

## Progression to Examination Decision Document

### Neighbourhood Planning (General) (Amendment) Regulations 2012

Name of neighbourhood area	Ashperton Neighbourhood Area
Parish Council	Ashperton Parish Council
Draft Consultation period (Reg14)	1 May to 26 June 2018
Submission consultation period (Reg16)	13 May to 24 June 2019
Resubmission consultation period (Reg16)	29 October to 10 December 2019

#### Determination

Is the organisation making the area application the relevant body under section 61G (2) of the 1990 Act		Yes
Are all the relevant documentation included within the submission <ul style="list-style-type: none"> <li>• Map showing the area</li> <li>• The Neighbourhood Plan</li> <li>• Consultation Statement</li> <li>• SEA/HRA</li> <li>• Basic Condition statement</li> </ul>	Reg15	Yes
Does the plan meet the definition of a NDP - 'a plan which sets out policies in relation to the development use of land in the whole or any part of a particular neighbourhood area specified in the plan'	Localism Act 38A (2)	Yes
Does the plan specify the period for which it is to have effect?	2004 Act 38B (1 and 2)	Yes
Are any 'excluded development' included? <ul style="list-style-type: none"> <li>• County matter</li> </ul>	1990 61K / Schedule 1	No

<ul style="list-style-type: none"> <li>Any operation relating to waste development</li> <li>National infrastructure project</li> </ul>		
Does it relation to only one neighbourhood area?	2004 Act 38B (1and 2)	Yes
Have the parish council undertaken the correct procedures in relation to consultation under Reg14?		Yes
Is this a repeat proposal? <ul style="list-style-type: none"> <li>Has an proposal been refused in the last 2 years or</li> <li>Has a referendum relating to a similar proposal had been held and</li> <li>No significant change in national or local strategic policies since the refusal or referendum.</li> </ul>	Schedule 4B para 5	No

### Summary of comments received during submission consultation

Please note the above are summaries of the response received during the submission consultation. Full copies of the representations will be sent to the examiner in due course.

<b>Herefordshire Council</b>	
Strategic Planning	No major conformity issues identified. Full comments can be found in appendix 1.
Environmental Heath	<p><b>S.1 Land between Peascroft and Hopton House</b>  A review of Ordnance survey historical plans indicate a site used for clay bricks and tiles manufacture quarry was situated immediately adjacent the allocated site. It is possible that unforeseen contamination may be present at the above mentioned site  A further review of Ordnance survey historical plans indicate an area of ground which has been classed as Unknown filled ground (pond, marsh, river stream dock) to the west of the former clay bricks and tile manufacture site.</p> <p><b>S.2 Land opposite Peasecroft</b>  Historical maps indicate that the site was used as orchards which can be subject to agricultural spraying practices and in some circumstances, lead to a legacy of contamination.</p>
Transportation 29/11/19	<p><b>Site 4</b> (formerly site 10, although the map towards the end of the document still refers to it as site 10), is just off a lane joining the A417 in Stretton Grandison.</p> <p>Vehicles travelling north along the A417 and turning right into the lane from which access would be achieved, have very bad forward visibility along the A417 and therefore cannot see oncoming vehicles. It is likely that we would resist more than one dwelling on this site unless significant upgrades to the</p>

