

Herefordshire Council

**Bosbury and Catley  
Neighbourhood Development Plan  
2011-2031**

**Independent Examiner's Report**

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4 April 2019

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## Summary

I have been appointed as the independent examiner of the Bosbury and Catley Neighbourhood Development Plan.

An earlier version of the Plan was submitted and examined by another examiner. That report recommended the Plan could proceed to referendum subject to a number of modifications. The Group Parish Council decided to take the opportunity to revise the Plan and its supporting evidence and chose to resubmit. It is this latest version of the Plan that I examine.

The Plan area falls wholly within the Group Parish of Bosbury and Coddington, but is not coterminous with its boundaries and is a smaller area focusing on the village of Bosbury. Bosbury lies some five miles north of Ledbury.

The Plan's vision and its accompanying objectives are translated into six policies. Although no site allocations are made, the policies include the definition of a new settlement boundary, policies on local character and distinctiveness, support for the local economy and facilities and services, transport and biodiversity.

It has been necessary to recommend some 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. These do not significantly or substantially alter the intention or overall nature of the Plan.

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 Bosbury and Catley Neighbourhood Development Plan can go forward to a referendum.

In considering whether the referendum area should be extended beyond the Neighbourhood Plan area, I have recommended that the (larger) Bosbury and Coddington Group Parish area should be used for the purpose of the referendum.

Ann Skippers MRTPI  
Ann Skippers Planning  
4 April 2019



## 1.0 Introduction

This is the report of the independent examiner into the Bosbury and Catley 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 Bosbury and Coddington 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.

Work on the Plan began in 2014. A new village noticeboard in Bosbury village, a dedicated email address and a twitter feed were created and used to advertise meetings and provide information. Posters were displayed at key points throughout the consultation process and flyers to every house and in Network 5, the Parish magazine.

Fortnightly meetings and public workshops were held in the Summer of 2014 to kickstart discussions about what sustainable development meant for the area. Two questionnaires were developed; one focused on sustainable development sites, the other on policy matters. Events were held to refine the options. Voting on four options for the new settlement boundary for Bosbury took place.

An informal consultation was held in September 2014. After refinement, the formal period of pre-submission consultation was held between 18 December 2014 – 12 February 2015. This was advertised via posters, social media and the press. Various individuals and organisations were contacted by letter.

After this period, the Plan was refined. It was submitted to HC in March 2015. Submission (regulation 16) consultation was held between 14 May – 25 June 2015. Changes to the then emerging CS had a direct impact on the Plan. This Plan was withdrawn in November 2016.

A revised Plan was submitted in November 2016. A period of consultation was held between 16 November 2016 – 11 January 2017. Independent examination took place with a report published in March 2017.

In the light of that examination report, the Parish Council decided the Plan should be reviewed and resubmitted. It was submitted to HC in June 2018. Submission consultation was held between 15 June – 27 July 2018. It is this version of the Plan which is subject to this examination and report.

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

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 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 Group 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 answers to my questions. After consideration of all the documentation including the responses to my queries, I decided that it was not necessary to hold 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 a 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 Group Parish Council sent comments and I have taken these into account.

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

I made an unaccompanied site visit to familiarise myself with the Plan area on 19 September 2018.

Where modifications are recommended they appear in **bold text**. Where I have suggested specific changes to the wording of the policies or new wording these appear in ***bold italics***.

As a result of some modifications consequential amendments may be required. These can include changing section headings, amending the contents page, renumbering

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

<sup>6</sup> *Ibid*

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

<sup>8</sup> *Ibid*

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.

## **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**

Bosbury and Coddington Group Parish Council is the qualifying body able to lead preparation of a neighbourhood plan. This requirement is satisfactorily met.

### **Plan area**

The Plan area is the Bosbury and Catley neighbourhood plan area. The Plan area is wholly within the Bosbury and Coddington Group Parish Council boundary, but the area excludes some of Bosbury Parish and all of Coddington Parish. HC approved the designation of the area on 1 August 2014. 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 14 of the Plan.

### **Plan period**

The Plan period is 2011 – 2031 to coincide with the Core Strategy timescale. 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>

Page 5 of the Plan indicates that it includes a number of aspirations falling outside the development and use of land remit of the Plan and that these are included within each topic where relevant. In response to my query on this matter as I could not find any such aspirations in the document, the Group Parish Council has indicated that with the passage of time, this paragraph should now be deleted.

