

# **Little Birch and Aconbury**

## **Neighbourhood Development Plan**

### **Submission Version 2011 – 2031**

**Report of Examination**

**February 2019**

**Undertaken for Herefordshire Council with the support of Little Birch Parish Council on the submission version of the plan.**



**Independent Examiner:**

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## Contents

Summary .....	3
1. Introduction and Background.....	4
1.1 Neighbourhood Development Plans .....	4
1.2 Independent Examination .....	4
1.3 Planning Policy Context.....	6
2. Plan Preparation and Consultation.....	7
2.1 Pre-submission Process and Consultation.....	7
2.2 Regulation 16 Consultation Responses.....	8
3. Compliance with the Basic Conditions Part 1 .....	9
4. Compliance with the Basic Conditions Part 2: National Policy and the Development Plan.....	11
5. The Referendum Boundary.....	15

### **Abbreviations used in the text of this report:**

Little Birch and Aconbury Neighbourhood Development Plan is referred to as ‘the Plan’ or ‘LBA-NDP’.

Little Birch Parish Council is abbreviated to ‘Little Birch PC’ or referred to as ‘the qualifying body’.

Herefordshire Council is also referred to as the Local Planning Authority abbreviated to ‘LPA’.

The National Planning Policy Framework is abbreviated to ‘NPPF’.

The National Planning Practice Guidance is abbreviated to ‘NPPG’.

The Herefordshire Local Plan Core Strategy 2015 is abbreviated to ‘HCS’.

Strategic Environmental Assessment is abbreviated to ‘SEA’.

Habitats Regulations Assessment is abbreviated to ‘HRA’.

The Regulation 14 Consultation is abbreviated to ‘Reg14 Consultation’

The Regulation 16 Consultation is abbreviated to ‘Reg16 Consultation’

## Summary

- I have undertaken the examination of the Little Birch and Aconbury Neighbourhood Plan during February 2019, and detail the results of that examination in this report.
- The Little Birch and Aconbury Steering Group have undertaken extensive consultation on this Plan, and it complies with legislative requirements. The Plan is a well-written and focused document that has needed little in the way of modification to make it comply with the Basic Conditions. It has an original and appropriate solution to applying development limits in a situation where dispersed settlement is the traditional settlement form. The Herefordshire Local Plan Core Strategy 2015 provides a comprehensive strategic policy framework.
- I have considered the comments made at the Regulation 16 Publicity Stage, and where relevant these have informed the recommended modifications.
- Subject to the modifications recommended, the Plan meets the basic conditions and may proceed to referendum.
- I recommend the referendum boundary is the designated neighbourhood plan area.

**Acknowledgements:** Thanks to Local Authority and qualifying body staff for their assistance with this examination. My compliments to the local community volunteers, Little Birch Parish Council and Aconbury Parish Meeting, who have produced a well-written and focused Plan that responds well to local circumstances.

# 1. Introduction and Background

## 1.1 Neighbourhood Development Plans

1.1.1 The Localism Act 2011 empowered local communities to develop planning policy for their area by drawing up neighbourhood plans. For the first time, a community-led plan that is successful at referendum becomes part of the statutory development plan for their planning authority.

1.1.2 Giving communities greater control over planning policy in this way is intended to encourage positive planning for sustainable development. The National Planning Policy Framework (NPPF) states that:

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

Further advice on the preparation of neighbourhood plans is contained in the Government’s Planning Practice Guidance website:

<http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/>

1.1.3 Neighbourhood plans can only be prepared by a ‘qualifying body’, and in Little Birch and Aconbury that is the Little Birch Parish Council, with the agreement of the Aconbury Parish Meeting to be included in the Plan and neighbourhood area. Drawing up the Neighbourhood Plan was undertaken by a steering group made up of residents and councillors from both parishes.

## 1.2 Independent Examination

1.2.1 Once the qualifying body had prepared their neighbourhood plan and consulted on it, they submitted it to the LPA, Herefordshire Council. After publicising the plan with a further opportunity for comment, the LPA were required to appoint an Independent Examiner, with the agreement of Little Birch PC to that appointment.

