

**Cradley Parish Council**

# **Cradley Neighbourhood Development Plan**

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

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12 April 2017

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## Overall Finding

This is the report of the Independent Examination of the Cradley Neighbourhood Development Plan. The plan area is the entire Cradley Parish area. The Plan period runs until 2031. The Neighbourhood Plan includes 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 Cradley Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Cradley Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the Cradley Neighbourhood Area which was formally designated by Herefordshire Council (the Local Planning Authority) on 5 August 2013.
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 Herefordshire 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 Herefordshire Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum.

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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

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 should be extended, and what modifications, if any, should be made to the submission version plan. Once a neighbourhood plan has been independently examined, and the decision taken to put the plan to a referendum, it must be taken into account when determining a planning application, in so far as the policies in the plan are material to the application. 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 as part of the Development Plan for the neighbourhood area, and subsequently be used in the determination of planning applications and decisions on planning appeals in the plan area. The Housing and Planning Act requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan. The National Planning Policy Framework is very clear that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted<sup>3</sup>.
7. I have been appointed by Herefordshire Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and Herefordshire Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Neighbourhood Plan examiner. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.
8. As independent examiner, I am required to produce this report and must recommend either:

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<sup>3</sup> National Planning Policy Framework paragraph 198 DCLG 2012

- 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>4</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>5</sup>

10. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.<sup>6</sup> The Guidance states “*it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.*” The examiner has the ability to call a hearing for the purposes of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary I proceeded on the basis of written representations.

## Basic conditions and other statutory requirements

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

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

<sup>5</sup> Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

<sup>6</sup> Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

<sup>7</sup> Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

- 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>8</sup>

12. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.<sup>9</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’.

13. 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 and Compulsory Purchase Act 2004.<sup>10</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.

14. The Neighbourhood Plan relates to the area that was designated by Herefordshire Council as a neighbourhood area on 5 August 2013. Paragraph 4 of the Forward makes it clear the area for designation was the Parish Council area. The map on Page 4 of the Submission Version of the Neighbourhood Plan shows the Cradley Parish boundary. For the avoidance of doubt, I recommend the title of the map on page 4 should state Cradley Parish Neighbourhood Plan Area.

**Recommended Modification 1:**

**Revise the title of the map on page 4 to read “Cradley Parish Neighbourhood Plan Area”**

15. I have noted the Foreword to the Neighbourhood Plan refers to the Cradley and Storrige Neighbourhood Plan, and paragraph 1.1 of the Plan refers to Cradley and Storrige parish. References assigned to identify policies commence CS. I have examined the application to designate a Neighbourhood Area received by Herefordshire Council on 14 June 2013. This clearly shows the name Cradley Parish Council

<sup>8</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>9</sup> The Convention rights has the same meaning as in the Human Rights Act 1998

<sup>10</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)).

and the name of the Neighbourhood Area to be Cradley Neighbourhood Development Plan. The Neighbourhood Area boundary map is titled Cradley Parish Area. The Herefordshire Council decision document shows the Parish to be Cradley. I recommend all references are standardised in order to avoid any confusion.

**Recommended Modification 2:**

**All references to the name of the Parish and to the title of the Neighbourhood Plan should be standardised**

16. The Neighbourhood Plan does not relate to more than one neighbourhood area,<sup>11</sup> and no other neighbourhood development plan has been made for the neighbourhood area.<sup>12</sup> Subject to the recommended modification all requirements relating to the plan area have been met.
17. 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>13</sup> and the Neighbourhood Plan does not include provision about excluded development.<sup>14</sup> I am able to confirm that I am satisfied that each of these requirements has been met.
18. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.<sup>15</sup> The front cover of the Regulation 16 Version of the Neighbourhood Plan confirms the Plan period is 2011 to 2031 (the same period as the Herefordshire Local Plan Core Strategy).
19. 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>16</sup> It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan. I have been appointed to examine whether the submitted Neighbourhood Plan meets the basic conditions and Convention rights, and the other statutory requirements.
20. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include

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<sup>11</sup> Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

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

<sup>13</sup> Section 38A (2) Planning and Compulsory Purchase Act 2004

<sup>14</sup> Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B (1)(b) Planning and Compulsory Purchase Act 2004

<sup>15</sup> Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

<sup>16</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

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.

21. 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.
22. 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>17</sup>

## Documents

23. 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:
  - Cradley Parish Neighbourhood Development Plan 2011 to 2031 Consultation Draft Regulation 16 September 2016
  - Cradley Parish Neighbourhood Development Plan 2011-2031 Basic Conditions Statement August 2016
  - Cradley Neighbourhood Area Environmental Report September 2016
  - Cradley Neighbourhood Area Habitats Regulations Assessment March 2016
  - Cradley Neighbourhood Development Plan Consultation Statement August 2016
  - Cradley Policies Map
  - Cradley Village Policies Map
  - Documents supporting the Neighbourhood Development Plan available on the Cradley Parish Council website
  - Representations received during the Regulation 16 publicity period
  - Herefordshire Council Progression to Examination Decision Document January 2017

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<sup>17</sup> See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

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

## Consultation

24. The submitted Neighbourhood Plan is accompanied by a Consultation Statement which details the process undertaken in the preparation of the Neighbourhood Plan. The Consultation Statement includes a “progress flow-chart”. This is a very successful method of summarising the Plan preparation process in an easily understandable form. The progress flow chart is an example of best practice that other plan preparation groups could usefully adopt. I outline here a number of the main stages of consultation in order to acknowledge the comprehensive and inclusive approach adopted.

