

Herefordshire Council

**Hampton Bishop
Neighbourhood Development Plan
2018-2031**

Independent Examiner's Report

By Ann Skippers MRTPI FRSA AoU

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Contents

	Summary	3
1.0	Introduction	4
2.0	The role of the independent examiner	4
3.0	Neighbourhood plan preparation	6
4.0	The examination process	6
5.0	Compliance with matters other than the basic conditions	8
6.0	The basic conditions	9
	<i>National policy and advice</i>	9
	<i>Sustainable development</i>	10
	<i>The development plan</i>	10
	<i>European Union (EU) obligations</i>	11
	<i>Strategic Environmental Assessment</i>	11
	<i>Habitats Regulations Assessment</i>	12
	<i>European Convention on Human Rights (ECHR)</i>	14
7.0	Detailed comments on the Plan and its policies	14
	<i>Introduction and Background, Planning Policy Context</i>	14
	<i>Key Issues, Vision and Objectives</i>	15
	<i>Neighbourhood Plan Policies –</i>	15
	<i>Reducing Flood Risk and Improving Flood Resilience - Policies HB1, HB2, HB3</i>	15
	<i>Protection of the Historic and Natural Environment – Policies HB4, HB5, HB6, HB7, HB8, HB9, HB10</i>	17
	<i>Improving Accessibility and Traffic Management – Policy HB11</i>	22
	<i>Next Steps, Appendices</i>	23
8.0	Conclusions and recommendations	23
	Appendix 1 List of key documents	25
	Appendix 2 Note from HC	26
	Appendix 3 Note from HC	27
	Appendix 4 Letter from the examiner	28
	Appendix 5 Note from HC	30

Summary

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

Hampton Bishop is a small rural Parish adjacent to the edge of the built up area of Hereford with a population of 500 or so. The village is in two main clusters; one to the west lying south of Court Farm and the other to the east focused around the Church. There is a Conservation Area, many listed buildings and historic farmsteads.

Of great concern to the local community is the impact of flooding. Most of the Parish falls within Flood Zones as three rivers flow through the Parish; the Wye, the Lugg and the Frome.

The Plan does not allocate any sites for residential development, but defines the two clusters with development boundaries. It contains a range of policies aimed at ensuring that any new development respects the character and special qualities of the area whilst addressing the flooding situation.

It builds on work started by a Parish Plan in 2006. It is a well written and presented document.

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. My reasoning is set out in detail in this report. 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 Hampton Bishop 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
April 2019



1.0 Introduction

This is the report of the independent examiner into the Hampton Bishop 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 Hampton Bishop Parish Council to undertake this independent examination. I have been appointed through the Neighbourhood Planning Independent Examiner Referral Service (NPIERS).

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

2.0 The role of the independent examiner

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

The basic conditions¹ are:

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

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

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to in the paragraph above. Only one is applicable to neighbourhood plans and was brought into effect on 28 December 2018.² 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 check³ 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.⁴

The examiner must then make one of the following recommendations:

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

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

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

² Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

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

⁴ 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 began on the Plan in 2013. A first stage draft Issues and Options plan was produced in 2014 and this built on earlier work carried out on a Parish Plan. Informal consultation was carried out and comments made then informed the first version of the Plan.

In 2015, work paused on the Plan until the Core Strategy was adopted in 2016. The Plan was then updated and revised to align with that document.

A dedicated area of the Hampton Bishop website for the Plan was set up and kept up to date. Minutes of the Steering Group were also available.

Pre-submission consultation was held between 18 April – 1 June 2018. As well as being available online, the Plan was available from three locations in the Parish and on request from the Parish Clerk. A public drop-in session was held in the Village Hall during the period. Direct emails were also sent to those on the Parish Council's newsletter database. Notices were placed on the noticeboard and in local newsletter. Consultees were advised by email or letter.

Submission (regulation 16) consultation was held between 23 October – 4 December 2018.

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

The Regulation 16 stage resulted in 14 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).⁵ PPG confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.⁶ 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.

