

Herefordshire Council

**Aymestrey  
Neighbourhood Development Plan  
2011-2031**

**Independent Examiner's Report**

By Ann Skippers MRTPI FRSA AoU

5 March 2019

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## Summary

I have been appointed as the independent examiner of the Aymestrey Neighbourhood Development Plan.

The Plan covers a large rural area with a population of about 350. It lies in north Herefordshire with Leominster some 8 miles to the south and Ludlow about 12 miles to the north. Four settlements have been identified at County level.

The Plan has a clear vision which is underpinned by a set of objectives. The vision is translated into 23 policies which cover a wide variety of topics including the definition of settlement boundaries and a site allocation.

It has been necessary to recommend a number of modifications. In the main these are intended to ensure the Plan is clear and precise and 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 Aymestrey 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  
5 March 2019



## 1.0 Introduction

This is the report of the independent examiner into the Aymestrey 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 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 conditions<sup>1</sup> 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.

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<sup>1</sup> 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 was brought into effect on 28 December 2018.<sup>2</sup> It states that:

- The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

The examiner is also required to check<sup>3</sup> 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.<sup>4</sup>

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.

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<sup>2</sup> Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

<sup>3</sup> Set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act

<sup>4</sup> 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 has been submitted. It meets the requirements of Regulation 15(2) of the Neighbourhood Planning (General) Regulations 2012. It contains a useful timeline summarising the sequence of events.

Work on the Plan began in earnest in 2016. Three questionnaires were devised; Land for Future Development, Housing Needs and Parishioner. A stall at the Fete in July and an Open Weekend in August helped to receive feedback on the questionnaire designs. Questionnaires were hand delivered in August 2016. A good response rate of 45% was achieved. The results were used to develop a number of themes for the Plan with teams assigned to each theme.

A further Open Weekend to feed back results and an Environmental Open Evening with experts from a variety of organisations were held in February 2017.

A stall at the Summer Fete was taken. A second environmental survey was commissioned (although it is not obvious to me when the first was conducted).

Throughout the process, activity has been publicised on a dedicated website, articles in the local magazine 'Aymestrey Matters', notice boards and so on. Meetings of the Steering Group were public and minutes published.

With numerous work underway, a draft Plan was produced.

Pre-submission (Regulation 14) consultation took place between 19 March – 13 May 2018. Two Open Weekends were held during this period.

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

Submission (Regulation 16) consultation was carried out between 27 June – 22 August 2018.

The Regulation 16 stage resulted in 12 representations. I have considered all of the representations and taken them 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).<sup>5</sup> PPG confirms that the

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<sup>5</sup> PPG para 055 ref id 41-055-20180222

examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.<sup>6</sup> 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.

PPG<sup>7</sup> 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.<sup>8</sup>

I sought clarification on a number of matters from the Parish Council and HC in writing and my list of questions is attached to this report as Appendix 2. I am very grateful to both Councils who have provided me with comprehensive answers to my questions. The responses received (all publicly available) have enabled me to examine the Plan without the need for a hearing.

Last year NPIERS published guidance to service users and examiners. Amongst other matters, the guidance indicates that the qualifying body 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 comments and I have taken these into account.

I am very grateful to everyone for ensuring that the examination has run so smoothly.

I made an unaccompanied site visit to familiarise myself with the Plan area on 28 December 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 and the Plan's presentation made consistent.

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<sup>6</sup> PPG para 055 ref id 41-055-20180222

<sup>7</sup> *Ibid* para 056 ref id 41-056-20180222

<sup>8</sup> *Ibid*

## 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

Aymestrey 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 7 January 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. 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.<sup>9</sup>

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<sup>9</sup> PPG para 004 ref id 41-004-20170728

## 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. On 19 February 2019, the revised NPPF was updated and replaces the previous NPPF published in March 2012 and revised last July.

Paragraph 214 in Annex 1 of that document explains that:

“The policies in the previous Framework published in March 2012 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.

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

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.<sup>10</sup>

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.<sup>11</sup>

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<sup>10</sup> NPPF paras 14, 16

<sup>11</sup> *Ibid* para 184

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.<sup>12</sup>

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](http://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 unambiguous<sup>13</sup> 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.<sup>14</sup>

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.<sup>15</sup> It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.<sup>16</sup>

Whilst this has formed part of my own assessment, the Basic Conditions Statement<sup>17</sup> sets out how the Plan aligns with the NPPF's core planning principles. Section 3 of the Basic Conditions Statement contains more details cross referencing the NPPF and Core Strategy policies.<sup>18</sup>

### **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 whole<sup>19</sup> 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.<sup>20</sup>

Whilst this has formed part of my own assessment, the Basic Conditions Statement contains a table<sup>21</sup> which explains how the Plan aligns with each of the three components of sustainable development outlined in the NPPF.

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<sup>12</sup> NPPF para 17

<sup>13</sup> PPG para 041 ref id 41-041-20140306

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid* para 040 ref id 41-040-20160211

<sup>16</sup> *Ibid*

<sup>17</sup> Basic Conditions Statement page 5

<sup>18</sup> *Ibid* page 7

<sup>19</sup> NPPF para 6 which indicates paras 18 – 219 of the Framework constitute the Government's view of what sustainable development means in practice

<sup>20</sup> *Ibid* para 7

<sup>21</sup> Basic Conditions Statement Section 3 page 7

## **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<sup>22</sup> 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).

PPG<sup>23</sup> 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.

## ***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 June 2018 has been submitted as an earlier screening opinion in January 2016 concluded that a SEA would be required.

The ER confirms that a Scoping Report dated April 2016 was prepared and sent to the statutory consultees from 5 May – 9 June 2016. Natural England and Historic England responded.

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<sup>22</sup> Basic Conditions Statement Section 3 page 7

<sup>23</sup> PPG para 031 ref id 11-031-20150209

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

Following the Regulation 14 stage, a number of changes were made to objectives and policies. The changes have been rescreened and the ER of June 2018 includes this review. The ER concludes that the Plan would have 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.<sup>24</sup> 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.<sup>25</sup> The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

An initial screening undertaken in January 2016 concluded that a HRA would be required. This was because the Plan area falls within the River Wye (including the River Lugg) Special Area of Conservation (SAC) and is within the hydrological catchment of the River Wye. It also falls within 10km of the Downton Gorge SAC, some 3.8km away).