25. A Neighbourhood Development Plan “Plan team” comprising four Parish Councillors was established in May 2013. Communication since that time has included a dedicated Neighbourhood Plan section on the Parish Council website where latest news, minutes of meetings, and other documents can be viewed. A report of the NDP Working Group has been considered at each Parish Council meeting. The Cradley Reporter, the Parish Council newsletter delivered to every household in the Parish, has been used to update parishioners on progress. The Parish newsletter has also included regular reports. Consultation events and presentations have been organised at a number of stages in Plan preparation. Parish notice boards and posters have been used to advertise events and meetings.

26. A public launch event attended by approximately 120 people was held in August 2013. Approximately 40 people expressed an interest and were subsequently invited to join the NDP Group.
27. A questionnaire consultation delivered to all households in the Parish was held in the period March/April 2014. Planning for Real events were held in the British Legion Club Cradley, and in Storridge Village Hall, in June and July 2014 respectively. These events together attracted a total of approximately 100 attendees.
28. A Landscape Capacity Assessment was published in November 2014. This study was presented along with possible options for consideration at public meeting and drop in sessions in June 2015. Various options for housing development and/or community facilities were presented by the respective promoters. Approximately 200 people attended over the two days of the event. Other consultation involved distribution of a further questionnaire throughout the Parish in September 2015 and the holding of a settlement boundary drop-in open day in October 2015. A specific consultation meeting was held between representatives of the NDP Working Group and five members of the Heart of the Village Group in January 2016.
29. Pre-submission consultation in accordance with Regulation 14 was undertaken in the period 9 March to 27 April 2016. Publicity included postings on the website and Facebook page; the display of posters on Parish Council notice boards and elsewhere; email notifications; hand delivery of a four-page leaflet to every household in the village; four half-day drop-in events attended by a total of 16 residents; and distribution of a questionnaire. A total of almost 80 submissions were made during this period. The Neighbourhood Plan Consultation Statement sets out comments received; the Parish Council response; and where appropriate, amendments to the Neighbourhood Plan.
30. The final draft of the Neighbourhood Plan was approved by the Parish Council and has been submitted to Herefordshire Council. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 publicity period between 28 September and 9 November 2016. Representations were submitted by a total of 28 organisations and individuals which I have taken into consideration in preparing this report, even though they may not be referred to in whole, or in part. A further representation was received after the period for representations had closed. This representation related to a matter raised in other representations and did not include any case why it had

been submitted after the period for representations had closed but should be considered. I have not taken this representation into consideration.

31. The Malvern Hill AONB Unit states other opportunities could have been taken to lend further statutory support to the conservation and enhancement of natural beauty, and to include a policy relating to highway signs. There is however no requirement for a Neighbourhood Plan to include policies relating to any particular topics.
32. The representations of Welsh Water; Environmental Health and Trading Standards Herefordshire Council; Severn Trent Water; Natural England; Homes and Communities Agency; Historic England; The Environment Agency; CPRE; National Grid; and The Coal Authority do not recommend any modification of the Neighbourhood Plan. I have considered matters raised in the representations as appropriate when preparing the section of my report that examines the Neighbourhood Plan as a whole, and the section that examines the policies of the Neighbourhood Plan.
33. One representation states “*there is no mention of the dangerous stretch of road and the completely inappropriate 60mph speed limit between the Red Lion pub and the Bosbury road turn on the A4103.*” There is no requirement for a Neighbourhood Plan to include general text or any policy relating to highway matters. Indeed, the issue of vehicle speeds is not an issue that could appropriately be the subject matter of a neighbourhood plan policy which should relate to the use and development of land.
34. A representation expresses a concern relating to an alleged land ownership conflict of interest of an NDP team member. Other comment is made with respect to the process of commissioning the Landscape Assessment. A further representation sets out 14 matters that are described by the writer as procedural irregularities. My role does not extend to examination of such matters.
35. Two other representations state the whole approach of the NDP team has been to stop further residential development and actively stand in the way of the Heart of the Village proposal. A further representation makes several points with respect to the Plan preparation process and concludes:
  - The NDC/PC has failed to properly consult the community, with fairness and adequate information.
  - Alternative proposals have been ruled out without adequate

research or consultation.

- Clear guidance from Herefordshire Council in their NDP notes has been ignored to the detriment of this community.

36. Another representation sets out a case that “*the consultation process has been done very poorly*” and includes complaints with respect to procedural issues during the plan preparation process. A further representation states consultation has been “*flawed*” referring to loaded, incomplete and inconsistent questions, failure to acknowledge conflicts of interest, failure to assess economic and social needs, and partiality and unfairness. Six other representations state the strategic green gap was not adequately defined and explained during consultation. One of these representations also states acceptance of the recommendation of Herefordshire Council to allow forestry and agricultural development within the strategic green gap and not accept the recommendation of that Council to accept a development for community purposes in the gap has not been explained. Another of the representations states the plan preparation process has not revealed the views of the Parish regarding the Heart of the Village project.

37. A further representation sets out what the writer describes as a schedule of monies invested in or given to the Heart of the Village and puts forward thoughts on this, and refers to community response to a planning application.

38. My role does not extend to consideration of alternative proposals to those included in the submission Neighbourhood Plan; or whether recommendations of, or guidance issued by, Herefordshire Council has been followed; or financial support for a local project; or community response to a planning application.

