

Stretton Sugwas Neighbourhood Development Plan 2019 - 2031

Plan submitted to LPA for examination

April 2019

Report to the Herefordshire Council on the
Independent Examination of the submission
draft Stretton Sugwas Neighbourhood
Development Plan

October 2019

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Summary of main findings

0.1 It is a requirement of the Localism Act that this report should contain a summary of its main findings. The reasons for each of the recommendations are given in the following sections of the report.

0.2 The principal findings in this report are that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in the Town and Country Planning 1990 Act (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

0.3 It is recommended that the plan, as modified, be submitted to a referendum and that the referendum area need not be extended beyond that of the neighbourhood area. My main recommendations for modifications to the individual plan policies and accompanying text are, in plan order: -

- that the references in Policies SS1, 6 and 7 to development schemes being limited the 12 (housing) units in any one proposal should be deleted;
- that the first paragraph of Policy SS4 be reworded so as not to refer to the demolition of existing buildings and the second sentence in criterion 8 relating to mobility and wheelchair access to housing deleted;
- that the criteria in Policy SS6 relating to housing be moved to Policy SS7 and the 'sequential' approach to brownfield priority deleted from the final paragraph;
- that the settlement boundary for Stretton Sugwas, as shown on Map 5, should be redrawn to follow the western side of the A480 road to the north of Roman Road and the Traveller's Inn thus excluding land to the east of the road from the settlement;
- that Policy SS7 should be re-written, incorporating criteria from Policy SS6 but deleting the third criterion and introducing a requirement for a local housing needs assessment before the final criterion can be implemented;
- that Policy SS9 should be deleted as policy but included as a community aspiration in section 6.5 of the plan.

Section 1 - Introduction

Appointment

1.01 I have been appointed by the Herefordshire Council (HC), acting as the Local Planning Authority (LPA), under the provisions of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, to carry out an independent examination of the Stretton Sugwas Neighbourhood Development Plan (SSNDP) as submitted to the LPA on 30th April 2019. The HC carried out publicity for the proposed plan for a period of 6 weeks between 8th May and 19th June 2019 giving details of how representations might be made, in accordance with Regulation 16 of the Neighbourhood Plans (General) Regulations 2012 ('the 2012 Regulations')¹. I was sent a link to the documentation required under Regulation 17 on 23rd August 2019 including copies of all of the representations received under Regulation 16. I have taken that documentation and all of the representations into account in carrying out the examination.

1.02 I am a Chartered Town Planner (Member of the Royal Town Planning Institute) with some 48 years post-qualification professional experience in local and central government and latterly as a sole practitioner specialising in development plan policy work. I am independent of the Stretton Sugwas Parish Council ('the Parish Council' – SSPC) and of the Local Planning Authority. I have no land interests in any part of the plan area.

My role as an examiner

1.03 The terms of reference for the independent examination of a Neighbourhood Development Plan are statutory. They are set out in the Localism Act 2011 and in the 2012 Regulations. As an examiner I must consider whether the plan meets what are called 'the basic conditions'². In summary, these require me to consider: -

- whether, having regard to national policies and to advice contained in guidance issued by the Secretary of State, it would be appropriate to make the plan;

¹ All subsequent reference to a Regulation followed by a number is a reference to the 2012 Regulations.

² These are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (as introduced in Schedule 10 of the Localism Act 2011)

- whether the making of the plan would contribute to the achievement of sustainable development;
- whether the making of the plan would be in general conformity with the strategic policies contained in the development plan for the area; and to ensure that:-
- the making of the plan would not breach, and would otherwise be compatible with EU obligations relating to Strategic Environmental and Habitats Assessment and that the plan would be compatible with Convention rights, within the meaning of the Human Rights Act 1998; and
- that 'prescribed conditions' would be met and 'prescribed matters' would be complied with in plan preparation and submission.

1.04 Legislation requires that my report on the draft plan should contain one of the following recommendations:-

- a) that the draft plan is submitted to a referendum, or
- b) that modifications are made to the draft plan and the modified plan is submitted to a referendum, or
- c) that the proposal for the plan is refused.

I may make recommendations for modifications which I consider need to be made to secure that the plan meets the basic conditions or for compatibility with EU obligations and (Human Rights) Convention Rights. The only other modifications which I may recommend are those to correct errors.

Section 2 – Statutory compliance and procedural matters

2.01 The Herefordshire Council formally designated the Stretton Sugwas Neighbourhood Area on 25th November 2013. The plan has been submitted by the SSPC as the 'qualifying body' and it relates solely to the designated Neighbourhood Area of Stretton Sugwas parish as it was in 2013. I am informed that a boundary change took place on 1st April 2019 which resulted in the incorporation of additional land to the west Sugwas Pool, formerly part of Kenchester parish (Bishopstone Group), into Stretton Sugwas parish. It is not within my powers to recommend any change to the neighbourhood area boundary, but see section 5 of this report dealing with the referendum area.

2.02 The title of the plan is given on the front sheet as the Stretton Sugwas Neighbourhood Development Plan 2019 – 2031 with a date of March 2019. The statutory requirement³ that the plan 'must specify the period for which it is to have effect', has, therefore, been met. The plan does not include provision about development which is 'excluded development'⁴ and a plan showing the area to which the Neighbourhood Development Plan relates has been submitted as required by Regulation 15(1)(a). Accordingly, those statutory provisions are met also.

