

Little Dewchurch Parish Council

Little Dewchurch Neighbourhood Development Plan

A Report to Herefordshire Council of the Independent
Examination of the Little Dewchurch Neighbourhood
Development Plan

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Overall Finding

This is the report of the Independent Examination of the Little Dewchurch Neighbourhood Development Plan. The plan area is the entire Little Dewchurch Parish area. The Plan period runs until 2031. The Neighbourhood Plan includes nine policies relating to the development and use of land.

This report finds that subject to specified modifications the Neighbourhood Plan meets the basic conditions and other requirements to proceed to a local referendum based on the Plan area.

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”¹
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Little Dewchurch Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Little Dewchurch Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the Little Dewchurch Neighbourhood Area which was formally designated by Herefordshire Council (the Local Planning Authority) on 5 September 2013.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement, and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to Herefordshire Council. Herefordshire Council has submitted the Neighbourhood Plan to me for independent examination.

Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan.² The report makes recommendations to Herefordshire Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. Herefordshire Council will decide what action to take in response to the recommendations in this report.
6. Herefordshire Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area

¹ Paragraph 183 National Planning Policy Framework (2012)

² Paragraph 10 Schedule 4B Town and Country Planning Act 1990

should be extended, and what modifications, if any, should be made to the submission version plan. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will be 'made' by Herefordshire Council. If 'made' the Neighbourhood Plan will come into force and subsequently be used in the determination of planning applications and decisions on planning appeals in the plan area.

7. I have been appointed by Herefordshire Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and Herefordshire Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Neighbourhood Plan examiner. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.
8. As independent examiner I am required to produce this report and must recommend either:
 - that the Neighbourhood Plan is submitted to a referendum, or
 - that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
 - that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.
9. I make my recommendation in this respect and in respect to any extension to the referendum area,³ in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.⁴
10. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.⁵ The Guidance states "*it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.*" The examiner has the ability to call a hearing for the purposes of receiving oral

³ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁴ Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

⁵ Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary I proceeded on the basis of written representations.

Basic conditions and other statutory requirements

11. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.⁶ A neighbourhood plan meets the basic conditions if:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the 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 of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
- 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.⁷

12. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.⁸ All of these matters are considered in the later sections of this report titled ‘The Neighbourhood Plan taken as a whole’ and ‘The Neighbourhood Plan policies’.

13. In addition to the basic conditions and Convention rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning

⁶ Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

⁷ Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

⁸ The Convention rights has the same meaning as in the Human Rights Act 1998

and Compulsory Purchase Act 2004.⁹ I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 which are made pursuant to the powers given in those sections.

14. The Neighbourhood Plan relates to the area that was designated by Herefordshire Council as a neighbourhood area on 5 September 2013. The map on Page 6 of the Submission Version of the Neighbourhood Plan shows the Neighbourhood Area is defined by the Little Dewchurch Parish boundary. The Neighbourhood Plan does not relate to more than one neighbourhood area,¹⁰ and no other neighbourhood development plan has been made for the neighbourhood area.¹¹ All requirements relating to the plan area have been met.
15. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;¹² and the Neighbourhood Plan does not include provision about excluded development.¹³ I am able to confirm that I am satisfied that each of these requirements has been met.
16. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.¹⁴ The front cover of the Regulation 16 Version of the Neighbourhood Plan confirms the Plan period is 2011 to 2031 (the same period as the Herefordshire Local Plan Core Strategy).
17. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.¹⁵ It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan. I have been appointed to examine whether the submitted Neighbourhood Plan meets the basic conditions and Convention rights, and the other statutory requirements.
18. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include

⁹ In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

¹⁰ Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

¹¹ Section 38B (2) Planning and Compulsory Purchase Act 2004

¹² Section 38A (2) Planning and Compulsory Purchase Act 2004

¹³ Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B (1)(b) Planning and Compulsory Purchase Act 2004

¹⁴ Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

¹⁵ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.

19. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans are a reflection of thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.
20. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the basic conditions and the other requirements I have identified.¹⁶

Documents

21. I have given consideration to each of the following documents in so far as they have assisted me in considering whether the Neighbourhood Plan meets the basic conditions and other requirements:

- Little Dewchurch Parish Regulation 16 Draft Neighbourhood Development Plan 2011-2031 September 2016
- Little Dewchurch Parish Neighbourhood Development Plan 2011-2031 Basic Conditions Statement September 2016
- Little Dewchurch Neighbourhood Area Environmental Report August 2016
- Little Dewchurch Neighbourhood Area Habitats Regulations Assessment February 2016
- Little Dewchurch Neighbourhood Area Habitats Regulations Assessment Addendum August 2016
- Little Dewchurch Neighbourhood Development Plan Consultation Statement approved by Little Dewchurch Parish Council March 2016 and reviewed before submission in September 2016
- Little Dewchurch Policies Map
- Little Dewchurch Village Policies Map
- Documents supporting the Neighbourhood Development Plan available on the Little Dewchurch Parish Council website