1.2.2 I have been appointed to be the Independent Examiner for this plan. I am a chartered Town Planner with over thirty years of local authority and voluntary sector planning experience in development management, planning policy and project management. I have been working with communities for many years, and have recently concentrated on supporting groups producing neighbourhood plans. I have been appointed through the Neighbourhood Plan Independent Examiners Referral Service (NPIERS). I am independent of any local connections to Little Birch and Aconbury and Herefordshire Council, and have no conflict of interest that would exclude me from examining this plan.

1.2.3 As the Independent Examiner I am required to produce this report and recommend either:

- (a) That the neighbourhood plan is submitted to a referendum without changes; or
- (b) That modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
- (c) That the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.

1.2.4 The legal requirements are firstly that the Plan meets the 'Basic Conditions', which I consider in sections 3 and 4 below. The Plan also needs to meet the following requirements under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990:

- It has been prepared and submitted for examination by a qualifying body;
- It has been prepared for an area that has been properly designated by the Local Planning Authority;
- It specifies the period during which it has effect;
- It does not include provisions and policies for excluded development;
- It does not relate to land outside the designated neighbourhood area.

The LBA-NDP complies with the requirements of Paragraph 8(1). The Neighbourhood Area was designated on the 24<sup>th</sup> May 2016 by Herefordshire Council. The plan does not relate to land outside the designated Neighbourhood Area. It specifies the period during which it has effect as 2011 – 2031 and has been submitted and prepared by a qualifying body and people working to that qualifying body. It does not include policies about excluded development; effectively mineral and waste development or strategic infrastructure.

1.2.5 I made an unaccompanied site visit to Little Birch and Aconbury to familiarise myself with the area and visit relevant sites and areas affected by the policies. This examination has been dealt with by written representations, as I did not consider a hearing necessary.

1.2.6 I am also required to consider whether the referendum boundary should be extended beyond the designated area, should the Plan proceed to a referendum. I make my recommendation on this in section 5 at the end of this report.

## 1.3 Planning Policy Context

1.3.1 The Development Plan for the neighbourhood area, not including documents relating to excluded mineral and waste development, is the Herefordshire Core Strategy 2011-31 (HCS) adopted by the LPA in 2015 and some saved policies from the Herefordshire Unitary Development Plan. The latter are not relevant for the LBA-NDP however, being mainly concerned with minerals and waste issues, development that is excluded from consideration by neighbourhood plans. The Policies of the Core Strategy are considered 'strategic' for the purposes of the Basic Conditions.

1.3.2 The National Planning Policy Framework (NPPF) sets out government planning policy for England, and the National Planning Practice Guidance (NPPG) website offers guidance on how this policy should be implemented. Although the NPPF has been revised recently, that document makes clear (para 214 of Appendix 1 and footnote 69) that neighbourhood plans submitted to the LPA before 24<sup>th</sup> January 2019 will need to have regard to the previous 2012 version of the NPPF.

1.3.3 During my examination of the LBA-NDP I have considered the following documents:

- National Planning Policy Framework (NPPF) 2012
- National Planning Practice Guidance 2014 and as updated
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004
- The Localism Act 2011
- The Neighbourhood Planning Regulations 2012 (as amended)
- Submission version of the Little Birch and Aconbury NDP (LBA-NDP)
- The Basic Conditions Statement submitted with the LBA-NDP
- The Consultation Statement submitted with the LBA-NDP
- The Environmental Report submitted with the LBA-NDP to comply with SEA regulations
- The HRA Report submitted with the LBA-NDP to comply with the Habitats Regulations
- Neighbourhood Area Designation (map)
- Herefordshire Local Plan Core Strategy 2011 – 2031: Adopted 2015
- 'Housing Delivery' – Report for Steering Group June 2017 DJN Planning Ltd
- Representations received during the publicity period (reg16 consultation)

## 2. Plan Preparation and Consultation

### 2.1 Pre-submission Process and Consultation

2.1.1 Little Birch is a village in the County of Herefordshire, and Aconbury is an adjacent hamlet, approximately four miles south of Hereford. Both parishes are rural in character, the population of the neighbourhood area was 306 at the time of the 2011 Census. A small southern part of the area is within the Wye Valley AONB, and the proximity of the River Wye SAC has resulted in the need for SEA and HRA assessment of the Plan and its policies. The area also has other locally important and sensitive landscapes, including ancient and semi-natural woodland and traditional orchards.