2.03 The legislation states that the 'general rule' is that the examination of the issues by the examiner should take the form of the consideration of written representations. However, an examiner must hold a hearing 'for the purpose of receiving oral representations about an issue' where he or she considers a hearing 'is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case'⁵. Before deciding whether a hearing would be required I issued⁶ a list of written questions seeking clarification and further information by way of justification for plan policies. Following my consideration of the written responses⁷ to the initial questions raised I sought further clarification⁸ with regard to land north of the Traveller's Inn and east of A480.

³ These statutory requirements are to be found in Section 38B of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011)

⁴ Sections 61J(2) and 61K of the 1990 Act, introduced by section 2 of Schedule 9 to the Localism Act 2011

⁵ Paragraph 9 of Schedule 4B to the 1990 Act (as in reference 1 above)

⁶ By email dated 11 September 2019

⁷ Received on 1 October 2019

⁸ Email 3 October 2019

Only after receiving that clarification⁹ was I able to conclude that I had adequate information to proceed with the examination without recourse to a hearing. I will be referring to my questions and the responses to them in section 4 of this report.

2.04 I visited the neighbourhood plan area on Thursday 19th September 2019. In order to obtain a general overview of the character and appearance of the area I approached along the A4103 Roman Road; passed up and down the A480 and went west along the A438 to Sugwas Pool. From Sugwas Pool I walked along the A438 to the Church Road area, passing the village hall and church before returning to Roman Way and the road to Barnfields. I looked at the land around the former Travellers Inn before proceeding southwards past Morningside to the primary school (academy), then along the track towards Railway Terrace south of the school. I focussed in particular on the areas of land which are proposed for inclusion within the settlement boundaries, as shown on page 39 of the neighbourhood plan.

2.05 The SSPC have submitted a Basic Conditions Statement in accordance with the Regulations¹⁰. In section 3 it sets out in tabular form an analysis of policies and proposals within the NDP against each of the basic conditions. In particular it focusses on the regard which has been had to Government policies and guidance¹¹ as well as general conformity with strategic development plan policies. It is a helpful as an overall analysis which I have taken into account.

European Union (EU) Obligations¹²

2.06 Section 3.6 of the Basic Conditions Statement sets out correctly those European Obligations which are relevant to neighbourhood plans. Details are given of Articles 1, 6 and 14 of the First Protocol to the European Convention on Human Rights confirming that the plan does not contain policies and proposals which would infringe the human rights of residents or other stakeholders. No representations have been made to suggest that any infringement of human

⁹ Email 9 October 2019

¹⁰ Regulation 15(1)(d)

¹¹ As set out in the National Planning Policy Framework (NPPF) and in Planning Practice Guidance (PPG)

¹² The Government has signalled an expectation that the UK will leave the European Union on 31 October 2019 although the situation remains uncertain. This report is, therefore, written on the assumption that should 'Brexit' have occurred the relevant provisions of European legislation will have been transferred into UK law.

rights would be likely to occur as the result of the application of the policies in the plan. I have no reason to conclude other than that the approach taken in the plan is fully compatible with, and does not breach, Convention Rights.

2.07 Other EU obligations relate to requirements for Strategic Environmental Assessment (SEA)¹³ and Habitats and Species assessment (HRA)¹⁴. The European Directives are applied in England through the provisions of the Environmental Assessment Regulations¹⁵ and the Habitats Regulations¹⁶.

2.08 Initial desk based screening under both sets of regulations was undertaken by the Herefordshire Council in October 2013 which advised that further assessment work for both SEA and HRA would be required. A scoping report followed which was made available to the statutory consultees in consultation during June and July 2014 with comments received¹⁷ from Natural England and English Heritage. There appears to have been no formal determination under Regulation 9(1) of the SEA Regulations, indeed it could not be prior to the production of the first draft NDP in 2015. However, that is implicit in the decision to produce a full Environmental Report in accordance with Regulation 12. That was dated August 2015 and it evaluated the environmental effects of plan objectives, policies and proposals against SEA objectives and identifies alternatives. Its conclusions were that for the most part many of the policies scored positively against environmental objectives or would have neutral effect. The report was consulted upon in conjunction with the first draft NDP.

2.09 Significant revisions to the Environmental Report were undertaken in November 2018 to reflect the amended policies in the second draft (Regulation 14) version of the plan. That was consulted upon in parallel with the plan¹⁸ but no comments were received from the statutory consultees. That is as stated in Appendix 7 to the final version of the Environmental Report produced in April 2019 pursuant to the formal submission of the NDP at the end of that month. The overall conclusions remain as in the April 2015 report. From this I conclude

¹³ Directive 2001/42/EC

¹⁴ Article 6(3) of Council Directive 92/43/EEC

¹⁵ The Environmental Assessment of Plans and Programmes Regulations 2004 (Generally referred to as the 'SEA Regulations')

¹⁶ The Conservation of Habitats and Species Regulations 2017 (abbreviated to the Habitats)

¹⁷ Appendix 3 to the Environmental Report

¹⁸ 10 December 2018 to 4 February 2019

that the final SEA demonstrates adequately that the making of the plan would not breach and would otherwise be compatible with EU Obligations¹⁹.