	junction with the A417 were achieved (this is unlikely due to land ownership constraints).
Conservation – historic environment team	For the Housing Allocation to the far NW of the village of Ashperton, care will need to be taken over any proposal due to the location of the site on the periphery of the village, forming a transition in terms of density and hierarchy to the centre, and also being mindful of the setting of listed buildings.
<b>External</b>	
Welsh Water	Nothing further to add at this time.
Coal Authority	No specific comments to make on it.
Historic England	<p>Pleased to note that our comments on the earlier draft of the Plan in relation to certain housing allocations have now been addressed.</p> <p>Pleased to note that the Plan evidence base is generally well informed by reference to the Herefordshire Historic Environment Record including the Herefordshire Landscape Character Assessment</p> <p>Supportive of both the content of the document and the vision and objectives set out in it.</p> <p>Also commend the general emphasis given to the conservation of landscape character and the maintenance of local distinctiveness.</p>
National Grid	National Grid has identified that it has <b>no record</b> of such apparatus within the Neighbourhood Plan area.
Natural England <i>Received late</i>	<p>It looks as though the HRA for this plan was produced in Jan 2019 and concludes that there are no Adverse Effects on the Integrity of the River Wye SAC. This was of course before the Dutch judgement.</p> <p>Post Dutch judgement, Natural England and Herefordshire Council are in agreement that the River Wye Nutrient Management Plan does not give enough 'certainty' to be relied upon as mitigation for additional phosphate entering the river as a result of development (or other land use changes). The NMP needs to be revised.</p> <p>The Ashperton NP area is in the River Lugg catchment. This part of the River Wye SAC is already exceeding its Phosphate limits. In the absence of a NMP with sufficient certainty to be relied upon in a HRA, new development in the Lugg catchment would need to be able to demonstrate that it is Phosphate neutral.</p> <p>The Ashperton NP allocates development. Therefore at the present time NE is unable to agree with the HRA's conclusion of no Adverse Effects on Integrity to the River Wye SAC.</p>
Collins Design and Build  On behalf of Mr Davies  Land north of the village	<p>The objections concern the following:</p> <ol style="list-style-type: none"> <li>1) The exclusion of our client's land from the proposed Ashperton NDP settlement boundary</li> <li>2) The unreasonably restrictive nature of the design and scale/ phasing policies.</li> </ol> <p><b>Objection 1: NDP Policy H2 – Settlement Boundary</b> The NDP does not include any explanation as to criteria that has been</p>

hall	<p>used to define the settlement boundary.</p> <p>Outline planning permission was approved on 24th August 2016 for a proposed development of ten dwellings. A reserved matters application was submitted on 19th March 2019 and yet to be determined</p> <p>The site is the largest residential commitment within Ashperton and will deliver 71% of the Parish Core Strategy minimum housing requirement. There is therefore no planning or other logical reason why the site should be excluded from the proposed village settlement boundary.</p> <p>The situation is even more puzzling when the proposed settlement boundary has been expanded to include other housing commitments and even proposed housing allocations which do not yet have any form of planning permission and cannot automatically be considered deliverable.</p> <p>The settlement boundary should therefore be enlarged to encompass the site known as land north of Ashperton Village Hall.</p> <p>There is also an inconsistency between NDP text at Section 5.4 and the proposed settlement boundary identified on the plan titled Ashperton Policies Map.</p> <p><b>Policy D1: Design and Appearance</b> requires that the design of all new development should respect local character with a heavy steer in the policy and pre-text towards dwellings of a more traditional appearance. No reference or support is provided in the policy for a more contemporary or innovative design approach which may also incorporate high levels of sustainability.</p> <p>The policy should be amended to incorporate an additional criteria that provides support for contemporary, innovative and sustainable designs that make a positive contribution to the architectural diversity of the Parish.</p> <p><b>Policy D2: Scale and Phasing of Development</b> places an unreasonably restrictive cap on the scale of development that will be permitted without any robust planning justification. There is no evidence to suggest a development larger than 3 dwellings will result in an adverse impact on the character of the village</p>
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### Officer appraisal

All the consultation requirements of Regulation 14 were undertaken by the parish council and all the required documentation was submitted under Regulation 15.

During the first Regulation 16 consultation (May/June 2019) it became apparent that some of the representations refer to comments made at Regulation 14 which are not reflected within the Consultation Statement submitted.

Therefore it was recommended that the parish council review all the representations received during submission and a repeat Regulation 16 consultation would be required to ensure the process is robust and free from challenge. The parish carried out a second regulation 16 consultation in October 2019.

This plan has met the requirements of the regulations as set out in the table above. No concern has been raised from internal consultees with regards to the ability of the plan to meet the required minimum proportional growth contributing towards the deliverability of the Core Strategy.