39. In a consultation, Government had put forward a question as follows “*Do you agree with the introduction of a new statutory requirement (basic condition) to test the nature and adequacy of the consultation undertaken during the preparation of a neighbourhood plan or order? If you do not agree is there an alternative approach that you suggest that can achieve our objective?*” The published Government response to the consultation states “*We do not intend to take forward the proposals to introduce a new basic condition...*”<sup>18</sup> The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement.

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<sup>18</sup> Department for Communities and Local Government Neighbourhood Planning Government response to consultation December 2014 ISBN 978-1-4098-4416-7

The Regulations state a consultation statement means a document which –

- a) Contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- b) Explains how they were consulted;
- c) Summarises the main issues and concerns raised by the persons consulted; and
- d) Describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.<sup>19</sup>

40. The Consultation Statement includes information in respect of each of the requirements set out in the Regulations. On this basis, I am satisfied the requirements have been met. It is evident the group of people most actively involved in preparing the plan has offered stakeholders considerable opportunity to influence the plan content. It is however not within my role to test the nature and adequacy of the consultation undertaken.

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

41. 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

42. The Basic Conditions Statement states “*The draft NDP does not diminish but seeks to enhance the human rights of the current and future residents of Cradley and Storrige Parish and of any other people who might be affected by it*”. I have given consideration to the

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<sup>19</sup> Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).<sup>20</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.

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

44. The objective of EU Directive 2001/42<sup>21</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>22</sup> as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.<sup>23</sup>

45. The submission documents include an Environmental Report dated September 2016. This report confirms a Scoping Report had been made available to the statutory bodies for consultation from 8 September to 13 October 2014. The Environmental Report states responses from Natural England and English Heritage were incorporated where relevant. The draft Environmental Report was subject to consultation alongside the Pre-Submission Neighbourhood Plan, from 9 March to 27 April 2016, both of which were published for consultation with the statutory bodies as well as the general public. The final Environmental Report was published alongside the Submission Neighbourhood Plan document.

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<sup>20</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>21</sup> Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

<sup>22</sup> Defined in Article 2(a) of Directive 2001/42

<sup>23</sup> Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

46. 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. Four policies were re-screened following amendment of those policies in response to Regulation 14 consultation submissions. An additional policy relating to design criteria was added. The Environmental Report confirms “*no significant effect is likely from the implementation of the Cradley and StorrIDGE NDP policies*”.
47. 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 48 options and a ‘do nothing’ option. 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.
48. Alternatives have been assessed to the same level of detail against a consistent set of assessment criteria. Paragraph 8 of Schedule 2 to the EA Regulations requires an outline of the reasons for selecting the alternative dealt with. The explanation of why the preferred alternative was selected is presented in paragraphs 5.4 to 5.6 inclusive. The explanation 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.

49. 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>24</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 7.3 of the Environmental Report that Herefordshire Council will monitor outcomes from the NDP policies. I am satisfied that the requirements in respect of Strategic Environmental Assessment have been met.

50. The Environmental Report dated September 2016 states “*Habitat Regulations Assessment (HRA) screening does not need to be carried out as the Parish falls outside the catchment for the River Wye (including River Lugg), Wye Valley woodlands and is outside the 10km of Downton Gorge both of which are European sites (Special Area of Conservation). The HRA assesses the potential effects of the NDP on the River Wye SAC, Wye Valley Woodlands and Downton Gorge SAC*”. 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.

51. 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.

52. 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

53. The Guidance<sup>25</sup> states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature

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<sup>24</sup> National Planning Policy Guidance Revision date 09 02 2015 Paragraph 30 Reference ID:11-030-20150209

<sup>25</sup> National Planning Policy Guidance paragraph 031 reference ID:11-031-20150209

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

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

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

54. 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>26</sup> which requires plans to be “*consistent with national policy*”.

55. Lord Goldsmith has provided guidance<sup>27</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.*”

56. 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 presented seeking to demonstrate the regard the Neighbourhood Plan has to the economic, social, and environmental dimensions of the Framework. Statements are also made that the Neighbourhood Plan has regard for

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<sup>26</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>27</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 October 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 October 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

the 12 core planning principles set out in paragraph 17 of the Framework.

57. The Neighbourhood Plan includes a positive Vision that refers to the village continuing to thrive as a vibrant and distinctive place. The Vision identifies five specific dimensions of the future that is envisaged. These dimensions include a thriving and prosperous community; a flourishing local economy that exhibits vitality and dynamism; and supporting sustainable development. The vision is underpinned with eight objectives that are also positively worded and which will be pursued to deliver the Vision for the Plan area. The eighth objective is concerned with process rather than a future state however I do not consider a modification is necessary to meet the Basic Conditions.
58. 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.
59. 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.*”
60. 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>28</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*

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<sup>28</sup> Paragraph 14 National Planning Policy Framework 2012

*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>29</sup>.

61. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.
62. The Framework states there are three dimensions to sustainable development: economic, social and environmental. I have earlier in my report made reference to the fact the Basic Conditions Statement includes statements that demonstrate the economic, social and environmental attributes of the Neighbourhood Plan.
63. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. The Neighbourhood Plan seeks to contribute to sustainable development by:
- Directing new housing development, apart from defined exception schemes, within and adjacent to settlement boundaries;
  - Directing housing development to locations where the landscape is assessed to have capacity;
  - Supporting appropriate economic development by seeking to avoid loss of existing employment premises and sites;
  - Retaining existing community facilities and conditionally supporting additional community facilities;
  - Seeking to ensure new development does not adversely affect and enhances the natural beauty of the landscape and biodiversity;
  - Safeguarding a local wildlife site;
  - Avoiding increased flood risk;

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<sup>29</sup> National Planning Policy Guidance (Ref ID:41-072-20140306)

- Maintaining a strategic gap between the built areas of east and west Cradley;
- Promoting good quality design in new developments;
- Avoiding loss of recreational open space unless this is no longer required or is being replaced with an equivalent facility.