2.10 With regard to the EU Habitats Directives, the 2017 Habitats Regulations amended the wording of the basic condition prescribed in paragraph 1 of Schedule 2²⁰ of the Neighbourhood Planning General Regulations 2012 ('the 2012 Regulations'). For that basic condition to be met the making of the plan should not breach the requirements of Chapter 8 in part 6 of the 2017 Habitats Regulations. The most directly relevant Regulations are 105 and 106. Both the submitted Basic Conditions Statement and the document entitled 'Habitats Regulations Assessment' prepared by the Herefordshire Council²¹ have not been updated to refer to the latest statutory provisions.

2.11 The initial screening work identified that the parish is within the hydrological catchment area for the River Wye, indeed the south-eastern parish boundary is in the centre of the river itself which means that the 'left bank' of the river which is part of the River Wye (including the River Lugg) Special Conservation Area (SAC) and a 'European site'. As such Regulation 106 requires the qualifying body (the parish council), when submitting the plan, to 'provide such information as the competent authority may reasonable require for the purposes of the assessment under Regulation 105 or to enable it to determine whether that assessment is required'. The term 'competent authority' is defined in Regulation 7 and is (post-submission) the Herefordshire Council. Regulation 105 sets out the responsibilities of the 'plan-making authority' which is defined in Regulation 111 as the Local Planning Authority (Herefordshire Council). The plan cannot be sent for a referendum unless the LPA has determined whether or not it would be 'likely to have a significant effect on a European site' either alone or in combination with other plans (the Herefordshire Core Strategy - HCS²²). If it does an 'appropriate assessment' must be undertaken.

2.12 The main analysis in the 'Habitats Regulations Assessment' document relates to the draft plan as consulted upon under Regulation 14 but there is an update in Appendix 5 to take account of the amendments made to the draft plan

¹⁹ Section 8(2)(f) in Schedule 4B to the Town and Country Planning Act 1990

²⁰ Given effect by Regulation 32

²¹ Dated April 2019

²² As adopted October 2015. Full title 'Herefordshire Local Plan Core Strategy' abbreviated in this report to 'HCS'

following that consultation and confirmation in Appendix 4 of the consultation response (none). The Various options considered are analysed in tabular form in Appendix 2. In section 7 it is stated that all policies have been re-screened taking account of the *Sweetman* judgement²³ with the results tabulated in Appendix 3. Section 9 deals with 'in combination' effects leading to the overall conclusion in paragraph 10.2 that ' the Stretton Sugwas NDP will not have a likely significant effect on the River Wye SAC'. That indicates that the requirement of Regulation 105(1)(a) is met and that it is not necessary to undertake an 'appropriate assessment'. It is also confirmed in paragraph 8.7 that, through the operation of policies in the HCS, the plan would meet the requirements of the Water Framework Directive²⁴.

2.13 From the above, I am satisfied that the submitted plan is compatible with EU obligations and meets the basic condition prescribed by section 1 of Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 (as amended).

²³ European Court of Justice - case ref. C323/17: *People over Wind & Sweetman v. Coillte Teoranta*

²⁴ Directive 2000/60/EC

Section 3 - Preparation of the plan and the pre-submission consultation processes

3.01 As required by legislation²⁵, the SSPC have submitted a Consultation Statement. It transpires that a first draft of the neighbourhood plan was considered by the parish council in November 2014 and was followed by informal consultation with residents, landowners and businesses leading to public drop-in sessions which were held over a weekend in March 2015, although it is stated that only 12 residents attended with 'no significant issues raised'. A formal (Regulation 14) consultation on the draft plan was held for 6 weeks in September and October 2015 notified to residents by flyer and in the local newsletter as well as online. The results of that consultation, including decisions made on revisions to the plan, are summarised and tabulated in section 4 of the statement.

3.02 A significant representation made by the Herefordshire Council at that time suggested that consideration be given to the identification of settlement boundaries and/or allocations for housing. That required further work to be done. As explained in paragraphs 5.1 and 5.2 of the statement the plan was then 'parked' until 2018 when, in June that year, public consultation events were held in the village hall with two options for settlement boundaries put forward. The results are set out in paragraph 5.4 of the statement showing responses only in single figures and with a difference of only one 'vote' between the public preferences in each case. Nevertheless, those were taken on board in the settlement boundaries chosen. The second Regulation 14 consultation which followed between 10 December and 4 February 2019 (8 weeks to allow for the Christmas/New Year period) resulted in only 7 representations as summarised in paragraph 7.1 of the statement with detailed responses in Table 2. The main amendments as a result of that consultation was the deletion of a policy on green infrastructure and an increase in the number of dwelling units to be permitted in any one proposal by policies SS6 and 7 increased from 11 to 12.

3.03 As indicated above, the level of public representation on the plan is low but it is clear that local residents were informed of the plan at each stage of its preparation. The Consultation Statement makes clear the consultation processes followed and, by giving full details of the representations received and the parish council's responses, goes beyond the minimum statutory²⁶ requirement for the statement to include merely a summary of the main issues and concerns raised. It also provides a useful check against the issues which still remain after the Regulation 16 consultation.