¹⁶ See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

- Representations received during the Regulation 16 publicity period
- Herefordshire Local Plan Core Strategy 2011-2031 (and Appendices) Adopted October 2015
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Department for Communities and Local Government Permitted development for householders' technical guidance (April 2014) [*In this report referred to as the Permitted Development Guidance*]
- Department for Communities and Local Government Planning Practice Guidance web-based resource (first fully launched 6 March 2014) [*In this report referred to as the Guidance*]
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004 (as amended)
- Localism Act 2011
- Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations*]

Consultation

22. The submitted Neighbourhood Plan is accompanied by a Consultation Statement which details the process undertaken in the preparation of the Neighbourhood Plan. I outline here a number of the main stages of consultation in order to acknowledge the comprehensive and inclusive approach adopted.

23. A Neighbourhood Development Plan Steering Group comprising Parish Councillors and independent parishioners has led the plan preparation process since first meeting in November 2013. Meetings have been open to the public and progress has been reported to the Parish Council.

24. An important element of the consultation effort were questionnaires delivered throughout the Plan area in July 2014 and in September 2015. Events were held to present the analysis of results and invite comment. Other consultation occurred at a Village Fun Day in August 2015.

25. Pre-submission consultation in accordance with Regulation 14 was undertaken in the period 28 March to 16 May 2016. Publicity included

use of notice boards and the village Facebook page, and a public meeting was held. A total of 19 submissions were made during this period. The Neighbourhood Plan Consultation Statement sets out comments received; the Parish Council response; and where appropriate, amendments to the Neighbourhood Plan.

26. The final draft of the Neighbourhood Plan was approved by the Parish Council on 20 September 2016 and has been submitted to Herefordshire Council. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 publicity period between 5 October and 16 November 2016. A total of 10 representations were submitted, which I have taken into consideration in preparing this report, even though they may not be referred to in whole, or in part. A further representation was received after the period for representations had closed. I have not taken this representation into consideration.

27. The Coal Authority, Natural England, the Homes and Communities Agency, and Welsh Water have no specific comments. The Environmental Health (Air, Land and Water Protection) Service of Herefordshire Council has advised a number of sites referred in the Neighbourhood Plan have historically been used as orchards where development proposals should consider potential contamination. The Housing Development Officer of Herefordshire Council has praised the provision for affordable housing. Historic England is supportive of both the vision and objectives set out in the Neighbourhood Plan and consider that it takes a suitably proportionate approach to the historic environment of the Parish. National Grid has identified the 1465 Ross-On-Wye-Luggbridge High Pressure Pipeline falls within the Neighbourhood Plan area but state this gas distribution pipeline does not interact with any of the proposed development sites. I have considered matters raised in the representations as appropriate when preparing the section of my report that examines the Neighbourhood Plan as a whole, and the section that examines the policies of the Neighbourhood Plan.

28. In a consultation, Government had put forward a question as follows *“Do you agree with the introduction of a new statutory requirement (basic condition) to test the nature and adequacy of the consultation undertaken during the preparation of a neighbourhood plan or order? If you do not agree is there an alternative approach that you suggest that can achieve our objective?”* The published Government response to the consultation states *“We do not intend to take forward the proposals*

*to introduce a new basic condition...*¹⁷ The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which –

- a) Contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- b) Explains how they were consulted;
- c) Summarises the main issues and concerns raised by the persons consulted; and
- d) Describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.¹⁸

29. The Consultation Statement includes information in respect of each of the requirements set out in the Regulations. On this basis, I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Steering Group that has prepared the plan has taken great care to ensure stakeholders have had considerable opportunity to influence the plan content.

The Neighbourhood Plan taken as a whole

30. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and human rights requirements; has regard to national policies and advice contained in guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the development plan for the area. Each of the plan policies is considered in turn in the section of my report that follows this.

Consideration of Convention rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and 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

¹⁷ Department for Communities and Local Government Neighbourhood Planning Government response to consultation December 2014 ISBN 978-1-4098-4416-7

¹⁸ Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

31. The Basic Conditions Statement states *“The Neighbourhood Plan has regard to the fundamental rights and freedom guaranteed under the European Convention on Human Rights and complies with the Human Rights Act 1998.”* I have given consideration to the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).¹⁹ I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. Although no equalities impact assessment has been undertaken the submission draft of the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics.
32. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council to submit to Herefordshire Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.
33. The objective of EU Directive 2001/42²⁰ is *“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”* The Neighbourhood Plan falls within the definition of ‘plans and programmes’²¹ as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.²²
34. Herefordshire Council issued a Screening Opinion on 2 August 2013 that concluded the Neighbourhood Plan will require further environmental assessment for Strategic Environmental Assessment. Whilst the Screening Opinion predated the designation of the Neighbourhood Area this counterintuitive timing does not represent a significant anomaly given the outcome of the screening, and subsequent production of an Environmental Report.

