

Herefordshire Council

**Ocle Pychard Group
Neighbourhood Development Plan
2011-2031**

Independent Examiner's Report

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17 December 2018

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Summary

I have been appointed as the independent examiner of the Ocle Pychard Group Neighbourhood Development Plan.

The Neighbourhood Area covers the Parishes of Felton, Ocle Pychard and Ullingswick. The market town of Bromyard lies some six miles to the east and Hereford is about eight miles away. The area is crossed by two main roads; the A465 linking Hereford and Bromyard and the A417 running north-south. These two roads intersect at a roundabout junction and are a source of concern on traffic speed and safety to the local community whilst recognising the connections they bring. The area is otherwise served by rural lanes and is crossed by the Three Rivers Ride and the Three Choirs Way long distance routes.

The Plan is well presented. It takes a sensible approach by not seeking to repeat higher level policies in the Core Strategy, but by adding local flavour. It offers a clearly articulated vision supported by a number of objectives. The policies can be directly linked to the vision and objectives. Its approach and strategy to housing growth are clear with one site allocation and the definition of settlement boundaries for three villages. Non development and land use issues are clearly differentiated without being lost. This welcome clarity of thought has meant that I have recommended relatively few modifications and those that are made are intended to ensure that the Plan provides a practical framework for decision-making as required by national policy and guidance.

Subject to those modifications, I have concluded that the Plan does meet the basic conditions and all the other requirements I am obliged to examine. I am therefore pleased to recommend to Herefordshire Council that the Ocle Pychard Group Neighbourhood Development Plan can go forward to a referendum.

In considering whether the referendum area should be extended beyond the Neighbourhood Plan area I see no reason to alter or extend this area for the purpose of holding a referendum.

Ann Skippers MRTPI
Ann Skippers Planning
17 December 2018



1.0 Introduction

This is the report of the independent examiner into the Ocle Pychard Group Neighbourhood Development Plan (the Plan).

The Localism Act 2011 provides a welcome opportunity for communities to shape the future of the places where they live and work and to deliver the sustainable development they need. One way of achieving this is through the production of a neighbourhood plan.

I have been appointed by Herefordshire Council (HC) with the agreement of the Group Parish Council, to undertake this independent examination. I have been appointed through the Neighbourhood Planning Independent Examiner Referral Service (NPIERS).

I am independent of the qualifying body and the local authority. I have no interest in any land that may be affected by the Plan. I am a chartered town planner with over twenty-five years experience in planning and have worked in the public, private and academic sectors and am an experienced examiner of neighbourhood plans. I therefore have the appropriate qualifications and experience to carry out this independent examination.

2.0 The role of the independent examiner

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

The basic conditions¹ are:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan
- The making of the neighbourhood plan contributes to the achievement of sustainable development
- The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area
- The making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations
- Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

¹ Set out in paragraph 8 (2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to in the paragraph above. Only one is applicable to neighbourhood plans and is:

- The making of the neighbourhood plan is not likely to have a significant effect on a European site² or a European offshore marine site³ either alone or in combination with other plans or projects.

The examiner is also required to check⁴ whether the neighbourhood plan:

- Has been prepared and submitted for examination by a qualifying body
- Has been prepared for an area that has been properly designated for such plan preparation
- Meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one neighbourhood area and that
- Its policies relate to the development and use of land for a designated neighbourhood area.

I must also consider whether the draft neighbourhood plan is compatible with Convention rights.⁵

The examiner must then make one of the following recommendations:

- The neighbourhood plan can proceed to a referendum on the basis it meets all the necessary legal requirements
- The neighbourhood plan can proceed to a referendum subject to modifications or
- The neighbourhood plan should not proceed to a referendum on the basis it does not meet the necessary legal requirements.

If the plan can proceed to a referendum with or without modifications, the examiner must also consider whether the referendum area should be extended beyond the neighbourhood plan area to which it relates.

If the plan goes forward to referendum and more than 50% of those voting vote in favour of the plan then it is made by the relevant local authority, in this case Herefordshire Council. The plan then becomes part of the 'development plan' for the area and a statutory consideration in guiding future development and in the determination of planning applications within the plan area.

² As defined in the Conservation of Habitats and Species Regulations 2012

³ As defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

⁴ Set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act

⁵ The combined effect of the Town and Country Planning Act Schedule 4B para 8(6) and para 10 (3)(b) and the Human Rights Act 1998

3.0 Neighbourhood plan preparation

A Consultation Statement in two parts has been submitted. It meets the requirements of Regulation 15(2) of the Neighbourhood Planning (General) Regulations 2012.

Work started on the Plan in May 2016 with a public meeting that launched the Plan and sought volunteers.

An Open Day was held in July 2016 following establishment of the Steering Group and identification of initial and broad issues. The drop in event was attended by 50 people and resulted in key issues being identified. A report was prepared to feed back into the community.

This helped develop the residents' survey. The survey was hand delivered to all households in the Plan area and had a good response rate of nearly 34%.

A public meeting was held in February 2017 to discuss the results of the survey. An analysis of the survey was produced and made available.

With regard to assessing land for potential housing development, a 'Call for Sites' was held between January and March 2017. This resulted in 32 sites coming forward and a site identified in HC's Strategic Housing Land Availability Assessment was also included. The sites were then assessed and options developed in the Housing Site Assessment. This stage also included draft settlement boundaries for Burley Gate, Ocle Pychard and Upper Town, Ullingswick.

