

Bodenham Neighbourhood Development Plan 2011-2031

The Report by the Independent Examiner

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Summary

The preparation of a neighbourhood plan is a very substantial undertaking for a small community and it is evident that a great deal of work has gone into the preparation of the Bodenham Neighbourhood Development Plan.

I have found that the preparation of the Plan has been carried out in accordance with the legal requirements. In considering the policies of the Plan I have found it necessary to recommend a number of modifications in order to meet the basic conditions. In some cases, the policies are worded too rigidly. Most planning decisions require many competing considerations to be balanced and in some cases the benefits of development may be considered to outweigh the harm. Policies which seek to impose an unduly rigid opposition to development that might result in harm, however slight, are therefore inappropriate. In other cases, the policies summarise or replicate policies in the Herefordshire Core Strategy or the NPPF without adding a local dimension. This provides no helpful guidance to decision makers. I have also recommended some modifications to clarify the intentions of the policy and provide clearer guidance to decision makers.

I have also not found all of the proposals for Local Green Spaces consistent with the criteria for designation set out in the NPPF. I am sure that there will be some disappointment about this, but I have applied the criteria consistently having regard to my experience.

I am grateful for the support I have received from Herefordshire Council and Bodenham Parish Council in responding promptly to my queries. I have concluded that, if the modifications that I have recommended are made:

- The Bodenham Neighbourhood Development Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012 (as amended) and that;
- Having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;
- The making of the Plan would contribute to the achievement of sustainable development;
- The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;
- The Plan would not breach and would be otherwise compatible with European Union obligations and the European Convention on Human Rights.

I am therefore pleased to **recommend that the Bodenham Neighbourhood Development Plan should proceed to a referendum subject to the modifications that I have recommended.**

I am also required to consider whether or not the referendum area should extend beyond the Neighbourhood Plan Area. The Plan includes the whole Parish of Bodenham and I have seen nothing to suggest that the policies of the Plan will have significant implications beyond the neighbourhood area". **I therefore conclude that there is no need to extend the referendum area.**

Introduction

1. The Localism Act 2011 has provided local communities the opportunity to have a stronger say in their future by preparing neighbourhood plans which contain policies relating to the development and use of land.
2. Bodenham Parish Council is the qualifying body for the Bodenham Neighbourhood Development Plan 2011-2031, which I shall refer to as the BNDP or the Plan. The Plan covers the whole of the parish of Bodenham.
3. Bodenham lies approximately midway between Hereford and Leominster to the east of the A49. The main settlement is Bodenham Moor and it is separated from Bodenham by the River Lugg which is a tributary of the River Wye. There are several smaller hamlets scattered around the parish. The population of the parish in 2011 was 1042.
4. The parish has a very rural character. The western part of the parish is relatively low lying and lies mainly within the Herefordshire Lowlands National Character Area. The land rises to the north and east of the parish which lies within the Herefordshire Plateau National Character Area.
5. If, following a recommendation from this examination, the Plan proceeds to a local referendum and receives the support of over 50% of those voting, it can be made and will then form part of the statutory development plan. This would make it an important consideration in the determination of planning applications, as these must be determined in accordance with development plan policies unless material considerations indicate otherwise.

Appointment of the Independent Examiner

6. I have been appointed by Herefordshire Council (HC), with the agreement of Bodenham Parish Council (BPC) to carry out the independent examination of the BNDP.
7. I confirm that I am independent of both HC and BPC and have no interest in any land which is affected by the BNDP. I have never had any other professional involvement in Bodenham. I have carried out two previous examinations in Herefordshire at Breinton and Lower Bullingham.
8. I am a Chartered Town Planner with over 30 years' experience in local government, working in a wide range of planning related roles, including 15 years as a chief officer. Since 2006 I have been an independent planning and regeneration consultant. I have completed 30 neighbourhood plan examinations and three health checks. I therefore have the appropriate qualifications and experience to carry out this examination.

The Scope of the Examination

9. The nature of the independent examination is set out in Sections 8-10 of Schedule 4B of the Town and Country Planning Act 1990.
10. I must:
 - i. Decide whether the plan complies with the provisions of Sections 38A and 38B of the Planning and Compulsory Purchase Act 2004. These requirements relate primarily, but not exclusively, to the process of preparing the Plan and I shall deal with these first.
 - ii. Decide whether the neighbourhood development plan meets the basic conditions contained in Schedule 4B paragraph 8(2) of the Town and Country Planning Act 1990. This element of the examination relates mainly to the contents of the Plan.
 - iii. Make a recommendation as to whether the Plan should be submitted to a referendum, with or without modifications, and whether the area for the referendum should extend beyond the Plan area.
11. The Plan meets the basic conditions if:
 - i. Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the Plan;
 - ii. The making of the Plan contributes to sustainable development;
 - iii. The making of the 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);
 - iv. The making of the Plan does not breach, and is otherwise compatible with, EU obligations.
12. I am also required to consider whether the Plan is compatible with the European Convention on Human Rights.
13. Paragraph 9 of Schedule 4B indicates that as a general rule the examination should be carried out on the basis of written representations unless a hearing is necessary to allow adequate consideration of an issue or to allow a person a fair chance to put a case. In carrying out the examination I concluded that the examination could be completed without a hearing.
14. The main documents to which I have referred in the examination are listed below:
 - Bodenham Neighbourhood Development Plan 2011-2031 as submitted in November 2017

- Bodenham Neighbourhood Development Plan Basic Conditions Statement September 2017
 - Bodenham Neighbourhood Development Plan Consultation Statement October 2017
 - Responses to Regulation 16 publicity on the Submission Plan
 - The Neighbourhood Planning (General) Regulations 2012 as amended in 2015 which are referred to as the NPR
 - The Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR).
 - The National Planning Policy Framework which is referred to as the NPPF
 - National Planning Practice Guidance referred to as PPG
15. The documents submitted include all of those that are required to be submitted under regulation 15 of the NPR.
16. I made an unaccompanied visit to Bodenham on 25 March 2018 to familiarise myself with the Parish and help me to understand the implications of the Plan policies. I spent several hours walking and driving around the Parish and viewing all the key locations referred to in the Plan.
17. During the examination I sought clarification on various points. My emails and the responses to them have been posted on the HC website along with documents referred to in the responses.

The Preparation of the Plan

18. An application from BPC for the designation of the Parish as a neighbourhood area was publicised between 8 February and 19 April 2013, in accordance with the requirements of regulation 6 of the NPR at that time. The application was approved by HC on 22 April 2013. The designation of the neighbourhood area met the legal requirements.
19. As required under section 38B (1) (a) of the Planning and Compulsory Purchase Act 2004 the Plan clearly states the period to which it relates, which is 2011-2031.
20. The Plan must not include any provision about development that is excluded development as defined in section 61K which is inserted into the 1990 Town and Country Planning Act. Excluded development includes “county matters”, such as mineral extraction and waste disposal, and major infrastructure projects. I am satisfied that the submitted Plan contains no policies which relate directly to these matters.
21. I am also satisfied that the Plan does not relate to more than one neighbourhood area.