²⁵ The Neighbourhood Development Planning (General) Regulations 2012, Regulations 15(1)(b) and 15(2)

²⁶ Regulation 15

Section 4 - The Plan, meeting the basic conditions

4.01 This section of my report sets out my conclusions on the extent to which the submitted plan meets those basic conditions which are set out in the first three bullet points in paragraph 1.03 above. There is no issue with regard to the general conformity of the NDP with the strategic policies of the Herefordshire Local Plan Core Strategy. With some reservations, as highlighted in the following paragraphs, I consider that the plan contributes to sustainable development and that regard has been had to Government policy and guidance. My reservations relate primarily to the interpretation of plan policies and their implementation. If I conclude that the inclusion of a policy in the plan means that, as submitted, it does not meet one or more of the basic conditions, I recommend a modification to the plan policy in order to ensure that the plan, taken as a whole, does meet those conditions.

4.02 In the set of questions put to the SSPC in my email of 11 September 2019 I raised a number of issues about certain aspects of the plan policies. I deal first with the main issues arising followed by an examination of more detailed aspects of policy wording and implementation. The latter is dealt with in plan order.

Main issue 1 – The definition of settlement boundaries (Policy SS6)

4.03 The proposed settlement boundaries are shown on maps 5 and 6 on page 39 with background considerations outlined in paragraphs 6.4.1 to 6.4.9 in support of policy SS6.

4.04 It is stated in paragraph 6.4.3 that the housing growth target set in the adopted HCS for the Hereford Rural Housing Market Area (HMA) is 18%. That figure, which is indicative, is taken from the table under HCS Policy RA1. The policy provides for the indicative target to be used as a basis for NDPs and that the 'local evidence and environmental factors will determine the appropriate scale of development.' I am informed²⁷ that in April 2011 there were 174 dwellings in the two settlements of Stretton Sugwas and Swainshill²⁸ hence the figure of 31 dwellings given in paragraph 6.4.4 of the NDP as the 18% target for

²⁷ By email from Herefordshire Council on 10 September 2019

²⁸ Listed in Figure 4.14 of the HCS as 'settlements which will be the main focus of proportionate housing development'

housing over the 'plan period'²⁹. Commitments, including extant planning permissions, exceed that figure although it is clear from HCS Policy RA2 that it is a minimum growth target and that NDPs 'will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets, by indicating levels of suitable and available capacity.' The criteria under HCS Policy RA2 provide a helpful check list of those factors which would ensure that such development contributes to the maintenance of a sustainable community.

4.05 The SSPC have chosen not to make specific land use allocations, including for housing, in the plan and seek to rely on the application of the development management criteria in policies SS6 and SS7 to control the nature and scale of development over the plan period. However, the first paragraph in policy SS6 states that 'development will be supported' within the identified settlement boundaries. In practice, that is the same as saying that planning permission will be granted provided that the stated criteria are met.

4.06 Community involvement during the preparation of the plan³⁰ has resulted in the choice of an option for the drawing of settlement boundary lines which enclose a significant amount of currently undeveloped land. That is especially so in the vicinity of the Stretton Sugwas Academy primary school and to the north of the Travellers Inn, on both sides of the A480 bypass (see below). There is an analysis in paragraph 6.4.5 of the NDP of sites identified in the 2012 Strategic Housing Land Availability Assessment (SHLAA) with the statement in paragraph 6.4.6 that if all that land were to be developed the housing numbers would be significantly higher 'and therefore not in conformity with' the HCS. However, there is no assessment of the areas included within the proposed settlement boundaries nor any estimate of the housing capacity of those areas.

4.07 Paragraph 29 in the National Planning Policy Framework should not promote less development than provided for in the strategic policies for the area or undermine those strategic policies. It is clearly not the case that the plan seeks to provide less than provided for in the HCS. I have ascertained³¹ that the

²⁹ This reference is to the HCS plan period of 2011-2031.

³⁰ In June 2018, see para. 3.02 in this report

³¹ Figures provided in response to my question 3b together with supplementary on 9 October 2019

total area of developable land included within the settlement boundaries in the SSNDP is almost 2 hectares. Herefordshire Council draw attention to HCS policy SS2 which sets a target net density of between 30 and 50 dwellings per hectare across the county 'although it may be less in sensitive areas'. The SSPC have acknowledged that, at 30 dwellings per hectare, there would be potential for up to 59 dwellings to be built within the settlement boundaries with a single 'site' of 1.35 ha. (up to 40 dwellings) to the west and north of the school. However, given the generally low density character of development within this parish and the application of NDP policies SS4, 6 and 7, it seems likely that the potential capacity for development would be somewhat lower.

4.08 As no specific allocations have been made in the plan there has been no testing, other than through the SHLAA, of the deliverability of any of the sites enclosed by the settlement boundaries. I understand, however, that there have been discussions with landowners who have confirmed availability. Deliverability would depend upon factors such as access and ground conditions. Given the vision and objectives of the plan to maintain the character of the area in the face of encroaching urbanisation to the west of Hereford as well as the policy provisions mentioned above, I accept that the overall scale of development within the settlement boundaries is not likely to be so great as to take the plan out of general conformity with the Core Strategy. Herefordshire Council have not suggested that it does. Nevertheless, the situation will require careful monitoring to ensure that community aspirations are fulfilled in such a way as not to undermine strategic objectives, most especially given the relative proximity of Hereford.

4.09 I find it difficult to reconcile the plan's vision and objectives with the inclusion of land to the east of the A480 within the settlement boundary, despite the fact that discussions have taken place with the Duchy of Cornwall as land owners. Should development take place at the Travellers Inn and on the Duchy land west of the A480, the road would remain as a clear divide between the built-up part of the village to the west and the countryside to the east. Despite the presence of two dwellings on the lane leading to the Priory any development

on the eastern side of the road would not be 'infilling' in the conventional sense³² but an encroachment into the countryside.