Two public meetings were held in May and June 2017. The first was attended by 38 people and the second by 36 people. A questionnaire was developed to record views on the three option sites at Burley Gate and the draft settlement boundaries.

Following this, a revised housing option was put forward by the Steering Group after consideration of the views expressed by the community and further highway evidence in respect of one of the sites. This revised housing option formed the basis for the draft Plan.

Pre-submission (Regulation 14) consultation took place between 1 November – 31 December 2017. Copies of the draft Plan were distributed to all households in the Plan area and various individuals and organisations were contacted including those who had submitted sites. The draft Plan was available to view in various locations and on the Group Parish website together with supporting documents. Posters were placed on noticeboards and at the Community Shop and Village Hall.

Part 2 of the Consultation Statement summarises the comments received and how these were addressed.

A range of consultation activities has been used. These have included the establishment of a dedicated Plan page on the Group Parish website, updates in the Community Newsletter, use of Parish, Community Shop and Village Hall noticeboards and open day drop in sessions.

Monthly Parish Council and regular Steering Group meetings have been held and are open to the public. Notes of the meetings are posted on the website.

I consider that the consultation and engagement carried out is satisfactory.

Submission (Regulation 16) consultation was carried out between 27 March – 8 May 2018.

The Regulation 16 stage resulted in 16 representations which I have considered and taken into account in preparing my report.

4.0 The examination process

I have set out my remit earlier in this report. It is useful to bear in mind that the examiner's role is limited to testing whether or not the submitted neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).⁶ PPG confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.⁷ Where I find that policies do meet the basic conditions, it is not necessary for me to consider if further amendments or additions are required.

A representation refers to an alleged conflict of interest within the qualifying body. It is outside the jurisdiction of examiners to consider such matters. It may be appropriate for such matters to be separately considered through the complaints procedure of the qualifying body or local planning authority.

PPG⁸ explains that it is expected that the examination will not include a public hearing. Rather the examiner should reach a view by considering written representations. Where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.⁹

After consideration of all the documentation I decided that it was not necessary to hold a hearing.

Earlier this year NPIERS published guidance to service users and examiners. Amongst other matters, the guidance indicates that the qualifying body, in this case, Ocle

⁶ PPG para 055 ref id 41-055-20180222

⁷ *Ibid*

⁸ *Ibid* para 056 ref id 41-056-20180222

⁹ *Ibid*

Pychard Group Parish Council, will normally be given an opportunity to comment upon any representations made by other parties at the Regulation 16 consultation stage should they wish to do so. There is no obligation for the Parish Council to make any comments; it is only if they wish to do so. If a qualifying body wishes to make comments, the guidance indicates that any such comments should be made within two weeks after close of the Regulation 16 stage. The Parish Council sent some comments which I have taken account of in preparing my report.

I am very grateful to officers at HC for ensuring that the examination has run so smoothly.

I made an unaccompanied site visit to familiarise myself with the Plan area on 18 September 2018.

Where modifications are recommended they appear in **bold text**. Where I have suggested specific changes to the wording of the policies or new wording these appear in ***bold italics***. As a result of some modifications consequential amendments may be required. These can include changing section headings, amending the contents page, renumbering paragraphs or pages, ensuring that supporting appendices and other documents align with the final version of the Plan and so on. I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be taken and any such necessary editing carried out.

5.0 Compliance with matters other than the basic conditions

I now check the various matters set out in section 2.0 of this report.

Qualifying body

Ocle Pychard Group Parish Council is the qualifying body able to lead preparation of a neighbourhood plan. This requirement is met.

Plan area

The Plan area is coterminous with the administrative boundary for the Group Parish. HC approved the designation of the area on 3 May 2016. The Plan relates to this area and does not relate to more than one neighbourhood area and therefore complies with these requirements. The Plan area is shown on page 4 of the Plan.

Plan period

The Plan period is 2011 – 2031. This is clearly stated in the Plan itself and confirmed in the Basic Conditions Statement. The end date aligns with the Core Strategy. This requirement is therefore met.

Excluded development

The Plan does not include policies that relate to any of the categories of excluded development and therefore meets this requirement. This is also helpfully confirmed in the Basic Conditions Statement.

Development and use of land

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable.¹⁰ The Plan explains this distinction very well and contains a separate section on community actions. This is an approach I commend to others.

6.0 The basic conditions

Regard to national policy and advice

The Government published a National Planning Policy Framework (NPPF) in 2012. On 24 July 2018, a revised NPPF was published. Paragraph 214 in Annex 1 of that document explains that:

“The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.”

Footnote 69 explains that for neighbourhood plans “submission” means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.

It is therefore clear that it is the previous NPPF published in 2012 that is relevant to this particular examination. I sent a note to this effect to the Parish Council and HC and this is included as Appendix 2.

Any references to the NPPF in this report refer to the NPPF published in 2012.