¹⁹ The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

²⁰ Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

²¹ Defined in Article 2(a) of Directive 2001/42

²² Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

35. The submission documents include an Environmental Report dated August 2016. This report confirms a Scoping Report had been made available to the statutory bodies for consultation from 18 June to 27 July 2015. The Environmental Report states responses from Natural England and English Heritage were incorporated where relevant. The draft Environmental Report was subject to consultation alongside the Pre-Submission Neighbourhood Plan, both of which were published for consultation with the statutory bodies as well as the general public. The final Environmental Report was published alongside the Submission Neighbourhood Plan document.
36. The Environmental Report sets out the assessment framework used to assess the sustainability performance of the Neighbourhood Plan. The Neighbourhood Plan objectives, options, and policies have been appraised with a generally positive outcome. The Environmental Report confirms *“None of the NDP policies are considered to be in direct conflict with or propose greater levels of growth and development than strategic policies contained in the Local Plan (Core Strategy) which themselves have undergone a full Sustainability Appraisal”*.
37. There is a need to consider whether the SEA Report generates and assesses alternatives for a reasonable range of plan issues, and secondly for any given issue, whether the range of alternatives considered is reasonable. The method adopted includes assessment of nine options and four spatial direction of development options. Generation of alternatives for every conceivable issue and option is not a requirement of the EA Regulations and could be detrimental to efficient plan making; insufficiently focussed on the important issues within the specific plan area; and not well suited to community led plan making where processes benefit from being proportionate, transparent and easily understood. The EA Regulations acknowledge SEA is plan context dependent in terms of taking into account the objectives and geographical scope of a neighbourhood plan. In *Gladman Developments Ltd v Aylesbury Vale DC [2014] EWHC 4323 (Admin)* it was confirmed that a report will satisfy the requirements of the Implementing Regulations, and hence the Directive, if the information included in the report is that which is *“reasonably required to evaluate the likely significant effects of the plan or programme and reasonable alternatives taking account the objectives and the geographical scope of the plan or programme.”* The SEA Report includes identification, description and evaluation of the likely significant effects on the environment of reasonable alternatives.

38. Alternatives have been assessed to the same level of detail against a consistent set of assessment criteria. Paragraph 8 of Schedule 2 to the EA Regulations requires an outline of the reasons for selecting the alternative dealt with. The explanation of why the preferred alternative was selected is presented in paragraphs 5.3 to 5.6 inclusive. The explanation is brief and not well developed, but is capable of description as an outline. This requirement has been met in respect of the Neighbourhood Plan. The requirement for the Environmental Report to include a non-technical summary has also been met.
39. The Guidance states “*The strategic environmental assessment should only focus on what is needed to assess the likely significant effects of the neighbourhood plan proposal. It should focus on the environmental impacts which are likely to be significant. It does not need 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 neighbourhood plan.*”²³ I consider likely significant effects have been assessed. I am satisfied that the level of consideration of alternative strategies in the SEA is appropriate for the content of the plan and meets the requirements of the SEA Directive and the Regulations. It is confirmed in paragraph 7.3 of the Environmental Report that Herefordshire Council will monitor outcomes from the NDP policies. I am satisfied that the requirements in respect of Strategic Environmental Assessment have been met.
40. Herefordshire Council issued a Screening Notification on 2 August 2013 stating the River Wye runs close to the borders of Parish boundary (less than one kilometre away) and therefore a European Site, River Wye (including River Lugg) Special Area of Conservation (SAC), will need to be taken into account in the future Little Dewchurch Neighbourhood Plan, and the Neighbourhood Plan will require further environmental assessment for Habitats Regulations Assessment. As previously noted in respect of Strategic Environmental Assessment, whilst the Screening Notification predated the designation of the Neighbourhood Area this counterintuitive timing does not represent a significant anomaly given the outcome of the screening, and subsequent production of a Habitats Regulations Assessment.
41. A Habitats Regulations Assessment (HRA) was undertaken in February 2016 concluding the Neighbourhood Plan will not have a likely significant effect on the River Wye SAC. An Addendum Report dated August 2016 considered whether the conclusions of the earlier

²³ National Planning Policy Guidance Revision date 09 02 2015 Paragraph 30 Reference ID:11-030-20150209

report were affected by revisions to policies of the Neighbourhood Plan. The Addendum Report states *“the earlier conclusion that the Little Dewchurch NDP will not have a likely significant effect on the River Wye SAC remains valid.”*

42. I conclude the Neighbourhood Plan meets the requirements of the EU Habitats Regulations. I have not seen anything that suggests the Neighbourhood Plan will have a significant effect on a European offshore marine site.

43. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.

44. I conclude that the Neighbourhood Plan:

- is compatible with the Convention rights
- does not breach, and is otherwise compatible with, EU obligations
- 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

45. The Guidance²⁴ states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations (including obligations under the Strategic Environmental Assessment Directive):

- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).