64. 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)

65. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.<sup>30</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>31</sup>

66. 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>32</sup>

67. 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

<sup>30</sup> Paragraph 16 National Planning Policy Framework 2012

<sup>31</sup> Paragraph 184 National Planning Policy Framework 2012

<sup>32</sup> National Planning Policy Guidance (ID: 41-04720 140306)

me that the Development Plan applying in the Cradley 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.

68. 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.

69. 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>33</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. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

70. 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>34</sup>

71. 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

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<sup>33</sup> Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P &CR 31

<sup>34</sup> National Planning Policy Guidance (ID ref: 41-074 201 40306)

contained in the last of those plans to become part of the Development Plan.<sup>35</sup>

72. 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.

## **The Neighbourhood Plan policies**

73. The Neighbourhood Plan includes 12 policies as follows:

Policy CSNDP 1: Settlement Boundary

Policy CSNDP 2: Housing Provision

Policy CSNDP 3: Economic Development

Policy CSNDP 4: Community Facilities

Policy CSNDP 5: Area of Outstanding Natural Beauty

Policy CSNDP 6: Local Wildlife Sites

Policy CSNDP 7: Areas of Flood Risk

Policy CSNDP 8: Strategic Green Gap

Policy CSNDP 9: Design

Policy CSNDP 10: Conservation Area

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<sup>35</sup> Section 38(5) Planning and Compulsory Purchase Act 2004

Policy CSNDP 11: Protected Area of Open Space

Policy CSNDP 12: Recreational Open Space

74. 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>36</sup>
75. The Guidance states *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”*
76. *“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”.*
77. *“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>37</sup>
78. 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

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<sup>36</sup> Paragraphs 184 and 185 National Planning Policy Framework 2012

<sup>37</sup> See section 38(6) of the Planning and Compulsory Purchase Act 2004.

determination of planning applications and appeals, I have examined each policy in detail:

### **Policy CSNDP 1: Settlement Boundary**

79. This policy seeks to establish that the provision of housing, apart from exception site schemes, will be limited to sites within identified settlement boundaries.
80. A representation states *“the message is that as we no longer have a settlement boundary the NDP has to be accepted by the community because if the community does not there is a chance of rampant development in and around Cradley.”* The representation opposes *“excessive infilling”* and suggests one or more areas should be set aside for development *“if need be, the settlement boundary changed to incorporate these areas.”*
81. The policy includes reference to *“the Proposals Map”*. The Submission Plan does not include a map with that title. Appendix 4 includes a map with the title *“NDP Plan Map for Cradley Village”*. Herefordshire Council has provided me with a *“Cradley Policies Map”* and a *“Cradley village Policies Map”*. These two maps are not included within the Plan document.

### **Recommended modification 3:**

#### **The Cradley Policies Map and the Cradley village Policies Map should be included in the Neighbourhood Plan document**

82. The policy refers to *“exception schemes covered by Herefordshire Core Strategy Policy H2”*. Core Strategy Policy H2 includes reference to Core Strategy Policy RA2. This cross-referencing of policies is not good practice. Policies should be self-contained wherever possible so that they provide clear advice to parties preparing development proposals, and offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. I have recommended a modification in this respect.
83. There is a degree of overlap between Policy CSNDP 1 and Policy CSNDP 2 with respect to the policy approach to proposals outside the settlement boundaries. I have recommended modification so that the first policy relates to proposals within the settlement boundaries and the second policy relates to proposals adjacent to, and more distant from, the settlement boundaries in order to achieve a practical

framework for decision making on planning applications as required by paragraph 17 of the Framework.

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

**Recommended modification 4:**

**Replace Policy CSNDP 1 with “Proposals for housing development will be supported within the settlement boundaries defined on the Cradley village Policies Map”**

**Policy CSNDP 2: Housing Provision**

85. This policy seeks to establish conditional support for small scale development within and adjacent to the settlement boundary.

86. A representation opposes “*excessive infilling*” and suggests one or more areas should be set aside for development “*if need be, the settlement boundary changed to incorporate these areas.*” Another representation states Storridge seems to be offered no protection from creeping development.

87. The policy includes reference to the policies of the Herefordshire Core Strategy and other policies of the Neighbourhood Plan. This cross-referencing is unnecessary. Policies should be self-contained wherever possible so that they provide clear advice to parties preparing development proposals, and offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. I have recommended a modification in this respect.

88. The policy includes reference to the Landscape Assessment. One representation states that the policy wording requires further clarification. The Malvern Hills AONB Unit also consider that this policy needs to be amended to clarify that it applies only to sites that are deemed to have a capacity of moderate as a minimum. It should not apply to sites that, for example, have a capacity of low-moderate. I

recommend a modification is made in this respect, and recommend reference should be made to the map included at Appendix 5 in order to offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

89. The use of the term small scale is imprecise. The final sentence of the Policy clarifies the intention to define small scale as 10 dwellings or fewer. This explanation is not included in the Policy when it is represented in Section 10 of the Neighbourhood Plan. The limitation to 10 or fewer dwellings whilst arising from the results of the Parish survey of September 2015 is not sufficiently justified. The Guidance states “*Proportionate, robust evidence should support the choices made and the approach taken*”. I have recommended a modification in this respect. I also recommend minor modifications to improve clarity.
90. I have also recommended modifications to reflect national policy relating to housing development in countryside locations, in particular that set out in paragraph 55 of the Framework. I have recommended a specific reference to Storridge in order to clarify how the Policy applies to that settlement.
91. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; supporting a prosperous rural economy; and conserving and enhancing the natural environment. Subject to the modification recommended, this policy meets the basic conditions.