⁵ PPG para 055 ref id 41-055-20180222

⁶ *Ibid*

PPG⁷ 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.⁸

After consideration of all the documentation, 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 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 2 March 2019.

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.

⁷ PPG para 056 ref id 41-056-20180222

⁸ *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

Hampton Bishop 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 Hampton Bishop neighbourhood plan area. HC approved the designation of the area on 7 May 2013. Although a representation raises a query about the boundary, HC confirms that the Plan area coincides with the approved area which is the Parish area. The decision document confirms there is no overlap with another designated area. 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 3 of the Plan.

Plan period

The Plan period shown on the front cover is 2018 – 2031. The Basic Conditions Statement indicates the Plan period is 2017 – 2031. Whilst the end dates coincides with the time period for the Core Strategy, the start date should also align.

- **Insert the start date of the Plan as “2011”**

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.⁹

⁹ 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.¹⁰

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.¹¹

¹⁰ NPPF paras 14, 16

¹¹ *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.¹²

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

PPG indicates that a policy should be clear and unambiguous¹³ 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.¹⁴

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

Whilst this has formed part of my own assessment, the Basic Conditions Statement sets out how the Plan aligns with the NPPF and in particular the its core planning principles.

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 whole¹⁷ 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.¹⁸

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

¹² NPPF para 17

¹³ PPG para 041 ref id 41-041-20140306

¹⁴ *Ibid*

¹⁵ *Ibid* para 040 ref id 41-040-20160211

¹⁶ *Ibid*

¹⁷ NPPF para 6 which indicates paras 18 – 219 of the Framework constitute the Government's view of what sustainable development means in practice

¹⁸ *Ibid* para 7

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 conforms 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).

PPG¹⁹ 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 October 2018 has been submitted as an initial screening assessment of 4 June 2013 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 March 2018 underwent a period of consultation alongside the pre-submission version of the Plan.

¹⁹ PPG para 031 ref id 11-031-20150209

Following the Regulation 14 stage, changes were made; a new objective and a new policy were added and changes were made to five other policies that warranted reassessment and the ER of October 2018 includes this review.

The ER concludes that the Plan “is in general conformity with both national planning policy...and strategic policies...nor does it propose any growth that would be over and above that prescribed by strategic policies.” It was published for consultation alongside the submission version of the Plan.

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

The ER is a comprehensive document that has dealt with the issues appropriately for the content and level of detail in the Plan. This in line with PPG advice which confirms the SEA does not have to be done in any more detail or using more resources than is considered to be appropriate for the content and level of detail in the Plan.²⁰ In my view, it has been prepared in accordance with Regulation 12 of the Regulations.

Therefore EU obligations in respect of SEA have been satisfied.

Habitats Regulations Assessment

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

A HRA dated October 2018 has been submitted. This explains that an initial screening undertaken in June 2013 confirmed that the Plan area falls within the River Wye (including the River Lugg) Special Area of Conservation (SAC). The River Wye runs along the western and southern borders and the River Lugg along the eastern border. The Parish falls within the River Lugg’s hydrological catchment area. As a result that HRA screening concluded that a full HRA screening was needed.

A HRA of March 2018 was undertaken.

In the light of CJEU cases and the changes to the Plan between Regulation 14 and 16 stages, the HRA Screening Assessment of October 2018 has been undertaken to see if the conclusions of the earlier HRA report remain valid. It concluded that the Plan “will not have a likely significant effect on the River Wye SAC”. This related both to alone and in combination effects.

HC issued a briefing note of 13 September 2018 attached as Appendix 2 to this report. This explains that they have sought Counsel advice following the judgments and that

²⁰ PPG para 030 ref id 11-030-20150209

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

screening reports relied 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 attached as Appendix 3. 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).²² 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)."

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 4. HC responded on 18 January 2019 and their note is attached as Appendix 5.

Given the nature and characteristics of the SACs concerned and the nature and contents of this Plan and taking the conclusions of the screening assessment 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.