¹⁰ PPG para 004 ref id 41-004-20170728

The NPPF is the main document that sets out national planning policy. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the strategic development needs set out in Local Plans, plan positively to support local development, shaping and directing development that is outside the strategic elements of the Local Plan and identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with the neighbourhood plan to proceed.¹¹

The NPPF also makes it clear that neighbourhood plans should be aligned with the strategic needs and priorities of the wider local area. In other words neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. They cannot promote less development than that set out in the Local Plan or undermine its strategic policies.¹²

The NPPF indicates that plans should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.¹³

On 6 March 2014, the Government published a suite of planning guidance referred to as Planning Practice Guidance (PPG). This is an online resource available at planningguidance.communities.gov.uk which is regularly updated. The planning guidance contains a wealth of information relating to neighbourhood planning. I have also had regard to PPG in preparing this report.

PPG indicates that a policy should be clear and unambiguous¹⁴ to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the context and the characteristics of the area.¹⁵

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.¹⁶ It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.¹⁷

Whilst this has formed part of my own assessment, the Basic Conditions Statement sets out how the Plan has responded to national policy and guidance. Table 1 also offers detailed commentary on how the Plan aligns with the NPPF's core planning principles.

¹¹ NPPF paras 14, 16

¹² *Ibid* para 184

¹³ *Ibid* para 17

¹⁴ PPG para 041 ref id 41-041-20140306

¹⁵ *Ibid*

¹⁶ *Ibid* para 040 ref id 41-040-20160211

¹⁷ *Ibid*

Contribute to the achievement of sustainable development

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development. The NPPF as a whole¹⁸ constitutes the Government's view of what sustainable development means in practice for planning. The Framework explains that there are three dimensions to sustainable development: economic, social and environmental.¹⁹

Whilst this has formed part of my own assessment, the Basic Conditions Statement contains Table 2 which explains how the Plan aligns with each of the three components of sustainable development outlined in the NPPF.

General conformity with the strategic policies in the development plan

The development plan consists of the Herefordshire Local Plan Core Strategy 2011 – 2031 (CS) which was adopted on 16 October 2015 and various other documents including the saved policies of the Unitary Development Plan (UDP) (found in Appendix 1 of the CS). I have taken all the CS policies to be 'strategic'.

Whilst this has formed part of my own assessment, the Basic Conditions Statement contains Table 3 that gives an assessment of how each Plan policy generally confirms to the relevant CS policies.

European Union Obligations

A neighbourhood plan must be compatible with European Union (EU) obligations, as incorporated into United Kingdom law, in order to be legally compliant. A number of EU obligations may be of relevance including Directives 2001/42/EC (Strategic Environmental Assessment), 2011/92/EU (Environmental Impact Assessment), 92/43/EEC (Habitats), 2009/147/EC (Wild Birds), 2008/98/EC (Waste), 2008/50/EC (Air Quality) and 2000/60/EC (Water).

Strategic Environmental Assessment

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment is relevant. Its purpose is to provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes. This Directive is commonly referred to as the Strategic Environment Assessment (SEA) Directive. The Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR).

An Environmental Report (ER) dated March 2018 has been submitted as an earlier screening opinion in April 2016 concluded that a SEA would be required.

¹⁸ NPPF para 6 which indicates paras 18 – 219 of the Framework constitute the Government's view of what sustainable development means in practice

¹⁹ *ibid* para 7

The ER confirms that a Scoping Report dated February 2017 was prepared and sent to the statutory consultees from 21 February – 28 March 2017. Natural England and Historic England responded.

A draft ER underwent a period of consultation alongside the pre-submission version of the Plan.

Following the Regulation 14 stage, three policies were amended (Policies OPG2, OPG3 and OPG4). These policies have been rescreened and the ER of March 2018 includes this review. The ER concludes that the Plan would have an overall positive impact on environmental assets and a positive impact on the SEA baseline data. It was published for consultation alongside the submission version of the Plan.

HC will monitor the outcomes from the Plan's policies annually.

The ER is a comprehensive document that has dealt with the issues appropriately for the content and level of detail in the Plan. This in line with PPG advice which confirms the SEA does not have 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 Plan.²⁰ In my view, it has been prepared in accordance with Regulation 12 of the Regulations. Therefore EU obligations in respect of SEA have been satisfied.

Habitats Regulations Assessment

Directive 92/43/EEC on the conservation of natural habitats, commonly referred to as the Habitats Directive, is also of relevance to this examination. A Habitats Regulations Assessment (HRA) identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects.²¹ The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

The initial screening assessment in April 2016 found that the Plan area lies some 3km away from the River Wye, but falls within the hydrological catchment of the River Lugg (the River Wye (including the River Lugg) Special Area of Conservation (SAC)). As a result, this initial screening indicated that a full screening assessment would be required.

A HRA dated September 2017 concluded that the draft Plan would not have a likely significant effect on the River Wye SAC alone or in combination with other plans.

A HRA Addendum Report dated March 2018 was then prepared following changes to the Plan and updated information at HC level. This affirmed the earlier conclusion that the Plan would not have a likely significant effect on the River Wye SAC.

²⁰ PPG para 030 ref id 11-030-20150209

²¹ *Ibid* para 047 ref id 11-047-20150209

I wrote to HC on 10 July 2018 regarding the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*.²² My letter to HC is attached at Appendix 3. I asked HC to consider any implications arising from the judgment that meant that measures intended to avoid or reduce effects could not be taken into account at the screening stage when considering whether a plan would be likely to have a significant effect on a European site.