Public Consultation

22. The Consultation Statement describes the various stages of consultation that were undertaken during the preparation of the Plan. The decision to prepare a neighbourhood plan was taken

at a formal public meeting in November 2012, following which a steering group was formed. The group started by using the results of a survey of residents which had taken place in 2010 in the context of the preparation of the Parish Plan. Its meetings were publicised, and open days were held in February and March 2014 which were well attended and served to increase awareness of the neighbourhood plan.

23. A second survey of residents took place between 21 September and 12 October 2014. This achieved a 52% response, a very high level of engagement in my experience. The results of this survey were very important in shaping the policies of the Plan, but progress was paused to take account of the emerging Herefordshire Local Plan which was adopted in October 2015.
24. Consultation in accordance with regulation 14 of the NPR took place between 3 October and 14 November 2016. The consultation process was publicised through the Bodenham Newsletter, posters displayed on parish noticeboards and the website and through a public meeting on 20 September. Copies of the Plan were distributed to all households and extra copies were available in the Post Office, Saffron's Cross Garage or on request. The draft plan was also available on the parish website. The statutory consultees were consulted by e mail. Response forms could be sent by e mail, left in collection boxes at the Post Office, Saffron's Garage and Millcroft Farm.
25. The Consultation Statement summarises all the comments received and sets out the Parish Council's comments and any amendments to the Draft NDP. It also sets out a list of other changes which were made to the draft plan after the regulation 14 consultation.
26. Overall, I am satisfied that the consultation that took place during the preparation of the Plan and the Consultation Statement fully meet the requirements of the NPR.

The Basic Conditions Test – The Plan taken as a whole

27. The consideration of whether the Plan meets the basic conditions is the main focus of the independent examination process. This section of my report clarifies the meaning of each of these conditions and considers how the Plan, taken as a whole, meets them.

“having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan”

28. There are two important points to emphasise in relation to this. The first is that I must consider this requirement in relation to the making of the Plan; it thus applies to the Plan as a whole rather than to individual policies. The second point is the use of the phrase *“having regard to”*. This means that I must consider the national policy and advice, but it does not mean that each policy should be in absolute conformity with it. PPG explains that *“having regard to national policy”* means that *“a neighbourhood plan must not constrain the delivery of important*

national policy objectives".¹ The Plan as a whole is clearly the sum of its policies and it is therefore necessary to consider the extent to which each policy complies with national policy and guidance. However, in reaching my conclusion on this basic condition it is the relationship of the Plan as a whole with national policies and guidance rather than individual policies which is the key consideration.

29. Table 1 of the Basic Conditions Statement sets out how each of the policies in the BNDP relate to individual paragraphs of the NPPF. In each case it indicates that the policy complies with the NPPF and adds local detail. This is helpful as far as it goes, but less than explicit. I shall consider each policy in detail later in the report, but in some cases I have found the comment in the Basic Conditions Statement to be oversimplified. Also, the table is not comprehensive in identifying the appropriate paragraphs of the NPPF. For example, the table identifies paragraph 54 of the NPPF as the relevant paragraph in relation to Policy BNDP3 but does not refer to paragraph 50 which has much more to say on housing mix. The purpose of the Basic Conditions Statement is to explain how the plan meets the legal requirements. It is a key document for the examination and the rather cursory statements here fall short of explanation. This means that I have had to spend additional time identifying the appropriate sections of the NPPF and testing their compliance with the policies of the Plan.
30. Also, relevant to this element of the basic conditions test is "...guidance issued by the Secretary of State" as set out in PPG. This contains extensive guidance on both general principles and specific aspects of the preparation of neighbourhood plans² some of which I have already referred to. It is important to be able to demonstrate that the preparation of the Plan has had regard to this. The Basic Conditions Statement does not refer to PPG but, in my report, I make frequent reference to it. At this stage I need to emphasise the importance of the guidance on the formulation of policies. *"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 plan for which it has been prepared"*³. Also *"Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn on to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan..."*⁴
31. I have considered each policy in turn having regard to national policy and guidance and my findings on each policy are set out later in this report. I have recommended several modifications, but, taking the Plan as a whole, and subject to the modifications I have

¹ PPG What does having regard to national policy mean? Reference ID: 41-069-20140306

² PPG Neighbourhood Plan, Reference ID Paragraphs 41-001 to 41-087

³ PPG Neighbourhood Planning How should the policies in a neighbourhood plan be drafted? Reference ID: 41-041-20140306

⁴ PPG Neighbourhood Planning What evidence is needed to support a neighbourhood plan? Reference ID 41-040-20160211

recommended, there is no serious conflict between the policies of the Plan and national policies and guidance.

“The making of the Plan contributes to sustainable development”

32. There is inevitably considerable overlap between the requirements for satisfying this basic condition and the previous one as the NPPF clearly states that *“the purpose of the planning system is to contribute to the achievement of sustainable development and the policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.”*⁵
33. The NPPF then spells out the three dimensions of sustainable development: economic, social and environmental, and emphasises the interdependent nature of these. Again, it is important to note that the assessment to be undertaken relates to the Plan as a whole, but clearly the contribution of each policy needs to be considered to enable a conclusion to be reached. Policies which fail to demonstrate that they contribute to sustainable development are likely to require modification or deletion. As the NPPF points out, local circumstances vary greatly and that influences the way in which contributions to sustainable development can be made.⁶
34. Table 2 of the Basic Conditions Statement indicates with a system of stars how strongly each policy contributes to the three dimensions of sustainable development. This is a helpful approach to show that the balance between the three dimensions is maintained.
35. The contribution of each of the policies of the Plan to sustainable development is considered later in my report. However, taken as a whole I am satisfied that the Plan contributes to sustainable development.

“The making of the plan is in general conformity with the strategic policies contained in the development plan for the area”

36. As with the previous two conditions, the test applies to the Plan as a whole, but also requires consideration of individual policies against relevant strategic policies in order to reach an overall conclusion. The test of *“general conformity”* is fundamentally that the neighbourhood plan policies should not undermine the strategic policies of the Local Plan. The test is spelt out more fully in PPG.⁷ It does not preclude some variation from a strategic policy where it is justified by local circumstances providing the proposal upholds the general principle that a strategic policy is concerned with. However, any departure from development plan policies needs to be clearly justified.
37. The main development plan document for the purposes of the BNDP is the Herefordshire Local Plan Core Strategy 2011-2031 (HCS). The other development plan policies which are relevant

⁵ NPPF Paragraph 6

⁶ NPPF Paragraph 10

⁷ PPG What is meant by ‘general conformity’? Reference ID 41-074-20140306

are the saved policies of the Herefordshire Unitary Development Plan 2007 relating to Minerals and Waste.