A HRA of February 2018 concluded that the draft Plan would not have a likely significant effect on either SAC alone or in combination with other plans.

An Addendum Report of June 2018 was prepared following refinement to the Plan. This affirmed the earlier conclusion that the Plan would not have a likely significant effect on the River Wye or Downton Gorge SACs.

Following the case of *People Over Wind*, *Peter Sweetman v Coillte Teoranta*,<sup>26</sup> HC issued a note indicating that HRAs would be reviewed including this Plan. HC therefore rescreened the Plan. The HRA dated September 2018 reviews the submission version

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<sup>24</sup> PPG para 030 ref id 11-030-20150209

<sup>25</sup> *Ibid* para 047 ref id 11-047-20150209

<sup>26</sup> Case C-323/17

of the Plan. It concluded that the Plan would not have any likely significant effects on the SACs.

HC have also issued a briefing note attached as Appendix 3 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)."

HC have also issued a further statement dated 13 December 2018. This is attached as Appendix 4. This explains that advice has been sought following further Court cases including that of *Cooperation Mobilisation for the Environment v Verenigin Leefmilieu* (the so called Dutch Nitrogen case).<sup>27</sup> 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)."

Further consultation was carried out on this HRA from 26 September – 31 October 2018. Historic England responded and did not disagree with its conclusions. The Parish Council was also given an opportunity to consider this representation and no further comments have been received.

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.<sup>28</sup> 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.

On 28 December 2018, the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) was substituted by a new basic condition brought into force by the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

I wrote to HC on 4 January 2019 drawing attention to this and asking whether this change to the basic conditions gave rise to any implications for the examination of this

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<sup>27</sup> Case C-293/17

<sup>28</sup> PPG para 031 ref id 11-031-20150209

particular neighbourhood plan. My letter is attached as Appendix 5. HC responded on 18 January 2019 and this is attached as Appendix 6.

Given the distance, nature and characteristics of the SACs 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 and that the prescribed basic condition is complied with.

### **European Convention on Human Rights (ECHR)**

The Basic Conditions Statement contains a short statement in relation to 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.

## **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 and contains 23 policies. There is a useful contents and index page at the start of the Plan.

### **1. Introduction**

This is a helpful introduction to the Plan that sets out how and why the Plan came into being, key dates and its relationship with the CS.

### **2. Background to the Plan Area**

Explaining that the Parish covers a large rural area, this well-written and informative section sets out the context and characteristics of the Plan area containing a wealth of information about the Group Parish.

There is a reference to the draft NPPF in paragraph 2.3 on page 7 of the Plan. Given the passage of time, it might be useful to update any such references. I have not repeated this modification throughout my report but have an expectation that any other references will be similarly updated.

- **Update references made to the draft NPPF throughout the document to refer to the NPPF published in February 2019**

### 3. Issues & Options

This section explains the key issues facing the Parish and the options facing the community in relation to the provision of housing development in particular.

There is a typo on page 14.

- **Change “manoeuvres” in paragraph 3.9 on page 14 of the Plan to “manoeuvres”**

### 4. Vision, Objectives and Strategic Policies

The clear and succinct vision for the area is:

“To have a flourishing community, cherishing our unique environment as a place to grow up, work, retire and enjoy.”

The vision is supported by 14 objectives. All are articulated well, relate to the development and use of land and will help to deliver the vision.

#### ***Strategy for Sustainable Development***

#### **Policy AYS1 Promoting Sustainable Development**

This policy seeks, on the face on it, to promote sustainable development. However, there are a number of problematic issues with it.

Where development is not in accordance with policies in the Plan, this policy asks for clear public benefits to outweigh the conflict. Any harm arising from the conflict should be satisfactorily mitigated or compensated.

The first issue is that the Plan forms part of the development plan against which proposals will be assessed, but it is not the only document. Therefore there is no recognition that this Plan forms part of a suite of policy documents including the CS at HC level.

The final paragraph of the policy refers to HC policies where the Plan is silent. This is incorrect as CS policies will apply whether or not the Plan is 'silent' on a particular issue. This then introduces a 'hierarchy' of plans which is not appropriate to do.

Secondly, whilst I welcome the attempt to define what sustainable development might mean for the Parish, the wording used sets an extremely high bar. In fact the bar is akin to how development in Sites of Special Scientific Interest, national parks or areas of outstanding natural beauty (AONB) or that related to designated heritage assets or irreplaceable habitats might be considered and managed.

The policy then lists a number of factors to be considered in the assessment of proposals. These are all common considerations in the assessment of planning applications.

The policy then seeks to support limited new housing. As HC has commented in their representation this does not reflect a positive planning approach.

Modifications are therefore made to address these concerns to ensure that the policy takes a positive approach, takes account of national policy and guidance and will help to achieve sustainable development.

With regard to the supporting text, some changes are needed to make sure the text aligns with the modifications put forward to the policy.

In addition greater flexibility is needed on the requirement set out in paragraph 4.7 for landscape assessments. The NPPF is clear that supporting information should be relevant, necessary and material to the planning proposal.<sup>29</sup> The requirement is too prescriptive as currently presented.

With these modifications the policy will meet the basic conditions.

- **Delete the first paragraph of the policy**
- **Delete the word "Limited" from the [existing] third paragraph of the policy so that this paragraph begins "New housing..."**
- **Delete the final paragraph of the policy**
- **Delete everything after "This NDP will form part of the Local Development Framework and as such its policies will guide development..." from paragraph 4.5 of the Plan**
- **Change the fifth sentence in paragraph 4.7 to read: "Consequently, for many forms of development within the Parish, a *proportionate* landscape assessment *may* be required when a planning application is submitted."**

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<sup>29</sup> NPPF para 193

- **Delete the sixth sentence of paragraph 4.7**

### **Policy AYS2 Development Strategy**

This policy confines residential development to within the settlement boundaries identified in the Plan and the proposed site allocation which is subject to a later policy. It refers to the planning brief for this site, but then restricts housing numbers. It is not appropriate for a neighbourhood plan to impose a cap on housing numbers. So this element of the policy needs deletion.