- **Delete the last paragraph under the heading “The Neighbourhood Plan Policies” on page 5 of the Plan that states: “Whilst the Neighbourhood Plan is first and foremost a land-use document, a number of issues falling outside of the planning system’s remit were identified by the local community during consultation events. Alongside its core policies the Plan therefore includes a number of aspirations to encourage interventions by wider stakeholders. These are included within each topic where relevant.”**

## 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.

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

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

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 sets out how the Plan aligns with the NPPF's core planning principles.

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

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

<sup>12</sup> *Ibid* 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*

## **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>17</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>18</sup>

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

## **General conformity with the strategic policies in the development plan**

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

Whilst this has formed part of my own assessment, the Basic Conditions Statement 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>19</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.

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<sup>17</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>18</sup> *Ibid* para 7

<sup>19</sup> PPG para 031 ref id 11-031-20150209

### ***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 April 2018 has been submitted as an initial screening assessment of July 2014 indicated a SEA was needed.

The ER confirms that a Scoping Report dated October 2014 was prepared and sent to the statutory consultees from 8 September – 13 October 2014. Natural England and Historic England responded.

A draft ER dated December 2014 underwent a period of consultation alongside the pre-submission version of the Plan.

Following the Regulation 14 stage, changes were made to Policies 1, 3, 5 and 6 that warranted rescreening and the ER of April 2018 includes this review.

The ER concludes that the Plan would be unlikely to have any significant effects. 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>20</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>21</sup> The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

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<sup>20</sup> PPG para 030 ref id 11-030-20150209

<sup>21</sup> *Ibid* para 047 ref id 11-047-20150209

A HRA dated December 2014 has been submitted. This explains that an initial screening undertaken in July 2014 confirmed that the Plan area did not fall within any European sites and given the distance to any European sites, they would not be affected by any policies or proposals in the Plan. The nearest site is the River Wye (including the River Lugg) Special Area of Conservation (SAC) some 12.5km away and the Plan area does not fall within its hydrological catchment area. As a result the HRA concludes that a full HRA is not needed.

There is no need to revisit this position following the Court cases of *People Over Wind*, *Peter Sweetman v Coillte Teoranta*,<sup>22</sup> and *Cooperation Mobilisation for the Environment v Verenigin Leefmilieu* (the so called Dutch Nitrogen case)<sup>23</sup> in particular as it has been found no pathways exist. National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.<sup>24</sup> 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 particular neighbourhood plan. My letter is attached as Appendix 3. HC responded on 15 January and their note is attached as Appendix 4. I do not consider this note to be of relevance to this examination as it indicates that revised HRAs have been carried out and this is not the case for this particular Plan.

Nevertheless, given the distance, nature and characteristics of the SAC concerned and the nature and contents of this Plan, I consider that as no pathway exists, there was no need to revisit the HRA as explained above. Therefore the requisite requirements have been met and the prescribed basic condition is complied with.

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

The Basic Conditions Statement contains a 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.

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<sup>22</sup> Case C-323/17

<sup>23</sup> Case C-293/17

<sup>24</sup> PPG para 031 ref id 11-031-20150209

## 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 six policies.

### A Brief History of the Parish

This is a pleasant introduction to the Plan which sets the scene well.

### Neighbourhood Planning Background

This short section explains the background to neighbourhood planning.

### Plan Introduction

Taking a positive stance, this section of the Plan explains that the community seeks appropriate housing growth of a high quality.

### Character and Situation

This section outlines the characteristics of Bosbury.

### Vision

The Plan explains that the community would like Bosbury to remain a distinctive and historic village, but recognises that growth is needed. Four actions are identified to help support this aim. All are clearly articulated.

HC suggest a minor word change to the vision. I agree this is appropriate and reads more positively.

- Replace the word “slowly” in the first sentence of paragraph two on page 4 of the Plan with the word “gradually”

## Objectives

The vision is supported by seven objectives. Helpfully the policies which support each objective are identified in a table on page 4 of the Plan.

## Strategy

This section explains the strategy of the Plan and leads into the next section which contains the planning policies. These are developed around the themes of housing, local character, local economy, local facilities, transport and biodiversity.