Consideration whether having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan; and whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development

²⁴ National Planning Policy Guidance paragraph 031 reference ID:11-031-20150209

46. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans²⁵ which requires plans to be “*consistent with national policy*”.
47. Lord Goldsmith has provided guidance²⁶ that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”
48. The Basic Conditions Statement seeks to demonstrate that the Neighbourhood Plan has been prepared with regard to national policies as set out in the Framework. A Table is presented seeking to demonstrate the regard the Neighbourhood Plan has to listed paragraphs of the Framework. A statement is also made that the Neighbourhood Plan is mindful of the Guidance.
49. The Neighbourhood Plan includes a positive Vision that identifies nine specific dimensions of the future that is envisaged. These dimensions include the building of new homes, and enhancement of facilities and services. The vision is underpinned with eight objectives that are also positively worded and which will be pursued to deliver the Vision for the Plan area.
50. The Neighbourhood Plan taken as a whole seeks to shape and direct development. This is precisely the role national policy envisages for a neighbourhood plan.
51. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that need to “*have regard to*” national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has

²⁵ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

²⁶ The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the Lord’s Grand Committee on 6 October 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 October 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.*”

52. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision-taking.²⁷ The Guidance states, “*This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions*”²⁸.

53. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.

54. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes a Table that seeks to demonstrate the economic, social and environmental attributes of the Neighbourhood Plan.

55. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. The Neighbourhood Plan seeks to contribute to sustainable development by:

²⁷ Paragraph 14 National Planning Policy Framework 2012

²⁸ National Planning Policy Guidance (Ref ID:41-072-20140306)

- Conserving and enhancing the natural environment and protecting and enhancing heritage assets;
- Designating four areas as Local Green Space;
- Directing development to sites within a settlement boundary;
- Making provision for at least 35 new dwellings in the Plan period;
- Avoiding increased flood risk;
- Promoting good quality design in new developments;
- Supporting appropriate employment growth;
- Supporting infrastructure improvements;
- Promoting renewable energy production;
- Protecting existing local community facilities and supporting provision of appropriate new community facilities.

56. Subject to my recommended modifications of the Submission Plan including those relating to specific policies, as set out later in this report, I find that the Neighbourhood Plan, taken as a whole, has regard to national policies and advice contained in guidance issued by the Secretary of State and it is therefore appropriate to make the plan. I have also found the Neighbourhood Plan contributes to the achievement of sustainable development.

Consideration whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

57. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.²⁹ “*Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them.*”

²⁹ Paragraph 16 National Planning Policy Framework 2012

*Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies”.*³⁰

58. The Guidance states, “A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.”³¹
59. In this independent examination, I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). Herefordshire Council has informed me that the Development Plan applying in the Little Dewchurch neighbourhood area and relevant to the Neighbourhood Plan comprises the Herefordshire Local Plan Core Strategy 2011-2031 adopted on 16 October 2015, and that the whole of the Core Strategy is considered to be the strategic policy of the Development Plan.
60. There is no requirement for a neighbourhood plan to include particular types of development and land use policies, nor is there any requirement for a neighbourhood plan to deal with any particular development and land use issues.
61. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. In considering a now repealed provision that “a local plan shall be in general conformity with the structure plan” the Court of Appeal stated “the adjective ‘general’ is there, to introduce a degree of flexibility.”³² The use of ‘general’ allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.
62. The Guidance states, “When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:
- whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with

³⁰ Paragraph 184 National Planning Policy Framework 2012

³¹ National Planning Policy Guidance (ID: 41-04720 140306)

³² Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P & CR 31

- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy*
- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy*
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.*³³

63. My approach to the examination of the Neighbourhood Plan policies has been in accordance with this guidance. If there were to be a conflict between a policy in a neighbourhood plan and a policy in a local plan the conflict must be resolved in favour of the policy contained in the last of those plans to become part of the Development Plan.³⁴

64. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole, and each of the plan policies below. In *BDW Trading Limited, Wainholmes Developments Ltd v Cheshire West & Chester BC* [2014] EWHC1470 (Admin) it was held that the only statutory requirement imposed by basic condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted development plan as a whole. It is not necessary to demonstrate an absence of tension between each policy of the Neighbourhood Plan and each strategic policy of the Development Plan. I have concluded the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

The Neighbourhood Plan policies

65. The Neighbourhood Plan includes 9 policies as follows:

Policy LD ENV1: A Valued Natural and Built Environment

Policy LD ENV2: Local Green Spaces

³³ National Planning Policy Guidance (ID ref: 41-074 201 40306)

³⁴ Section 38(5) Planning and Compulsory Purchase Act 2004

Policy LD SB1: Settlement Boundary

Policy LD H1: Housing Delivery

Policy LD H2: Housing Design Criteria

Policy LD E1: Rural Employment

Policy LD INF1: Local Infrastructure

Policy LD RE1: Renewable Energy

Policy LD CF1: Community Facilities

66. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.” “Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”*³⁵
67. The Guidance states *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”*
68. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.*
69. *“A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in*

³⁵ Paragraphs 184 and 185 National Planning Policy Framework 2012

*accordance with the development plan, unless material considerations indicate otherwise.*³⁶

70. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is made they will be utilised in the determination of planning applications and appeals, I have examined each policy in detail:

Policy LD ENV1: A Valued Natural and Built Environment

71. This policy seeks to establish that the highest priority should be given to the conservation and enhancement of the Wye Valley Area of Outstanding Natural Beauty, and that in addition, development proposals should protect named components of the natural and built environment.

