

**Weston under Penyard Parish Council**

# **Weston under Penyard Neighbourhood Development Plan**

A Report to Herefordshire Council of the Independent  
Examination of the Weston under Penyard Neighbourhood  
Development Plan

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## 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.*”<sup>1</sup>
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 Weston under Penyard Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Weston under Penyard Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the Weston under Penyard Neighbourhood Area which was formally designated by Herefordshire Council on 7 November 2013.
4. Work on the production of the plan has been undertaken by members of the local community through a Neighbourhood Plan Steering Group (the Steering Group) that first met on 26 November 2013.
5. On 23 July 2015 the submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, was approved by the Parish Council for submission of the plan and accompanying documents to Herefordshire Council, which occurred on 30 July 2015. Herefordshire Council has undertaken the necessary consultation between 4 August and 16 September 2015 and subsequently submitted the Neighbourhood Plan to me for independent examination.

## Independent Examination

6. This report sets out the findings of the independent examination into the Neighbourhood Plan.<sup>2</sup> The report makes recommendations to Herefordshire Council including a recommendation as to whether or

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<sup>1</sup> Paragraph 183 National Planning Policy Framework (2012)

<sup>2</sup> Paragraph 10 Schedule 4B Town and Country Planning Act 1990

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.

7. Herefordshire Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area 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.
8. 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 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.
9. 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
10. I make my recommendation in this respect and in respect to any extension to the referendum area,<sup>3</sup> 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.<sup>4</sup>

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

<sup>4</sup> Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

11. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.<sup>5</sup>
12. The examiner has the ability to call a hearing for the purposes of receiving oral 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**

13. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.<sup>6</sup> 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.<sup>7</sup>
14. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.<sup>8</sup> 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’.

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<sup>5</sup> Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

<sup>6</sup> Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

<sup>7</sup> 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

<sup>8</sup> The Convention rights has the same meaning as in the Human Rights Act 1998

15. 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 and Compulsory Purchase Act 2004.<sup>9</sup> 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.
16. The Neighbourhood Plan relates to the area that was designated by Herefordshire Council as a neighbourhood area on 7 November 2013. The plan area is described in Section 1.2 of the Submission Version of the Neighbourhood Plan as follows “*The Plan applies only to the parish of Weston under Penyard in Herefordshire.*” A map of the plan area is included on page 5 of the Submission Version plan. The Neighbourhood Plan does not relate to more than one neighbourhood area,<sup>10</sup> and no other neighbourhood development plan has been made for the neighbourhood area.<sup>11</sup> All requirements relating to the plan area have been met.
17. 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;<sup>12</sup> and the Neighbourhood Plan does not include provision about excluded development.<sup>13</sup> I am able to confirm that I am satisfied that each of these requirements has been met.
18. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.<sup>14</sup> The front cover of the Submission Version clearly shows the plan period to be 2011 – 2031.
19. 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.<sup>15</sup> 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

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<sup>9</sup> 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)).

<sup>10</sup> Section 38B(1)(c) Planning and Compulsory Purchase Act 2004

<sup>11</sup> Section 38B(2) Planning and Compulsory Purchase Act 2004

<sup>12</sup> Section 38A(2) Planning and Compulsory Purchase Act 2004 See recommended modification regarding Policy 11

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

<sup>14</sup> Section 38B(1)(a) Planning and Compulsory Purchase Act 2004

<sup>15</sup> 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

submitted Neighbourhood Plan meets the basic conditions and Convention rights, and the other statutory requirements.

20. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include 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.
21. 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.
22. 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.<sup>16</sup>

## Documents

23. 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:

- Weston under Penyard Neighbourhood Development Plan 2011-2031 Submission Version July 2015
- Weston under Penyard Neighbourhood Development Plan Basic Conditions Statement July 2015
- Weston under Penyard Neighbourhood Development Plan Consultation Statement July 2015
- Weston under Penyard Policies Map
- Weston under Penyard Village Policies Map
- Pontshill Policies Map
- Weston under Penyard Neighbourhood Area Strategic Environmental Assessment Environmental Report July 2015

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

- Weston under Penyard Neighbourhood Area Habitat Regulations Assessment May 2015
- Weston under Penyard Neighbourhood Area Habitat Regulations Assessment Addendum July 2015
- Weston under Penyard Neighbourhood Plan Evidence Base accessed on the Weston under Penyard Parish Council website
- Representations received during the Regulation 16 publicity period
- Herefordshire Local Plan Core Strategy 2011-2031 October 2015
- Herefordshire Local Plan Core Strategy 2011-2031 Appendices October 2015
- Herefordshire Council Progression to Examination Decision Document
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Technical Guidance to the National Planning Policy Framework (27 March 2012) [*In this report referred to as the Technical Guidance*]
- 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

24. Community engagement in plan preparation has been extensive as evidenced by the consultation statement. I highlight here a number of key stages in order to illustrate the thorough and comprehensive approach adopted.

25. An important component of the approach to consultation has been the production of a Communication Strategy. This feature of best practice and has ensured that plan preparation has been open and inclusive and has benefitted from effective two-way communication between the Steering Group and all stakeholders. A full spectrum of communication methods has been deployed with consultation events forming a central component.

26. The first of the consultation events was a two-day Neighbourhood Plan launch weekend in June 2014 attended by more than 100 people. A three day event was held in December 2014 being a public presentation of the questionnaire survey results attracting 80 attendees. A further three day consultation event was held in June 2015 during the Regulation 14 pre-submission consultation which 49 people attended.
27. The questionnaire project was an important component of the overall consultation approach. A total of 556 completed questionnaires were received representing a 72% response rate in respect of those delivered. In addition responses included 27 Housing Needs Questionnaires; 29 Business Questionnaires; and 40 Land Availability Enquiries. It is evident that engagement of stakeholders in plan preparation has been extensive.
28. Pre-submission consultation was held between 26 May 2015 and 7 July 2015. Publicity included use of emails, leaflets, noticeboards and press releases as well as the consultation event referred to above. All necessary and appropriate organisations and bodies were consulted. The plan documents were widely available both electronically and in hard copy form. The Representations Tables included as Appendix 1 to the Consultation Report confirm full consideration of submitted views and evidence and that these resulted in changes to the Neighbourhood Plan where it was considered appropriate.
29. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 publicity period between 4 August 2015 and 16 September 2015. A total of 11 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. One representation was submitted after the period for representations had closed. I have not taken that representation into consideration.
30. Where representations relate to a specific policy of the Neighbourhood Plan I have taken them into consideration in the examination of individual policies set out later in my report. Representations relating to Habitats Regulations Assessment have been considered in my report when I consider effects on European sites. Other representations are of a more general nature. Heritage England is supportive of the plan particularly the comprehensive treatment of the wider historic environment including non-designated heritage assets and the emphasis on local distinctiveness. Herefordshire Council is concerned

that some comments regarding public transport have not been included and Natural England has suggested additions, however there is no requirement for a neighbourhood plan to include any statement or policy concerned with any particular topic. The Coal Authority confirms the very southern tip of the plan area is within the current defined coalfield (safeguarded reserves) but have no comments to make.

31. Consultation has clearly exceeded the requirements of the Regulations achieving wide and intensive engagement with stakeholders who have influenced the content of the Neighbourhood Plan.

## **The Neighbourhood Plan taken as a whole**

32. 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

33. The Basic Conditions Statement states “*the policies within this NP are considered to comply with the requirements of the EU obligations in relation to human rights.*” 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).<sup>17</sup> 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

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<sup>17</sup> 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.

submission draft of the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics.