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.²³ In undertaking a great deal of work on HRA, HC has considered the compatibility of the Plan in regard to EU obligations and does not raise any concerns in this regard.

²² Case C-293/17

²³ PPG para 031 ref id 11-031-20150209

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.

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 extremely well and very clearly. It contains 11 policies. It starts with a useful contents page.

1.0 Introduction and Background

This is a well written section that sets out the background to the Plan.

2.0 Planning Policy Context

This section starts by selecting quotes from the NPPFs published in 2012 and in 2018. With the passage of time, a new NPPF has been published. A decision will need to be made whether to update this section or retain the references as they are.

It also makes reference to “Technical Guidance to the NPPF” of March 2012. This document was withdrawn on 7 March 2014. It has been replaced by PPG. Any references and links to this document should be removed. Should it be desired these references could be updated accordingly.

- **Update references to the NPPFs as necessary**
- **Delete any references and links to the “Technical Guidance to the NPPF” document (paragraphs 2.3 and 2.4 and links 5 and 7)**
- **Replace any references to the “Technical Guidance to the NPPF” document with relevant references to PPG**

3.0 Key Issues for Hampton Bishop

Setting out the key issues for the community, this well written section sets the scene well.

4.0 Vision and Objectives

The vision for the Plan is:

‘By 2031 Hampton Bishop will be a thriving and sustainable community of sensible size which has adequate protection from river and surface water flooding.’

The vision is supported by three objectives; further detail is given in a series of bullet points under each objective.

Both the vision and the objectives are clearly articulated.

5.0 Neighbourhood Plan Policies

5.1 Reducing Flood Risk and Improving Flood Resilience

Hampton Bishop is located close to three rivers; the Wye, the Lugg and the Frome. The majority of Hampton Bishop lies within Flood Zone 3 with a high probability of flooding, some areas around the village lie in Flood Zone 2 and a few small areas of the Parish fall within Flood Zone 1.

The Plan explains there is a history of flooding. The village is located on the floodplain at the confluence of the Rivers Wye and Lugg and is almost fully surrounded by raised earthwork flood defences which, on the River Wye is known as “The Stank”. This lasts for some six miles. Although a flood event in 1960 remains the highest flood event on record, there have been three other subsequent significant floods. This has resulted in repair and extension to The Stank.

Surface water flooding is also an issue. The Plan details three major events in 2000, 2012/2013 and 2013/2014. A link found in footnote 11 should be updated in the interests of accuracy.

Reference is made to the NPPF 2012 and PPG.

Paragraph 5.1.32 indicates that proposals in Flood Zones 2 and 3 have to submit a sequential test. My understanding is that an applicant may need to submit one if a

sequential test has not already been done for the type of development proposed. A sequential test is also not needed for minor development or some changes of use proposals. Therefore in the interests of accuracy and clarity, a modification to this paragraph is recommended.

- **Update footnote 11 on page 20 of the Plan to “<https://flood-map-for-planning.service.gov.uk/>”**
- **Revise paragraph 5.1.32 on page 23 of the Plan to read: “For proposals in Zones 2 and 3 applicants may need to submit a Sequential Test of alternative sites in lesser Flood Zones to identify if a more suitable site is available. A Sequential Test is not needed if one has already been done for the type of development proposed or for some types of minor development and changes of use. It is therefore important to check what is needed.” [retain rest of paragraph from the existing second sentence]**

Policy HB1 Development in Areas of Flood Risk

The NPPF²⁴ is clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Flood risk is something that neighbourhood plans can address and forms part of planning for new development in relation to a range of impacts arising from climate change.

Given the concern and issues over flooding in the Plan area, this policy seeks to set out expectations in relation to development. It deals with both river flooding and surface water drainage.

In line with the modification above to the supporting text, a similar modification for the same reasons is made to the second paragraph of this policy.

The policy refers to the settlement boundary shown on Map 6. However this should be Map 5.