38. The Basic Conditions Statement includes a table which shows which HCS policies are considered relevant to each of the BNDP policies and simply states that the policies comply with these policies. However, it is not complete. For example, in relation to Policy BNDP12 it refers to HCS policy LD3 but not to Policy OS3, which is also and arguably more relevant. As in the case of the NPPF, it does not explain the relationship between the Neighbourhood Plan policies and the Local Plan policies and that is something that I have had to do. Taking the Plan as a whole, and subject to the modifications I have recommended, I am satisfied that it is in general conformity with the policies of the HCS.
39. With regard to the Minerals and Waste Plans, parts of the parish, including much of the countryside to the east and west of Bodenham Moor are identified as a minerals safeguarding area. However, the Plan does not allocate land for development and I have not identified or been made aware of any conflict with the policies of these plans.

“The making of the order does not breach and is otherwise compatible with EU obligations”
Strategic Environmental Assessment and Appropriate Assessment under the Habitats Regulations

40. PPG indicates that *“where a neighbourhood plan is likely to have significant environmental effects it may require a strategic environmental assessment”*⁸, subsequently referred to as SEA. A SEA requires the preparation of an environmental report. In order to determine whether the plan is likely to have a significant environmental effect, a screening assessment is necessary.
41. Regulation 15 of the NPR requires that the submission of a neighbourhood plan must include:
*“(i) an environmental report prepared in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans Regulations (EAPPR) or
(ii) where it has been determined under regulation 9(i) of these Regulations that the proposal is unlikely to have significant environmental effects (and accordingly does not require an environmental assessment), a statement of reasons for the determination”.*
42. Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (CHSR) puts into effect the requirements of Article 6.3 of the EU Habitats Directive and requires that:
*“(1) Where a land use plan -
is 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) and is not directly connected with or necessary to the management of the site, the plan-making authority must before the plan is given effect, make an appropriate assessment of the implications of the site in view of that site’s conservation objectives.”*

⁸ PPG Does a neighbourhood plan require a strategic environmental assessment? Reference ID: 11-027-20150209

Amendments to these regulations were made in the Schedule 2 to the NPR which inserted Regulation 102A to the CHSR:

“A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required.”

43. The submitted documents include an Environmental Report for the Bodenham Neighbourhood Plan. This document describes in full the process that has been followed to determine that SEA is necessary, and to assess the objectives and policies of the Plan against a range of environmental objectives drawn from those used in the Sustainability Appraisal of the HCS. It also contains a scoping report which was subject to consultation with the statutory consultation bodies. The report considers a range of realistic alternatives relating to the allocation of housing sites and reliance on a settlement boundary. It looks at the short-, medium- and long-term effects of the policies and their cumulative effect and contains a non-technical summary. Following the regulation 14 consultation on the pre-submission draft of the Plan, there were modifications to several of the policies and two new policies were introduced. The environmental report contains a reassessment of those policies that were amended and an assessment of the policies that were added. I am satisfied that it is consistent with the requirements of the EAPPR.
44. An initial Screening Assessment in 2014 of the need for an Appropriate Assessment under the Habitats Regulations concluded that as part of the River Wye (including the River Lugg) SAC lies within the parish a full Screening Assessment was necessary. A full Screening Assessment was carried out in 2016 and concluded that because the draft policies of the Plan did not propose more development than could be provided under the policies of the HCS an Appropriate Assessment under the Habitats Regulations was not necessary. English Nature were consulted and confirmed this conclusion.
45. I conclude that the making of the Plan does not breach and is otherwise in conformity with European Regulations.

Human Rights

46. Nothing in the Plan suggests that there would be any breach of the European Convention on Human Rights.

Key Issues, Vision and Objectives

47. This section helpfully starts by explaining that the purpose of the Plan is to set out what sustainable development means for the parish of Bodenham and lists several conclusions which came from the parish survey which define issues to be addressed by the Plan. From these a Vision for Bodenham is identified expressed in terms of residents' wishes:

“They wish to see a single, vibrant, caring and safe community in which all residents feel comfortable and valued. Careful integration of existing and planned new housing is essential to this Vision.

They wish to see the open and green character of the villages within the Parish not only maintained but enhanced. Further measures to lessen the risks of homes being flooded and everyday life being disrupted by flooded roads are seen as a high priority and no developments should be allowed which can directly or indirectly increase the flooding risk.

They accept the need for Bodenham Moor and Bodenham to accommodate more housing. However, they believe that the number of new dwellings must be compatible with the environmental constraints and economic and social objectives of the Plan and that development in the period to 2031 should be proportionate and consistent with Herefordshire Council’s Core Strategy. In particular, they wish to see the rural character of their villages promoted through the adoption of appropriate building styles and low housing densities, whilst maintaining and continuously improving the infrastructure of the Parish.”

48. From the conclusions of the survey and the Vision a series of objectives are identified under the headings:
- Housing requirement
 - Settlement boundaries
 - Criteria for new housing
 - Jobs
 - Local services and infrastructure
 - Open spaces and the environment
 - Renewable energy
49. The Vision and objectives will not form part of the statutory development plan, but, as they provide the context for the policies which will, it is important that they are consistent with sustainable development. I am satisfied that the Vision and objectives provide an appropriate balance between the economic, social and environmental dimensions of sustainable development.

Policies

50. I have considered all the policies of the Plan against the basic conditions, having regard to the evidence provided to justify them. Where necessary I have recommended modifications. I am only empowered to recommend modifications necessary to meet the basic conditions or to correct errors.
51. In considering the policies I have taken account of all the comments made during the preparation of the Plan with a particular focus on comments made in response to the regulation 16 consultation on the submitted plan. While I have not referred directly to all the comments made, I have given attention to all of them.

Policy BNDP1: Delivering New Housing

52. This policy sets out the intention to provide for a minimum of 72 new dwellings over the plan period through existing planning permissions and further windfall development. One of the key requirements for neighbourhood plans is that they “should not promote less development than set out in the Local Plan or undermine its strategic policies.”⁹ Policy RA1 of the HCS sets out the approach to housing development in rural areas. It identifies several local housing market areas and expresses the housing to be provided in each location as a percentage increase of the existing stock. The parish of Bodenham is in the Bromyard Housing Market Area where Policy RA1 requires an increase of 15% in the number of dwellings over the Plan period. Policy RA2 indicates that “*Neighbourhood Development Plans will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets, by indicating levels of suitable and available capacity.*” This is regarded as a minimum amount of development and neighbourhood plans may make provision for more housing.
53. The background for policy BNDP1 clearly identifies the existing level of commitments as 70 new dwellings. This includes the substantial new development of 40 new dwellings opposite England’s Gate Inn which is nearing completion. Evidence is also provided of the rate of development through windfall permissions both within Bodenham and Bodenham Moor and through the conversion of agricultural buildings. On average there have been three new permissions per year and even on the more modest assumption of one per year the requirement of 72 dwellings will be comfortably exceeded. Both the NPPF¹⁰ and HC’s Neighbourhood Planning Guidance Note 22¹¹ indicate that it is appropriate to allow for some windfall development where there is evidence that this produces a consistent supply of new dwellings.
54. I note representations that this policy leaves limited flexibility which may mean that if some permissions are not brought forward the proportionate growth requirement may not be met. However, the construction of the 40 new dwellings at England’s Field and the continuing windfall permissions since the preparation of the draft plan suggest that there is little doubt that this total of 72 new dwellings will be exceeded. I am satisfied that the policy is consistent with the basic conditions.