34. The objective of EU Directive 2001/42<sup>18</sup> 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’<sup>19</sup> as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.<sup>20</sup>
35. Herefordshire Council issued a Screening Opinion that concluded that due to the range of environmental designations in and around the parish, there may be environmental effects and therefore the Neighbourhood Plan should be prepared in accordance with EU Directive 2001/42 on Strategic Environmental Assessment (SEA).
36. The submission documents include an Environmental Report dated July 2015. This report confirms a Scoping Report had been made available to the four statutory bodies from 30 October to 4 December 2014. Responses of Natural England and English Heritage were incorporated within the document where relevant. The draft SEA was consulted on for a six week period from 26 May to 7 July 2015 alongside the Pre-Submission Neighbourhood Plan, both of which were published for consultation with the statutory authorities as well as the general public. The final SEA is published alongside the Submission Neighbourhood Plan document.
37. 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 further 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.”*

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<sup>18</sup> Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

<sup>19</sup> Defined in Article 2(a) of Directive 2001/42

<sup>20</sup> Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

38. 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.”*<sup>21</sup> I consider likely significant effects have been assessed.
39. Natural England has confirmed during the Regulation 16 publicity period that the Environmental Report *“meets the requirements of the Strategic Environmental assessment (SEA) European Directive and national regulations, and that we concur with its conclusions.”*
40. It is confirmed 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.
41. A Habitats Regulations Assessment (HRA) was undertaken in May 2015. An Addendum Report dated July 2015 considered whether the conclusions of the earlier report were affected by revisions to policies of the Neighbourhood Plan. The Addendum Report states *“importantly, the three European sites are now specifically mentioned within relevant policies and this negates the likelihood of an adverse impact on these”* and *“the earlier conclusion that the Weston under Penyard NDP will not have a likely significant effect on the River Wye SAC; Wye Valley Woodlands SAC and the Wye Valley and Forest of Dean Bat Sites SAC remains valid.”*
42. A representation by Natural England suggests adjustments of general text which I refer to in the annex to my report, and supports appropriate references to the European sites and the Nutrient Management Plan. I note the representation of Natural England was prepared prior to the adoption of the Herefordshire Local Plan Core Strategy 2011-2031 which in Policy SD2 relating to renewable and low carbon energy generation makes specific reference to international and national designated assets. I am satisfied that requirements relating to Habitats Regulations Assessment have been met.
43. Gloucestershire County Council *“agree with Natural England that the NDP is unlikely in itself or in combination with other plans and projects to have significant effect on any European site.”* Further comment was made regarding the Wye Valley and Forest of Dean Bat Sites SAC

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<sup>21</sup> National Planning Policy Guidance Revision date 09 02 2015 Paragraph 30 Reference ID:11-030-20150209

which I note is referred to in the HRA Addendum Report. The Core Strategy also includes the criteria “*the proposal does not adversely impact upon international or national designated natural and heritage sites*” in Policy SD2 relating to renewable and low carbon energy production.

44. The Basic Conditions Statement under a heading “*Water Framework Directive*” states “*Changes have been made to ensure that any proposals within this plan would not conflict with measures and provisions the Environment Agency is advocating to meet its obligations under this Directive as set out in the Severn River Basin Management Plan.*”

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

46. 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

47. The Guidance<sup>22</sup> 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).

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<sup>22</sup> National Planning Policy Guidance paragraph 031 reference ID:11-031-20150209

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

48. 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 Plans<sup>23</sup> which requires plans to be “*consistent with national policy*”.
49. Lord Goldsmith has provided guidance<sup>24</sup> 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.*”
50. Section 3 of the Basic Conditions Statement seeks to demonstrate the Neighbourhood Plan has been prepared with regard to national policies as set out in the Framework. The table presented details how the Neighbourhood Plan supports or otherwise positively relates to the Framework. Specific paragraphs of the Framework are identified where there is a linkage to a policy of the Neighbourhood Plan.
51. The Neighbourhood Plan states a vision. This vision and the expansion to set out what this will mean by 2031 relate to matters appropriate to a Neighbourhood Development Plan, are written clearly, and adopt a positive approach “*where there are homes, businesses and facilities to meet the needs of a sustainable rural community.*” The vision does not constrain and indeed supports the objectives of the Framework. 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.