As a result HC rescreened the Plan. The HRA dated July 2018 reviews the submission version of the Plan. It concluded that the Plan would not have any likely significant effects on the SAC.

HC have also issued a briefing note attached as Appendix 4 to this report. This explains that they have sought Counsel advice following the judgments and that revised screening reports rely on policies in the CS namely SD4 and LD2 to reach a conclusion that a Plan would not result in any likely significant effects. It explains that the key issue has been whether CS policies are classified as 'mitigation' and therefore cannot be taken into account at the screening stage.

The note states:

“Counsel advice has indicated that [CS] Policy SD4 (for example) is part of the development plan and importantly it has been considered through the CS assessment as removing the pathway to harm and “likely significant effects”. As all neighbourhood plans need to be in conformity with the CS and the policies of the development plan read as a whole, there is no need for the NDPs to include addition [STET] mitigation covered within these policies as it is within the higher level plan (the CS).”

The July 2018 HRA was subject to consultation between 6 August – 10 September 2018. This resulted in one representation from Historic England who did not disagree with its conclusions.

Following on from this, HC has sought further Counsel advice regarding the case of *Cooperatie Mobilisation for the Environment v Vereniging Leefmilieu*²³ (the so called Dutch Nitrogen case). The update of 13 December 2018 is attached as Appendix 5 to this report. This explains that the neighbourhood plan does not give rise to any pathway to harm which is not prevented by the proper application of CS Policy SD4. It therefore confirms that there is no reason why neighbourhood plans cannot progress in Herefordshire following on from current case law.

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.²⁴ In undertaking a great deal of work on HRA, HC has considered the compatibility of the Plan in regard to EU obligations and does not raise any concerns in this regard.

²² Case C-323/17

²³ Case C-293/17

²⁴ PPG para 031 ref id 11-031-20150209

Given the distance, nature and characteristics of the SAC concerned and the nature and contents of this Plan and taking the conclusions of the revised screening report undertaken by HC and the Counsel advice received by HC into account, I consider that the requisite requirements have been met.

European Convention on Human Rights (ECHR)

The Basic Conditions Statement contains a statement on human rights. There is nothing in the Plan that leads me to conclude there is any breach of the fundamental rights and freedoms guaranteed under the ECHR or that the Plan is otherwise incompatible with it or does not comply with the Human Rights Act 1998.

PPG²⁵ confirms that it is the responsibility of the local planning authority, in this case HC, to ensure that all the regulations appropriate to the nature and scope of the draft neighbourhood plan have been met. It is HC who must decide whether the draft plan is compatible with EU obligations when it takes the decision on whether the plan should proceed to referendum and when it takes the decision on whether or not to make the plan.

7.0 Detailed comments on the Plan and its policies

In this section I consider the Plan and its policies against the basic conditions. Where modifications are recommended they appear in **bold text**. As a reminder, where I suggest specific changes to the wording of the policies or new wording these appear in **bold italics**.

The Plan is presented clearly with 13 policies and a separate section on community actions. There is a useful contents page at the start of the Plan.

1. Setting the scene

This is a helpful introduction to the Plan that takes the reader through the Plan sections and signposts supporting information.

Apart from some natural updating as the Plan progresses towards referendum, there is just one issue to be updated; reference is made to the NPPF published in 2010 (this should be 2012). A revised NPPF has also now been published. A modification is recommended to address this issue.

- **Delete “...published in March 2010...” from paragraph 1.8 on page 2 of the Plan**

²⁵ PPG para 031 ref id 11-031-20150209

2. Ocle Pychard Group neighbourhood area

This is an informative section that set outs background information about the Plan area.

3. Vision, objectives and strategy

Vision and objectives

The clearly articulated vision for the area “provides for the future of the Neighbourhood Area by protecting and enhancing its essential qualities, features and facilities whilst allowing careful and limited change:

- A home for thriving and distinct local communities, where the needs of all ages, including those of the younger generation, can be met;
- A location which supports successful farming enterprises and other small businesses, providing local employment; and
- A location where high-quality and sustainable community services and infrastructure are available; and
- A sustainable rural environment where the character of the villages, the natural beauty of the landscape, wildlife and historic heritage are protected and enhanced, providing an attractive and peaceful countryside for all to enjoy.”

The vision is supported by a number of objectives which are grouped into housing, economic and social development and the environment. All are articulated well and will help to deliver the vision.

Sustainable development

Policy OPG1: Sustainable development

The Plan focuses on how it might deliver sustainable development. To help achieve this, Policy OPG1 is an overarching policy that sits alongside the vision and objectives of the Plan.

The policy is clearly worded. It sets out four principles that provide a balance between promoting and responding to growth recognising both a strategic and local role for the area whilst ensuring that the rural nature of the area and its attributes are protected and enhanced. It is a positive policy that reflects the principles in the CS, takes account of national policy and helps to achieve sustainable development. It meets the basic conditions and no modifications are therefore recommended.

Development needs and requirements

Policy OPG2: Development needs and requirements

The Plan explains that the main type of development for which provision needs to be made is housing.

It is useful for me at this stage to set out the strategic context for the Plan as this applies across the Plan area.

The strategy for the rural areas in the CS²⁶ is positive growth. The strategy is based on seven housing market areas (HMA). This Plan falls within the Bromyard HMA. This HMA has an indicative housing growth target of 15% according to CS Policy RA1.