Policy BNDP2: Settlement Boundaries

55. Policy BNDP2 defines Settlement Boundaries for Bodenham Moor and Bodenham, sets out criteria to be met by development proposals within the Settlement Boundaries and refers to the relevant HCS policies for proposals outside Settlement Boundaries. The definition of the

⁹ NPPF paragraph 184

¹⁰ NPPF paragraph 48

¹¹ Herefordshire Council Neighbourhood Planning Guidance Note 22

boundaries is based on a guidance note produced by HC and has been supported in public consultation. The boundary for Bodenham Moor closely follows that which was defined in the Herefordshire Unitary Development Plan but has been modified to reflect recent development and permissions. There was previously no Settlement Boundary for Bodenham but, because it has been defined as settlement for proportionate growth in the HCS, it was considered necessary to define a Settlement Boundary.

56. Representations have been submitted in response to the regulation 16 publicity on the submitted plan relating to both the principle of Settlement Boundaries and the definition of the Settlement Boundary for Bodenham Moor.
57. Gladman Developments object to the use of Settlement Boundaries “where they would act to prevent otherwise sustainable development opportunities coming forward”. However, Settlement Boundaries are a well-established means of defining the interpretation of sustainable development at a local level and providing some certainty on where development is considered appropriate and where it is not. In this instance the definition of the Settlement Boundary is consistent with the scale of development that is required over the Plan period.
58. The owner of the listed Broom Cottage argues that the Settlement Boundary should not exclude the large garden there. Neighbourhood Planning Guidance Note 20 on the HC website indicates that large gardens can be excluded from Settlement Boundaries. I do not accept this means that all large gardens should be included or excluded, and it is possible to consider these on a case by case basis. It appears to me reasonable for the Plan to find that the large plot to the rear of Broom Cottage lies outside the built-up area of the village. There is therefore no reason in terms of the basic conditions for me to recommend modification of the Settlement Boundary in this location. The representation rightly points out that there are inconsistencies between the map in the submitted plan and the Bodenham Policies Map prepared by HC and it has been confirmed to me that the map in the submitted plan is correct.
59. Other representations have been submitted in relation to land south of Chapel Lane known as Shuker’s Field and to land north of the C1121. Both these representations argue that substantial areas of land should be included within the settlement boundary. I have concluded that it has been demonstrated that the Plan has made provision for significantly more development in total than is required for general conformity with the policies of the HCS and there is no compelling reason why the inclusion of these areas within the Settlement Boundary is necessary to meet the basic conditions.
60. The criteria set out for developments within the Settlement Boundaries are consistent with the basic conditions with the exception of criterion 1.4. This presents a more restrictive approach to any adverse effect on heritage assets or the landscape than the NPPF¹². Most decisions on development are based on a balance of factors where harm is weighed against benefits. The amount of weight attached to any harm will vary according to how severe it is and it is

¹² NPPF paragraphs 132-135

therefore not appropriate to resist any development that has any adverse effect. There is also an inconsistency in grammatical structure between the first paragraph of the policy and some of the individual criteria. I have recommended modifications to reflect these points.

61. Criterion 2 is not strictly necessary as there is no need to refer to other development plan policies, but I have not recommended its deletion as it helpfully clarifies the approach of the Plan.

Recommendations

In the last line of the first paragraph of Policy BNDP2 delete “these are” and insert “they”.

In criterion 1.1 insert “are” before “located”.

In criterion 1.4 delete “do not adversely affect any” and insert “any adverse effect on” and add after “...Annex C” “is clearly outweighed by the benefits of the proposal in terms of sustainable development.”

Policy BNDP 3: Mix, Type and Tenure of New Housing Development

62. This policy contains several elements. It requires the housing mix of new developments to meet local requirements and provide affordable housing in accordance with CS Policy H1. It also provides for affordable housing on exception sites subject to 4 criteria, requires affordable housing to be ‘tenure blind’ and provides for monitoring of the Plan and a review if local needs are not being met. I shall consider the elements in turn.
63. The aim of the first part of the policy, to ensure that the housing mix meets local needs, is consistent with the NPPF.¹³ However it does not define “local housing requirements”. The supporting text refers to the Herefordshire Local Housing Market Assessment of 2013 and the Local Housing Needs Survey for Bodenham 2014. The latter document was not listed in the evidence base but, I have been directed to it on the HC website and a link has been inserted into the evidence base. Both of these provide evidence that the predominant need is for smaller, 2-3 bedroom dwellings. While this is helpful evidence it relates to a point in time and housing needs change over time. I have therefore recommended a modification to reflect this.
64. I acknowledge representations which suggest that there will be little opportunity to provide affordable housing in association with developments of market housing, because the relatively tight definition of the settlement boundary will limit the potential for developments of more than 10 dwellings or 1000sq m, which is the threshold for affordable housing contributions in CS Policy H1. This will also limit the circumstances in which criterion 3, requiring that affordable housing should be “tenure blind” is likely to be applicable. However, part two of the policy provides for the provision of affordable housing on exception sites in accordance with HCS Policy H2. This complies with the NPPF¹⁴ and the criteria add detail to those in Policy H2. The second criterion refers to a Local Occupancy Condition which is spelt out in the

¹³ NPPF paragraph 50

¹⁴ NPPF paragraph 54

supporting text. This is in fact part of the policy and I have therefore recommended a modification to this effect. There is no need to repeat the policy in paragraph 5.7 and I have therefore recommended a modification to paragraph 5.7 and its relocation to follow paragraph 5.6, before the policy. It is necessary to modify the paragraph as, as currently worded, it implies that all affordable will be subject to the local occupancy condition, whereas part 2.2 of the policy relates just to developments on exception sites.

65. The final criterion commits to a review of the Plan if the delivery of housing does not meet local needs. This is appropriate but, in view of the tight definition of the development, if there is evidence from an emerging update of the Local Plan that an increased provision of housing is necessary that will also necessitate a review of the Plan if it is not to become out of date.

Recommendations

Modify the first Part 1 of Policy BNDP3 to read: “Proposals for new housing development will be required to demonstrate that the dwelling mix, type and tenure reflect local housing requirements in the most up to date published assessment of housing need, and incorporate...”

Modify criterion 2.2 to read:

“they are subject to a condition or planning obligation which will require that they meet the needs of local people or having a local connection who meet at least one of the following criteria:

- **Currently living in the locality (retain footnote) and has done for a continuous period of at least 3 years;**
- **Works in the locality and has done so for at least 3 years**
- **Has moved away but has strong established and continuous links with the locality by reason of birth or long term immediate family connections**
- **Has an essential need through age, disability or other special circumstances to live close to those who have lived in the locality for at least 3 years.”**

In criterion 2.4 insert a comma after design

Modify criterion 4 to read:

“The delivery of housing will be monitored during the Plan period. If monitoring clearly demonstrates that local needs are not being met or there is clear evidence that there is a need for additional housing to meet the strategic needs of the area, the Plan will be reviewed.”