## The Neighbourhood Plan Policies

### *Housing Growth*

#### Policy 1 – Village Character

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

The strategy for the rural areas in the CS<sup>25</sup> is positive growth. CS Policy RA1 Indicates that 5,300 dwellings will be delivered throughout the rural housing market areas (HMA). The strategy is based on seven HMAs. This Plan falls within the Ledbury HMA. This HMA has an indicative housing growth target of 14% according to CS Policy RA1.

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

The main focus for development is within or adjacent to existing settlements listed in two figures, 4.14 and 4.15. CS Policy RA2 translates this into policy. Bosbury is identified in Figure 4.14 as a settlement which will be the main focus of proportionate housing development. Coddington is identified in Figure 4.15 as a settlement where proportionate housing growth is appropriate, but lies outside the Plan area. No other settlements in the Plan area are identified in Figures 4.14 or 4.15.

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<sup>25</sup> Core Strategy Section 4.8

In response to a query on this matter, HC have confirmed that the target is 51 new homes over its Plan period (based on 14% of 367 households). HC agreed with the Parish Council that whole Group Parish figures would be used as to separate the Plan area figures from the Group Parish figures would be difficult and I fully understand and accept this stance.

The most recent figures provided to me confirm that there are 36 completions and commitments between 2011 and 2018 leaving a residual of 15 to provide.

The Plan contains a section entitled "Options for the Neighbourhood Plan" on page 7. The information in this section rather confused me and is now out of date. It therefore needs updating at this stage of the Plan's production.

Turning now to Policy 1 itself, there are four elements to it.

The first element is the definition of a settlement boundary for Bosbury. 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.

The settlement boundary is shown on the Policies Map. It is tightly drawn around existing development with the exception of Old Court Farm and a commitment site to the north of the Vicarage. Old Court Farm lies within the Bosbury Conservation Area, close to listed buildings and on land liable to flood. Although there may be some potential, it is not clear what, if any, preparatory work has been carried out to ascertain the potential of this site in terms of its redevelopment.

The commitment site appears to be larger than the designation of the settlement boundary which has no rationale to it. In response to my query on this, the Group Parish Council advises that the boundary has been drawn to include areas of development and to exclude open space. I consider that the whole of the commitment site should be included within the settlement boundary. This is not to indicate in any way that the site should be developed without requisite landscaping, buffers and green or open spaces. It is simply to indicate the extent of the settlement. This would also align with the approach set out in HC's Neighbourhood Planning Guidance Note 20 Guide to settlement boundaries.

Within the settlement boundary, "proportionate and sustainable development" is supported. I was not sure what this phraseology might mean. In response to my query on it, the Group Parish Council advise this is to ensure that development respects the character of the village by giving guidance as to individual site size and refer me to page 15 of the Plan. Page 15 discusses housing volume calculation and gives a mean of 8.3 houses per development. In turn this refers to the "8 house stipulation to be found at Policy 1A". There is no mention of eight in the policy so this appears as if this refers to an earlier version of the policy. In any case, it is better to have a design-led solution to

any sites that come forward as this will ensure that development is appropriate and respectful of character whilst ensuring the effective use of land.

In addition it is important that the Village Policies Map is referred to in 1A.

Therefore a modification to 1A is suggested.

The second element, 1B, refers specifically to the redundant farm buildings at Old Court Farm. The policy refers to “exceptions in scale”, but it is not clear to me what is meant by this phrase. In response to my query on this, the Group Parish Council has indicated that it is the intention to support an exception to element 1A in relation to the redevelopment of Old Court Farm. It is unnecessary to support an exception to 1A as the site falls within the settlement boundary. In addition the Group Parish Council accepts that the site is not brownfield as described in the policy.

Furthermore, the site is shown as a proposed housing site on the Village Policies Map. In response to my query, it has been confirmed that it is not intended to show this site as a site allocation.

Therefore a number of modifications are made in respect of 1B.

The third element, 1C, seeks to ensure any new development respects the natural, built and historic environments.

The last element, 1D, applies to proposals of four or more units requiring a mix of homes which takes into account housing need. For schemes of more than 11, affordable housing is required. CS Policy H1 requires schemes of more than 10 units to contribute to affordable housing. To ensure there is clarity and consistency, a modification is recommended to address this point.