This results in a target of 36 new homes over its Plan period. Only four have been completed since 2011.

The CS explains that this indicative growth target in CS Policy RA1 will form the basis for the minimum level of new housing to be accommodated in each neighbourhood plan across the County.

The main focus for development is within or adjacent to existing settlements listed in two figures, 4.14 and 4.15. CS Policy RA2 translates this into policy. Burley Gate is identified in Figure 4.14 as a settlement which will be the main focus of proportionate housing development. It is worth noting that part of Burley Gate falls within an adjacent Parish, Much Cowarne, and outside this Plan area. Ocle Pychard and Ullingswick are identified in Figure 4.15 as other settlements where proportionate housing is appropriate.

The CS states that neighbourhood plans have flexibility to apportion the minimum housing requirement between the settlements concerned where more than one settlement is listed Figures 4.14 and 4.15.

In this case, the Group Parish has decided to define a settlement boundary for these three villages. Comprehensive work has been carried out to help ensure that the strategic requirements for housing can be achieved. A 'Call for Sites' and Housing Site Assessments have been carried out.

As a result of this work and making reasonable assumptions about housing development in the more rural parts of the area and windfall provision, the Plan²⁷ shows that 48 dwellings can be achieved. This level of growth will be achieved through a mix of commitments, an allocation in Burley Gate, small sites within the settlement boundaries, housing outside the rural areas (in line with policy) and windfalls.

²⁶ Core Strategy Section 4.8

²⁷ Table 1 on page 11 of the Plan

Some representations query the strategy taken. It is clear that the proposed allocation in Burley Gate will represent the largest single site. This gives the opportunity for affordable housing and other infrastructure as well as a community shop and parking to be provided in this settlement. Given Burley Gate has a number of facilities and amenities and is identified in Figure 4.14 this seems to me to be entirely appropriate.

The definition of settlement boundaries for Burley Gate, Ocle Pychard and Ullingswick will also provide a firm foundation for some development.

Elsewhere in those areas outside the settlement boundaries known as the rural areas, a figure of 18 dwellings has been put forward in the Plan.

The CS recognises that housing on non-allocated sites has made a significant contribution to meeting housing needs. This has been what the CS describes as a “major element of new housing in rural areas”²⁸ and the contribution of the conversion of agricultural buildings into homes is also recognised. Often rural housing has come forward on small sites allowed via planning applications rather than allocations in policy documents.²⁹

Such sites are usually known as windfalls. It is usual to make an allowance for windfalls based on historic data of such provision and information that they will continue to provide a reliable source.

Had the figure of 18 houses in the rural areas been put forward as a windfall figure in the Plan there would be little historic data to support this figure. However by undertaking a ‘Call for Sites’, the Plan can then offer greater certainty that these sites will come forward.

There is no need to allocate these sites and whilst they are identified in Appendix D of the Plan, this serves to give more certainty to their availability as I have explained above rather than anything else. They are not allocations and in my view this is the correct approach to take as these sites will be assessed on a one by one basis against the applicable development plan policies.

I accept that by identifying specific sites but not to allocate them or to include such sites in the rural area as a specific figure may have caused some confusion. They could have been included in the windfall row in Table 1 on page 11 of the Plan. However, by presenting the housing figures in this way, it is clear that the Plan can accommodate its target.

Before leaving this issue, I will also comment on the figure that has been included for windfalls in Table 1. The allowance of four is based on a modest view of historic availability. I consider this to be a reasonable assumption over the remaining years of the Plan period. Indeed other sites have been put forward during the course of Plan

²⁸ CS para 3.46

²⁹ *Ibid* para 4.8.9

preparation which offers further comfort in that not all sites available or suitable have been put forward during the Plan's production.

Finally, I note that HC has not raised any concern with respect to the Plan's approach or the figures put forward in it. The figures exceed the CS target which whilst not a maximum figure do indicate the level of growth sought in each Plan area.

I commend the approach taken which is appropriate for the Group Parish.

The Plan then discusses the tenure and type of homes needed. These development needs are then translated into policy.

Policy OPG2 supports a minimum of 36 new dwellings by defining settlement boundaries for Burley Gate, Ocle Pychard and Ullingswick, allocating a site at Burley Gate, supporting appropriate housing within the settlements and countryside. It seeks housing of a type and size that will contribute to meet proven housing needs. It supports employment and rural diversification in appropriate locations cross-referencing applicable CS policies.

The policy is clearly worded. It supports the CS, reflects national policy and will help to achieve sustainable development. It therefore meets the basic conditions and no modifications are suggested.

4. Housing

This chapter focuses on housing in Burley Gate, Ocle Pychard and Ullingswick.

Burley Gate

Policy OPG3: Burley Gate

The Plan explains that Burley Gate has a linear form which extends east-west along a ridgeline as frontage development along the A465. It continues eastwards towards Bishops Frome, but this part of the village lies outside the Group Parish and this Plan area. The village has a number of local services and local employment.

A settlement boundary is sensibly defined for the village.

This policy supports housing on infill sites within the settlement boundary where development respects the local character of the village and heritage assets and is of a size and type that meets local requirements.

The policy takes account of national policy, generally conforms to CS Policies RA2, H3 and SD1 and will help to achieve sustainable development.