**Recommended modification 5:**

**Replace Policy CSNDP 2 with “Proposals for housing development adjacent to the settlement boundaries defined on the Cradley village Policies Map which make a positive contribution to their landscape setting will be supported in areas (including the Pixiefield site) that are defined on Figure 6 as having a moderate, high, or very high capacity to accommodate development.**

**In areas, not within or adjacent to the settlement boundaries, proposals for housing development, including in Storridge, will only be supported where they comprise affordable housing on rural exception sites; are essential to agriculture, forestry or**

**other land based employment; or are for a dwelling of exceptional quality or that is truly innovative”**

### **Policy CSNDP 3: Economic Development**

92. This policy seeks to establish support for appropriate proposals that will contribute to development of the local economy.
93. A representation states the Policy should actively allow for the creation of suitable business premises. The Malvern Hills AONB Unit states “*It is possible that the intention of this policy is to support tourism development involving the conversion of redundant buildings which is appropriate to the special character of the Parish. It would be useful if this could be clarified*”. It is not within my role to recommend additional policy components.
94. Herefordshire Council Development Management service states the Policy needs to distinguish between tourist accommodation and attractions, and between conversions and new build, and suggest that there should be a separate tourism policy that sets out criteria. Whilst I do not disagree with this observation it is beyond my role to recommend the introduction of new policy areas to the Neighbourhood Plan. The element of the policy that seeks to establish support for tourism related development involving the conversion of redundant buildings meets the basic conditions.
95. It is inappropriate for the Policy to refer, in respect of one provision, to the Parish Council. The policy includes reference to several Core Strategy policies. This is unnecessary. Indeed, the third paragraph of Section 4 of the Neighbourhood Plan confirms this. The Policy does not add any additional level of detail or distinct local approach to the strategic policies, in particular in respect of re-use or conversion of redundant buildings, or in respect of tourism related development. I have recommended a modification in this respect so as to achieve a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.
96. The Policy refers to the Ashvale Industrial Estate being identified on a “*Proposals Map*”. I have proposed (recommended modification 3) that Policies maps be included within the Neighbourhood Plan. I further recommend the extent of the Ashvale Industrial Estate is shown on the appropriate Policies map. The use of the word “*protect*” is imprecise.

Appropriate marketing would include terms that are reasonable. I have recommended a modification in these respects also.

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

**Recommended modification 6:**

**Replace Policy CSNDP 3 with “Development proposals that would result in the loss of employment floorspace, or change of use of any part of the Ashvale Industrial Estate to non-employment use, will not be supported, unless it is demonstrated, through appropriate marketing for a period of no less than 12 months, that the employment floorspace or land is not required for that purpose”**

**The extent of the Ashvale Industrial Estate should be identified on the appropriate Policies map.**

**Policy CSNDP 4: Community Facilities**

98. This policy seeks to support retention of existing community facilities, and seeks to establish conditional support for provision of additional community facilities.
99. A representation states NDP processes are designed to stop the Heart of the Village project. Consideration of the implications of NDP processes for a particular project does not fall within my role.
100. The Policy refers to the Parish Council. It is unnecessary for some policies, or part of some policies, to refer to the future actions or decisions of the Parish Council. The Policy refers to “*the policies of the Herefordshire Core Strategy and the other policies of this Plan.*” This cross-referencing is unnecessary. Policies should be self-contained wherever possible so that they provide clear advice to parties preparing development proposals, and offer a practical framework for decision making on planning applications as required by paragraph 17

of the Framework. I have recommended a modification in these respects.

101. The Policy is imprecise in that it is unclear how retention of existing community facilities will be supported. I have recommended a modification in this respect to clarify proposed loss of facilities will not be supported.

102. The Framework states planning policies should plan positively for the provision and use of community facilities and other local services, and guard against the unnecessary loss of valued facilities and services. The Framework also encourages a positive approach to development that will widen choice in education. Core Strategy Policy SC1 states “*Development proposals which protect, retain or enhance existing social and community infrastructure or ensure that new facilities are available as locally as possible will be supported.*” Policy CSNDP 4 seeks to establish requirements for support to be given to the provision of additional community facilities.

103. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include *‘information to accompany the application as specified by the local planning authority on their local list of information requirements’*. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain *‘relevant, necessary and material’*. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application.

104. The requirement for a precise use to be specified is unnecessary as any planning application must precisely specify the proposal in order to be validated. The requirement for justification of

need, impact on existing facilities, and the requirement for a business plan have neither been fully explained nor properly justified. I have recommended a modification so that the requirements are deleted from the policy. It is appropriate for the Policy to guard against the unnecessary loss of valued facilities and services in accordance with paragraph 70 of the Framework. I have recommended a modification so that the Policy enables that assessment to be made.