72. The policy includes reference to hedgerows. The Hedgerows Regulations 1997 establish a balanced regime to protect hedgerows in specified locations. It is appropriate for the Neighbourhood Plan to seek to introduce a policy approach to apply in the context of development proposals.

73. The policy includes the word “*protecting*” in relation to listed buildings and heritage assets. I have recommended use of the word “*conserving*” so that the policy more clearly reflects the balanced approach to proposals leading to substantial harm, and less than substantial harm, to designated and non-designated heritage assets set out in the Framework.

74. I also recommend minor modifications to improve clarity and to ensure that the policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

75. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment, and conserving and enhancing the

³⁶ See section 38(6) of the Planning and Compulsory Purchase Act 2004.

historic environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 1:

In Policy LD ENV1

- **Replace the first paragraph with “To be supported development proposals that impact on the Wye Valley Area of Outstanding Natural Beauty must demonstrate highest priority has been given to the conservation and enhancement of the amenity, visual quality, natural beauty and wildlife of the area.”**
- **in the second paragraph after “need to” insert “demonstrate that they”**
- **in the second paragraph, penultimate bullet point, delete “Protecting” and insert “Conserving”**
- **in the third paragraph delete “Ensure that any development is” and insert “Development proposals must demonstrate that they are”, and delete “is of” and insert “are of”**

Policy LD ENV2: Local Green Spaces

76. This policy seeks to establish protection for four named areas of open space.

77. The policy seeks to introduce a regime to resist development that does not reflect the approach set out in the Framework. I recommend a modification in this respect.

78. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. As recommended to be modified the policy has regard to the components of the Framework concerned with the designation of Local Green Space. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 2:

Replace Policy LD ENV2 with “The following areas identified on Plan 1 are designated as Local Green Space where new development is ruled out other than in very special circumstances, for example, it is essential to meet specific

necessary utility infrastructure needs and no alternative feasible site is available:

- **The village green**
- **The recreational playing field**
- **School playing field**
- **Churchyard”**

Policy LD SB1: Settlement Boundary

79. This policy seeks to establish a settlement boundary for the village of Little Dewchurch. Development proposals will be directed to appropriate sites within this boundary. The policy also seeks to establish the circumstances where new homes will be permitted outside the defined settlement boundary.

80. Policy RA2 of the Herefordshire Local Plan Core Strategy 2011-2031 supports sustainable housing growth in or adjacent to one hundred and nineteen settlements that include Little Dewchurch. Paragraph 4.8.23 of the Core Strategy envisages settlement boundaries will be defined in either Neighbourhood Plans or in the Rural Areas Sites Allocation DPD. The establishment of a Little Dewchurch Settlement Boundary is consistent with this strategic policy context.

81. A representation from the Herefordshire Council Strategic Planning Team states *“With the fairly tightly drawn settlement boundary, it is difficult to ascertain whether enough infill schemes are going to come forward in the plan period to supplement the allocated site and meet the growth target.”* Although this representation was directed to Policy LD H1 it is relevant to Policy LD SB1 and in particular whether the settlement boundary as drawn is appropriate.

82. The Herefordshire Core Strategy identifies Little Dewchurch as one of the settlements that will be the main focus of proportionate housing development in the rural areas. Policy RA1 of the Core Strategy identifies an indicative housing growth target of 18% in the Hereford Rural Housing Market Area. The Neighbourhood Plan states that this target represents 35 dwellings to be delivered in Little Dewchurch. The Neighbourhood Plan sets out in Policy LD H1 a statement of how the growth target for new dwellings is to be met and Appendix L lists completions 2011-2016, and commitments at April 2016. After the completions and commitments are taken into account the Neighbourhood Plan states 22 dwellings are to be provided. As the land west of Field Fare allocated for residential development in Policy

LD H1 would appear capable of accommodating approximately 20 dwellings then it is a reasonable expectation that approximately two other dwellings, or more, will be developed on other sites within the proposed settlement boundary, or as new homes outside the settlement boundary in accordance with the latter part of Policy LD SB1. I am satisfied the settlement boundary defined on Plan 1 includes sufficient development opportunities to enable the sustainable growth of Little Dewchurch, and meets the basic conditions.