4.10 Map 4 on page 23 of the plan shows the area to the north of the old roman road as a zone of medium landscape sensitivity, meaning that NP Policy SS1 applies. The A480 is currently fronted by a substantial hedge and the site itself well-vegetated such that development could hardly 'reduce potential urbanisation' or enhance the local landscape character. It would not 'make a positive contribution to the surrounding environment' in accordance with the third criterion of HCS policy RA2. Indeed, it would reduce the effectiveness of the sensitive and relatively narrow gap towards Hereford. Although there is a bus stop and shelter on the eastern side of the road and a footpath with cycleway, access on foot or cycle to village facilities, including the school, would be across the busy road. For that reason, neither physical nor visual links to the existing built-up area can be said to exist.

4.11 As stated above, the potential for housing development within the settlement boundaries, even without the area east of the A480, would be significant, well above the proportionate requirement of the HCS. There would be no imperatives social or economic justification for development to breach the firm boundary formed by the A 480 road. I conclude, therefore, that the inclusion of land to the east of the A480 within the settlement boundary would not contribute to the achievement of sustainable development. I do not, therefore, consider that the plan meets the relevant basic condition in that respect. For it to do so, Map 5 should be modified to draw the settlement boundary north of the Travellers Inn along the western side of the A480 as far as the point where the 'old road' joins it. I recommend accordingly.

Recommendation 1.

Modify the settlement boundary for Stretton Sugwas as shown on Map 5 on page 23 of the plan to exclude land to the east of the A480 bypass from the settlement. Redraw the boundary north of the Travellers Inn to follow the western side of the A480.

³² The filling of a small gap in an otherwise built-up frontage

Main issue 2 – The restriction of housing development to ‘schemes of up to 12 units in any one proposal’ (policies SS1, 6 and 7)

4.12 The repetition of the same or similar provisions in different policies does not assist in providing clarity to the plan. This is considered in more detail on an individual policy basis below. In this section I will consider the principle involved.

4.13 In paragraph 6.4.9 of the plan it is stated that the Parish Council that would like to see a pattern of development which compliments and supports the existing settlement pattern and that recent developments of 1 to 4 dwellings have led to gradual, incremental development over a period of years. That paragraph refers to a ‘threshold’ of 11 dwellings which ‘should support the provision of some affordable housing in line with Core Strategy Policy H1 ...’. That statement has not been updated since the 2018 Regulation 14 draft plan. Current Government policy, as stated in paragraph 63 of the current NPPF, is that the provision of affordable housing should not be sought for residential developments which are not ‘major developments’, which term is defined in the Glossary.³³

4.14 The upper limit of 12 included in the submitted plan is arbitrary. It has been increased from 11 in the Regulation 14 draft as the result of a representation at that stage by the Herefordshire Council that restricting development up to 11 dwellings ‘will miss out potential affordable housing in the settlements’. However, that comment must apply to any limit, or restriction of housing numbers, below the threshold of ‘more than 10’ set by policy H1 in the adopted HCS. HC have clarified³⁴ that the indicative target of 35% in this area is converted by rounding up to the nearest whole number of affordable homes to be sought, subject to viability considerations.

4.15 In response to my questions on these matters the SSPC have not sought to justify setting an upper limit of 12 units. Indeed, they suggest that the limit be revised downwards to ‘10 dwellings or fewer’ and to indicate in the text that this would be ‘rather than support schemes for major development’. It is also stated that affordable housing is not considered to be a priority for the area. The HMA level studies undertaken by GL Hearn as part of the local plan evidence base certainly cannot be relied upon to gauge needs at individual parish level quite apart from which the last update was in 2014.

³³ Developments where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more

³⁴ Email 11 September 2019

4.16 It may well be the case that recent development approvals have been in the range of 4 to 8 dwellings but that does not establish with any certainty that only developments of that size (or smaller) would be in keeping with the character of the settlement(s). Much will depend upon the nature of a site and its immediate surroundings as well as design quality. It is stated in paragraph 41-040³⁵ of the Planning Practice Guidance that proportionate, robust evidence should support the choices made and the approach taken in the plan. Although the intention behind the plan policies is clear enough, the only evidence is that relating to recent permissions which I do not find to be sufficiently robust or proportionate to justify setting a specific figure as an upper limit for the number of dwellings to be provided in any one development proposal. For that reason I conclude that sufficient regard has not been paid to the practice guidance in this respect. I also consider that the general intent of Government policy to facilitate housing development would not be assisted by setting a specific figure. Flexibility is required whilst at the same time respecting local community aspirations to protect the rural character of the area. To my mind that can be achieved by the words already included within the criteria in policies SS6 and SS7. The precise wording of these policies is considered in more detail below followed by recommendations which involve the deletion of the numeric development size limits.

Main issue 3 – The degree to which Policy SS9 relating to New Roads represents a land use policy to be implemented through planning decision making.