It explains that outside of the settlement boundaries, development must comply with the policies of the Plan and CS Policies RA3, RA4 and RA5. It confirms that land outside the boundaries including land adjacent to or adjoining the boundaries, will be regarded as countryside. The CS explains that settlement boundaries for settlements identified in CS Policy RA2 will be defined in neighbourhood plans or the Rural Areas Sites Allocation Development Plan Document. Once a settlement boundary is defined, CS Policy RA3 will apply to land outside of settlements which is regarded as countryside. This element of the policy is therefore appropriate and reads clearly.

Subject to this modification, the policy will take account of national policy and guidance, generally conform to the CS and CS Policies SS2, RA2, RA3, RA4 and RA5 in particular and help to achieve sustainable development.

The supporting text refers to paragraph 59 of the NPPF. This refers to design codes and so is not an appropriate reference. It should be removed in the interests of accuracy.

- **Delete the words “...including the restriction on housing numbers.” from the first paragraph of the policy**
- **Delete the words “...in accordance with NPPF paragraph 59.” from paragraph 4.9 on page 21 of the Plan**

## **5. Environmental Policies**

### **Policy AYEnv1 Landscape**

This policy seeks to ensure that development proposals contribute positively to the landscape of the Parish. As part of the work undertaken for the Plan an Environmental Survey has been carried out.

As explained earlier in this report, the NPPF is clear that requirements for information should be proportionate, relevant, necessary and material.<sup>30</sup> The policy requirements are quite prescriptive and so a modification is made to increase flexibility to take account of the NPPF.

Whilst the drive to obtain AONB status is laudable, the Plan area is not currently an AONB. Therefore it is not appropriate for this policy to seek to impose the criteria set out in the NPPF<sup>31</sup> in relation to national parks and AONBs as this policy and the Basic Conditions Statement seeks to do.

To align with the modifications made in relation to Policy AYS1, a modification is also made to the supporting text for this policy.

With these modifications, the policy takes account of national policy and guidance, generally conforms to CS Policies SS6, LD1 and LD2 in particular and will help to achieve sustainable development.

- **Change the word “will” to “may” in the second paragraph of the policy before points 1. and 2. of the policy**
- **Change the word “will” to “may” in point 1.**
- **Delete point 2.**
- **Delete everything after the first sentence in paragraph 5.5**

## **Policy AYEnv2 Biodiversity and Geodiversity**

This policy seeks to ensure that development conserves and enhances biodiversity. It is a criteria based policy. All the criteria are worded clearly. Whilst the NPPF indicates that distinctions should be made between the hierarchy of designated sites to ensure protection is commensurate with their status, this policy and its supporting text refers to various designations and sites and this offers sufficient distinction through references to supporting documents and CS policies.

The last criterion refers to the Parish’s ambition for designation as an AONB. Whilst I understand this stance, I do not consider it appropriate to refer to this in the policy itself as it requires something to be done outside the remit of the Plan (however desirable or likely that might be). Removing it would not affect the intent of the policy. A modification is therefore made to address this alongside one to delete this element from the supporting text.

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<sup>30</sup> NPPF para 193

<sup>31</sup> *Ibid* para 116

Subject to these modifications, the policy will meet the basic conditions reflecting CS Policies SS6 and LD2 in particular.

- **Delete criterion g)**
- **Delete paragraph 5.7 on page 24 of the Plan**

### Policy AYEnv3 Protecting Heritage Assets

Policy AYEnv3 seeks to protect heritage assets. It is a long policy with ten criteria. To ensure the policy takes better account of national policy and guidance, a number of modifications are proposed including to criteria a), b), c) and d).

Criterion e) refers to the protection of registered parks and gardens and “their wider setting”. As a representation from HC explains there is no additional statutory protection, but this is a material consideration in the determination of planning applications. The NPPF defines registered parks and gardens as designated heritage assets. The NPPF explains that it is the significance of a designated heritage asset which should be considered and that significance could, amongst other things, be harmed or lost through development within its setting.<sup>32</sup> I consider that this criterion requires modification to make it less prescriptive and to take better account of the NPPF.

Criterion j) refers to ancient hedgerows and associated patterns. The wording used might inadvertently result in the loss of these habitats as it could be argued that their removal was necessary. Therefore a modification to make the wording more precise so it provides a practical framework for decision making is recommended.

Whilst the policy does not distinguish explicitly between designated and non-designated assets, with the modifications made each element of the policy correctly refers to the tests put forward for each heritage asset in the NPPF. With these modifications, the policy takes account of national policy and guidance, generally conforms to CS Policies SS6 and LD4 in particular and will help to achieve sustainable development.

- **Change criterion a) to read: “Refusing development proposals that would lead to substantial harm or *total* loss of significance of any designated heritage asset unless it can be *demonstrated* that the development would offer *substantial* public benefits.”**
- **Change criterion b) to read: “Requiring robust evidence of the public benefits of any proposal that would result in less than substantial harm to *the significance* of a designated asset or its setting.”**

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<sup>32</sup> NPPF para 132

- **Change criterion c) to read: “Ensuring the *conservation* of Aymestrey’s Grade I listed church and the Grade II\* listed church at Leinthall Earls and their *settings*. Development proposals *should conserve* the openness and character of the settings and preserve *or* enhance views to and from the Churches, which make an important contribution to their significance.”**
- **Change criterion d) to read: “Ensuring the *conservation* of *Scheduled* Monuments and their settings. Development proposals shall *conserve* important views...and *conserve* their setting and character.”**
- **Change criterion e) to read: “*Conserving* Registered Parks and Gardens and their *settings*.”**
- **Reword criterion j) to read: “Protecting ancient hedgerows and associated hedgerow patterns from *loss or deterioration unless the public benefits of development clearly outweigh such loss or deterioration*.”**

#### **Policy AYEnv4 Sustainable Construction**

The title of this policy is perhaps a misnomer. As well as dealing with construction, the policy covers much more; it is another long criteria based policy that seeks to ensure that new development is appropriate and of high quality. However, with the exception of criterion h) it closely resembles CS Policy SD1. This criterion is covered elsewhere in policy. Therefore in the interests of providing a practical framework for decision-making, the policy should be deleted.

- **Delete Policy AYEnv4**
- **Consequential amendments to the supporting text on page 29 of the Plan will be required**

#### **Policy AYEnv5 Addressing Climate Change**

In a Written Ministerial Statement (WMS) of 25 March 2015, the Government announced that it is not now appropriate to refer to any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings in neighbourhood plans. It is therefore not acceptable for criteria to require such items. Modifications are therefore made to address this point.