Move the heading “Local Occupancy” and paragraph 5.7 to follow paragraph 5.6 before the policy and modify paragraph 5.7 to read: “In order to ensure that the provision of affordable housing on exception sites meets the requirements of local people, it will be necessary for such developments to be subject to a condition or section 106 agreement which will require that properties are let in accordance with the requirements of part 2.2 of the policy.”

Policy BNDP4: Flood Risk and Drainage

66. Policy BNDP4 sets out a range of requirements relating to flood risk and drainage. A significant part of the parish is identified as an area of flood risk, mainly along the valley of the River Lugg and its tributaries. There has also been local concern about the capacity of the foul drainage system, but Welsh Water have confirmed at several stages of the preparation of the Plan that there is no capacity problem and I have no clear evidence to dispute this. The wording of the policy is largely consistent with the basic conditions. However, to a very large extent it repeats in slightly different wording some of the requirements of HCS Policies SD3 and SD4. PPG indicates that neighbourhood plan policies 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.”* There is no need to repeat existing national or Local Plan policy and it is not helpful to decision makers to do so.
67. Looking at the distinctly local aspects of the policy, part 1.2 requires that for brownfield sites peak run-off rates should be reduced by a minimum of 30% compared to existing rates. This is more specific than Policy SD3 part 5 which simply seeks a reduction in run-off rates. However, there is no justification for the figure of 30% and the policy takes no account of any mitigation of run-off that may be incorporated in the existing drainage system. Parts 1.3 and 2 add detail to the Core Strategy Policies by referring specifically to the local treatment works. I have recommended modifications to delete those parts of the policy that repeat Local Plan policy.
- Recommendation**
- Change the heading of Policy BNDP 4 to Foul Drainage. Delete parts 1.1 and 1.2 of Policy BNDP4, attach part 1.3 to the first line of Part 1 and delete the number 1.3.**

Policy BNDP5: Employment

68. This policy supports new employment subject to two sets of criteria. The first list relates to the possible harmful effects of new employment uses and the second to the physical form that it might take. I am satisfied that criteria 1.1, 1.2 and 1.4 are consistent with the basic conditions. Criterion 1.3 suggests that any harm to residential amenity would be unacceptable. In practice there may well be instances where slight harm to living conditions would need to be balanced against the benefits of the proposal in order to consider whether the proposal amounted to sustainable development. I have recommended a modification to reflect this.
69. Criterion 1.5 is different in nature in that it completely precludes commercial camping, caravanning or mobile home sites. The only reason given for this is that these uses were not strongly supported in the response to the questionnaire. This does not provide any reasons in planning terms why such developments would not be sustainable in a large rural parish such as Bodenham, and while a majority of respondents did oppose these uses, about 40% of respondents supported or gave no view on camping sites and about 30% supported or

expressed no view on caravan sites.¹⁵ There was also strong support for the diversification of farms and camping and caravanning were given as example of this.¹⁶ Mobile home sites are subject to the criteria for residential development. Camping and caravan sites can vary greatly in scale and environmental impact, and criteria to limit harmful effects may well be appropriate. However, camping and caravanning fall within the scope of rural tourism and strong support is given to sustainable rural tourism in the NPPF¹⁷ and Policy E4 of the HCS. With appropriate management in accordance with criteria 1.1 to 1.4 of the policy camping and caravanning are capable of contributing to sustainable development and the local economy and it is therefore not consistent with the basic conditions to preclude them.

70. The second set of criteria are consistent with the support for the rural economy in the NPPF and Policies RA5 and RA6 of the HCS with one exception. Criterion 2.5 provides for small scale new buildings or workshops on sites within the defined settlement boundaries of Bodenham Moor and Bodenham. By implication this means that new buildings would be contrary to the policy outside the settlement boundaries. This would be more restrictive than the NPPF which encourages “well-designed new buildings¹⁸ and HCS Policy RA6 which does not preclude new buildings in rural areas. I have therefore recommended a modification to meet the basic conditions.

71. Part 3 of the policy simply cross refers to the Core Strategy Policy and this is not necessary.

Recommendations

In Policy BNDP 5:

In 1.3 insert “unacceptable” before “adverse”

Delete criterion 1.5

Insert a new criterion 2.6 “Outside the settlement boundaries new buildings for employment use will only be permitted where they cannot be accommodated within the settlement boundary of Bodenham or Bodenham Moor or have a clear need to be located in the countryside and in all cases they should not be prominent in the landscape and of a high quality of design which respects their rural setting.”

Policy BNDP 6: Large Scale Economic Activities

72. This policy generally does not support large scale economic activities because of their potential environmental impact and sets out criteria which must be met. It also refers specifically to intensive livestock units and requires a separation distance of 400m from sensitive receptors such as dwellings to protect the amenity of residents.

73. The first part of the policy is expressed negatively and this contrasts with the more positive presentation of HCS Policy RA6. I can see no particular reason why the environmental

¹⁵ Bodenham’s Future: Neighbourhood Plan Questionnaire Report question 27 page 20

¹⁶ Bodenham’s Future: Neighbourhood Plan Questionnaire Report question 2 page 16

¹⁷ NPPF paragraph 28 third bullet point

¹⁸ NPPF paragraph 28 first bullet point

sensitivity of Bodenham is greater than that of much of Herefordshire. The environmental criteria which follow and those in Policy RA6 are designed to ensure that new development does not have an unacceptably harmful impact and the presumption against large scale activities is therefore not in general conformity with it. I have therefore recommended a modification to express the policy more positively in accordance with the NPPF requirement to “*plan positively*”¹⁹. It is unrealistic to require full mitigation as any development is likely to have some effects. What is important is that they are not unacceptable.

74. The individual criteria are generally consistent with the basic conditions but are very generally expressed and I have recommended modifications to 1.1 and 1.5 to enable them to provide a clearer framework for decision makers. The cross references to other policies are not necessary.
75. I recognise that intensive livestock rearing is a sensitive issue in the parish. However, the use of the figure of 400m as the separation distance for intensive livestock units from sensitive receptors is not supported by the appeal reference which is given as a precedent.²⁰ Planning permission is required for intensive livestock developments within this distance²¹. That does not mean that the effects of such proposals will inevitably have unacceptably harmful effects within this distance. Indeed, the appeal referred to was permitted as the affects of the development on two dwellings, 85m and 110m away, were found to be acceptable. This reference therefore does not provide the “*proportionate and robust evidence to support the choices made*” encouraged in PPG.²² It is therefore necessary to delete parts 2 and 3 of the policy, but in my recommendation on part 1 of the Policy I have referred specifically to intensive agriculture.