2.1.2 After agreeing to work on a joint neighbourhood plan for the two parishes, the neighbourhood area was designated and a steering group was set up. The Steering Group comprised representatives from both parishes and parish councillors. Minutes of meetings were made available on the Little Birch PC website.

2.1.3 The Consultation Statement sets out the nature and form of consultation prior to the formal Reg14 six week consultation. Several open meetings were held to gather information on issues in 2016, which informed the questions on a follow-up questionnaire. The questionnaire asked questions on topics that included transport, housing and potential sites, employment and the environment and landscape protection. With delivery of the questionnaire and background information to each household, and collection by hand a fortnight later, a response rate of 76.9% was achieved.

2.1.4 The questionnaire offered resident preferences for policy options on the key issues, including a preference for the village area being defined flexibly rather than with a settlement boundary, and infill rather than defined sites being preferred for new housing.

2.1.5 As required by regulation 14 of the Neighbourhood Planning Regulations 2012, the formal consultation for six weeks on the pre-submission draft Plan ('Reg14 consultation') ran from the 8<sup>th</sup> January to the 19<sup>th</sup> February 2018. The draft Plan was delivered to each household and business premises in the area, together with a comments form. The draft Plan, evidence documents and environmental reports were on the website, and comments could also be made online or by email. Hard copies of the Plan were available at The Castle Inn, and the consultation was covered in the local newsletter. A drop-in event was also held during the Reg14 consultation.

2.1.6 Representations were received from seventeen residents, four departments of Herefordshire Council and five statutory bodies and the Woodland Trust during the Reg14 consultation period. Several amendments have been made to the Plan as a result of constructive suggestions for changes, and these are comprehensively documented in the Consultation Statement. I am satisfied that due process has been followed during the consultation undertaken on the Plan, and efforts made to engage a wide range of people and stakeholders are well-documented in the Consultation Statement.

2.1.7 As required, the amended plan, together with a Basic Conditions Statement, a Consultation Statement, the Environmental Report and Habitats Regulations Assessment, and a plan showing the neighbourhood area were submitted to Herefordshire Council on the 24<sup>th</sup> September 2018.

## **2.2 Regulation 16 Consultation Responses**

2.2.1 Herefordshire Council undertook the Reg 16 consultation and publicity on the LBA-NDP for six weeks, from the 4<sup>th</sup> October 2018 to the 15<sup>th</sup> November 2018. Ten representations were received during this consultation, four from different sections of Herefordshire Council and 6 from Statutory Consultees. Historic England commended the emphasis on local distinctiveness and the maintenance of historic rural character and dispersed settlement pattern. Four of the Statutory Bodies had no specific comments to make on this Plan, and Highways England commented on Policy LBA7 and requested amended wording. This is considered further in section 4 of this report below.

### 3. Compliance with the Basic Conditions Part 1

3.1 General legislative requirements of the 1990 Town and Country Planning Act (TCPA) other than the Basic Conditions are set out in paragraph 1.2.4 above. The same section of this report considers that the LBA-NDP has complied with these requirements. What this examination must now consider is whether the Plan complies with the Basic Conditions, which state it must:

- Have regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contribute to the achievement of sustainable development;
- Be in general conformity with the strategic policies of the development plan for the area; and
- Be compatible with and not breach European Union (EU) obligations including the habitats basic condition (2017 as amended) and human rights law.