With these modifications, the policy will take account of national policy and guidance, generally conform to the CS and in particular Policies SS1, SS7, SD3 and SD4 and will help to achieve sustainable development and therefore meet the basic conditions.

- **Change the words “...will be...” to “...may be...” and add the words “...in line with national and local policy requirements.” after “...Sequential Test...” in the first sentence of the second paragraph of the policy**

²⁴ NPPF paras 99 - 104

- **Change the reference to “Map 6” in the sixth paragraph of the policy to “Map 5”**

Policy HB2 Design for Flood Resilience and Resistance

This policy seeks to ensure new development is flood resilient. It is clearly worded. It meets the basic conditions and no modifications to it are recommended.

Policy HB3 Design to Reduce Surface Water Run Off

Policy HB3 deals with surface water. It is worded clearly and appropriately with a balance between ensuring the issues are addressed fully and encouraging where needed. It meets the basic conditions and no modifications are recommended.

5.2 Protection of the Historic and Natural Environment

The supporting text to the next set of policies on this topic explains that Hampton Bishop has a distinctive character and the village is set within traditional Herefordshire farms and farmsteads.

There is a Conservation Area and a number of listed buildings. The text indicates that a list of the listed buildings is provided in Appendix II, but they are found in Appendix I. A modification is made in the interests of accuracy.

- **Change “...Appendix II...” in paragraph 5.2.3 on page 29 of the Plan to “...Appendix I...”**

Policy HB4 Protecting Heritage Assets and Archaeology

The NPPF²⁵ recognises that heritage assets are an irreplaceable resource; they should be conserved in a manner appropriate to their significance. It continues that great weight should be given to the conservation of a designated heritage asset. In relation to non-designated heritage assets, the NPPF indicates that significance should be taken into account and that a “balanced judgement” will be needed having regard to the scale of any harm or loss and the significance of such heritage assets.

This policy combines designated heritage assets along with non-designated heritage assets and does not make the distinction which is made by the NPPF as clearly as it

²⁵ NPPF Section 12

might. A modification is therefore made to ensure the policy takes account of the stance in the NPPF.

The second element of the policy refers to archaeology and is clearly worded.

With this modification, the policy will take account of national policy and guidance, be in general conformity with CS Policies SS6, LD1 and LD4 in particular and will help to achieve sustainable development.

- **Add a new second sentence to the policy which reads: *“In relation to non-designated heritage assets, a balanced judgement will be made having regard to the scale of any harm and the asset’s significance.”***

Policy HB5 Protection of Historic Farmsteads

Historic farmsteads are a notable feature of the Plan area. This policy seeks to ensure that development which relates to historic farmsteads is appropriate. It is clearly worded and meets the basic conditions. No modifications are therefore recommended.

Policy HB6 Hampton Bishop Settlement Boundary

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 CS²⁶ is positive growth. CS Policies SS2 and RA1 indicate that 5,300 dwellings will be delivered throughout the rural housing market areas (HMA).

The strategy is based on seven HMAs. This Plan area falls within the Hereford HMA. This HMA has an indicative housing growth target of 18% 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. Hampton Bishop is identified in Figure 4.14 as a settlement which will be the main focus of proportionate housing development. No other settlements in the Plan area are identified in Figures 4.14 or 4.15.

²⁶ Core Strategy Section 4.8

The Plan explains that 18% of its 178 dwellings equates to at least 32 units. However, commitments total 137 units. The commitments are located on the edge of Hereford city, but within the Parish. Therefore the Parish has already met the CS growth target.

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.

Policy HB6 defines a settlement boundary for Hampton Bishop. This is shown clearly on Map 5 found on page 33 of the Plan. The settlement boundary is in two parts. This reflects the two 'clusters' of built development. By its own admission, the boundary is fairly tightly drawn. However, I saw at my site visit that it has been drawn logically.