Recommendations

In Policy BNDP6:

Modify the first part to read “Proposals for large scale economic activities, including new intensive livestock units (cattle, chicken and pigs) and the conversion of existing livestock enterprises to intensive husbandry techniques, will only be supported where they provide detailed evidence to demonstrate that any adverse impact on the following areas can be adequately mitigated:

- 1.1 the highway network in terms of an adequate access, highway, safety, congestion and the suitability of the ability of the network to accommodate the type of traffic generated;**
- 1.2 the landscape and historic environment of the area;**
- 1.3 the ecology and biodiversity of the area;**
- 1.4 flood risk and drainage and**
- 1.5 the living conditions in neighbouring properties in terms of noise, disturbance, dust,**

¹⁹ NPPF paragraph 16 second bullet point

²⁰ Appeal ref APP/W1850/W/17?3170855

²¹ General Permitted Development Order 2015 Part 6 Class A

²² PPG Neighbourhood Planning What evidence is needed to support a neighbourhood plan? Reference ID 41-040-20160211

lighting, smell or overbearing visual impact.

Delete parts 2 and 3.

Policy BNDP7: Local Community Facilities

76. The policy relates to the protection of existing community facilities and the provision of new ones. It also identifies potential improvements to infrastructure and community facilities which may be provided through developer contributions.
77. Paragraphs 69 and 70 of the NPPF express the importance of community facilities to healthy communities and Policy SC1 of the HCS provides a clear framework for protecting existing community facilities against development proposals which would result in their loss. The policy quite rightly does not repeat these provisions, but the first sentence is effectively a summary of Policy SC1 which adds nothing to it and is expressed too generally to be useful in decision making as it does not say how facilities will be protected, retained and enhanced. The second part of part 1 and part 2 add local detail to Policy SC1 and are consistent with the basic conditions.
78. Part 3 of the policy identifies three categories of infrastructure and facilities improvements which may be secured through contributions from new developments. Developer contributions may be received by the Community Infrastructure Levy (CIL) or through planning obligations. Contributions received by the Parish Council through CIL may be spent as they wish. While Herefordshire has not yet introduced CIL, it may be introduced during the Plan period. Until then developer contributions will only be received where they meet the tests set out in paragraph 204 of the NPPF of being: necessary to make the development acceptable in planning terms, directly related to the development; and fairly and reasonably related in scale and kind to the development. Having regard to the relatively small scale of development envisaged by the Plan the potential for contributions through this route will be limited and it is probable that many of the identified needs will not meet the legal requirements. I have therefore recommended a modification to clarify the potential role of CIL and development obligation.

Recommendations

In Policy BNDP 7 delete the first sentence.

Modify part 3 to read: "Where the legal requirements are met, developer contributions will be sought towards meeting identified community needs, including..." and after "...pedestrian safety." Add "If the Community Infrastructure Levy is introduced, income received by the Parish Council will be used to meet these needs."

Policy BNDP 8: Protecting Landscape and Important Public Views

79. This policy aims to ensure that new development takes account of the surrounding landscape, respects the setting of the two settlements of Bodenham and Bodenham Moor and does not have an adverse effect on important public views.

80. The first part of the policy requires that the design of new development is influenced by the character of the landscape and that landscaping proposals reinforce the established character. To a large extent it replicates the first part of HCS policy LD1 but amplifies it slightly. This is a carefully worded policy and I am satisfied that it meets the basic conditions.
81. Part two of the policy focusses on the landscape settings of the two main settlements and resists development that would be harmful to them. This aims to reinforce local character, but, as with other policies it implies that any adverse effect would lead to the refusal of planning permission. In my view this would make the policy too inflexible as development which caused a slightly adverse impact could be acceptable. I have therefore recommended a modification to reflect this.
82. The final part of the policy refers to 11 important views that are identified at Annex I. The policy is positively worded in saying that proposals which do not have a significant adverse effect on these views will be supported. However, while the policy must be read in association with all other development plan policies, it gives a misleading impression given the generally restrictive approach to development in the countryside, and area covered by the views. The symbol used for the views on the map in Annex I is imprecise as it appears to have a 180 degree spread which means they cover a very broad area. Cumulatively the whole of the countryside around Bodenham Moor and Bodenham and a large part of the settlements themselves is covered by the views. I have therefore recommended that the symbol for the views should be replaced by a more focussed cone of vision which defines the significant view more clearly.
83. The description of the views in Annex I briefly summarises what can be seen in the view and, by implication, its significance. I visited all of the views and was able to see this significance except in the case of View 7 where, as far as I could see, the view from Chapel Lane was of an Orchard, which even in late March, before there were leaves on the trees, did not allow any distant views. Turning to the policy, the implication of the Policy is that any development that would have a significantly adverse impact on the view will be refused. It is difficult to define what a significant adverse impact would be. In some instances, development may have an impact which when viewed subjectively would be significantly adverse to some people and not others. I have therefore recommended a modification to require an analysis of the impact of development on the landscape to demonstrate that its impact would not be severe.

Recommendations

In Policy BNDP8:

Modify the second sentence of part 2 to read: "Where development would affect the landscape setting of the two main settlements it will only be permitted where a detailed landscape assessment demonstrates that the impact will not be severe.

Modify Part 3 to read "Proposals which can demonstrate that they have taken into account any impact on the views defined in the map and table at Annex I, and are designed to ensure that any impact on them will not seriously detract from the main features of them, will be

permitted.”

Revise the map in Appendix I to show the location and scope of the significant views more clearly, by using a narrower view cone instead of the existing symbol and delete view 7 from the map and table in Appendix I.

Policy BNDP 9: Landscape Design Principles

84. Section 1.1 contains three design principles for new buildings. The first requiring new development to be designed to take account of local topography is consistent with the basic conditions. The second requires new buildings to merge seamlessly with the landscape and in my view does not meet the basic conditions. The distinctive character of a landscape is sometimes defined by buildings that are quite prominent in it but make a positive contribution. It should not be assumed that new buildings cannot make a similar contribution. Both paragraphs 60 and 63 of the NPPF place emphasis on the importance of innovation and originality and the fact that a building is a new feature in the landscape does not necessarily make it harmful. The third principle, that development should not break the skyline, raises similar concerns. The skyline is not a fixed line. What may appear as a skyline from a relatively close viewpoint may be halfway up a slope in a more distant view. Moreover, this principle does not provide for any positive contribution to the skyline. Sometimes built features such as monuments or church spires are vital components of a distinctive and attractive skyline. I have recommended a modification to reflect this. The final principle in this group relating to the River Wye SAC/SSSI and its catchment is consistent with the basic conditions.
85. Section 1.2 simply requires local habitats to be preserved and enhanced and wildlife protected. This does not add to the approach to Habitats and Biodiversity in the NPPF or in Policy LD2 of the HCS, where the policy provides much more explicit guidance. There is therefore no value in repeating it in this oversimplified form.
86. Section 1.3 adds useful detail to the national and Core Strategy guidance on trees and hedges and is consistent with the basic conditions.
87. Section 1.4 aims to resist development that would involve the removal of a traditional orchard unless it can be demonstrated that this would not result in a loss of biodiversity or wildlife habitat. This approach is certainly consistent with the support in the NPPF for the protection of valued habitats.²³ The Plan usefully identifies the traditional orchards in the Plan area in Map and table form.

Recommendations

In Policy BNDP9:

Delete section 1.1.2

Modify section 1.1.3 to read “not break the skyline in distant views unless they make a

²³ NPPF paragraph 118

demonstrably positive contribution to the landscape.”