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<sup>23</sup> 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

<sup>24</sup> 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 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 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)

52. The objectives of the Neighbourhood Plan relating to housing, opportunities for employment, environmental sustainability, roads and traffic, and community services and facilities are all consistent with components of the Framework and in particular those aspects relating to building a strong, competitive economy; supporting a prosperous rural economy; delivering a wide choice of high quality homes; conserving and enhancing the natural environment; promoting healthy communities; and promoting sustainable transport.
53. 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 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.*"
54. 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.<sup>25</sup> 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.*"
55. 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

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<sup>25</sup> Paragraph 14 National Planning Policy Framework 2012

alternative plan would make a greater contribution to sustainable development.

56. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes at Section 2 a table that seeks to demonstrate how the Neighbourhood Plan provisions contribute to the Core Planning Principles set out in paragraph 17 of the Framework. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. In particular I consider the Neighbourhood Plan seeks to:

- Allocate land for housing development and ensure proposals contribute to meeting local housing needs including affordable homes;
- Encourage proposals that enhance and increase community facilities, recreation and local services;
- Support local business and workspace development;
- Ensure new development is of good quality design;
- Designate areas of Local Green Space;
- Conserve and enhance the natural environment and achieve sustainable water management;
- Sustain local heritage and character; and
- Promote sustainable modes of transport.

57. I note the Neighbourhood Plan includes at Section 11 four Neighbourhood Planning Projects. As expressed the projects are merely headings without any level of detail. The project proposals do not form part of the Neighbourhood Development Plan and as such have not been considered as part of this independent examination. The projects would not be the subject of any referendum and would not become part of the Development Plan for the area.

58. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on projects considered important in the local community. However the Guidance states, *“Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non land use matters should be clearly identifiable. For*

*example, set out in a companion document or annex.”* The identification of priorities for funding is a financial resources decision and not one relating directly to the development and use of land. I recommend a modification in accordance with this Guidance.

**Recommended modification 1:**

**Transfer Section 11 ‘Neighbourhood Planning Projects’ to a non-statutory annex to the Neighbourhood Plan**

59. 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 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)

60. The Framework states that the ambition of the neighbourhood should “*support the strategic development needs set out in Local Plans*”.<sup>26</sup> “*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. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies*”.<sup>27</sup>

61. 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.*”

62. 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

<sup>26</sup> Paragraph 16 National Planning Policy Framework 2012

<sup>27</sup> Paragraph 184 National Planning Policy Framework 2012

me that the Development Plan applying in the Weston under Penyard Neighbourhood area and relevant to the Neighbourhood Plan comprises the Herefordshire Local Plan Core Strategy 2011-2031, and that all of the policies are considered to be strategic.

63. 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.
64. In order to satisfy the basic conditions the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan.
65. 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.”*”<sup>28</sup> 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.
66. 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*
  - *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.”*
67. 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

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<sup>28</sup> Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P &CR 31

contained in the last of those plans to become part of the Development Plan.<sup>29</sup>

68. 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) has been addressed through examination of the plan as a whole and each of the plan policies below. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

## **The Neighbourhood Plan policies**

69. The Neighbourhood Plan includes 24 policies:

- H1: Number of New Houses
- HS1: Housing Site Policy
- HS2: Housing Site Policy
- H2: Location of New Developments
- H3: Housing Mix and Tenancy
- H4: Type of Housing
- H5: Provision of Affordable Housing
- H6: Affordable Housing on Rural Exception Site
- H7: Allocation of Affordable Housing for Local People
- D1: Design Appearance
- D2: Technical Design
- SD1: Promoting a Sustainable Community
- SD2: Community Facilities
- ST1: Accommodating Traffic within the Parish