The remainder of the policy sets out a number of criteria for new housing development within the boundary to adhere to. All are worded clearly and are appropriate for the village. However, one requires amendment to reflect the statutory duty in the Planning (Listed Buildings and Conservation Areas) Act 1990. This indicates that in considering whether to grant planning permission for development in relation to any buildings or other land in a conservation area, the decision maker shall pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Criterion 1) refers only to the enhancement of heritage assets which goes beyond this duty.

With this modification, the policy will take account of national policy and guidance, generally confirm to the CS, particularly Policies SS2, SS6, RA1, RA2 and RA3 and help to achieve sustainable development and will meet the basic conditions.

- **Change criterion 1) of the policy to read: "Proposals are designed to respond positively to the character of the surrounding area and *preserve or enhance* heritage assets such as the conservation area..."**

Policy HB7 Building Design Principles for New Development

Policy HB7 sets out a number of design principles. All are aimed at ensuring that local character and local distinctiveness is respected and reflected in new development. It supports high quality and innovative design.

Given the character of the Parish, it is appropriate for all development to show how it meets the principles set out. This does not have to be an onerous requirement and can be proportionate to the scale and type of development sought.

The policy aligns with the NPPF's stance that good design is a key aspect of sustainable development and is indivisible from good planning.²⁷ It builds on CS Policies SS6, LD1 and SD1. It is a comprehensive and robust policy that sets out the quality of development expected for the area.

It is well worded. It meets the basic conditions and no modifications are recommended.

Policy HB8 Landscape Design Principles

This policy requires all development proposals to consider a number of landscape design principles set out in the policy. The NPPF is clear that the planning system should contribute to and enhance the natural and local environment.²⁸ Given the nature of the Plan area it is appropriate for all proposals to take account of this policy which is a local expression of CS Policies LD1, LD2 and LD3 in particular.

The policy therefore recognises features in the Plan area that are intrinsic to the beauty and character of the area. However, a number of elements need further consideration.

Criterion 4. relates to signage; often such signs do not require consent. This then is not appropriate to include in a policy. It should be deleted.

Amongst other things, criterion 5. refers to the protection and incorporation of mature and established trees "wherever possible". This language is not sufficiently robust and could lead to the loss of such trees.

The same principle applies to criterion 7. This refers to traditional orchards which are priority habitats. Given that the next Policy HB9 also specifically refers to traditional orchards, I suggest the reference in this policy is deleted and retained in the next policy.

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

- **Delete criterion 4. from the policy**
- **Reword the second sentence of criterion 5. to read: "Mature and established trees should *be integrated and* incorporated into landscaping schemes *and be protected unless there are compelling reasons to support their loss.*"**
- **Reword criterion 7. to read: "Locally distinct landscapes *should be retained unless there are compelling reasons to support their loss.*"**

²⁷ NPPF para 56

²⁸ *Ibid* para 109

Policy HB9 Green Infrastructure

The Plan rightly recognises that green infrastructure has an important multi-functional role and delivers a wide range of environmental and quality of life benefits including supporting healthy lifestyles, helping to address climate change and as part of flood risk management.

There are a number of different elements to the policy which promote green infrastructure in its many guises. All the elements are clearly worded. The policy meets takes account of the NPPF, generally confirms to the CS and in particular Policies SS6, LD1, LD2 and LD3 and will help to achieve sustainable development. As a result no modifications are recommended.

Policy HB10 Development on the Urban Fringe of the City of Hereford

The supporting text to this policy quotes from HC's Urban Fringe Sensitivity Analysis. This is a technical paper which sought to classify the level of sensitivity of the urban fringe of Hereford and five market towns. Sensitivity is taken to be the sensitivity of the landscape itself; as a physical resource, historical features, visual sensitivity and landscape value. It does not consider the ecology which was dealt with in a separate paper.

The purpose of the study was to inform the identification of potential housing sites and likely constraints to development. Although the Urban Fringe Sensitivity Analysis is dated 2010, I do not consider it to be outdated or lacking in merit. The study itself recognises that due to its assessment of the sensitivity of the landscape, it could be used for other purposes. In addition, I note that the SEA Scoping Report indicates that it could provide evidence that could be taken into account in policy preparation. It would also be open for any development proposals to submit a more detailed and specific landscape and/or visual analysis on a case by case basis.