Otherwise the policy is a local expression of CS Policies SS7 and SD1 and will help to achieve sustainable development.

- Change the word “should” in the first sentence of the policy to “*are encouraged to*”
- Delete the words “Where development does not comply with this a reasoned justification will be required.” from criterion a)
- Change the word “must” in the last paragraph of the policy to “*should*”

### Policy AYEnv6 Waste Water Treatment

The Parish is not served by a public mains sewer. This policy amplifies CS Policy SD4 at a local level. It is clearly worded and will help to achieve sustainable development in particular. It meets the basic conditions and no modifications are recommended.

### Policy AYEnv7 Protection of Local Green Space

Two areas of Local Green Space (LGS) are proposed.

The NPPF explains that LGSs are green areas of particular importance to local communities.<sup>33</sup> The effect of such a designation is that new development will be ruled out other than in very special circumstances.

The identification of LGSs should be consistent with local planning of sustainable development and complement investment. The NPPF makes it clear that this designation will not be appropriate for most green areas or open space. Further guidance about LGSs is given in PPG.

A Local Green Space Assessment has been carried out (included in the Consultation Statement).

I saw both areas on my site visit. Taking each one in turn:

**Orchard to the south of St John the Baptist and St Alkmund’s Church, Aymestrey** is valued for its beauty and biodiversity. It contributes to the setting of the Church enabling views of it to be gained and is an important feature of the village. I saw at my visit this area does have a different character from land around it.

**Aymestrey Mill’s Orchard** is valued for its beauty and biodiversity and contributes to the setting of the Mill House and views on entering the village from the north.

In my view, both proposed LGSs meet the criteria in the NPPF satisfactorily.

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<sup>33</sup> NPPF paras 76, 77 and 78

The policy resists development that results in the loss of the two areas, but permits development that would “benefit their utility for the purpose they are designated or currently used”. I asked what the intention of this element of the policy was. The Parish Council suggested some amended wording. I consider this to be helpful.

However, a further paragraph for inclusion put forward by the Parish Council is not appropriate to include. This is because the policy would permit harm or loss in exceptional circumstances which would go against the grain and rationale for designating these areas in the first place as they must be capable of enduring beyond the Plan period.<sup>34</sup>

The supporting text reads well.

Subject to the following modifications, the policy meets the basic conditions.

- **Reword the first paragraph of the policy to read: “The following areas are designated Local Green Spaces. Development that would result in the loss of *or significant harm to* these sites will not be permitted. Proposals that *enhance or extend the purpose or purposes for which they are designated will be permitted provided there are no significant adverse effects.*” [retain existing points a) and b)]**

### Policy AYEnv7a Protection of Views and Vistas

A number of views identified by the community as being particularly valued are protected by this policy.

Whilst some of the views are identified on a map on page 34 of the Plan, a response to a query confirmed that not all were shown on the map. A revised map was sent to me and as the views are referred to in the policy, I consider no one is prejudiced by an update to the map which brings it in line with the policy. Therefore in the interests of accuracy, a modification is made to the map on page 34 of the Plan.

The map also has a paragraph indicating that the map is not an exhaustive list. Whilst this may well be true, the map sits alongside the policy which does specify those views most particularly cherished by the community. It is therefore not appropriate and potentially confusing for this paragraph to be retained.

In addition pages 35 and 36 of the Plan helpfully included photographs of the specified views with the exception of views 6 (Views to Croft Ambrey and Yatton Hill) and 7 (Leinthall Earls Church). In the interests of consistency and completeness, photographs should be added to the Plan of these two views as provided in the answers to my query on this matter.

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<sup>34</sup> NPPF para 76

Criterion c) referred to “Pokehouse Wood”, but the map on page 34 referred to “School Wood”. In response to my query on this, it is confirmed that the view covers both. A modification is therefore made to address this in the interests of accuracy.

Turning now to the wording of the policy, I consider it reads oddly. In responding to my other queries on this policy, the Parish Council helpfully has produced a new section which also includes alteration to the wording of the policy. However, the wording put forward is not acceptable as it does not do anything. To ensure that the policy meets the basic conditions and has sufficient clarity and flexibility to provide a balance between the protection of key views and growth, the policy should be reworded.

- **Change the policy number to be consistent with the Plan’s presentation for the final version of the Plan**
- **Number the map on page 34 of the Plan**
- **Add View 7 (Leinthall Earls Church) to the map on page 34 of the Plan**
- **Delete the words “This is not intended as an exhaustive list of all the valued views within the Parish as the nature of the Parish lends itself to many other unspoilt views and vistas not listed here.” from page 34 of the Plan or any replacement map**
- **Add photographs of views 6 (Views to Croft Ambrey and Yatton Hill) and 7 (Leinthall Earls Church) as provided in the answers to my query on this matter to the Plan**
- **Change criterion c) to read: “Views from *School Wood* and *Pokehouse Wood* across *Aymestrey valley* (view 2)”**
- **Reword Policy AYEnv7a to read: “The following views *which are identified on Map X shall be protected. Any development or alterations to an area within the identified views must ensure that key features of the view can continue to be enjoyed including distant buildings, areas of landscape and the juxtaposition of village edges and countryside.* [retain criteria a) to d) taking into account any other modifications relating to them].”**

### **Policy AYEnv8 Protection from Flood Risk**

The supporting text explains that substantial areas within the Parish fall within areas at risk of flooding.

There is little doubt that consideration of flood risk will proactively help to meet one of the challenges of climate change. The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at

highest risk.<sup>35</sup> It advocates a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property.<sup>36</sup>

The policy seeks to help to address flood risk and encourage appropriate surface water and sustainable drainage systems. It is clearly worded. It takes account of national policy and guidance, generally conforms to CS Policies SD3 and SD4 and will help to achieve sustainable development. It therefore meets the basic conditions and no modifications are recommended.

## 6. Transport Policies

### Policy AYT1 Traffic Measures within the Parish

Some elements of this policy are traffic management related rather than development and use of land related. I have therefore made a number of modifications to ensure the policy relates to development and use of land and to incorporate the non-planning aspects into the supporting text.