4.17 Although paragraph 6.3.7 in the plan text and policy SS9 are stated as applying to any new road proposals they are clearly related primarily to the proposed Hereford bypass, as the heading to the section indicates. There is recognition within the policy that it could only apply to any part of the bypass which might pass through the parish but the 'red route' which has been chosen by Herefordshire Council as the preferred route would pass well to the east of the parish. Only a short section of the 'black route' would pass through it. At the moment further work on the project is paused for review. Furthermore, the SSPC have confirmed that they are not aware of any other proposals for new roads in parish in the plan period. It would seem, therefore, that although many of the provisions of Policy SS9 are clearly desirable to achieve a well-designed scheme the scope for implementation of the policy, as a policy for land

³⁵ Full reference ID 41-040-20160211

use within the parish, is very limited indeed and probably non-existent. Even should a short section of the road pass through the parish it would be unrealistic to expect different design standards to be applied to that section in isolation.

4.18 Although planning permission is required for the construction of a new road there are separate procedures under the Highways Acts for dealing with such matters as side road (closure) orders and the diversion of footpaths. Also, as the recent consultation procedures for the bypass have shown, consideration of alternatives routes is undertaken by the Highway Authority before any planning application is submitted.

4.19 The last part of the policy is of more general applicability but is not related to land use. Most works within the highway, such as the construction of speed bumps, are permitted development and would not come before the planning authority for consideration. Other matters mentioned are for consideration by the Herefordshire Council as Highway Authority.

4.20 In my view, policy SS9 is more in the nature of a community aspiration than a policy for the development and use of land which might realistically be implemented by the Local Planning Authority in determining a planning application. That is especially so given that there is little prospect that most of the policy provisions could be applied to land within the parish. The advice in the PPG³⁶ is that wider community aspirations may be included in neighbourhood plans but they should be clearly identifiable as they do not form part of the statutory development plan. Section 6.5 of the plan immediately preceding policy SS9 deals with infrastructure and includes reference to the (Hereford) western relief road. There is also a section headed 'Parish Council Action' which might be expanded to cover the suggested measures considered necessary to minimise the environmental impact of the bypass on the parish and dealing with other non-planning issues such as speed limits. It will be a matter for the Parish Council to liaise with the Highway Authority to achieve its aims.

Recommendation 2.

Delete Policy SS9 as a statutory policy and move it, along with the accompanying text, to the section 6.5 of the plan as a community aspiration dealing with those measures considered necessary to minimise any environmental impact on the parish.

³⁶Reference ID: 41-004-20190509

Main issue 4 – Whether the wording of individual policies is sufficiently clear and unambiguous to ensure that they may be used with confidence by decision-takers.

4.21 The policies in a neighbourhood plan once adopted ('made') become part of the statutory development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any 'determination', which includes a decision on a planning application, 'should be made in accordance with the plan unless material considerations indicate otherwise'. That is why it is good practice to ensure, as advised in the PPG³⁷, that any policies in a neighbourhood plan should be 'clear and unambiguous' and should be 'drafted with sufficient clarity (so) that a decision maker can apply it consistently and with confidence when determining planning applications'. If a policy does not meet that requirement as drafted the plan does not meet the relevant basic condition.

4.22 It is with that guidance in mind that I have reviewed the wording used in the policies of the plan and I raised a number of questions for clarification to provide an opportunity for the parish council to suggest alternative wording where I considered some uncertainty might arise. There are also some instances where similar issues are covered in more than one policy with slight variations in wording. That could cause uncertainty in decision-making. I deal with the individual policies in plan order below, covering the issues raised above on policies SS6 and 7. If a policy is not mentioned it signifies that it may be implemented by the planning authority 'with confidence' and that no amendments are needed to ensure that the plan meet the basic condition.

4.23. *Policy SS1*. For the most part this is a clear and well worded policy. However, the second paragraph includes a reference to developments to being 'small scale' with a definition in brackets which duplicates the fourth criterion in policy SS7. Not only is the overlap not necessary but it introduces a degree of ambiguity in that the provision only makes sense for housing schemes whereas policy SS1 refers more generally to 'development' not just for housing. The important point appears to be that the height, scale and massing of new buildings should be 'appropriate to the rural character of the parish'. It does not assist clarity to state that development should be 'small scale'.

³⁷ Reference ID: 41-041-20140306

Recommendation 3.

In the second paragraph of Policy SS1, delete the first part of the second sentence from 'Developments should ...' to, and including, the words '...wherever possible and' starting the sentence with 'New buildings should ...'

4.24 *Policy SS4.* This policy is seeking to apply a 'preserve or enhance' test which is appropriate only in conservation areas. Be that as it may, the second sentence in stating that the demolition of buildings or structures that contribute to the character and appearance of 'these areas' (the villages and rural settlements) 'will be resisted' goes beyond the powers available to the local planning authority other than for listed buildings or those within conservation areas, which does not apply to Stretton Sugwas.

4.25 In response to my written question on this point the parish council have suggested an alternative wording which provides the basis for a clear policy to be implemented through planning decision-making. I recommend accordingly.

4.26. Criterion 8 in the policy refers to accessibility standards for new housing. Government guidance on this matter is to be found in section 56 of the PPG. Although addressed to local planning authorities in preparing local plans the guidance must apply equally to a neighbourhood plan policy. Accessibility standards are set in Part M of the Building Regulations. A plan policy should state what proportion of new housing should be constructed to accessibility standards³⁸ based upon evidence from a local needs assessment. No evidence has been presented to suggest that all new housing in Stretton Sugwas should be capable of adaption to meet those with impaired mobility or wheelchair users. As drafted the policy has not had regard to the practice guidance on this matter. However, the first sentence of criterion 8, that 'developments should be accessible to all' is a desirable objective which applies equally to external access to buildings.