With these modifications, the policy takes account of national policy and guidance and generally conforms to the CS and CS Policy H1 in particular. It will help to achieve sustainable development and therefore meet the basic conditions.

- **Rewrite the section titled “Options for the Neighbourhood Plan” on page 7 of the Plan changing the title of the section to “Housing Delivery”. Replace the information in this section with:**

***“The proportional growth target for the Group Parish area is 51 dwellings over the Plan period. This is based on the whole Group Parish rather than the smaller Plan area as it is difficult to provide separate figures for the latter.***

***A combination of completions and commitments to 2018 have resulted in 36 units leaving a residual of 15.***

***It is anticipated that Old Court Barns and North of Old Court Farm will provide some units. There is an extensive range of traditional cattle sheds, standalone***

*open sheds and a large old Dutch barn on the site. Further possibilities lie in developing the hop kilns and the Bishops Palace buildings.*

*In addition other windfall opportunities exist.*

*The Buchanan Trust seeks to provide accommodation, employment, training and support for ex-military beneficiaries. Whilst this site lies outside the Plan area, there are plans to provide accommodation on this site."*

- **Change the Bosbury Village Policies Map to include the whole of the commitment site boundary within the Settlement Boundary**
- **Reword element 1A of the policy to read: "Sustainable and appropriately design-led development proposals will be permitted within the settlement boundary of Bosbury which is defined on the Bosbury Village Policies Map."**
- **Delete 1B from the policy**
- **Delete the "Proposed Housing Site (Policy 1B)" from the Policies Map**
- **Replace the words "...and if over 11 dwellings..." in 1D with "and for 11 or more dwellings..."**

### ***Village Character***

In response to a query, the Group Parish Council has agreed that this section heading should be local character.

HC has recommended a modification to clarify the language used in the supporting text. I agree it would add clarity and a modification is therefore recommended.

The first and third paragraph on page 8 refers to Building for Life. In turn more information is given about this tool on page 12 of the Plan. I consider the Plan would flow better if the third paragraph and information on page 12 of the Plan were alongside the first reference to this. Some future proofing of the Plan would also be useful in this regard.

In addition, the text as currently worded reads as if this is a policy requirement.

Therefore to address these matters, two modifications are put forward.

- **Change the section heading to "Local Character" on page 7 of the Plan**
- **Replace the first sentence in the first paragraph under this section heading on page 7 of the Plan with: "The settled agricultural landscape around Bosbury derives its character from centuries of mixed farming."**

- Retain the first paragraph on page 8 as is; move the information on Building for Life on page 12 of the Plan and insert this as a new second paragraph on page 8; move the existing third paragraph on page 8 to follow under this new insertion
- Delete the “(now stating 20 measures instead of the 12 defined a few years ago)” from the existing second paragraph on page 12
- Change the existing third paragraph to read: *“The Parish Council urges applicants to include an assessment of how their scheme performs against the Building for Life criteria with any application.”*
- Remove the “(see note on P12)” from the end of the existing first paragraph on page 8

## Policy 2 – Local Character

This policy has six elements to it.

The first two elements seek to ensure that new development is of a high quality and respect and reflect local distinctiveness. Minor word changes are put forward to help with clarity and flow.

The third element seeks to support renewable low carbon energy. In itself this is acceptable, but the order and wording should be changed so that the overall policy makes sense and flows better.

The fourth, fifth and sixth elements are similarly acceptable in their intentions, but they do not flow particularly well and the language could be more precise. Greater flexibility will also help to ensure the policy is not over prescriptive.

The modifications shown below are therefore made to ensure that the Plan provides the practical framework for decision making sought by national policy and guidance. It is in line with CS Policies SS6, LD1, LD2, LD4, SD2, and SD3 in particular and will help to achieve sustainable development.