Whilst the policy is worded well, for the avoidance of any doubt, I consider it would be useful if it explicitly defined the settlement boundary. A modification is therefore suggested in the interests of providing the practical framework for decision-making sought by national policy.

- **Add a new sentence at the beginning of the policy that reads: “A settlement boundary for Burley Gate is defined and is shown on Plan 4 and the Burley Gate Village Policies Map.”**

Land east of the Telephone Exchange, Burley Gate

Policy OPG4: Land east of the Telephone Exchange, Burley Gate

Policy OPG4 allocates a site for approximately 15 dwellings, a community shop and car parking. The site is east of the Telephone Exchange on the southern side of the A465. It is close to the primary school and other facilities. For the avoidance of any doubt, I suggest that the policy refers to the Policies Map which clearly shows the site.

I saw at my visit that the site is appropriate for allocation given its relationship to other development and the form of the settlement. It also gives the opportunity for a permanent home for the community shop to be found as this is currently housed in a portacabin.

The policy sets out some site-specific requirements covering house size and type, affordable housing provision in line with the CS Policy H1 requirements, the need for an active frontage to the A465, vehicular access, pedestrian crossing, footways and landscaping. All are clearly worded and will help to achieve a high quality development.

However, two criteria require further thought. Criterion 4 refers to landscaping required outside but adjacent to the southern boundary. Whilst I do not disagree this is needed particularly because the land slopes away, I think it is difficult to require landscaping outside the allocation site. A modification is made to address this.

Secondly, criterion 5 requires the transfer of the land for the community shop and car parking to the Parish Council. Whilst this is laudable, I do not regard this as a development and use of land policy and consider this needs to occur outside the planning policy context. A modification is therefore made to address this and in making this modification I note that the issue is highlighted elsewhere in the Plan.

Subject to these modifications made in the interest of providing a practical framework for decision-making that is required by national policy, the policy will meet the basic conditions in that it reflects CS Policies RA2, H1 and H3.

- **Add a new sentence after the first sentence of the policy that reads: “The site is shown on Plan 4 and the Burley Gate Village Policies Map.”**

- Delete the words “...outside but adjacent to...” from criterion 4 and replace with the word “...along...”
- Delete criterion 5 in its entirety

Ocle Pychard

Policy OPG5: Ocle Pychard

Ocle Pychard has two main built-up areas; one to the east of the historic core extending to the Parish boundary and the second at Holme Oaks, a more recent development. As a result of this topography, two settlement boundaries are proposed. I consider both areas to be appropriately defined.

In order to be consistent with the modification recommended for Policy OPG3, I suggest that explicit reference is made to the Policies Map. Otherwise the policy is clearly worded and supports housing on infill sites within the settlement boundary where development respects the local character of the village and the natural and historic environments and is of a size and type that meets local requirements. This is in line with CS Policies RA2, H3 and SD1 and will help to achieve sustainable development.

- **Add a new sentence at the beginning of the policy that reads: “*Two settlement boundaries for Ocle Pychard are defined and are shown on Plan 5 and the Ocle Pychard Village Policies Map.*”**

Ullingswick

Policy OPG6: Ullingswick

Similar in wording to Policies OPG3 and OPG5, this clearly worded policy identifies a settlement boundary for Ullingswick and supports housing on infill sites where local character and heritage assets are respected and where the development is of a type and size that meets local requirements.

Whilst the boundary has been tightly defined in places, development to the west of Upper Town is more fragmented whereas the boundary contains more tightly knit development. I consider the boundary has been defined appropriately given the form of the village. This is in line with CS Policies RA2, H3 and SD1 and will help to achieve sustainable development.

The only modification reflects those suggested for Policies OPG3 and OPG5 and is made in the interests of providing a practical framework for decision-making. Subject to this modification, the policy will meet the basic conditions.

- **Add a new sentence at the beginning of the policy that reads: “A settlement boundary for Ullingswick is defined and is shown on Plan 6 and the Ullingswick Village Policies Map.”**

5. Economic and social

Economic development in Ocle Pychard Group

Policy OPG7: Economic development in Ocle Pychard Group

This policy supports employment generating proposals and the diversification of the rural economy provided that development is of a scale, type and nature appropriate to their location and setting. Five criteria are included which support the reuse of redundant rural buildings for business and live/work units, the extension of existing premises, home working and tourism and leisure.

The policy will help to achieve sustainable development. It is in line with national policy’s support for the rural economy and the NPPF’s support for economic growth in rural areas and for sustainable tourism and leisure developments that benefit the local community and visitors. It is in line with the general thrust of CS Policies SS5, RA5, RA6, E1, E3, E4 and MT1. This clearly worded policy therefore meets the basic conditions and no modifications are suggested.

Economic and social infrastructure

Policy OPG8: Communications and broadband

Telecommunications infrastructure is sought and supported by this policy. This is in line with the NPPF’s support for high quality communications infrastructure³⁰ and CS Policy SS5. The policy is clearly worded and meets the basic conditions. As a result no modifications are recommended.

Renewable energy

Policy OPG9: Renewable energy

Renewable energy schemes, including community-led proposals, are supported by this policy subject to acceptable effects on the natural and historic environments, amenity and highway safety and capacity.