83. The final part of Policy LD SB1 seeks to establish a policy approach to the determination of proposals for new homes outside the defined settlement boundary. Whilst the approach to proposals for new homes outside the settlement boundary requires reference to, and merely duplicates, policies of the Herefordshire Core Strategy, this does achieve a concise and clear policy statement that has regard for the approach set out in the Framework which states, *“Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- *the exceptional quality or innovative nature of the design of the dwelling. Such a design should: – be truly outstanding or innovative, helping to raise standards of design more generally in rural areas; – reflect the highest standards in architecture; – significantly enhance its immediate setting; and – be sensitive to the defining characteristics of the local area.”*

84. With regard to the issue of decision making the Framework states *“the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise”*. The material considerations at the time of determination of a future planning application are unknown and therefore cannot be dismissed through a policy that states development *“will only be permitted”*. I have recommended use of the term *“will only be supported”* as this does not prevent consideration of material considerations at the time of determination of planning proposals.

85. The term “*appropriate sites*” is imprecise and introduces uncertainty. The term “*will be directed to*” does not provide clarity regarding the determination of development proposals. The term “*in accordance with other relevant policies of this Plan*” is unnecessary as each policy of the Neighbourhood Plan should be self-contained. The term is also imprecise as it is not clear which policies are relevant. I recommend a modification in these respects so that the policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.
86. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes, and conserving and enhancing the natural environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 3:

Replace the first two paragraphs of Policy LD SB1 with “Development proposals will be supported within the Little Dewchurch settlement boundary defined on Plan 1.”
In the final paragraph delete “permitted” and insert “supported”

Policy LD H1: Housing Delivery

87. This policy seeks to establish support for a minimum of 35 new homes over the Plan period. The Policy includes an explanation that new homes include completions since 2011; commitments; and windfall provision that will occur within, and under specified circumstances outside, the defined settlement boundary; as well as on the allocated site west of Field Fare. I note the policy does not place any cap on the number of dwellings that can be developed, and that affordable housing needs will be provided in accordance with Policy H1 of the Core Strategy.
88. The policy seeks to establish support for new housing proposals on suitable sites within the defined settlement boundary. This element of the Policy is imprecise in its use of the word “*suitable*”, and unnecessarily duplicates Policy LD SB1 of the Neighbourhood Plan, which is counter to the achievement of a practical framework for

decision making on planning applications as required by paragraph 17 of the Framework. I have recommended a modification in this respect.

89. In my consideration of Policy LD SB1 I have referred to the representation from the Herefordshire Council Strategic Planning Team which states *“With the fairly tightly drawn settlement boundary, it is difficult to ascertain whether enough infill schemes are going to come forward in the plan period to supplement the allocated site and meet the growth target.”* In my consideration of Policy LD SB1 I have explained why I have concluded that there is a reasonable expectation that sufficient numbers of dwellings will be developed so that the Core Strategy target will be met.
90. The Policy also allocates land west of Field Fare for residential development. Specification of a scheme of 20 dwellings is inappropriately precise and could mean that a sustainable development of an alternative number of dwellings could not be supported. Such an approach would not have sufficient regard for the Framework. I recommend use of the term “approximately” in order to achieve necessary flexibility in this respect. The final part of the policy seeks to establish that the scheme proposed to be developed on land west of Field Fare should financially contribute to specified community benefits. I have recommended deletion of specific reference to the enhancement of road safety *“through the village”* as it is unclear how this directly relates to the proposed development. I have also recommended reference to the issue of viability in accordance with paragraph 173 of the Framework.
91. Whilst the policy includes references to, and merely duplicates, policies of the Herefordshire Core Strategy, this does achieve a concise and clear policy statement that has regard for the approach set out in the Framework. I recommend a minor modification to replace *“met”* with “meet” in order to improve clarity so that the policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.
92. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. Subject to the modification recommended, this policy meets the basic conditions.

**Recommended modification 4:
In Policy LD H1**

- delete “The Plan will provide for” and insert “Development proposals will be supported that provide”
- delete the second sentence
- delete “met” and insert “meet”
- insert “approximately” before “20”
- after “expected” insert “, subject to viability considerations,”
- delete “through the village”

Policy LD H2: Housing Design Criteria

93. This policy seeks to establish location and design criteria that housing proposals will need to meet. The policy concludes with a statement that relates to all development. From the policy title and supporting text it is evident the intention is that the policy relates to housing development only, and indeed justification is limited to that type of development.

94. With regard to the issue of decision making the Framework states “*the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise*”. The material considerations at the time of determination of a future planning application are unknown and therefore cannot be dismissed through a policy that states development “*will not be permitted*”. I have recommended a modification so that the policy uses the term “will be supported” so that the basis of decision making on planning applications is clarified.