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<sup>29</sup> Section 38(5) Planning and Compulsory Purchase Act 2004

- SB1: Supporting Local Business
- SB2: Workspace Development
- SB3: Change of Use
- SB4: Provision of Broadband and Mobile Telephone Services
- SE1: Sustaining the Parish Environment and Landscape
- SE2: Sustaining Local Heritage and Character
- SE3: Sustaining Open Spaces
- SE4: Polytunnel Development
- SE5: Renewable Energy
- SE6: Sustainable Water Management

70. The Guidance 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.”*

71. *“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.”*

72. *“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”.*

73. *“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 accordance with the development plan, unless material considerations indicate otherwise.”<sup>30</sup>*

74. 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 individually in turn.

### **H1: Number of New Houses**

75. This policy seeks to establish that a minimum of 55 dwellings should be delivered in the period April 2015 to 31 March 2031.

76. A representation states support for the overall approach to this policy *“as there is no wording which would seek to restrict residential growth in case of any changing circumstances during the plan period.”*

77. Another representation in proposing an alternative, additional or reserve housing site allocation states *“Indeed we note the draft plan is only planning for the minimum number of houses required in the parish. There is a very real danger that the plan will become out of date as soon as it is adopted. The opportunity should be taken now to incorporate a longer term strategy and degree of flexibility to ever increasing housing needs. Without such an approach, the local community will not be able respond to future development pressures. Instead it will have to continuously react to pre-emptive planning applications resulting in less suitable sites coming forward as recently evidenced.”*

78. In the context of paragraph 49 of the Framework whenever a five-year housing supply can be demonstrated during the plan period, Policy H1 once part of a made Neighbourhood Plan, should be regarded as up to date.

79. Paragraph 16 of the Framework includes *“neighbourhoods should plan positively to support local development, shaping and directing*

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<sup>30</sup> See section 38(6) of the Planning and Compulsory Purchase Act 2004.

*development in their area that is outside the strategic elements of the Local Plan*". Policy H1 of the Neighbourhood Plan provides opportunity for a minimum of 55 dwellings to be developed, making a positive contribution to the supply of new homes. This represents a significant boost to the number of dwellings in a Parish with approximately 450 homes. The supporting statement to Policy H1 describes the factors considered in policy formulation. There is also reference to the views of the local community as to the number of houses to be permitted. I consider the Neighbourhood Plan adopts an appropriate positive approach to growth of the Parish seeking to shape and direct development.

80. Whilst the site allocations will boost significantly housing supply, they do not represent all the housing development that will occur in the plan area over the plan period. The Neighbourhood Plan anticipates other development proposals will be made inside the Weston village settlement boundary, and on infill sites at Pontshill and Bromsash. The site allocations clearly do not represent a cap on housing development.
81. I am of the opinion that the commitment contained in Section 12 of the Neighbourhood Plan to plan review will offer appropriate opportunity to respond to any site delivery constraints arising and achieve any necessary flexibility and adaptability.
82. The policy has the potential to cause confusion through reference to the Plan period of April 2015 - 31<sup>st</sup> March 2031. I recommend a modification so that the policy provides a practical framework within which decisions on planning applications can be made in accordance with paragraph 17 of the Framework.
83. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy SS3 – Ensuring sufficient housing land delivery; Policy RA1 – Rural Housing Distribution (which includes an indicative housing growth target of 14% for the relevant area); and Policy RA2 – Housing in settlements outside Hereford and the market towns.
84. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 2:  
In Policy H1 delete “Plan”**