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

**Recommended modification 7:**

**Replace Policy CSNDP 4 with “Proposals that will result in the loss of community facilities will not be supported unless a lack of demand for those facilities has been demonstrated by unsuccessful appropriate marketing for a period of 12 months, or equivalent facilities will be created in no less a convenient location for users.**

**Proposals for new community facilities will be supported where there is no significant adverse impact on visual or residential amenity or the character of the settlement.”**

**Policy CSNDP 5: Area of Outstanding Natural Beauty**

106. This policy seeks to establish that development will be supported under stated circumstances. The Policy title “*Area of Outstanding Natural Beauty*” clearly indicates the policy should apply within the AONB. I have recommended a modification to the Policy to improve clarity and to ensure that the policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

107. I also recommend a minor modification to add the word “adverse” before impact to improve clarity and to ensure that the policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

108. A representation states the AONB's strict rules should be adhered to for proposals within its boundaries and not be used to object to any development near the AONB. The Policy sets out circumstances where development will be supported and does not prejudice the discretion of decision makers when considering proposals outside the AONB which may be judged to have effect on the AONB.

109. The Framework states "*great weight should be given to conserving landscape and scenic beauty in ... Areas of Outstanding Natural Beauty*" and "*the conservation of wildlife and cultural heritage are important considerations in these areas*". The Core Strategy includes in Policy LD1 a requirement that "*development proposals should conserve and enhance the natural, historic and scenic beauty of important landscapes and features including Areas of Outstanding Natural Beauty ... through the protection of the area's character and by enabling appropriate uses, design and management.*"

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

**Recommended modification 8:**

**In Policy CSNDP 5: before "development" insert "Within the AONB" and before "affect" insert "adversely"**

**Policy CSNDP 6: Local Wildlife Sites**

111. This policy seeks to establish a balanced approach to the assessment of development proposals with respect to potential harm to a Local Wildlife Site.

112. The policy includes reference to "*the Proposals Map*". I have proposed (recommended modification 3) that Policy maps be included within the Neighbourhood Plan. The reference to a map should be adjusted accordingly.

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

**Recommended modification 9:**

**In Policy CSNDP 6 the Local Wildlife Site should be identified on the appropriate Policies Map and the reference to a map adjusted accordingly**

**Policy CSNDP 7: Areas of Flood Risk**

114. This policy seeks to establish that development proposals should take account of potential flooding in areas identified to be at risk.

115. Herefordshire Council Development Management service questions whether “*the Environment Agency and Land Drainage have been consulted*”. A representation states “*this policy should defer to the Environment Agency*” with all flood risk assessment based on their data. It is inappropriate for the Policy to make reference to the entire Herefordshire Strategic Flood Risk Assessment 2009, which is a complex document, without drawing out the relevant aspects. I have recommended this reference is deleted so that the Policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. The Policy identifies relevant aspects of national policy to apply to the assessment of development proposals and also includes an additional level of detail by identifying specific areas of land that are at risk of flooding. Given the evidence of relatively recent flooding in the Plan area it is appropriate that local concerns are recognised through inclusion of this Policy in the Neighbourhood Plan. The Policy recognises that mitigation measures may be appropriate.

116. The Map presented on page 33 of the Plan document identifies roads and land “*liable to flash flooding*” with insets at a scale sufficient to identify the specific areas referred to. The Policy refers to “*the Proposals Map*”. The map presented at page 32 with the title NDP Plan Map for Cradley Village identifies “*areas liable to flood*” which

appear to correspond to those areas identified as “*land liable to flood*” on the Cradley village Policies Map. I have proposed (recommended modification 3) that Policy maps be included within the Neighbourhood Plan. I have recommended a modification so that the Policy refers to the appropriate Policies Map in order to achieve a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

117. The policy includes reference to the Parish Council working with other stakeholders. This sentence of the policy is merely a statement of intention relating to an intended action. The stated action does not relate directly to the development and use of land and as such cannot serve a role in the determination of planning applications. It is also inappropriate for a policy to rely on the actions of organisations where there is no certainty that they will be fulfilled throughout the Plan period. I recommend deletion of the final sentence of the Policy. This statement of intent could appropriately be transferred to the supporting text.

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

**Recommended modification 10:**

**In Policy CSNDP 7:**

- **the areas at risk of flooding alongside Cradley Brook should be identified on the appropriate Policies Map and the reference in the Policy to a map adjusted accordingly.**
- **transfer the final sentence to the supporting text**

**Policy CSNDP 8: Strategic Green Gap**

119. This policy seeks to establish that development other than for specified purposes will not be supported in a defined strategic green gap between east and west Cradley.

120. The Policy refers to the Proposals Map. The NDP Plan Map for Cradley Village presented on page 22 of the Neighbourhood Plan

identifies the strategic green gap at a scale sufficient to identify the boundaries of the area referred to. I have earlier in my report recommended the Cradley village Policies Map should be included in the Neighbourhood Plan. I recommend the Policy should refer to that map.

121. Several representations have suggested the consultation with respect to this Policy during Plan preparation has not been proper, fair or transparent. I have earlier in my report explained the extent of my role with respect to examination of the nature and adequacy of consultation undertaken as part of the Plan preparation process, and set out my conclusion that the necessary requirements of the Regulations have been met.
122. Herefordshire Council Development Management service states *“the preamble needs to make clear that the purpose of the strategic gap is to prevent coalescence and to maintain a generous gap and that unlike the AONB its designation does not arise from landscape beauty. Personally, it is considered that it should also allow for ‘...community facilities upon appropriate sites’. Forget the shop issue at present – think of all community facilities and the future! Community facilities within settlement boundaries are rare as such sites would normally command a residential value. So, they are pushed outside onto fringe sites. Surely with this in mind allowing such facilities in the strategic gap accessible to residents of both eastern Cradley and western Cradley makes sense.”*
123. A representation generally agrees that coalescence of east and west Cradley should be avoided but there should be an additional exception which allows for community development in the strategic gap which is accessible from *“both halves”* and is not in the AONB. Another representation states community development should be allowed in the strategic green gap. A further representation states a community project should not be treated in the same way as other development and that one small building would not be at odds with the values the strategic gap is promoting. This representation also states removal of trees could increase the prospect of flooding and that an agricultural building would not be dissimilar in size to a community building and could pay less regard for environmental considerations. A further representation states the Neighbourhood Plan should bring the two halves of the village together and not establish a permanent divide. This representation supports efforts to build a small café and shop between the two halves of the village. Another representation states the gap would be an ideal site for a future community shop and