The plan includes settlement boundary for the identified settlement of Ashperton. This takes into account existing commitments and proportional growth requirements of dwellings. The parish already has met the 15 commitments and completions (April 2019). The plan also allows for windfalls and some capacity within the settlements boundary and rural windfall. Therefore it is likely that Ashperton will continue to meet their proportionate growth target.

10 representations (1 late) were received during the re submission (reg16) consultation period. 6 External and 4 internal. One objection highlighted which is considered should be included within the plan, and that the plan was not flexible enough for development.

Historic England have raised no further concerns during the Reg14 consultation and first Regulation 16.

Natural England has highlighted that the Ashperton NP area is in the River Lugg catchment. This part of the River Wye SAC is already exceeding its Phosphate limits. In the absence of a NMP with sufficient certainty to be relied upon in a HRA, new development in the Lugg catchment would need to be able to demonstrate that it is Phosphate neutral. The Ashperton NP allocates development. Therefore at the present time NE is unable to agree with the HRA's conclusion of no Adverse Effects on Integrity to the River Wye SAC. However, following Counsel advice, a note has been issued by Herefordshire Council with this regards which is attached in appendix 2.

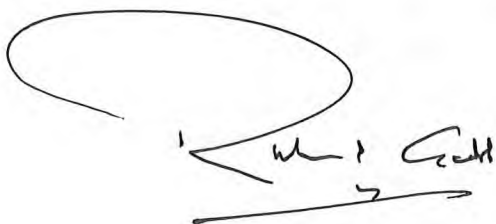
Strategic Planning confirmed that the policies within the plan are in general conformity with the Core Strategy.

Overall it is considered that there are no fundamental issues relating to this plan which would prevents its progress to examination.

#### **Assistant Director's comments**

#### **Decision under Regulation 17 of the Neighbourhood Planning (General) Regulations 2012.**

It is recommended that the Ashperton Neighbourhood Plan **does** progress to examination at this stage.

A handwritten signature in black ink, appearing to read 'Richard Gabb', with a large, sweeping loop above the name and a horizontal line underneath.

**Richard Gabb**

**Programme Director – Growth**

Date: 18 December 2019

## Appendix 1

### Neighbourhood Development Plan (NDP) – Core Strategy Conformity Assessment

From Herefordshire Council Strategic Planning Team

Name of NDP: Ashperton- Regulation 16 submission- revised version

Date: 29/10/19

Draft Neighbourhood plan policy	Equivalent CS policy(ies) (if appropriate)	In general conformity (Y/N)	Comments
H1- Number of New Houses	SS2; RA1; RA2	Y	
H2- Settlement Boundary	SS1; SS2; RA1; RA2	Y	
H3- Housing Mix and Tenancy	SS1; SS2; RA1, RA2, H1, H3	Y	<p>Standing comments from previous Reg 16 submission:</p> <p>Given that policy D2 has placed a cap on individual developments at 3 dwellings, it would not appear likely that such a scheme would come forward?</p>
H4- Type of Housing	SS1; SS2; H3	Y	<p>Standing comments from previous Reg 16 submission:</p> <p>The policy could perhaps be worded to clarify that the types of houses listed in particular are to be encouraged. The types of housing listed would be approved if they comply with other policies in any case- with or without this policy as currently worded.</p>
H5- Rural Exception Sites	SS1; SS2; H1; H2	Y	<p>Standing comments from previous Reg 16 submission:</p> <p>Though the policy conforms to its equivalents in the Core Strategy, it could be questioned whether its inclusion is strictly necessary when it does little to supplement what is already covered by the existing CS policy.</p>
D1- Design Appearance	SS6; LD1; LD2; LD3; LD4; SD1	Y	