Subject to these modifications, the policy will take account of national policy and guidance and chime with the CS particularly CS Policies SS4 and MT1 and will help to achieve sustainable development.

- **Delete the word “Measures” from the policy’s title**
- **Change the policy to read: “Development proposals will, where relevant, ensure that their impact on the road network is acceptable. This will include increasing transport choices through different modes of travel. Consideration should be given to: [retain existing criteria c), f) and g) and renumber them]**
- **Add to the supporting text a new section that reads: “Aymestrey Parish Council will work with Herefordshire Council to introduce measures to improve the road network, in particular to ensure greater safety *and* reduce the impact of vehicles including *through*: [retain existing criteria a), b), d) and e) renumbering them]**

### Policy AYT2 Highway Design Requirements

Policy AYT2 seeks to address the impact of any development on the local road network. It is clearly worded. It reflects national policy and is a local expression of CS Policies SS4

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<sup>35</sup> NPPF para 100

<sup>36</sup> *Ibid*

and MT1. It will help to achieve sustainable development. It therefore meets the basic conditions and no modifications to it are recommended.

## 7. Jobs and Economy Policies

### Policy AYJE1 Re-use of Employment Land at Mortimers Cross

This policy seeks to ensure that any redevelopment proposals for the change of use of employment land at Mortimer's Cross will be assessed against i) the criteria in the Herefordshire Employment Land Study or any successor document, ii) CS Policy E2, iii) the amenity of nearby residential occupiers and iv) flood risk.

The supporting text explains that the site was not assessed in the Employment Land Study. It also explains that these sources of employment should be protected and there is clearly a concern to ensure that any alternative uses are appropriate. However, the policy relies wholly on other considerations in other documents or plans and all of the criteria would be considered as part of the assessment of any proposal in any case. The policy does not therefore add anything. Furthermore it does not indicate what alternative uses might be regarded as acceptable. Therefore it duplicates other policies and does not provide the practical framework for decision-making. It should be deleted.

- **Delete Policy AYJE1 and its supporting text set out in paragraph 7.2 on page 41 of the Plan in its entirety**

### Policy AYJE2 Business, Farming and Employment

The NPPF<sup>37</sup> supports economic growth in rural areas recognising this will help to create jobs and prosperity. All types of business and enterprise are supported including farm and other land-based rural businesses. This policy supports employment and business uses provided that three criteria are met. The three criteria are clear and appropriate for the Parish.

Given the NPPF refers to farm and other land-based rural businesses, this should be recognised in the policy. This is also reflected in CS Policy RA5.

It is important to ensure that all of the criteria are met for the avoidance of any doubt. A modification is made to address this.

In addition, there are two modifications of a minor nature to help the policy flow better.

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<sup>37</sup> NPPF para 28

Subject to these modifications, the policy will meet the basic conditions.

- **Add the words “*and other land-based rural businesses*” after “...farm diversification” in the first sentence of the policy**
- **Add the word “*and*” at the end of criterion a)**
- **Change “They” at the start of criterion b) to “It”**
- **Add the word “*on*” after “...no significant adverse effects...” in criterion c)**
- **Add the words “*that it*” after “...there is safe access to the highway and...” in criterion c)**

### **Policy AYJE3 Tourism Development**

Small-scale tourism development is supported by this policy subject to its impact. This takes account of the NPPF<sup>38</sup> which supports the rural economy and in particular sustainable rural tourism that benefit businesses in rural areas, communities and visitors and which respect the character of the countryside.

However, criterion c) restricts large scale tourism “because of the constraints set out in this plan”. This is a blanket restriction which is not appropriate. Whilst I accept that it is likely that smaller-scale development will be more acceptable because of the nature and local characteristics of the Plan, there is no evidence to support a blanket ban which would not be in line with national policy or guidance or CS Policies RA6 and E4.

Criterion d) refers to tourist accommodation being judged against housing policies. Given the policy positively supports tourism development (now that criterion c) is removed), I do not feel this criterion sits well in this policy. Furthermore it does not offer any guidance within the policy as to how conversions might be regarded. Therefore it is largely redundant as it does not add anything to the policy. For these reasons it should be removed.

It is important to ensure that all of the criteria are met for the avoidance of any doubt. A modification is made to address this.

Subject to these modifications, the policy will meet the basic conditions.

- **Delete criterion c) in its entirety**
- **Delete criterion d) in its entirety**

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<sup>38</sup> NPPF para 28

- **Add the word “and” at the end of criterion a)**

## **Policy AYJE4 Working from Home**

The Plan recognises that working from home is a major contributor to the local economy. This policy supports the provision of live-work units subject to three criteria. All are appropriate and clearly worded. The policy is a local expression of CS Policy E3. It meets the basic conditions and no modifications are recommended.

## **8. Housing Policies**

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

The strategy for the rural areas in the CS<sup>39</sup> is positive growth. The strategy is based on seven housing market areas (HMA). This Plan falls within the Leominster HMA. This HMA has an indicative housing growth target of 14% according to CS Policy RA1.

The CS explains that the 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.

This results in a target of 23 new homes over the Plan period. 18 have been completed or received permission since 2011.

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.

The Parish does not have any settlements identified in Figure 4.14 as the main focus of proportionate housing development. The settlements of Aymestrey village, Leinthall Earls, Mortimers Cross and Yatton 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 four villages and to make a site allocation for 10 – 12 dwellings following a ‘call for sites’.

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<sup>39</sup> Core Strategy Section 4.8

A reasonable assumption about windfall provision has been made based on historic trends.

Overall the Plan shows about 42 – 44 dwellings can be achieved. This level of growth will be achieved through a mix of commitments, an allocation in Mortimers Cross, small sites within the settlement boundaries, housing outside the rural areas (in line with policy) and windfalls.

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 does indicate the level of growth sought in each Plan area. I consider the approach taken to be appropriate for this Group Parish.

### **Policy AYH1 Housing on Land at Mortimers Cross**

This policy allocates one site for a maximum of 12 dwellings subject to a number of criteria. The site was identified through the 'call for sites' exercise and subsequent site analysis. Page 44 of the Plan refers to Appendix 3, the site analysis. Whilst this was included in the pre-submission version of the Plan, it is no longer included in the current version of the Plan. I consider that it would be useful for the site analysis to remain available as a standalone document given the stage the Plan has reached. Two modifications are therefore made in this respect.