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

- **Reword Policy 2 to read:**

***“All new development should:***

***2A -Respect and conserve the local character; its historic and natural assets, and take every opportunity, through design and materials, to reinforce local distinctiveness and a strong sense of place and***

**2B -Respect *the surrounding local landscape character beyond the built form within* the Conservation Area.**

***In addition:***

**2C -The removal of any trees that have a significant amenity value will be resisted. An arboricultural report by an appropriately qualified *individual or company* should be provided to evidence the necessity of any removal. New schemes should allow space for existing and proposed trees to mature, to avoid any later pressure for their removal;**

**2D – New development *must* be protected from flood risk through *appropriate* siting and/or design and not worsen any flood risk to other parts of the village *and***

**2E – *Where appropriate* new development should *take* account of known surface and sub-surface archaeology and ensure unknown and potentially significant deposits are identified and appropriately considered during development.**

**2F – Renewable low carbon energy development that respects its surroundings will be supported.”**

### ***The Local Economy***

#### **Policy 3 – The Local Economy**

The Plan explains that farming has been historically important for the economy. It recognises that times have changed. Policy 3 therefore seeks to support the rural economy.

The policy has four elements to it. Taking each in turn, 3A encourages the conversion of existing redundant buildings into both residential and commercial uses. There are no restrictions on the type of buildings or their impact, but such conversions would also be subject to CS Policy RA5 and so the necessary caveats are in place by reading both plans together.

Element 3B deals with development outside the settlement boundary and simply cross refers to CS Policies RA3, RA4, RA5 and RA6. This is arguably unnecessary as it simply duplicates CS policies. In addition, CS Policies RA3 and RA4 refer to residential development whereas this policy deals with the local economy. Therefore the references to these policies are not appropriate as the policy does not deal with residential development. To retain these references would create confusion.

3C refers to accommodation which may be subject to an agricultural tie. It cross refers to CS Policy RA4 which deals with this type of development. It is therefore unnecessary

and in this case potentially misleading as it captures all accommodation. Some accommodation in the rural area is acceptable without a tie or consideration of it. This element should therefore be deleted for these reasons and the same reasons given above in relation to 3B.

3D refers to historic farmsteads and agricultural buildings and reads clearly.

Subject to this modification which is recommended so the policy provides the clarity sought by national policy and guidance, the policy will meet the basic conditions. It will help to achieve sustainable development. It is in line with national policy's support for the rural economy and the NPPF's support for economic growth in rural areas and the general thrust of CS Policies SS5, RA5, RA6 and E1 in particular.

- **Delete the references to CS Policies RA3 and RA4 from 3B**
- **Delete element 3C from the policy**

### ***Local Facilities***

#### **Policy 4 – Local Facilities**

New development is required to identify the effect on local infrastructure, amenities, services and facilities. This includes the cumulative impact from other schemes. In response to my query on this matter, the Group Parish Council has indicated that this is necessary to ensure that decision makers have full information on the impact of proposals to support the retention and development of local services and facilities.

Whilst I understand and support this aim, this is an onerous requirement for all development. I am mindful of the NPPF's stance on information requirements which should be proportionate to the nature and scale of development proposals and that supporting information should only be requested where it is relevant, necessary and material.<sup>26</sup> Therefore this element of the policy requires robust justification which has not been provided. Given the next two elements of the policy, the intention of retaining and supporting services and facilities will be covered.

Element 4A supports the diversification and enhancement of local amenities. The Plan explains that Bosbury has a Village Hall, a tennis and bowls club, barbers, a pub, Church and nursery and school as well as a visiting post office.

4B resists the loss of these amenities and services. Any loss should be in line with CS Policy SC1 which is referred to in the policy. The language used in this element should be changed to be clearer and more precise. To avoid any accusations of pre-determining planning applications, the phrase "will be refused" should also be altered.

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<sup>26</sup> NPPF para 193

A representation from Sport England suggests a reference to open spaces. The Group Parish Council in their comments agrees with this. This would assist with clarity and therefore a modification is made to address this.

Otherwise the policy takes account of the NPPF<sup>27</sup> which promotes the retention, and development, of local services and community facilities. It generally conforms to CS Policy SC1 in particular which protects, retains and enhances existing social and community infrastructure. It will help to achieve sustainable development.

- **Delete the first paragraph of the policy that begins: “Proposals for development will be required...”**
- **Change the second sentence of 4B to read: “Applications are likely to be refused unless evidence in line with Policy SC1 of the Core Strategy is presented to justify such a loss.”**
- **Add at the end of 4B “...of the Core Strategy and in relation to open spaces in line with Policy OS3 of the Core Strategy.”**

## **Transport**

### **Policy 5 - Transport**

Policy 5 is a short policy with two elements to it. Both are simply worded and seek to ensure that development is acceptable in relation to highway safety and that enhancement of footpath, cycleway and bridleway networks is supported.

