for safe access and highway safety. In this regard, Policy LU15, as worded, comprises a confusing Policy that adds nothing to adopted land use planning policies that already exist.

Further to the above, in making the recommendation below, I am mindful that Paragraph 32 of the Framework states that:

“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”

It is not clear to me that Policy LU15 has regard to this.

Policy LU15 does not meet the basic conditions. I recommend:

- **Delete Policy LU15**
- **Page 29, delete Supporting Statements**

7. The Neighbourhood Plan: Other Matters

I note that the recommendations made in this Report will have a subsequent impact on page numbering and Contents.

I recommend:

- **Update the Contents page (page 1), to reflect the recommendations above**

8. Summary

I have recommended a number of modifications further to consideration of the Whitbourne Neighbourhood Plan against the basic conditions.

Subject to these modifications, I confirm that:

- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (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.

Taking the above into account, I find that the Whitbourne Neighbourhood Plan meets the basic conditions. I have already noted above that the Plan meets paragraph 8(1) requirements.

9. Referendum

I recommend to Herefordshire Council that, subject to the modifications proposed, the **Whitbourne Neighbourhood Plan should proceed to a Referendum.**

Referendum Area

I am required to consider whether the Referendum Area should be extended beyond the Whitbourne Neighbourhood Area.

I consider the Neighbourhood Area to be appropriate and there is no substantive evidence to demonstrate that this is not the case.

Consequently, I recommend that the Plan should proceed to a Referendum based on the Whitbourne Neighbourhood Area approved by Herefordshire Council on 7 November 2012.

Nigel McGurk, July 2016
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