The site is clearly identified on the Policies Map. Its frontage is adjacent to the A4110 and is close to the crossroads and Mortimers Cross Inn.

The policy is clearly worded. The site's allocation will make a contribution to the Parish's housing requirements. However, it is not appropriate for the policy to cap the number of dwellings on this site as this may prevent the achievement of sustainable development.

The policy makes reference to a Housing Site Design Guide and Concept Statement in Appendix 1 of the Plan. The policy also requires issues such as drainage, archaeology and transport to be considered; these matters are explained well in the supporting text. However, the reference to Appendix 1 should be termed consistently. Appendix 1 is titled "Development Brief and Design Guide". I consider this is an appropriate title and suggest the policy is changed to reflect this.

Consequential amendments to the references within the policy to Policies AYEnv6 and AYEnv8 will need to be checked for accuracy in the light of other modifications made in this report.

With these modifications, the policy will take account of national policy and guidance, generally conform to the CS and in particular CS Policies SS2 and RA2 and will help to achieve sustainable development.

- End the first sentence in paragraph 8.4 on page 44 of the Plan at “...a ‘call for sites’ was undertaken.”
- Start a new sentence that reads: “*The results of the site analysis are available at [insert website].*” and change Appendix 3 into a standalone document
- Delete the words “...a maximum of...” from the first sentence of the policy and insert the words “*for around*”
- Change the reference to “Housing Site Design Guide and Concept Statement” in the policy to “*Development Brief and Design Guide*”
- Ensure that the references to Policies AYEnv6 and AYEnv8 remain correct

### Policy AYH2 Settlement Boundaries

Four settlement boundaries are defined. They are for Aymestrey village, Leinthall Earls, Mortimers Cross and Yatton. All are clearly shown on the respective Policies Maps.

The policy restricts housing within the settlement boundaries to infilling, alterations or extensions (with the exception of the site allocation at Mortimers Cross, subject of the previous policy). It prevents any residential development adjacent to or adjoining the boundaries unless it complies with CS policies.

The Plan explains that none of the four villages have had settlement boundaries before. It explains the rationale for how each boundary has been defined. Whilst there are always different ways to define such boundaries, all of them are appropriate and have been justified.

The policy is clearly worded. It meets the basic conditions and no modifications are recommended.

### Policy AYH3 Housing Development within Settlement Boundaries

Policy AYH3 contains ten criteria that residential development within the settlement boundaries must meet. All of the criteria are clearly worded and are a local reflection of CS Policy RA2. However, some of the language used is not positively framed and is prescriptive. Other criteria repeat other policies in the Plan and are therefore not necessary in this policy. With regard to criterion e), important views have been identified and are subject to Policy Env7a. It is not appropriate to have open ended views in a policy of this nature as this gives no certainty to developers. Criterion g) is better dealt with by Policy AYEnv3. Modifications are therefore made to address these concerns.

HC make the point about the impact of existing agricultural and commercial activity and its impact on future occupiers. I agree this may impact new development and therefore a modification to criterion f) is suggested.

Paragraph 8.14 of the supporting text outlines expectations. However, it also tries to apportion weight to various considerations such as the effect on residential amenity. This is not appropriate as the weight to be assigned to a particular consideration is a matter for the decision-taker. Therefore modifications are recommended to address this.

The supporting text takes each settlement in turn outlining key characteristics. In relation to Aymestrey village, the Plan recognises that this policy will mean it is unlikely that any new dwellings will come forward. This does not chime well with the positive approach taken elsewhere in the Plan. This is also true of the next paragraph. Both are unnecessary and should be deleted.

With these modifications, the policy will meet the basic conditions.

- **Delete the word “only” from the first sentence of the policy**
- **Add the words “*all of*” after “...where it meets...” in the first sentence of the policy**
- **Change the word “preserved” in criterion a) of the policy to “*conserved*”**
- **Delete the words “...rather than more recent and less sympathetic development.” from criterion c)**
- **Change the words “...provided materials are carefully matched to nearby properties.” to “...*taking account of the local context.*”**
- **Delete criterion e)**
- **Delete criterion g)**
- **Add at the end of criterion f) “*and that local agricultural or commercial activity does not adversely affect the amenity of future occupants.*”**
- **Delete “...and this should be given significant weight.” from the fourth sentence of paragraph 8.14 on page 48 of the Plan**
- **Change the words “...must also be given significant weight...” in the fifth sentence of paragraph 8.14 to “...must also be *considered*...”**
- **Delete paragraphs 8.19 and 8.20 on page 49 of the Plan**

## Policy AYH4 Exceptional Sites for Affordable Housing

CS Policy H2 supports affordable housing in rural areas on land which would not normally be released for housing. In contrast this policy permits such sites within settlement boundaries which means they would not be exception sites as well as on those sites immediately adjoining such boundaries. This policy then introduces a high bar for the provision of any affordable housing. Given the nature and characteristics of the Parish, this is not justified. Therefore to ensure the policy does not undermine CS Policy H2 or national policy and guidance on affordable housing and to achieve sustainable development, modifications are recommended.

These are changing the title to the more commonly used phraseology, clarifying the location of exception sites but not restricting them unduly and ensuring that any harmful effects are not materially harmful rather than simply harmful. This is because it is rare for development to not cause any change or harm but it is the materiality of that harm which judges whether a proposal can proceed or not.

In addition I have recommended a change to the presentation of the policy so that it flows better having regard to the modifications made earlier.

A reference to the highway design guide is removed. It is not referred to elsewhere and such standards can change over time as indeed the HC website acknowledges in relation to its Highways Design Guide for New Development.

Subject to these modifications, the policy will meet the basic conditions.

- **Change the title of the policy to “*Exception Sites for Affordable Housing*”**
- **Change the second sentence of the policy to read: “Such sites will not have an *unacceptably* adverse impact on any of the following: [retain existing criteria a), b) and c]”**
- **Create a new paragraph from existing fourth criterion [which is labeled as another c)] retaining the existing wording but deleting the last sentence**

## Policy AYH5 Conversion of Rural Buildings to Residential Use

This policy refers to CS Policy RA5 and seeks to add a local layer of detail to it. With some modification to reflect CS Policy RA5 fully to the first criterion, the policy will meet the basic conditions.