suggests the two halves of the village should be joined together. This representation states *“in this submission I suggest that the NDP should allow limited community development in the strategic gap and not be limited to forestry and agriculture.”* A further representation states *“preventing any kind of building development could prevent community projects that may be in the interests of the village.”* Another representation states *“there is no provision in the NDP for siting of additional community shop facilities although this appears to be strongly supported by the community”.* A further representation states the Policy would stop the Heart of the Village project going ahead.

124. Policy SS6 of the Core Strategy states *“Development proposals should conserve and enhance those environmental assets that contribute towards the county’s distinctiveness, in particular its settlement pattern, landscape, biodiversity and heritage assets and especially those with specific environmental designations.”* The supporting text to Policy SS6 states *“Although the approach will be based upon addressing issues at a landscape scale, there will be instances where detailed features and assets should be conserved when they contribute to local distinctiveness”.* The green gap identified in Neighbourhood Plan Policy CSNDP8 is the defining factor in the settlement pattern in Cradley which has the distinctive form of two settlements with different identities situated close together but clearly separate. Representations have referred to the potential of the strategic green gap to accommodate the development of community facilities. I have noted Core Strategy Policy SC1 states social and community facilities *“should be in or close to settlements, have considered the potential for co-location of facilities and where possible be safely accessible by foot, by cycle and public transport.”* The strategic green gap is not the only location where social and community facilities could be developed in accordance with Policy SC1. I conclude Policy CSANDP8 is in general conformity with the strategic policies included in the Development Plan.

125. The Framework states *“the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.”* For a landscape to be valued it does not have to have any particular quality or to be designated in any particular way, for example to be an AONB. Whilst the proposed strategic green gap immediately adjoins an AONB there is evidence the strategic green gap between east and west Cradley has consistently been identified as a valued landscape in its own right. The text supporting the Policy in the Neighbourhood Plan refers to a

strategic green gap being defined in the Malvern Hills District Local Plan adopted in 1998, and a strategic gap “*essential to maintaining the separate identity of east and west Cradley*” being identified in “*both Parish Plans*.” Reference is also made to the Landscape Assessment where the gap is described as acting “*as a buffer between the two settlements, preventing coalescence and providing... the setting to both sides of the village...*”. The supporting text also states the Village Design Statement refers to the gap as “*the single most significant space in the village and central to its character.*” I conclude the strategic green gap identified in Neighbourhood Plan Policy CSNDP8 is a valued landscape in the context of paragraph 109 of the Framework, the protection of which has regard for national policy.

126. A policy defining an area where no development is to be supported would seek to establish a regime that is more restrictive than even that applying in designated Green Belt or designated Local Green Space. Such an approach would not have sufficient regard for national policy for it to be appropriate. The Policy however does not seek to restrict all forms of development but identifies development for public open space, and that reasonably required for agriculture and forestry purposes, or to mitigate flood risk, as exceptions to the approach of not supporting development. In this respect, the policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community as described in paragraph 16 of the Framework.

127. The resistance of coalescence of settlements can be a legitimate objective of land use policy. East and west Cradley are separate built-up areas each having a distinct character that is different to the other in terms of the density, layout, and type of development. Policy CSNDP8 has regard for those elements of the Framework that refer to the establishment of a strong sense of place, and that development should respond to local character and history. A continuation of the settlement pattern where east and west Cradley are separate places with their own distinct local character and history is consistent with the aspects of the Framework that seek to require good design.

128. Preventing two settlements from coalescing is not the same as preventing all development between them. The strategic green gap has a distinct rural character and appearance, and functions to provide a clear physical separation between the two settlements of east and west Cradley. The gap has a quality of openness which is accentuated by the absence of boundary subdivision over much of the area and the

relatively flat topography. There is a well-defined boundary between the countryside character of the gap, and the built-up nature of the two settlements of east and west Cradley to either side. I am mindful that planning policy should serve public interests and not have regard for private interests where they do not coincide with the public interest. I have recommended a modification of the policy such that within the defined strategic green gap development that visually significantly diminishes the openness of the gap, as viewed from publically accessible locations, will not be supported. The recommended modification would have regard for those elements of the Framework that establish a presumption in favour of sustainable development as well as those that relate to conserving and enhancing the natural environment.