Draft Neighbourhood plan policy	Equivalent CS policy(ies) (if appropriate)	In general conformity (Y/N)	Comments
D2- Scale and Phasing of Development	SS6; LD1	Y/N	<p>Standing comments from previous Reg 16 submission:</p> <p>Criterion a): Without a clear basis for capping the size of individual developments to be permitted at 3 dwellings, this appears unnecessarily prescriptive.</p> <p>It could serve as a hindrance to similarly sized schemes with equal planning merit from coming forward.</p> <p>A minor suggestion on wording of criterion B for clarity:</p> <p><i>“...should incorporate variations—a variety of design features.”</i></p>
D3- Technical Design	SS1; SS6; MT1; SD1; SD2; SD3	Y	
ST1- Accommodating Traffic within the Parish	SS4; MT1	Y	
SB1- Supporting Local Business	SS5; RA6	Y	
SB2- Work Space Development	SS5; RA6; E3	Y	
SB3- Change of Use	SS1; RA5; E2	Y	It could perhaps be made clearer that this policy relates more specifically to protection of existing employment sites/buildings.
SB4- Provision of Broadband and Mobile Telephone Services	SS1; E3	Y	
E1- Landscape	SS6; LD1; LD2	Y	
E2- Tranquillity	SS6; SD1	Y	Criterion C could be more enforceable if the policy required lighting information to support applications.
E3- Cultural Heritage	SS6; LD4	Y	
E4- Wildlife and the Natural Environment	SS6; LD2	Y	
E5- Flooding and Water	SS6; SD3; SD4	Y	

Draft Neighbourhood plan policy	Equivalent CS policy(ies) (if appropriate)	In general conformity (Y/N)	Comments
Management			
RE1: Small-scale Renewable Energy	SS6; SS7; SD2	Y	
RE2: Commercial Renewable Energy	SS6; SS7; SD2	Y	





## **Habitat Regulation Assessments (HRA) of Neighbourhood Development Plans**

### **Statement in relation to CASE 293/17 COURT OF JUSTICE OF THE EUROPEAN UNION**

### **Cooperation Mobilisation for the Environment v Verenigin Leefmilieu (Dutch Nitrogen)**

#### **Update following Counsel Advice**

**13 December 2018**

Herefordshire Council has sought Counsel advice in light of the implication of the recent European judgment the case of People Over Wind and Sweetman v Coillte Teoranta (C-323/17) ("Sweetman") and the representations from Natural England to a number of Habitat Regulation Assessment consultations undertaken post the judgment.

Additional advice has now been sought regarding the judgment on Cooperation Mobilisation for the Environment v Verenigin Leefmilieu (Dutch Nitrogen) which was published on the 7 November 2018 (after the previous advice was issued).

The Herefordshire Core Strategy was subject to a detailed Appropriate Assessment (AA). Being prior to Sweetman the various stage of the AA addressed mitigation and built that mitigation into the Core Strategy to avoid significant effect including Policy SD4. It assessed the position of Policy RA1 and RA2 given Policy SD4 and assumes that SD4 will be applied correctly to any application including the provision of phasing and Appropriate Assessments of individual planning applications.

However, in stark contrast to Dutch Nitrogen the Core Strategy does not given a green light to the development envisaged in it. Development under the Core Strategy is expressed subject to specific restrictions which will remove any likely significant effects, this is the whole premise of Policy SD4. No permission could be granted (reg 63(5)) without meeting the requirements of Policy SD4.

The advice indicates that Policy SD4 as a measure to prevent harm is sufficiently certain to meet the Dutch Nitrogen tests. Compliance with it is a fundamental requirement before any permission could be granted.

The proposed Neighbourhood Development Plans do not undermine or change this and in screening the NDPs, the proper application under current case law of Policy SD4 (under s38(6) and reg 63(5)) will ensure that the NDP provides no pathway to adverse effects on the integrity.

The advice concludes that the overall package will ensure that the NDP is not adopted in breach of reg 63(5) and that, assuming SD4 is properly applied, any permission under Policy RA1, RA2, SD4 and compliant neighbourhood development plans would not breach reg 63(5).