95. A representation submitted by the Environmental Health Service of Herefordshire Council recommends the Policy should be amended to read “*Be of a scale and form which meets local housing need, complements the character of the area and does not result in a loss of amenity for existing residents and result in inappropriate development of residential gardens; ...and be suitably located such that the amenity of future occupiers is protected.*” The representation states that this recommendation is “*to ensure that the occupants of any new housing are not adversely affected by existing business activities.*” The term “*inappropriate development of residential gardens*” is imprecise and does not offer a basis for determination of planning applications. It is not possible to “*ensure*” occupants of new housing will not be

adversely affected by existing business activities. I have recommended a modification so that issues of future amenity of occupiers of a proposed development, and of amenity of existing residents, can be considered when developments are proposed.

96. The first criterion set out in the policy includes a number of terms that are imprecise, in particular: *“where possible”*; *“take every opportunity”*; *“provide a strong sense of place”*; and *“protect important open spaces, views, biodiversity, and landscape setting”*. The term *“views”* is in itself imprecise and in any case forms part of a *“landscape setting”*. Other criteria of the policy also include imprecise terms, namely: *“local housing need”*; *“take every opportunity”*; *“where practicable and viable”*; *“appropriate”* and *“where possible”*. I have recommended modifications to improve clarity, and so that the policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

97. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 5:

Replace Policy LD H2 with

“Housing proposals will be supported where they demonstrate that they:

- **respect their natural and built environment setting including open spaces, biodiversity and landscape setting, and are designed and use materials that reinforce local distinctiveness;**
- **maintain existing residential amenity and are likely to achieve satisfactory residential amenity for future occupiers;**
- **are of a scale and form that contributes to meeting the latest assessment of local housing needs;**
- **include energy efficient measures and renewable energy generation;**

- include safe access, and sufficient parking provision for users; and
- will not increase surface water runoff.”

Policy LD E1: Rural Employment

98. This policy seeks to establish conditional support for a range of types of employment proposals. The policy also seeks to establish that proposals for change of use of existing business premises should demonstrate the existing use is no longer economically viable. The meaning of this latter component of the policy is unclear. I have recommended a modification to clarify the reference is to a loss of existing business premises.

99. Unlike Policies LD SB1 and LD H1 where reference to Core Strategy Policies offers a shorthand statement as an integral and necessary part of those policies the reference to Core Strategy policies in Policy LD E1 is unnecessary. I have recommended the references are deleted so that the policy is self-contained in order to offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

100. The policy includes support for the development of opportunities. The meaning of this is unclear. The policy includes several terms that are imprecise including “*small scale*”, “*appropriate*”, “*suitable sites*” and “*minimal*”. I have recommended modifications to improve clarity so that the policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. I have also recommended the deletion of the reference to a requirement for “*satisfaction of the Parish Council and Local Planning Authority*” which introduces uncertainty into the policy and prevents it from offering a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.

101. The Framework states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. I have recommended a modification so that the policy more clearly reflects this approach, and in particular supports conversion of existing buildings for all types of business, not just for live work units. The modification recommended also has greater regard for the part of the Framework that states development should only be prevented or

refused on transport grounds where *“the residual cumulative impacts of development are severe”*.

102. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. As recommended to be modified the policy has regard to the components of the Framework concerned with supporting a prosperous rural economy; requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 6:

Replace Policy LD E1 with

“Rural employment proposals which respect their built and natural environment setting, including flooding and drainage considerations, and where there is no significant adverse effect on residential amenity, including through traffic generation, will be supported where they:

- **develop and diversify agricultural and other land based rural businesses;**
- **develop rural tourism;**
- **extend existing employment premises;**
- **convert and re-use redundant rural buildings to business use, including live work units;**
- **develop well-designed new employment buildings on previously developed land or other suitable sites;**
- **enable home working, including through extension of existing residential properties.**

To be supported proposals that would result in the loss of existing business premises must demonstrate the existing use is no longer viable, or that the premises are to be replaced with business premises of an equivalent size, quality and accessibility.”

Policy LD INF1: Local Infrastructure

103. This policy seeks to establish conditional support for improvement of local infrastructure.

104. The opening statements of the Policy state opportunities will be supported but it is unclear how opportunities will be recognised. Use of the word “*includes*” introduces uncertainty as to what other elements of local infrastructure are subject to the policy. I have recommended modification of the Policy to rectify these deficiencies. The final sentence of the policy refers to Community Infrastructure Levies being sought towards improvements to the local bus service and the condition of local roads. I have recommended deletion of this imprecise statement which does not offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework.
105. The Policy refers to Core Strategy Policy SD3. A representation from the Herefordshire Council Strategic Planning Team states “*With regard to flooding, development proposals should also be located in accordance with the Sequential Test and Exception Tests (where appropriate) outlined in the NPPF paragraphs 100-104. It must also have regard to the Strategic Flood Risk Assessment (SFRA) 2009 for Herefordshire.*” It is not necessary for a neighbourhood plan policy to repeat national and local strategic policy. I have recommended a modification to delete the reference to Policy SD3.
106. The Policy refers to speed of vehicles but this is not a matter that can be the subject of a neighbourhood plan policy which must relate to the development or use of land. The Policy does not have regard for the Framework which states “*Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*” The Policy includes several imprecise terms including “*high quality*”, “*sensitively sited*”, “*appropriate*”, “*well-designed*”, “*suitable*”, “*full and adequate provision*”, and “*looks to reduce existing run off where possible*” that do not offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. I have recommended modification of the Policy in these respects.
107. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with promoting sustainable travel; conserving and enhancing the natural environment; and meeting the challenge of climate change and flooding. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 7:

Replace Policy LD INF1 with:

“Development proposals for mobile phone and superfast broadband infrastructure will be supported where they demonstrate they will not adversely affect residential amenity or the historic and natural environment. To be supported all new development proposals must include on-site provision to enable access to superfast broadband.