**HS1: Housing Site Policy**

85. This policy allocates land east of Penyard Gardens, SW of A40 for 18 dwellings and seeks to establish site specific requirements.
86. A representation supports the allocation of this site but states the number of dwellings allocated should be increased to 35 units to reflect the outline permission recently granted. The representation states 18 dwellings would not make efficient use of the site in line with the Framework.
87. There is no requirement for a Neighbourhood Plan to achieve any particular density of development on a site allocated for development. The policy does not have the effect of modifying any planning permission in existence. 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 does not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. However the policy does properly seek to promote or reinforce local distinctiveness.
88. The bold text of the policy refers to a maximum number of houses and the text that follows refers to an allocation for 18 dwellings. The word ‘dwellings’ provides flexibility to refer to a variety of types of residential accommodation and should be utilised consistently in order to provide the clarity required by paragraph 17 of the Framework.
89. Herefordshire Council states specification of a maximum allocation is “*potentially restrictive to delivery*” and use of minimum “*would be more consistent with the modified Core Strategy*”. Specification of a maximum number of units or a specific number of units is inconsistent with the presumption in favour of sustainable development that may be proposed for the site. The description ‘approximate’ should be used in order to achieve necessary flexibility. It follows that the requirement for affordable homes should be described in terms of a percentage of total units only. It also follows that in terms of the necessary flexibility of provision, part i of the policy should not refer to “*the required number of houses*”.

90. The supporting statement to the policy does not set out any justification of the selection of a precise period of a little over 11 years (4 years before the end of the Plan period) when the allocation “*will lapse*”. The Guidance states “*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*”. The supporting statement describes a situation where development is partially built. Significant commencement of implementation of a planning permission will normally secure that permission into the future. Whilst limited effect is not a reason for a recommendation of modification of a neighbourhood plan policy the absence of justification of the timeframe chosen is. I recommend a modification to delete this provision.
91. The requirement for “*Tree Preservation Orders in place before tree planting*” should be modified. A Tree Preservation Order cannot be applied to a site for a future tree. Additionally Tree Preservation Orders are subject to a statutory procedure the outcome of which cannot be pre-determined. The Framework requires Plans to provide a practical framework within which decisions on planning applications can be made with a high degree of predictability. I recommend a modification of this provision.
92. The requirement for adequate public green space and play areas is imprecise not providing a clear framework for decision makers. I recommend a modification.
93. The requirement for consideration of a new access road through site 33 could be met by a simple statement that such a road has been considered. Limited or lack of effect is however not a reason for a recommendation of modification of a policy.
94. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy SS3 – Ensuring sufficient housing land delivery; Policy RA1 – Rural Housing Distribution; and Policy RA2 – Housing in settlements outside Hereford and the market towns.
95. The policy has regard to the components of the Framework concerned with promoting sustainable transport; delivering a wide choice of high quality homes; requiring good design; promoting healthy communities; and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the basic conditions.

### Recommended modification 3:

#### In Policy HS1

- In the heading delete “Max” insert “Approximate”; and delete “houses” insert “dwellings”; and delete “7” after “Affordable homes”
- Insert “approximately” before “18”
- In a) delete “all with Tree Preservation Orders in place prior to tree planting”
- In d) after “play areas” insert “to a stated recognised standard of provision”
- Delete part i)

#### HS2: Housing Site Policy

96. This policy allocates land east of Hunsdon Manor, NE of the A40 for 37 dwellings and seeks to establish site specific requirements.

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 does not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. However the policy does properly seek to promote or reinforce local distinctiveness.

98. The bold text of the policy refers to a maximum number of houses and the text that follows refers to an allocation for 37 dwellings. The word ‘dwellings’ provides flexibility to refer to a variety of types of residential accommodation and should be utilised consistently in order to provide the clarity required by paragraph 17 of the Framework.

99. Herefordshire Council states specification of a maximum allocation is “*potentially restrictive to delivery*” and use of minimum “*would be more consistent with the modified Core Strategy*”. Specification of a maximum number of units or a specific number of units is inconsistent with the presumption in favour of sustainable development that may be proposed for the site. The description ‘approximate’ should be used in order to achieve necessary flexibility. It follows that the requirement for affordable homes should be described in terms of a percentage of total units only. It also follows that in terms of the necessary flexibility of provision part j of the policy should not refer to “*the required number of houses*”.