- **Change the first sentence of criterion a) to read “*The building is of permanent and substantial construction capable of conversion without major or complete reconstruction.*”**

## Policy AYH6 Affordable and Intermediate Homes

This policy seeks to ensure that any affordable housing provided is first offered on a 'local connection' basis. The policy has flexibility and widens out the priority clearly and quickly in line with HC's allocation policies. HC considers this policy to be in general conformity with CS Policies SS2, H1 and H3. It meets the basic conditions and no modifications are proposed.

## 9. Delivering the Plan

Whilst monitoring and review of neighbourhood plans is not statutory, I welcome the commitment in the Plan to undertake annual monitoring and a five year review of the Plan.

## Maps

All are clearly produced.

## Schedule 1 Environmental Report

A comprehensive environmental report has been produced and is referred to throughout the Plan. Some minor errors to correct.

- **Change "complimentary" to "complementary" on page 60 of the Plan**
- **Add reference to "map x" in the first paragraph on page 66**

## Appendices

Appendix 1 is the Development Brief and Design Guide for the site allocation subject of Policy AYH1 and referred to in that policy. The appendix indicates that this means the land has permission in principle and therefore it is unnecessary to make an outline application. This is not correct. In response to my query on this matter, the Parish Council have suggested changes to Appendix 1. I have carefully considered those changes. Many I agree would make the Brief read better. However, I have made some other adjustments.

Those other modifications are to ensure the Plan provides a practical framework for decision-making, is not overly prescriptive, removes unnecessary references, removes any references to space standards as these are not permitted in neighbourhood plans, removes references to a local housing needs survey as no specific survey was carried out as part of the neighbourhood plan process and removes imprecise or unnecessary criteria.

In addition new text in relation to the water meadow is added. The Parish Council explain that the water meadow is an important habitat, but falls outside of the housing site allocation. It is recognised that this area may form part of the application site in association with a SUDs scheme to accommodate storm water arising from the housing development as indicated in the Brief.

Subject to these modifications, the Brief will be a useful tool for the development of the site allocation.

- **Delete the word “detailed” from the second sentence of the first paragraph in Section 1**
- **Delete the final sentence of the first paragraph in Section 1**
- **Amend the first paragraph of Section 2 to read: “Allocation of this site for housing in Aymestrey Neighbourhood Development Plan means that any planning applications should take account of this Development Brief and Design Guide.”**
- **Change Section 2 to read as follows:**

**“Outline Stage**

***Should applicants consider certain matters need to be determined in advance of a fully detailed submission, an outline application could be submitted, but it should be recognised that this Development Brief and Design Guide sets out the local community’s wishes for the site.***

**Detailed Stage**

***Applicants should submit plans and particulars showing detailed proposals for the following aspects of development that may not have been submitted at any outline stage where relevant and when required by the local planning authority:***

- i) A proportionate flood risk assessment indicating the extent of the allocated site that can be developed and any requirements for flood protection of properties, including those located off site affected by any scheme;***

- ii) The layout, including position and width of roads and footways (if proposed), and the details of design and materials for paved areas;
  - iii) Layout of foul and surface water drainage, including sustainable drainage measures;
  - iv) Landscaping and biodiversity *protection and enhancement measures*. An *adjoining area* comprises water meadow and appropriate ecological studies should inform measures to retain important features, enhance biodiversity and the arrangements for the permanent maintenance of landscaped areas;
  - v) Means of access to buildings;
  - vi) Siting *and* design;
  - vii) Provision for parking of vehicles;
  - viii) Sufficient information to demonstrate the effect of the development on the landscape and adjoining development *is acceptable*.”
- Delete the last sentence on page 77 of the Plan which reads “Development should also comply with all relevant policies within the Neighbourhood Development Plan.”
  - Replace the last paragraph under Section 4.1 on page 79 of the Plan with a new paragraph that reads: “*The preservation of the water meadow and other biodiversity net gains may be achieved in association with any SUDs scheme provided under paragraph 4.1 above. This habitat creation may be achieved within an enlarged site incorporating land to the west as a local compensatory and net-gain ‘off-site’ measure.*”
  - Change the words “...a maximum of between 10 -12 and dwellings...” in paragraph 4.3.4 on page 80 of the Plan with “*approximately 12 dwellings*”
  - Change the words “...which has been identified through a local housing needs survey.” in paragraph 4.3.5 on page 80 of the Plan with “*...or as otherwise evidenced through up to date local housing needs data or survey...*”
  - Delete criterion ix) on page 81 of the Plan
  - Delete the last sentence of the first criterion x) on page 81 which reads “To assist this, dwellings should provide appropriate space standards including provision for storage.”
  - Amend the second criterion x) on page 81 so the numbering is in sequence and change the word “top” to “to”
  - Delete the last sentence on page 82 of the Plan which reads “The housing needs survey carried out as part of the NDP process identified a need for smaller sized dwellings either as starter homes or offering downsizing options.”

Appendix 2 contains the environmental surveys maps. I consider these would be better located after the survey document.

- **Move Appendix 2 to be after the Environmental Report and rename appropriately with the Development Brief and Design Guide for the site subject of Policy AYH1 to appear as Appendix 1**

## 8.0 Conclusions and recommendations

I am satisfied that the Aymestrey 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 Aymestrey 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. I see no reason to alter or extend the Plan area for the purpose of holding a referendum and no representations have been made that would lead me to reach a different conclusion.

I therefore consider that the Aymestrey Neighbourhood Development Plan should proceed to a referendum based on the Aymestrey Neighbourhood Plan area as approved by Herefordshire Council on 7 January 2016.

*Ann Skippers* MRTPI

Ann Skippers Planning  
5 March 2019

## Appendix 1 List of key documents specific to this examination

Aymestrey Neighbourhood Development Plan 2011 – 2031 June 2018 Submission Document

Basic Conditions Statement June 2018

Consultation Statement 1 May 2018

Environmental Report June 2018

Habitats Regulations Assessment Report September 2018

Aymestrey Policies Map

Leinthall Earls Policies Map

Mortimers Cross Policies Map

Yatton Policies Map

Herefordshire Core Strategy 2011-2031 October 2015 and Appendices

Saved Policies of the Unitary Development Plan 2007

Comments from Aymestrey Parish Council on the Regulation 16 representations

Other supporting documents on <http://www.aymestrey.org>

**List ends**

## Appendix 2 Questions of clarification from the examiner

### Aymestrey Neighbourhood Plan Examination

#### Questions of clarification from the Examiner to the Parish Council and HC

Having completed my initial review of the Neighbourhood Plan (the Plan), I would be grateful if both Councils could kindly assist me as appropriate in answering the following questions which either relate to matters of fact or are areas in which I seek clarification or further information. Please do not send or direct me to evidence that is not already publicly available.