³⁸ PPG Reference ID: 56-008-20160519

Recommendation 4.

Delete the first paragraph of Policy SS4 and replace it by the following paragraph:-

Wherever practicable, development proposals should seek to retain and enhance traditional buildings and structures, especially those dating from previous centuries, which make a positive contribution to the villages and rural settlements of the area.

Delete the second sentence in criterion 8 of Policy SS4.

4.27 *Policy SS6.* There is a considerable overlap between policies SS6 and 7. That is especially so with the second paragraph in policy SS6 which duplicates the third criterion in policy SS7. In response to my question 4 the SSPC have accepted that, for clarity, the paragraph should be deleted from policy SS6. The SSPC have also accepted that the third and fourth paragraphs refer only to housing proposals and so would be more appropriately included in policy SS7.

4.28 The final paragraph in the policy sets out what might be called a 'brownfield first' approach. The first sentence has had regard to Government policy as expressed in paragraph 118 of the NPPF but, as the SSPC have accepted in response to my question 6a., it could be worded with greater clarity and I recommend the suggested alternative wording to achieve that. The second sentence, however, goes beyond current national policy by requiring a sequential approach. It could also prove to be a significant constraint on otherwise acceptable development. Furthermore, the SSPC have not identified any further brownfield sites within the settlement boundaries nor have they provided any evidence to support the three year limitation. The second sentence should be deleted for the plan to meet the relevant basic conditions.

Recommendation 5.

Delete the second paragraph of Policy SS6 and incorporate the third and fourth paragraphs within a revised Policy SS7.

Delete the second sentence in the fifth paragraph of Policy SS6 and amend the first sentence to read as follows:-

Developments are encouraged to prioritise the re-development and re-use of existing brownfield sites and buildings, provided the proposed site or buildings do not have a high environmental value such as for biodiversity.

4.29 *Policy SS7.* My written questions 7 to 15 were to seek clarification of various aspects of this policy. Questions 11 to 13 inclusive dealt with the limitation on the size of developments which I consider as the second main issue in paragraphs 4.12 to 16 above. There is then an overlap between the first criterion referring to the size of a site and the last sentence in criterion 3. The SSPC have suggested re-wording the first criterion and the deletion of the second sentence in the third criterion. With the other amendments discussed below, the first criterion will become of critical significance in achieving control on the size and character of new housing development. For the reasons given above I recommend that the policy should no longer set a specific numerical limit on the size of any one development but provide flexibility through the application of the first criterion.

4.30 I queried the wording of part A of the second criterion because the whole policy is setting out criteria only for the development of new housing sites. There might be disturbance to existing residents from noise or odours during the construction phase, which may be mitigated by conditions on any planning permission, but otherwise would be an environmental health issue. As I am advised by the SSPC that the policy is intended to dealing with permanent, rather than temporary, effect on residential amenities arising from development only loss of light or traffic movements are relevant planning considerations. I also consider that a development could 'adversely affect' such amenity without it being so serious that it would warrant the refusal of planning permission. As currently worded the policy could pose an unduly onerous limitation on housing development contrary to Government policy. I recommend the words 'significantly harm'.

4.31 The SSPC, in response to my question 9, have suggested a rewording of criterion 2C which would retain the words 'increase significantly the population of the settlement'. However, at application stage, it is the size of the development in terms of the number and type of dwelling proposed which has to be assessed. Any increase in population is a product of that and is difficult to assess in advance. I consider that matter may be covered by a reworded first criterion which should refer to the development respecting the size of the settlement in terms of its scale and the character of that settlement. The effect on local services and infrastructure is a relevant planning consideration although it is worth noting that

an important aspect of sustainable development in rural areas is in supporting local services³⁹. Any additional infrastructure required for, and directly related to development, may be secured through section 106 obligations subject to statutory tests⁴⁰, or through a Community Infrastructure Levy regime if applicable.

4.32 Criterion 2D, in providing that new housing should not have an 'adverse' impact on the local road network, does not fully reflect national policy as stated in paragraph 109 of the NPPF and is likely to lead to uncertainty in decision-making. The national policy provides that, for permission to be refused on highway grounds, there would need to be an 'unacceptable' impact on highway safety or the 'residual cumulative impacts on the network would be severe'. That would apply only should an 'adverse' impact on the network not be capable of satisfactory mitigation, which needs to be recognised in the policy wording for adequate regard to be had for national policy.

4.33 With the amendments discussed in paragraph 4.29 above and under the second main issue, the third criterion in policy SS7 would no longer serve any useful purpose and should be deleted. The reference to the need to 'maintain the local character of small and fragmented groups of houses and smallholdings' is not policy in itself but a justification of the policy approach in seeking to achieve development in the form of 'smaller groups and clusters'. It would, therefore, be more appropriately included in the supporting text. I also recommend revised wording for the fourth criterion for clarity. A similar consideration applies to the reference, in the fourth paragraph of policy SS6, to road traffic noise on the A438 at Swainshill.