Delete section 1.2.

Policy BNDP 10: Protection and Enhancement of the Built Environment

88. This policy sets out criteria to be applied to development proposals having regard to the existing built environment.
89. Sections 1.1 to 1.3 summarise the policies of the NPPF with regard to heritage assets. In summarising them some of the subtlety and detail is lost and there is therefore no benefit in including them as they do not add any local detail. The Plan has however usefully gathered detailed information on heritage assets in the Parish and these are listed in Tables 4 and 5 of Annex C and shown on the Maps in Appendices 5 and 6 of Annex C. This accords with the advice in PPG but there is no reference to this material in the section of the Plan headed Building Design.²⁴ Although I have recommended the deletion of sections 1.1 to 1.3 it would be helpful to refer to this detail in the supporting text, though this cannot be the subject of a formal recommendation as it is not necessary to meet the basic conditions.
90. Section 1.4 refers to non-designated heritage assets. PPG indicates that it is for local planning authorities to prepare local lists of non-designated heritage assets.²⁵ However, it is appropriate for a neighbourhood plan to identify local features of historic interest and to set out the policy that should apply to them. This needs to be aligned to the general approach in the NPPF which requires the extent of harm to any heritage asset to be considered in relation to the significance of the asset and balanced against any public benefits. Clearly the significance of these assets will be less than that of designated heritage assets. I have therefore recommended a modification to reflect the status of the assets that have been identified in Table 5 of Annex I and the Map at Appendix 7.
91. Section 1.5 requires new development to be in accordance with the guidance in Building for Life 12. This does not provide any clear guidance to decision makers. Building for Life 12 is a nationally recognised approach to design which includes a traffic light scheme of assessment against 12 detailed criteria. It is not normal or reasonable to expect all development to achieve 12 green scores, but the policy does not explain what level development will be expected to achieve and it would not be appropriate for me to suggest what that standard should be as it would not have been subject to consultation. I have therefore recommended a modification that requires developers to demonstrate how the Building for Life 12 Standards have been taken into account.

²⁴ PPG How should heritage assets be addressed in neighbourhood plans? Reference ID 18a-007-20140306

²⁵ PPG What are non-designated heritage assets and how important are they? Reference ID 18a-039-20140306 and How are non-designated heritage assets identified? Reference ID 18a-041-20140306.

92. Sections 1.6 to 1.9 set out more general criteria to be applied to all development. The criteria are rather generally worded, but the supporting text provides more detailed background information which can be used to guide the application of sections 1.6 and 1.7. As in the case of Policy BNDP9, the requirement for development to “merge seamlessly with the existing landscape” is a concern. This neglects the potential for a building to make a statement with the quality of its design and does not reflect the support for good and innovative design in the NPPF.²⁶ This part of the policy also refers to the existing landscape, which I believe is an error as the Policy as a whole relates to the built environment. I have therefore recommended a modification to reflect these points.
93. Section 1.9 supports development that does not include street lighting. The absence of street lighting, except in two small area, is a notable feature of Bodenham and is characteristic of Herefordshire more widely. It is therefore appropriate to resist the inclusion of street lighting in new developments.

Recommendations

In Policy BNDP10:

Delete parts 1.1, 1.2 and 1.3

Modify part 1.4 to read “Take account of the significance of the local features of historic interest identified in Table 4 and the Map in Appendix 7 of Annex I and retain them where possible unless their loss is clearly necessary for the development and the benefits of the development would clearly outweigh the harm resulting from their loss.”

Modify Part 1.5 to read: “demonstrate where appropriate and possible how they meet the standards of Building for Life 12.”.

In Part 1.7 delete “merge seamlessly with the existing landscape” and insert “respect and where possible enhance the existing built environment.”

Policy BNDP 11: Tranquillity and Light Pollution (Dark skies)

94. Policy BNDP 11 aims to maintain the tranquillity of Bodenham in terms of noise and to prevent development which would require lighting that would threaten the dark skies that are a characteristic of the Parish.
95. The policy with regard to noise could be unduly restrictive as it would preclude any development where noise could be regarded as a nuisance. Some noise is a characteristic of many developments, including those related to agriculture, business or local services and in some cases the economic and social benefits of development may justify noise which could be regarded as a low-level nuisance. It is the degree of noise that matters and the NPPF²⁷ seeks to prevent noise from giving rise to significant adverse effects.²⁸

²⁶ NPPF paragraphs 59, 60 and 65

²⁷ NPPF Paragraph 123

²⁸ Noise Policy Statement for England

96. The policy relating to dark skies and part two of the Policy relating to external lighting schemes are also expressed absolutely. In practice it is not possible to prevent any light spillage beyond a property boundary and the installation of external lighting to an existing property is often outside planning control. I have recommended modifications to reflect these points.

Recommendation

In Policy BNDP 11:

In part 1 insert “unacceptable” before “nuisance”.

In part 2 delete “there is no light spillage beyond the boundary of the property” and replace it with “light spillage beyond the boundary of the property is kept to a minimum.”

Policy BNDP 12: Open Spaces

97. The policy designates four spaces in Bodenham Moor and three in Bodenham as Local Green Spaces. It also seeks to protect other open spaces. While the supporting text makes it clear that it is the intention to designate these Local Green Spaces, the policy itself does not make this clear and I have therefore recommended a modification to do this.
98. To qualify for this designation the spaces must meet the criteria set out in Paragraph 77 of the NPPF. The table at Annex C contains information to support the designation. I visited all of these spaces on my visit and considered the spaces against these criteria.
1. The car park and tennis courts adjacent to Bodenham Parish Hall, together with the Field Parcel to the East not lying within the Settlement Boundary
99. This space is close to the community it serves and is not an extensive tract of land. It is also clearly an important facility for the village. However, much of the space comprises a car park and the building of the village hall and I am not satisfied that the space itself, including the undeveloped green space is demonstrably special. These facilities in an equally accessible location would be just as valuable. They also receive protection as open space and a recreational facility through paragraph 74 of the NPPF and HCS Policy OS3. I am therefore not satisfied that it meets the criteria for designation.
2. The grassed space to the north-east of the GP Surgery in Bodenham Moor bounded by the C1125 and Ash Grove Road and
 3. The Village Green in Bodenham Moor bounded by the C1125, Ash Grove Road and Brockington Road
100. These two spaces lie next to each other in the centre of Bodenham Moor, just separated by Ash Gove Road and similar considerations apply to both of them. It is clear to me that they make an important contribution to the identity and character of Bodenham Moor and fully meet the requirements for Local Green Spaces.

101. There is an inconsistency between Table 1 in Annex C and the Map at Appendix 1 of Annex C with regard to the Village Green in Bodenham Moor. The table indicates it as Public Open space, but the Map shows it as a Local Green Space and I have confirmed that this is the intention.