The well written policy seeks to avoid any development in the three areas it refers to in the supporting text which are taken from the Urban Fringe Sensitivity Analysis. It does not resist development per se and has sufficient flexibility.

However, it needs to be absolutely clear that the policy can only apply to the Plan area. For this reason a modification is made to the title of the policy. With this modification, the policy will take account of the NPPF, generally conform to the CS, in particular Policy SS6, help to achieve sustainable development and meet the basic conditions.

- **Add the words “*within the Plan area*” at the end of the policy’s title**

5.3 Improving Accessibility and Traffic Management

Policy HB11 Improving Traffic Management and Accessibility in Hampton Bishop

Policy HB11 is a relatively long policy that seeks to achieve a number of things.

The first element indicates developer contributions will be used to support traffic management and accessibility. This is a useful indicator of where the Parish's priorities lie.

The second element supports proposals when there is a "positive impact" on traffic. Two issues arise with this paragraph. Firstly, it supports, inadvertently I feel sure, any development and therefore may support otherwise unacceptable development if it improves traffic. Secondly, it is not clear to me what a positive impact on traffic might be. Therefore a modification to this element is recommended.

The same principle applies to the third element.

The fourth element about traffic management proposals is not a development and use of land related policy. It should be moved to the supporting text or deleted. This is because it is an action.

The last element is clearly written and will help to promote sustainable transport by providing footpath and cycleways.

Subject to these modifications, the policy takes account of national policy and guidance, generally conforms to the CS and in particular Policies SS4 and MT1 and will help to achieve sustainable development.

- **Reword the second paragraph of the policy to read: "*Otherwise acceptable proposals or transport related proposals which improve traffic conditions or contribute to its better management will normally be supported. Examples of enhancements include: [retain existing a) to c]*"**
- **Add the words "*Otherwise acceptable*" at the start of the third paragraph of the policy**
- **Delete the fourth paragraph from the policy; it could be included in the supporting text if desired**

6.0 Next Steps

This is a useful section to have in the Plan at this stage. It will however need some natural updating or removing in the final version of the Plan.

- **Update or remove this section from the final version of the Plan**

Appendices

Two appendices are included.

The first is a list of listed buildings in the Parish. This is referred to in relation to Policy HB4. It would be useful to add a note that this information may change over the lifetime of the Plan and the most up to date information should always be sought.

The second is titled “Parish Policies Map”.

- **Add a sentence to Appendix I 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.”***

8.0 Conclusions and recommendations

I am satisfied that the Hampton Bishop 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 Hampton Bishop 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.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Hampton Bishop 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 Plan should proceed to a referendum based on the

Hampton Bishop Neighbourhood Plan area as approved by Herefordshire Council on 7 May 2013.

Ann Skippers MRTPI
Ann Skippers Planning
April 2019

Appendix 1 List of key documents specific to this examination

Hampton Bishop Neighbourhood Development Plan 2018 – 2031 Submission Version
Autumn 2018

Basic Conditions Statement

Consultation Statement Autumn 2018

Draft Environmental Report March 2018

Environmental Report October 2018

Habitats Regulations Assessment Addendum Report March 2018

Habitats Regulations Assessment Regulation 16 Report October 2018

Hampton Bishop Parish Policies Map

Hampton Bishop Policies Map

Herefordshire Core Strategy 2011-2031 October 2015 and Appendices

Saved Policies of the Unitary Development Plan 2007

Comments from the Parish Council on the Regulation 16 representations

Various documents on the Parish Council website
www.hamptonbishopparrishcouncil.gov.uk including Planning Policy Assessment and
Evidence Base Review v2 February 2016

List ends



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 4 Letter from the Examiner 4 January 2019

Letter to Samantha Banks
Herefordshire Council

4 January 2019

Dear Sam,

Examination of the Hampton Bishop 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.