4.34. The sixth criterion in policy SS7 refers to the mix of housing and sizes 'to meet local needs'. Nowhere in the plan is there any reference to where the plan user might find a definition of the term 'local needs' or any evidence to provide clear guidance on what the policy is likely to require. The only evidence to which I have been referred in response to my question 15 is in the G L Hearn study produced at HMA level to support local plan policies. I mention it in paragraph 4.15 above. The study is now somewhat dated and is likely to be only of very limited value in determining an appropriate mix of house types and sizes to meet

³⁹ NPPF, paragraph 78; HCS Policies SS2 and RA2

⁴⁰ NPPF paragraph 56

needs at a parish level. I therefore recommend the addition of the words 'in accordance with an up-to-date local housing needs assessment'. Without it the policy is not capable of effective implementation.

4.35 Recommendation 6 below sets out a revised policy SS7 in full, for completeness. With some amended wording, it incorporates paragraphs four and five of policy SS6 in accordance with recommendation 5. The reasons for revisions are as stated above in order that the plan, including this policy, meets the basic conditions.

Recommendation 6

Replace Policy SS7 by the following revised policy:-

All sites proposed for housing development within the settlement boundaries of Stretton Sugwas and Swainshill will be required to meet the following criteria:

- 1. The proposed development should be well related to the settlement within which it is located and respect the size of that settlement in terms of its scale and character;**
- 2. proposed development should not be of such a scale that it would:**
 - a. significantly harm neighbours' enjoyment of their homes and gardens including through loss of light or traffic movements;**
 - b. have a detrimental effect on the openness of the countryside;**
 - c. lead to an unacceptably adverse impact on existing local services and infrastructure;**
 - d. have such an adverse impact on the local road network that it cannot be satisfactorily mitigated;**
- 3. proposals should demonstrate physical and visual linkages to the existing built-up area;**
- 4. any proposals for new development along the A438 at Swainshill should include a road traffic noise risk assessment taking into account the design and layout of the site:**
- 5. the layout and design of housing schemes should provide for the development to be broken into small groups of houses or clusters of up to five properties wherever possible;**
- 6. development should seek to reduce the environmental impacts of traffic and transport with layouts to facilitate walking and cycling;**
- 7. schemes should include a mix of housing types and sizes to meet local needs as identified in an up-to-date local housing needs assessment.**

Recommendation 7.

Include a reference to road traffic noise impacting development along the A438 at Swainshill as part of the justification for criterion 4 in revised policy SS7 within the explanatory text for the policy. Also, include reference to the maintenance of the local character of small and fragmented groups of houses and smallholdings as justification for criterion 5 in the revised policy.

4.36 *Policy SS8.* There is an error in the first paragraph of the policy and in paragraph 6.4.11 of the plan text in that that the former council housing estate at Roman Way and the group of houses at Morningside are shown on Map 4 as being within the settlement boundary for Stretton Sugwas. By definition they are not within the countryside and policy SS8 does not apply to them.

4.37 The SSPC have clarified in response to my question 16 that the last paragraph in this policy should read 'genuine local need for affordable housing'. That is because the paragraph reads as an additional provision to the first paragraph not a qualification of it. Policy H2 in the HCS applies only to affordable housing 'exception' sites and so there would need to be particular local need for such housing in a location other than as described in the first paragraph. The SSPC have agreed that, for clarification, the references to market housing and the HCS policy should be deleted.

Recommendation 8.

Replace the word 'and' on the first line of Policy SS8 by 'for' and delete all of the first sentence after '... affordable housing,'.

Section 5 - Formal conclusion and overall recommendations including consideration of the referendum area

Formal Conclusion

5.01 I conclude that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in Schedule 4B to the Town and Country Act 1990 (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

Overall Recommendation A.

I recommend that the modifications recommended in this report be made to the Stretton Sugwas Neighbourhood Development Plan 2019 - 2031 and that the draft plan as modified be submitted to a referendum.

The referendum area

5.02 As I have recommended that the draft plan as modified be submitted to a referendum I am also required under s10(5)(a) of Schedule 4B to the Town and Country Planning Act 1990 to recommend whether the area for the referendum should extend beyond the neighbourhood area.

5.03 Although there have been no representations made which seek an extension of the referendum area, as reported in paragraph 2.01 above, a change to the parish boundary came into effect on 1st April 2019. On that basis it seems sensible and desirable that all those who reside within the parish as now defined should have the right to a vote on the plan. Neither the Stretton Sugwas Parish Council nor the Herefordshire Council have raised objection to the proposal. I recommend accordingly.

Overall Recommendation B.

The area for the referendum should be extended to cover the parish of Stretton Sugwas as constituted on 1st April 2019.

Signed:

John R Mattocks

JOHN R MATTOCKS BSc DipTP MRTPI FRGS

24 October 2019

APPENDIX

Abbreviations used in this report:

'the Act'	The Town and Country Planning Act 1990, as amended
HC	Herefordshire Council
HCS	Herefordshire Local Plan – Core Strategy (CS)
HMA	Housing Market Area
HRA	Habitats Regulations Assessment
EU	European Union
LPA	Local Planning Authority
NDP	Neighbourhood Development Plan (generic term)
NPPF	The National Planning Policy Framework ('the Framework')
PPG	(national) Planning Practice Guidance
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SHLAA	Strategic Housing Land Availability Assessment
SSNDP	Stretton Sugwas Neighbourhood Development Plan ('the Plan')
SSPC	Stretton Sugwas Parish Council ('the PC')
'the 2012 Regulations'	The Neighbourhood Development Plans (General) Regulations 2012 (any reference to a Regulation number is to these Regulations)