100. The supporting statement does not set out any justification of the selection of a period of a little over 11 years (4 years before the end of the Plan period) when the allocation “*will lapse*”. The Guidance states “*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*”. The supporting statement describes a situation where development is partially built. Significant commencement of implementation of a planning permission will normally secure that permission into the future. Whilst limited effect is not a reason for a recommendation of modification of a neighbourhood plan policy the absence of justification of the timeframe chosen is. I recommend a modification to delete this provision.
101. The requirement for adequate play areas and public green space is imprecise. This and the term “*strengthening hedgerows and trees*” do not provide a clear framework for decision makers. I recommend a modification in the interests of clarity.
102. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy SS3 – Ensuring sufficient housing land delivery; Policy RA1 – Rural Housing Distribution; and Policy RA2 – Housing in settlements outside Hereford and the market towns.
103. The policy has regard to the components of the Framework concerned with promoting sustainable transport; delivering a wide choice of high quality homes; requiring good design; promoting healthy communities; meeting the challenge of flooding; and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the basic conditions.

#### **Recommended modification 4:**

##### **In Policy HS2**

- **In the heading delete “Max” insert “Approximate”; and delete “houses” insert “dwellings”; and delete “15” after “Affordable homes”**
- **Insert “approximately” before “37”**
- **In a) delete “strengthening” insert “reinforcing” and insert “increasing the number of” before “trees”**
- **In d) after “green space” insert “to a stated recognised standard of provision”**
- **Delete part j**

## H2: Location of New Developments

104. This policy seeks to establish an approach to the location of residential development. The policy seeks to establish an extended settlement boundary shown on the Weston under Penyard Village Policies Map.
105. The policy states development will be permitted at the locations defined in Policies HS1 and HS2. A representation proposes an additional site on land adjacent to The Link, Church Lane setting out a detailed case why this should be developed. Another representation states the proposed housing allocations do not appear to reflect the findings of the evidence base and proposes an additional (or alternative, or reserve) site at the field between The Street and Rectory Lane “*to reflect the findings of the resident’s survey*”. It is stated that without this additional site the Neighbourhood Plan would fail to provide a long-term strategy and level of flexibility in order to deliver the future development requirements. The representation states too much emphasis has been placed on the fact pre-emptive planning applications have been submitted. The representation sets out a case why the site in question should be developed.
106. Paragraph 49 of the Framework applies to relevant neighbourhood development plan policies for housing supply.<sup>31</sup> Policy H2 should be considered as a policy for the supply of housing in so much as it supports development proposals within the defined settlement boundary, and infill development in Pontshill and Bromsash, and because of its approach to development proposals outside the settlement boundary.<sup>32</sup> The Neighbourhood Plan is not seeking to impose a cap on the supply of housing development. The elements of Policy H2 together seek to shape and direct development which is a role for neighbourhoods envisaged in the Framework. Paragraph 49 of the Framework states how relevant policies should be considered in the context of the then current supply situation; it does not relate to the formulation or establishment of policy. The housing supply calculation will almost certainly change throughout the Neighbourhood Plan period. In the context of paragraph 49 of the Framework whenever a five-year supply of housing can be

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<sup>31</sup> Crane v Secretary of State for CLG 2015 in relation to the Broughton Astley Neighbourhood Development Plan

<sup>32</sup> South Northamptonshire Council v Secretary of State for CLG and others 2014 distinguishes between a general policy restricting development in open countryside from one to protect a specific feature or area such as a gap between settlements. Also see Cheshire East Borough Council v Secretary of State for CLG & Richborough Estates Partnership LLP 2015, although the latter is to be considered by the Court of Appeal

demonstrated during the plan period, Policy H2, once part of a made Neighbourhood Plan, should be regarded as up to date.