3.2 The Vision of the Plan encompasses all three of the social, economic and environmental goals of sustainable development, within a vibrant rural community. Policy LBA1 promotes sustainable development, within a context where the historic settlement form and environmental assets are protected. The Basic Conditions Statement discusses how the plan promotes the Core Planning Principles of the NPPF (2012), and I accept that the Plan does contribute to sustainable development in line with the Basic Conditions.

3.3 An Environmental Report and Habitat Regulations Assessment (HRA) Report have been submitted with the LBA-NDP as both Strategic Environmental Assessment (SEA) and HRA were required for the Plan. The two parishes are within the catchment of the River Wye Special Area of Conservation (SAC), where water quality is a particular issue of concern. The Environmental Report, which updates an earlier report done at the Reg14 stage, states that no further changes to the Plan will be required. It is considered to be in conformity with the Development Plan and not promoting more development above the level proposed in strategic policies.

3.4 The HRA Reports in 2017 and the further review of altered policies in the Plan done in the 2018 HRA Report, have considered the policies of the LBA-NDP for likely significant effect on the relevant European site, the River Wye and River Lugg SAC, and found there were none. Development proposals have not exceeded the requirements of the HCS, which has existing safeguards in place (Policy SD4) to ensure development will only take place if the proposals do not adversely impact on water quality and biodiversity of the River Wye. It should be noted there is an error in para 1.3 of

the HRA Report, it is Aconbury that has a designated settlement boundary, and Little Birch that doesn't. The legislative background in Section 2 could helpfully mention the Conservation of Habitats and Species Regulation 2017 and the new neighbourhood planning Basic Conditions within it (amended at the end of 2018 by SI No. 1307).

3.5 The LBA-NDP in my view complies with Human Rights Legislation. It has not been challenged with regard to this, the policies comply with the requirements of the Universal Declaration of Human Rights, and the consultation statement showed that the need to consult with a wide cross-section of the community was appreciated.

## 4. Compliance with the Basic Conditions Part 2: National Policy and the Development Plan

4.1 The final and most complex aspect of the Basic Conditions to consider is whether the LBA-NDP meets the requirements as regards national policy and the development plan. This means firstly that the Plan must have regard to national policy and guidance, which for this neighbourhood plan is the NPPF (2012) and the NPPG. Secondly the Plan must be in general conformity with the strategic policies of the development plan. The phrase ‘general conformity’ allows for some flexibility. If I determine that the Plan as submitted does not comply with the Basic Conditions, I may recommend modifications that would rectify the non-compliance.

4.2 The Plan and its policies are considered below in terms of whether they comply with the Basic Conditions as regards national policy and the development plan. If not, then modifications required to bring the plan into conformity are recommended.

Modifications are boxed in this report, with text to *remain in italics*, new text **highlighted in Bold** and text to be deleted ~~shown but struck through~~. Instructions for alterations are underlined.

4.3 The format of the Plan is clear and concise. The LPA is of course authorised to correct errors that may have been missed so far in proof-reading [Town and Country Planning Act 1990 Schedule 4B section 12(6)]. I have spotted that in para 1.8 of the Plan the NPPF is stated to have been published in March 2010, when the correct date is 2012.

4.4 **Policy LBA1: Sustainable development** The policy will comply with the Basic Conditions when bullet 1 makes it clear that it is the Herefordshire Local Plan Core Strategy that is referred to. The clarity required of policy by the NPPF (2012 para154) requires this change, and I recommend that Policy LBA1 is amended as shown in Modification 1:

**Modification 1:** Policy LBA1, bullet 1 to be amended as follows:

*“1. enabling new housing to meet the needs and requirements of the **Herefordshire Local Plan Core Strategy** and the communities in Little Birch and Aconbury; and”*

4.5 **Policy LBA2: Development needs and requirements** Complies with the Basic Conditions.

4.6 **Policy LBA3: Little Birch village** Complies with the Basic Conditions.

4.7 **Policy LBA4: Development in Little Birch** Complies with the Basic Conditions.