Development proposals will be supported where they provide for safe pedestrian and vehicular access to the highway network.

Development proposals for new homes will be supported where they demonstrate they will not result in on-street parking of vehicles.

Development proposals will be supported where they demonstrate they will not result in an increase in surface water run-off.

Development proposals will be supported where they demonstrate adequate public sewerage capacity.”

Policy LD RE1: Renewable Energy

108. This policy seeks to establish support for low carbon renewable energy initiatives within individual private proposals and conditional support for a small-scale community renewable energy scheme. The policy also seeks to establish criteria for the assessment of renewable energy proposals, and seeks to establish commercially led renewable energy schemes will not be supported.

109. The term “*individual private proposals*” is not appropriate as the nature of ownership is not a material planning consideration. I have recommended a modification in this respect. The term “*if further consultation with the parish indicated there was majority community support*” is not appropriate as it introduces uncertainty and does not offer a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. Neighbourhood Plan preparation is a process that enables communities to plan positively to support local development, shaping and directing development in their area. The element of the Policy that seeks to establish that commercially led renewable energy schemes will not be supported does not have regard to the approach set out in the Framework. The criteria set out in the third part of the Policy will

apply to all renewable energy proposals including any on a commercial scale.

110. The Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 included the following *“From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings”*. The Policy is consistent with this guidance in that it seeks to establish support for renewable energy approaches rather than seeking to establish standards or requirements.

111. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with meeting the challenge of climate change; and conserving and enhancing the natural environment. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 8:

In Policy LD RE1

- **in the first paragraph after “Proposals” insert “for buildings” and delete “within individual private proposals”**
- **in the second paragraph delete “In addition,” and delete “if further consultation with the parish indicated there was majority community support”**
- **in the third paragraph delete “Renewable energy proposals will need to” and insert “To be supported renewable energy proposals must demonstrate they”**
- **delete the fourth paragraph**

Policy LD CF1: Community Facilities

112. This policy seeks to establish conditional support for new community facilities and seeks the retention and enhancement of existing community facilities.

113. A representation from the Herefordshire Council Strategic Planning Team states “*Designating/listing the specific community facilities to be retained could afford stronger protection.*” Listing the existing community facilities in the Policy would improve clarity. I have recommended a modification in this respect so that the Policy offers a practical framework for decision making on planning applications as required by paragraph 17 of the Framework. Flix in the Sticks does not constitute a separate land use facility and is therefore not capable of being the subject of a neighbourhood plan policy.
114. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. The policy has regard to the components of the Framework concerned with supporting a prosperous rural economy and promoting healthy communities. Subject to the modification recommended, this policy meets the basic conditions.

Recommended modification 9:

In Policy LD CF1

Replace the first bullet point with “Proposals that will result in loss or reduction of the following community facilities will only be supported where it is clearly demonstrated they are no longer fit for purpose or viable, or that an equivalent equally accessible alternative community facility is/or will be available within the Parish:

The Plough Inn

The Church

The Village Hall

The recreational playing field and adjacent Adventure Park”

Summary of main findings and Referendum

115. I have recommended 9 modifications to the Submission Version Plan and also made a recommendation of modification in the Annex below.

116. I am satisfied that the Neighbourhood Plan³⁷:

- is compatible with the Convention rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the statutory requirements set out in paragraph 8(1) of schedule 4B of the Town and Country Planning Act 1990 and meets the basic conditions:
 - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the 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 of the authority (or any part of that area);
 - does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
 - 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.³⁸

I recommend to Herefordshire Council that the Little Dewchurch Neighbourhood Development Plan for the plan period up to 2031 should, subject to the modifications I have put forward, be submitted to referendum.

117. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.³⁹ I have seen nothing to suggest the referendum area should be extended beyond the designated Neighbourhood Area.

³⁷ The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

³⁸ Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

³⁹ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Herefordshire Council as a Neighbourhood Area on 5 September 2013.

Annex: Minor Corrections to the Neighbourhood Plan

I am able to recommend modification of the Neighbourhood Plan in order to correct errors.⁴⁰

A number of consequential modifications to the general text of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies.

**Recommended modification 10:
Modification of general text will be necessary to achieve consistency with the modified policies**

Chris Collison
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21 February 2017
REPORT ENDS

⁴⁰ Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990