³⁰ NPPF Section 5

The policy is clearly worded and is a local expression that takes account of the NPPF's drive to meet the challenge of climate change and can be viewed as a positive strategy promoting such energy whilst ensuring that adverse impacts are satisfactorily addressed.³¹ It generally conforms to CS Policy SD2 adding detail to it at the local level and will help to achieve sustainable development. It meets the basic conditions and no modifications are recommended.

Community facilities

Policy OPG10: Community facilities

This policy supports new provision in accessible locations and particularly at Burley Gate. It supports the enhancement of existing facilities. It refers to the co-location of services to assist with viability considerations and is flexible in respect to diversification that will enable or increase viability.

It is a clearly worded policy. It takes account of the NPPF³² which promotes the retention, and development, of local services and community facilities. It generally conforms to CS Policy SC1 in particular which protects, retains and enhances existing social and community infrastructure. It will help to achieve sustainable development. As a result the policy meets the basic conditions and no modifications are suggested.

6. Environment

Natural environment

Policy OPG11: Natural environment

The Plan explains that there are a number of local wildlife sites, ancient woodlands, other woodlands and traditional orchards in the Plan area.

Policy OPG11 seeks proposals to demonstrate they protect, conserve and enhance the natural environment and makes reference to CS Policies LD1, LD2 and LD3. The policy specifically refers to European and nationally important protected species, the River Wye SAC and the Rivers Wye and Lugg Sites of Special Scientific Interest, biodiversity interests, the maintenance and restoration of habitats and their network connectivity and landscape character.

The NPPF is clear that the planning system should contribute to and enhance the natural and local environment;³³ this policy takes account of national policy and will

³¹ NPPF para 97

³² *Ibid* para 28

³³ *Ibid* para 109

help to achieve sustainable development. It generally conforms to CS Policies SS6, LD1, LD2, LD3 and SD4. It therefore meets the basic conditions and no modifications are recommended.

Historic environment

Policy OPG12: Historic environment

There are a number of designated heritage assets in the Plan area including Conservation Areas in Ocle Pychard and Ullingswick and listed buildings. Historic farmsteads are a notable feature of the Plan area.

Policy OPG12 requires proposals to demonstrate that they protect, conserve and enhance the historic environment and heritage assets. It refers to CS Policy LD4. In particular the policy's four criteria reflect how this might be achieved and refer to the significance of the heritage assets, the two Conservation Areas, archaeological sites and the Herefordshire and Gloucestershire Canal which runs along the Parish's southern boundary and historic farmsteads and agricultural buildings.

The conservation or enhancement of the historic environment is reflected in the NPPF. One of the core planning principles in the NPPF is that heritage assets should be conserved in a manner appropriate to their significance.³⁴

The policy is clearly worded.

A modification is made to reflect the statutory duty in the Planning (Listed Buildings and Conservation Areas) Act 1990 which indicates that in considering whether to grant planning permission for development in relation to any buildings or other land in a conservation area, the decision maker shall pay special attention to the desirability of preserving or enhancing the character or appearance of that area. This is because criterion 2 refers to the protection and enhancement of the character and appearance of the Conservation Areas and this then does not accord with the relevant legislation and legal principles.

With this modification, the policy will meet the basic conditions.

In addition, the Ocle Pychard Conservation Area is shown on the Policies Map. In order to be consistent it would be useful to include a map that shows the Ullingswick Conservation Area in the Plan.

- **Revise criterion 2 to read: “*preserving or enhancing the character or appearance of the Ocle Pychard and Ullingswick Conservation Areas; and*”**
- **Include a map of the Ullingswick Conservation Area in the Plan**

³⁴ NPPF para 17

Design and access

Policy OPG13: Design and access

This policy sets out a number of design and access principles. All are aimed at ensuring that new development is of a high standard and is appropriate and respects the character and local distinctiveness of the area.

It reflects CS Policies MT1, SD1 and SD3 adding a local layer of detail. It will help to achieve sustainable development and takes account of national policy and guidance which particularly seeks good design indicating it is indivisible from good planning.³⁵ It meets the basic conditions and no modifications are recommended.

7. Delivering the Neighbourhood Development Plan

This section explains how the Plan will be used. It confirms that the Parish Council will seek to work proactively with applicants and HC to allow planning permission to be granted for development that improves the economic, social and environmental conditions of the Plan area.

Community actions

This part of the Plan includes a section on community actions. It helpfully explains that the Plan can only include policies that relate to the development and use of land. In preparing this Plan and earlier initiatives such as the Parish Plan, a number of non-planning issues were identified and these have been captured in Table 3 on page 33 of the Plan. This is a good approach that I commend to others.

Appendices

A number of appendices are included at the end of the Plan.

Appendix A contains details of the evidence base that supports the Plan.

Appendix B contains details of national and local planning policies referred to in the Plan. Given the presentation of the Plan, this is helpful in this particular instance.

Appendix C details the small sites at Upper Town, Ullingswick.

Appendix D details the rural area sites.

³⁵ NPPF para 56 and section 7

8.0 Conclusions and recommendations

I am satisfied that the Ocle Pychard Group Neighbourhood Development Plan, subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined earlier in this report.