4.8 **Policy LBA5: Development in Aconbury** The policy states that it defines a settlement boundary for Aconbury, but does not reference a map doing this visually and showing the boundaries. For clarity, as required by the NPPF, the policy needs to reference Plan 5, which does this clearly, and I recommend therefore that the Plan is amended as shown in Modification 2.

**Modification 2:** The first paragraph of Policy LBA5 to be amended as follows:

*“A settlement boundary is defined for Aconbury as shown on Plan 5 within which development proposals for housing and other purposes will be permitted provided that they will: ...”*

4.9 **Policy LBA6: Rural economic development** The policy very definitely supports a wide range of development proposals, not all of which can be expected to comply with other policies in the Development Plan. While there is an understood requirement that proposals will need to comply with all policies, for the clarity required of policy by the NPPF, I recommend that in order to comply with the Basic Conditions the policy is amended as shown in Modification 3 below:

**Modification 3:** The first sentence of Policy LBA6 to read as follows:

*“A range of proposals for employment development and rural diversification that comply with policies in the development plan will be supported, including: ...”*

**4.10 Policy LBA7: Infrastructure** The Policy has been criticised in a Reg16 submission from Highways England for proposing a highway solution alongside the A49 which has not been tested as being the best option or feasible. The policy has a caveat about 'feasible and appropriate' in the previous sentence, but although a neighbourhood plan can identify the need for improved transport provision, it should not anticipate the solution required at a particular location. I saw from my site visit that improved connectivity here is possible with a short connection on what appears to be existing highway verge, so that the aspiration of the neighbourhood plan is justified and realistic.

4.10.1 The qualifying body have supported the requested alteration to the policy from Highways England. In order that the policy does not deal with what is a highway issue, namely the choice of solution, and complies with the Basic Conditions in that it deals with land-use issues, I recommend that the Policy is altered as set out in Modification 4. As the site is on the boundary of the neighbourhood area I am also suggesting words that make it clear the policy applies within the neighbourhood area only, as required by the Basic Conditions.

**Modification 4:** The second paragraph of Policy LBA7 to be amended as follows:

*Proposals which provide for the provision or improvement of walking, cycling and public transport infrastructure will be supported wherever feasible and appropriate, particularly where they deliver enhanced connectivity to existing facilities. ~~This includes~~ A cycle/footway link **within the neighbourhood area** alongside the A49 between the Kings Pitt Road and the C1263 at Cross in Hand Farm, or similar facility as appropriate, will ~~to provide~~ **much-needed** enhanced access to the existing bus stop on the trunk road at this location.*

**4.11 Policy LBA8: Renewable energy** Complies with the Basic Conditions.

**4.12 Policy LBA9: Community facilities** Complies with the Basic Conditions.

4.13 **Policy LBA10: Protecting the local environment** Complies with the Basic Conditions.

4.14 **Policy LBA11: Building design** Complies with the Basic Conditions.

4.15 **Plan 2 taken from the SEA Environmental Report (Map 1)** This map is included for information purposes, and does not directly link to a policy. However the key is not clear with relation to features shown on the map and could cause confusion. The areas of 'ancient woodland' within the neighbourhood area appear to have been overlaid on areas designated as local wildlife sites on the parish policies map, although on this Plan there is no reference in the Key to local wildlife sites. The resulting visual effect could be mistaken for them being Registered Parks and Gardens. For the clarity required by the NPPF (2012 para154), I recommend that Plan 2 is altered as shown in Modification 5.

**Modification 5:** Plan 2 to be amended so that areas of ancient woodland within the neighbourhood area are clearly defined in a visually similar way to those outside of the neighbourhood area.

## 5. The Referendum Boundary

5.1 The Little Birch and Aconbury Neighbourhood Development Plan has no policy or proposals that have a significant enough impact beyond the designated Neighbourhood Plan Boundary that would require the referendum boundary to extend beyond the Plan boundary. Therefore I recommend that the boundary for the purposes of any future referendum on the Little Birch and Aconbury Neighbourhood Development Plan 2011 – 2031 shall be the boundary of the designated Neighbourhood Area for the Plan.