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

**Recommended modification 11:**

**In Policy CSNDP 8:**

**delete “Proposals Map” and insert “Cradley village Policies Map”**

**after “in it” insert “that will visually diminish the openness of the gap when viewed from publically accessible locations”**

**Policy CSNDP 9: Design**

130. This policy seeks to establish design principles for new development.

131. The policy includes reference to the Village Design Statement (VDS). The Malvern Hills AONB Unit states *“we have been led to believe that it is not possible for an NDP simply to refer to a document in this way and expect it to have statutory status. If this is true, it is important that people understand this fact, and recognise that this part of Policy 9 has much less weight than it might appear to have”*. It is inappropriate for a neighbourhood plan policy to refer in general terms

to a separate document. I have recommended a modification in this respect so that the Policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

132. Herefordshire Council Development Management service take issue with the statement relating to the Pixiefields proposals. This representation states *“a sentence re: density is appropriate but must be flexible. Eastern Cradley is sporadic, loosely-knit and low density. Western Cradley is higher density. Housing schemes need to be judged on a site by site basis and informed by contextual analysis.”* It is suggested the Policy should state *“the density of housing development must be informed by a thorough contextual analysis of the immediate surroundings and normally respect the prevailing density of the immediate surroundings”*. The Policy wording is both imprecise and inappropriate in that it requires reference to a planning proposal for any understanding to be achieved. I have recommended this element of the Policy is deleted so that the Policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

133. The policy includes reference to energy consumption. The Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 included the following *“From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings”*. Whilst the Ministerial Statement only applies to new dwellings these are likely to be the most common form of development proposal occurring during the Plan period. I have recommended a modification to delete the requirement for proposals to incorporate measures to reduce energy consumption.

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

**Recommended modification 12:**

**In Policy CSNDP 9:**

- delete “the recommendations of the Village Design Statement” and insert “their setting”
- delete “incorporate measures to reduce energy consumption” and insert “strengthen the distinctive character of the Plan area”
- delete the second paragraph

**Policy CSNDP 10: Conservation Area**

135. This policy seeks to establish that development should preserve or enhance the character and appearance of the Cradley Conservation Area.

136. The Malvern Hills AONB Unit states it is unclear what this policy adds to the protection already in place for Conservation Areas. Herefordshire Council Development Management service states *“whilst separate legislation deals with listed buildings a policy is still wise re: how applications for listed building consent will be judged. However, a policy is certainly required re: setting of listed buildings.”* Another representation states the Conservation Area should be limited to the oldest parts of the eastern part of the village and the extent shown is too large.

137. It is unnecessary for the Policy to refer to Strategic Policies nor is such reference conducive to the achievement of a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. It is not within my role to recommend inclusion of additional areas of policy in the Neighbourhood Plan. Neighbourhood plan preparation is not the vehicle through which Conservation Areas are declared or revised. The Policy fails to provide an additional level of detail and/or a distinct local approach to that set out in the Framework. The Policy does not meet the basic conditions. I have recommended it is deleted. This recommendation does not affect the status or boundaries of the designated Conservation Area.

**Recommended modification 13:**

**Delete Policy CSNDP 10:**

### **Policy CSNDP 11: Protected Area of Open Space**

138. This policy seeks to establish that two areas of land should be protected open spaces where proposals which would result in the loss or damage to these areas will not be supported.
139. The Framework includes provision for the designation of Local Green Spaces where development is ruled out except in very special circumstances. Such designation is dependent on criteria set out in paragraphs 76 and 77 of the Framework being met. The Neighbourhood Plan does not seek to designate any Local Green Spaces but instead proposes protected areas of open space. The Policy includes the term “*important open areas which contribute to the distinctive spatial character, form and pattern of the village*”. Proposals that would result in loss of, or damage to, these areas will not be supported. The Policy is seeking to establish a policy regime that is more restrictive than a Local Green Space designation, but without offering a similar or satisfactory basis for justification. The Neighbourhood Plan does not represent sufficient justification for the adoption of a regime that does not have sufficient regard for the presumption in favour of sustainable development that is central to the Framework. The Policy does not meet the Basic Conditions. I recommend the Policy is deleted.

### **Recommended modification 14: Delete Policy CSNDP 11**

### **Policy CSNDP 12: Recreational Open Space**

140. This policy seeks to establish that development that results in loss of open space with recreational value will only be supported under specified circumstances.
141. The policy includes reference to a clear excess of existing provision. I am satisfied that the balance between supply and demand for recreational open space is capable of being assessed. This could include demonstration that an existing facility is no longer required. The Framework refers to “*robust and up-to -date assessments of the needs for open space, sports and recreation facilities*” and “*assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreation facilities*” in a local area.

142. The Policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with promoting healthy communities. This policy meets the basic conditions.

## Summary of main findings and Referendum

143. I have recommended 14 modifications to the Submission Version Plan and also made a recommendation of modification in the Annex below.

144. I am satisfied that the Neighbourhood Plan<sup>38</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

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<sup>38</sup> The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

- 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>39</sup>

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

145. 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>40</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 5 August 2013.**

### Annex: Minor Corrections to the Neighbourhood Plan

I am able to recommend modification of the Neighbourhood Plan in order to correct errors.<sup>41</sup>

Where policies are repeated in Section 10 “*for ease of reference*” they should include the same wording as that used where the policies are presented earlier in the Plan document.

The Development Management service of Herefordshire Council states the map of Cradley showing areas of flash flooding and appendix 5 Landscape Assessment are difficult to read and interpret. I recommend these maps should be made more user friendly.

The Malvern Hill AONB unit has identified matters requiring factual correction as follows:

- The Malvern Hills AONB Partnership produces the AONB Management Plan (not the AONB Unit).
- The current document covers the period 2014-2019 not 2013-2018.

<sup>39</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>40</sup> Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

<sup>41</sup> Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990

- The range of guidance produced by the AONB Partnership now includes guidance on the selection and use of colour in development.
- End Hill is the northernmost of the Malvern Hills.
- The final two sentences of the fourth paragraph of Section 8.3 should be re-worded to reflect the approach of Historic England to local listing.

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 15:  
Identified maps should be made more user friendly, factual errors should be corrected, and modification of general text will be necessary to achieve consistency with the modified policies**

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12 April 2017  
REPORT ENDS