I am therefore pleased to recommend to Herefordshire Council that, subject to the modifications proposed in this report, the Ocle Pychard Group Neighbourhood Development Plan can proceed to a referendum.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Neighbourhood Plan area. In this case, I am mindful that Burley Gate falls within two Parishes. I have carefully considered the advice in PPG regarding the extension of referendum areas beyond the Plan area. This indicates that it may be appropriate to do so for example where the scale or nature of the proposals will have a substantial, direct and demonstrable impact beyond the neighbourhood area.³⁶ I do not consider that these circumstances apply or there are any other reasons that would warrant altering or extending the referendum area. No representations have been made that would lead me to reach a different conclusion.

I therefore consider that the Ocle Pychard Group Neighbourhood Development Plan should proceed to a referendum based on the Ocle Pychard Neighbourhood Plan area as approved by Herefordshire Council on 3 May 2016.

Ann Skippers MRTPI

Ann Skippers Planning
17 December 2018

³⁶ PPG para 059 ref id 41-059-20140306

Appendix 1 List of key documents specific to this examination

Ocle Pychard Group Draft Neighbourhood Development Plan 2011 – 2031 Submission draft March 2018

Basic Conditions Statement March 2018

Consultation Statement Part 1 Preparing the NDP March 2018

Consultation Statement Part 2 Regulation 14 March 2018

Environmental Report March 2018

Habitats Regulations Assessment Report September 2017

Habitats Regulations Assessment Addendum Report March 2018

Habitats Regulations Assessment Report July 2018

Ocle Pychard Group Parish Policies Map

Burley Gate Village Policies Map

Ocle Pychard Village Policies Map

Ullingswick Village Policies Map

Herefordshire Core Strategy 2011-2031 October 2015 and Appendices

Saved Policies of the Unitary Development Plan 2007

Other supporting documents on the joint neighbourhood plan website:
<http://www.oclepychardgroup-pc.gov.uk> including Housing site assessment May 2017, Revised housing option July 2017 and the Housing site assessment Addendum March 2018

Comments from Ocle Pychard Group Parish Council on the Regulation 16 representations

List ends

Appendix 2 Note from the examiner about the revised NPPF

Independent Examination of the Ocle Pychard Group Neighbourhood Plan

Information Note from the Independent Examiner on the publication of a revised National Planning Policy Framework

The Government published a revised National Planning Policy Framework (NPPF) on 24 July 2018.

I would like to draw your attention to paragraph 214 of the document which states:

“The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted⁶⁹ on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.”

The accompanying footnote 69 explains that:

“For neighbourhood plans, ‘submission’ in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.”

It is therefore not my intention to invite or accept any representations or comments on the revised NPPF in relation to this examination.

This note is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI
Ann Skippers Planning
Independent Examiner

Appendix 3 Note from the examiner on habitats

Letter to Stephanie Kitto
Herefordshire Council

cc Ocle Pychard Group Parish Council
10 July 2018

Dear Stephanie,

Examination of the Ocle Pychard Group Neighbourhood Plan

The examination of the Ocle Pychard Neighbourhood Plan is due to commence in September 2018, but I am writing to draw your attention to a recent judgment of the Court of Justice of the European Union now so that any delay to the examination process can be minimised.

In the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Court ruled that Article 6 (3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of appropriate assessment (AA) and that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage.

Earlier case law had established that reduction or avoidance measures could be taken into account when considering whether a plan or proposal would be likely to have a significant effect on a European site. However, the implications of the more recent judgment is that this is no longer the case.

I would therefore be grateful if the Council could consider the HRA Screening Report and advise me on whether it considers it to be legally compliant in the light of the judgment. If it is considered not to be legally compliant and to have fallen foul of the judgment, I would ask that the Council advises me of what further work would be required to rectify this, together with an indicative timescale for that work, including any further consultation.

I will clearly reach my own view on this matter as well. Once you have had an opportunity to consider what, if any, further work needs to be undertaken, I suggest that we agree a way forward for the examination of the Neighbourhood Plan.

This letter is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI
Independent Examiner

Appendix 4

HC Briefing Note on HRA



Habitat Regulation Assessments (HRA) of Neighbourhood Development Plans

Statement in relation to CASE 323/1/COURT OF JUSTICE OF THE EUROPEAN UNION

People over Wind and Peter Sweetman v Coillte

Update following Counsel Advice

13 September 2018

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

These revised Habitat Regulations Assessments (post *Sweetman*) relied on policies within the Core Strategy; namely policy SD4 and LD2 to indicate that there was unlikely to be any 'likely significant effects' and that an Appropriate Assessment would not be required and the NDPs met the EU obligations.

The key issue has been whether policies within the Core Strategy are classified as 'mitigation' and therefore cannot be used within an initial screening. Resulting in the need for Appropriate Assessment which NDPs cannot be subject to.

Counsel advice has indicated that Policy SD4 (for example) is part of the development plan and importantly it has been considered through the Core Strategy assessment as removing the pathway to harm and 'likely significant effects'. As all neighbourhood plans need to be in conformity with the Core Strategy and the policies of the development plan read as a whole, there is no need for the NDPs to include additional mitigation covered within these policies as it is within the higher level plan (the Core Strategy).

The advice gives a clear conclusion that the Council can and should make the NDPs and examinations could be concluded, where either there is an adequate sewerage treatment capacity; or there is not but SD4 applies.



Habitat Regulation Assessments (HRA) of Neighbourhood Development Plans

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

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

Update following Counsel Advice

13 December 2018

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

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

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

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

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

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

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