4. The field lying East of the C1125 and bounded to the north by Chapel Lane known as Shuker's Field

102. This is a large rectangular field approximately 200m long and 100m wide in agricultural use. It was the subject of a recent planning application for residential development which was refused. While I accept that it makes a contribution to the character of the village, including the setting of neighbouring listed buildings I am not persuaded that it is demonstrably special. There is no public access to it and, while that is not a requirement, it is essentially a large fairly flat cultivated field on the edge of the village. It appears to me that it is the wish for it not to be developed rather than the distinctive qualities of the space that motivate the proposed designation. Paragraph 77 makes it clear that "*Local Green Space designation will not be appropriate for most green spaces*" and that Local Green Spaces should be "*capable of enduring beyond the end of the plan period.*" This space benefits from the protection that its location in the countryside offers and I am not convinced that the space merits the longer-term protection that Local Green Space designation offers.

5. The Village Green at Bodenham on which are sited the War Memorial, Well and the Market Cross.

103. This is clearly the focal point of Bodenham and makes a very distinctive contribution to its character. It clearly meets the criteria for Local Green spaces.

6. The field opposite the War Memorial at the junction of the C1121 and Church Lane (U94029) to the north of Aisling House in Bodenham

104. This grassed area close the heart of the village and within the Conservation Area also makes an important contribution to the distinctive open character of the village, which is in my judgement demonstrably special.

7. Lady Close Orchard and Bodenham Lake

105. This is a large area of land which is a nature reserve and available for recreational use. However, as the justification states the community served by it is much wider than Bodenham. The site benefits from protection in several ways and because of its extensive area and wider significance it is not appropriate for designation as a Local Green Space.

106. The policy to be applied to the designated Local Green Spaces is consistent with the requirements of the NPPF. However, it is not clear why it refers to “other local assets”, if the Village Green in Bodenham Moor is designated as a Local Green Space.
107. The final part of the policy simply states that proposals that would result in the loss of public open space will not be permitted. However, there is no indication of any open spaces that this policy would apply to other than those proposed for Local Green Space designation, where the nature of the designation and the policy specifically applied to it in the first part of Policy BNDP12 provide protection. It has been clarified to me that the policy was intended to apply to any public open spaces where the proposed designation as a Local Green Space is not accepted. Both the NPPF²⁹ and Policy OS3 of the HCS provide protection for public open spaces but also identify the circumstances in which their loss may be justified. This part of the Policy is therefore not too rigid to meet the basic conditions as it does not identify these circumstances.

Recommendations

In Policy BNDP 12:

In part 1 delete “or other local assets” and after “Annex C” insert “and shown on the Maps at Appendix 1 and Appendix 2 to Annex C,”

Delete Part 2

In Annex C and the maps at Appendix 1 and Appendix 2 to Annex C delete: 1. The car park and tennis courts adjacent to Bodenham Parish Hall, together with the Field Parcel to the East not lying within the Settlement Boundary, 4. The field lying East of the C1125 and bounded to the north by Chapel Lane known as Shuker’s Field and 7. Lady Close Orchard and Bodenham Lake.

Also in Annex c change the reference in the “Category” column from “Public Open Space” to “Local Green Space”.

Policy BNDP 13: Renewable Energy

108. This policy sets out the approach of the Plan to renewable energy. Part 1 of the policy does not support large scale and/or commercial proposals to generate energy from solar, wind, hydropower, biomass or ground heat sources. There is a clear conflict between this part of the Policy and the generally positive approach to renewable energy proposals in the NPPF which refers to *“the responsibilities on all communities to contribute to energy generation from renewable or low carbon sources.”*³⁰ It also indicates that *“when determining planning applications local planning authorities should ...approve the application (unless material considerations indicate otherwise) if its impacts are or can be made acceptable.”* There is also a conflict with Policy SD2 of the HCS which states that *“Proposals for renewable or low carbon energy will be supported”* where they meet a set of criteria.

²⁹ NPPF paragraph 74

³⁰ NPPF paragraph 97

109. There is no clear justification in the Plan for this negative position other than a statement that “large systems were not supported”. A lack of local support may justify this approach in relation to windfarm proposals, where HCS Policy SD2 reflects PPG³¹ and the Ministerial Statement of June 2015³² but this approach does not apply to other forms of large scale renewable energy.
110. Parts 2 and 3 of the policy relate to smaller scale renewable energy proposals relating to community facilities. The policy has a much more positive approach to renewable energy in this form which in many cases would be permitted development,³³ but it precludes wind as an energy source. This part of the policy meets the basic conditions.

Recommendation

Delete part 1 of Policy BNDP13

Delivering the Plan

111. Part 10 of the Plan sets out how the Parish Council intends to work with Herefordshire Council and other agencies to support the delivery of the Plan. This is a useful way of demonstrating the relevance of the Plan and how it can be effective.

Reviewing and Monitoring the Plan

112. Part 11 of the Plan acknowledges the potential changes which may mean that the Plan could become out of date. It commits to a review of the Plan five years after its adoption.

Conclusion and Referendum

113. The preparation of a neighbourhood plan is a very substantial undertaking for a small community and it is evident that a great deal of work has gone into the preparation of the Bodenham Neighbourhood Development Plan.
114. I have found that the preparation of the Plan has been carried out in accordance with the legal requirements. In considering the policies of the Plan I have found it necessary to recommend a number of modifications in order to meet the basic conditions. In some cases, the policies are worded too rigidly. Most planning decisions require many competing considerations to be balanced and in some cases the benefits of development may be considered to outweigh the harm. Policies which seek to impose an unduly rigid opposition to development that might result in harm, however slight, are therefore inappropriate. In other cases, the policies summarise or replicate policies in the Herefordshire Core Strategy or the NPPF without adding a local dimension. This provides no helpful guidance to decision makers. I have also

³¹ PPG Do people have the final say on windfarm applications Reference ID 5-033-150618

³² Written Ministerial Statement by Secretary of State for Communities and Local Government 18 June 2015.

³³ General Permitted Development Order 2015 Part 14

recommended some modifications to clarify the intentions of the policy and provide clearer guidance to decision makers.

115. I have also not found all of the proposals for Local Green Spaces consistent with the criteria for designation set out in the NPPF. I am sure that there will be some disappointment about this, but I have applied the criteria consistently having regard to my experience.
116. I am grateful for the support I have received from Herefordshire Council and Bodenham Parish Council in responding promptly to my queries.
117. I have concluded that, if the modifications that I have recommended are made:
- The Bodenham Neighbourhood Development Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012 (as amended) and that;
 - Having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;
 - The making of the Plan would contribute to the achievement of sustainable development;
 - The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;
 - The Plan would not breach and would be otherwise compatible with European Union obligations and the European Convention on Human Rights.
118. I am therefore pleased to **recommend that the Bodenham Neighbourhood Development Plan should proceed to a referendum subject to the modifications that I have recommended.**
119. I am also required to consider whether or not the referendum area should extend beyond the Neighbourhood Plan Area. The Plan includes the whole Parish of Bodenham and I have seen nothing to suggest that the policies of the Plan will have significant implications beyond the neighbourhood area". **I therefore conclude that there is no need to extend the referendum area.**

Richard High

8 May 2018