1. Page 44 of the Plan refers to Appendix 3, but no such appendix is included in the submission version of the Plan. The appendix relates to the site analysis. I consider it would be useful for this to be available as a standalone document. Any comments?
2. Policy AYEnv7 Protection of Local Green Space permits development that would “benefit their utility for the purpose they are designated or currently used”. What was the intent of this element of the policy? Would a different phrase be clearer? And if so, what might this be changed to?
3. A number of queries arise in relation to Policy AYEnv7a Protection of Views and Vistas:
  - a. Would it be wise to change the policy number when the Plan is finalised?
  - b. Are all the views referred to in the policy identified on the map on page 34 of the Plan?
  - c. Do all the views referred to in the policy have accompanying photographs on pages 35 and 36 of the Plan?
  - d. Should Pokehouse Wood be School Wood or vice versa?
  - e. The views referred to in the policy should match those shown on a map, be referred to in the same language and have accompanying photographs. Given this does this element of the Plan need to be redone? If so, please provide the information.
4. Please provide a link to or copy of the Employment Study referred to in Policy AYJE1 Re-use of Employment Land at Mortimers Cross.
5. Policy AYH1 Housing on Land at Mortimers Cross refers to a Housing Site Design Guide and Concept Statement (Appendix 1). A number of queries arise:
  - a. The appendix indicates that the allocation in the Plan means the land has permission in principle and therefore it is unnecessary to make an outline application. This is not the case. Please review the whole appendix in the light of this and advise me of any amendments that should be made.

- b. Page 79 makes reference to an element of water meadow being preserved within the field parcel but outside of the development site. It is not possible to require something to be done outside the allocation site boundary. What if anything should be done in relation to this?
  - c. What is criterion x) on page 81 seeking to do?
6. Please provide a link to or copy of the Highway Design Guide referred to in Policy AYH4 Exceptional Sites for Affordable Housing.
7. Was a local housing needs survey carried out? If so, please send me a link to or copy of this document.

It may be the case that on receipt of your anticipated assistance on these matters that I may need to ask for further clarification or that further queries will occur as the examination progresses. Please note that this list of clarification questions is a public document and that your answers will also be in the public domain. Both my questions and your responses should be placed on the Councils' websites as appropriate.

With many thanks.  
Ann Skippers  
10 February 2019



### 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).

## Appendix 5 Letter from the examiner

Letter to Stephanie Kitto  
Herefordshire Council

4 January 2019

Dear Steph,

### **Examination of the Aymestrey Neighbourhood Plan Amendment to the Basic Conditions**

I am writing to draw your attention to the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 which came into force on 28 December 2018.

Amongst other things, these Regulations amend the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) which stated:

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

**The Regulations substitute a new basic condition which states:**

- **The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.**

The Conservation of Habitats and Species Regulations 2017 include regulations on the assessment of plans (including neighbourhood plans) and projects on European sites or European offshore marine sites. The first stage is to screen the plan to see whether it is likely to have a significant effect on any European site. If the plan is 'screened in' because significant effects cannot be ruled out, the next stage is for an appropriate assessment to be carried out considering the impact on the European site's conservation objectives. Consent for the plan can only be given if it is 'screened out' at the first stage or the appropriate assessment concludes the integrity of the European site will not be adversely affected.

Case law (*People Over Wind*, *Peter Sweetman v Coillte Teoranta*) ruled 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. This represented a move away from what was common practice. Any 'mitigation' measures can now only be considered at the appropriate assessment stage.

This resulted in some confusion as to whether neighbourhood plans 'screened in' could progress because of the wording of the basic condition.

The substituted basic condition removes this confusion; it gives certainty that those neighbourhood plans which have been 'screened in' and therefore require appropriate assessment can continue to progress (provided that the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 are met).

The process for appropriate assessment of neighbourhood plans is the same as assessments for Local Plans.

There are no transitional arrangements and so the substituted basic condition applies from 28 December 2018. It will therefore apply to any neighbourhood plans currently at examination or those submitted for examination on or after 28 December 2018.

As all basic conditions must be met by a neighbourhood plan before it can proceed, I would be grateful if you would consider this change to the basic conditions and let me know of any implications arising from it for the examination of this neighbourhood plan. I will 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, including any new timescales should further work be required.

This letter should be placed on the relevant Council websites.

With many thanks,

Ann Skippers MRTPI  
Ann Skippers Planning  
Independent Examiner



## **Amendment to the Prescribed Basic Condition: Neighbourhood Development Plans**

### **The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 (“the 2018 Regulations”)**

**15 January 2019**

The 2018 Regulations have introduced amendments to the basic condition relating to Habitat Regulation Assessments as required within the Neighbourhood Planning (General) Regulations 2012. This basic condition must be met by a neighbourhood plan to be successful at examination.

The 2018 Regulations insert “the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017”(assessment of implications for European Site: neighbourhood development plans) Herefordshire Council prior to the 2018 Regulations sought Counsel advice in light of the implication of the European judgment *the case of People Over Wind and Sweetman v Coillte Teoranta (C-323/17)* (“*Sweetman*”).

Counsel advice indicated that policies which form part of the development plan and have been considered through the Core Strategy assessment Policy SD4 (for example) remove the pathway to harm and ‘likely significant effects’. Therefore an Appropriate Assessment would not be required and NDPs met the EU obligations. 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 addition mitigation covered within these policies as it is within the higher level plan (the Core Strategy).

Neighbourhood Plans which are currently at examination as well as submitted for examination on or after 28 December 2018 have been subject to a revised HRA post the recent European judgment of *the case of People Over Wind and Sweetman v Coillte Teoranta (C-323/17)* (“*Sweetman*”) and concluded as having ‘no likely significant effects’ without the inclusion of mitigation measures that would have required an Appropriate Assessment.