The Plan explains that there are no major roads within the Parish and public transport is limited. By ensuring that new development is acceptable with regard to the local road network and by encouraging other modes of transport, the Plan seeks to address some of the issues of particular concern to the community. This reflects the NPPF’s stance on protecting and enhancing rights of way networks<sup>28</sup> and promoting sustainable transport.

The policy is clearly worded. It takes account of national policy and guidance, is a local expression of CS Policies SS4 and MT1 and will help to achieve sustainable development. It therefore meets the basic conditions and no modifications to it are recommended.

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<sup>27</sup> NPPF para 28

<sup>28</sup> *Ibid* para 75

## ***Biodiversity***

### **Policy 6 - Biodiversity**

The Plan explains that by designating a new settlement boundary, it seeks to protect and enhance the rural areas beyond the settlement.

The supporting text refers to the Hereford Way and in the interests of accuracy this should be corrected to the Herefordshire Trail.

The policy has three elements; 6A seeks to minimise impacts on biodiversity from new development. The NPPF<sup>29</sup> goes further by seeking net gains in biodiversity where possible. The policy would therefore be made more robust by the addition of this phrase.

6B seeks the protection of nature conservation sites and habitats and species and their enhancement. This takes account of CS Policy LD2 which also seeks enhancement of biodiversity amongst other things.

However, 6B also permits development that may reduce the ecological network subject to compensatory measures. This seems to potentially contradict the stance and other elements of the policy. The NPPF which is clear that the planning system should contribute to and enhance the natural and local environment,<sup>30</sup> makes it clear that if significant harm from a development cannot be avoided, adequately mitigated or as a last resort compensated for, planning permission should be refused.<sup>31</sup> I therefore consider this element to be too permissive as it refers to the potential reduction of networks. As a result this element should be removed.

6C encourages restoration. It is clearly worded.

With these modifications, the policy will take account of national policy and guidance, generally conform to CS Policies SS6, LD1, LD2 and LD3 in particular and will help to achieve sustainable development.

- **Replace the reference on page 11 of the Plan to the “Hereford Way” with “Herefordshire Trail”**
- **Add at the end of 6A: “Net gains in biodiversity should be provided where possible.”**
- **Delete paragraph 2. from 6B of the policy**

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<sup>29</sup> NPPF para 109

<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid* para 118

## Plan Delivery and Implementation

This section explains how the Group Parish Council will work to achieve the intent of each policy. It recognises that a review will take place every five years. Whilst this is not a requirement of neighbourhood planning, this is a welcome intention.

There is one minor change to refer to the Plan in full on page 12 in the interests of accuracy.

- **Add the words “and Catley” after “The Bosbury...” and before “...Neighbourhood Plan is a living document...” on page 12 of the Plan**

## Building for Life

I have made recommendations in relation to this section of the Plan earlier in this report.

## The Parish Consultation Process

This section offers a succinct review of the process undertaken.

## Housing Volume Calculation Basis

This section offers an explanation for the maximum eight house “stipulation” as the Plan describes it, in Policy 1A. As already discussed, Policy 1A does not include any such maximum. The purpose and intent of this section is not clear to me. It does not bear any link to Policy 1. Therefore it should be deleted.

- **Delete the Housing Volume Calculation Basis from the Plan**

## Maps

The Plan contains four maps. Two are duplicates; the one showing the settlement boundary is the same as the Village Policies Map. One can therefore be removed so that the Plan provides a practical framework for decision making. The settlement boundary is clear on the Village Policies Map and I have recommended a modification to ensure that Policy 1 refers to this map.

The Flood Risk Map on page 16 needs to be future proofed and so the addition of a sentence to direct users of the Plan to the most up to date information is necessary.

- **Delete the Bosbury Settlement Boundary map on page 13 of the Plan**
- **Add a sentence that reads: *“The information on this map reflects information correct at the time of writing the Plan. Up to date information should be sought from the local planning authority, the Parish Council or appropriate statutory body to the Flood Risk Map with Overlays on page 16 of the Plan***

## 8.0 Conclusions and recommendations

I am satisfied that the Bosbury and Catley 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 Bosbury and Catley 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.

The Plan area is smaller than Bosbury and Coddington Group Parish area and there is merit in extending the referendum area to the Group Parish area. This is for two reasons; to ensure that those residents living in the Parish area can participate as the Plan has a direct impact on the Parish in which they live and to ease the burden administratively as electoral services use the parish area. I have asked both the Parish Council and HC for their views on this matter and they concur with this stance. Therefore the area for the purpose of holding a referendum on the Bosbury and Catley Neighbourhood Plan should be the Bosbury and Coddington Group Parish area.

*Ann Skippers* MRTPI  
Ann Skippers Planning  
4 April 2019

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

Bosbury and Catley Neighbourhood Development Plan 2011 – 2031

Basic Conditions Statement March 2018

Consultation Statement March 2018

Environmental Report April 2018

Habitats Regulations Assessment Report December 2014

Bosbury Parish Policies Map

Bosbury Village Policies Map

Herefordshire Core Strategy 2011-2031 October 2015 and Appendices

Saved Policies of the Unitary Development Plan 2007

Comments from the Group Parish Council on the Regulation 16 representations

**List ends**

## Appendix 2 Questions from the examiner

### **Bosbury and Catley 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. The "Progression to Examination Decision Document" refers to a site allocation, the Old Court Farm site which is expected to provide up to five dwellings. I do not interpret criterion 1B of Policy 1 as allocating this site. However, the Policies Map also shows it as a proposed housing site. Please clarify the Plan's intention (bearing in mind if it is a site allocation, evidence will need to be provided on the site selection and assessment criteria used and the Strategic Environmental Assessment will need to consider reasonable alternatives as well as landowner evidence on availability and deliverability). Am I right to assume the "Progression to Examination Decision Document" and the Policies Map are therefore arguably hasty in stating it is a site allocation?
2. Please can HC update me on the number of completions and commitments for a) the Plan area and b) the Parish using the most up to date figures available. If it is not possible or it is difficult to separate the Plan area from the Parish, please provide the Parish figure.
3. Please can HC confirm the proportional growth target figure for a) the Plan area and b) the Parish. If it is not possible to separate the Plan area from the Parish, please provide the Parish figure.
4. Page 7 of the Plan refers to the Buchanan Trust site and appears to assume a figure of 22. Please update me about the position on this site. If planning permission has been granted then these figures will, no doubt, be included in the answer to question 2. above.
5. Page 7 of the Plan includes two tables showing how the figures are derived (although the information appears under a subheading of "Options for the Neighbourhood Plan". I find it difficult to interpret these and they seem at odds with the commentary. If an assumption on housing numbers is being made for, for example, Old Court Farm or for windfalls, figures should be justified in themselves.
6. The designation of the settlement boundary appears to show part of a commitment site. If this is the case, please explain why the whole of the commitment site (as shown on the Policies Map) has not been included in the settlement boundary.
7. Criterion 1A of Policy 1 uses the phrase "proportionate and sustainable development"; I'm not sure what the intention of this phrase might be – what does this mean?
8. Criterion 1B of Policy 1 uses the phrase "exceptions in scale"; what is the intention of this phrase?
9. Should the sub section heading on page 7 "Village Character" be "Local Character"?

10. The first paragraph of Policy 4 requires applicants to submit further information to identify the impact on local infrastructure and services and so on. Please could a brief explanation be given of the reasons for including this in the Plan?
11. Page 5 of the Plan indicates that it includes a number of aspirations falling outside the development and use of land remit of the Plan and that these are included within each topic where relevant. I cannot find any such aspirations. Have these now been removed in this version of the Plan and if so should this section of the Plan be revised?
12. Further to my letter of 4 January 2018 to HC drawing attention to the new basic condition on habitats, please confirm whether a response was sent and if so, and my apologies for this, please could this be resent to me?
13. Given that the Plan area is smaller than Bosbury and Coddington Parish, is there any reason to extend the referendum area - should the Plan progress to that stage - beyond the Plan area? I simply seek the views of both Councils in this regard should they wish to offer any.
14. Was the Neighbourhood Development Plan dated October 2016 on HC's website, the version of the Plan subject to an earlier independent examination?

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  
18 February 2019

## Appendix 3 Letter from the examiner

Letter to Karla Johnson  
Herefordshire Council

4 January 2019

Dear Karla,

### **Examination of the Bosbury and Catley 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 additional 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 judgement 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.