107. Paragraph 16 of the Framework includes “*neighbourhoods should plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan*”. Policy H2 of the Neighbourhood Plan provides opportunity for approximately 55 dwellings plus infill and redevelopment schemes to be developed, making a positive contribution to the supply of new homes. In a parish with approximately 465 dwellings the allocations represent a significant level of provision for new housing development. The Neighbourhood Plan clearly seeks to boost significantly the supply of housing in the plan area. Adjustment to the settlement boundary is grounded in the community feedback from the Questionnaire Project of August 2014. I consider the Neighbourhood Plan adopts an appropriate positive approach to growth of the settlement seeking to shape and direct development.

108. Whilst the site allocations will boost significantly housing supply, they do not represent all the housing development that will occur in the plan area over the plan period. The Neighbourhood Plan anticipates other development proposals will be made inside the settlement boundary and at Pontshill and Bromsash, which Policy H2 supports. The site allocations clearly do not represent a cap on housing development. I also note Policy H2 does not place any cap on the number of dwellings or the amount of development that can take place within the settlement boundary. I consider the use of the phrase “controlled growth” is ambiguous in this respect. I recommend the use of “appropriate growth” which more clearly has regard to the presumption in favour of sustainable development within the Framework.

109. Whilst representations have put forward land, as alternative or additional or reserve sites, as being suitable for allocation in the Neighbourhood Plan I find that the settlement boundary defined in Policy H2 meets the Basic Conditions and the existence of any sites outside that boundary, whether they are suitable for development or not, as additional or alternative or reserve sites, is not a matter against which the Neighbourhood Plan is to be examined.

110. The Framework aims to support a prosperous rural economy. The Framework states Neighbourhood Plans should: support the sustainable growth and expansion of all types of business and

enterprise in rural areas, both through conversion of existing buildings and well designed new buildings; promote the development and diversification of agricultural and other land-based rural businesses; and support sustainable rural tourism and leisure developments. Whilst the wording of Policy H2 does not refer to business activities including tourism and leisure I am satisfied these are included within the scope of Policy SB1 of the Neighbourhood Plan.

111. I am of the opinion that the commitment contained in Section 12 of the Neighbourhood Plan to plan review will offer appropriate opportunity to respond to any site delivery constraints arising and achieve any necessary flexibility and adaptability.
112. Herefordshire Council has stated “*only permitting infill developments with frontages of 30 metres or less is overly specific and potentially restrictive*” and questioned the basis of the limit set. Provision e) establishes support for infill development within frontages at Pontshill and Bromsash. I am content this approach is appropriate to situations where there is no settlement boundary and where there may be uncertainty as to what constitutes infill development. This element of the policy provides clarity for decision makers as required by paragraph 17 of the Framework.
113. Provision h includes the word “*worthy*”. This word does not provide sufficient guidance for decision makers and I recommend substitution of the word “capable” which is able to be assessed.
114. Another representation expresses concern that the policy is over restrictive in its approach to flood risk. The Framework states “*inappropriate development in areas at risk of flooding should be avoided by directing development away from areas of highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.*” The Framework states that Local Plans should be supported by Strategic Flood Risk Assessment, apply a Sequential Test, and if necessary apply an Exception Test. The Framework and Technical Guidance issued with the Framework is silent with respect to neighbourhood plans in this respect. The Framework does however state that “*a sequential approach should be used in areas known to be at risk of any form of flooding*”<sup>33</sup> and “*if following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if*

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<sup>33</sup> Paragraph 101 National Planning Policy Framework 2012

*appropriate. For the Exception Test to be passed it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible will reduce flood risk overall. Both of these tests will have to be passed for development to be allocated or permitted.”<sup>34</sup>*

The Neighbourhood Plan policy only permitting development on land which is within Flood Zone 1 is inconsistent with national policy. National policy is clearly defined. I recommend that provision k is deleted.

115. 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 does not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. However the policy does properly seek to promote or reinforce local distinctiveness.
116. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy RA1 – Rural Housing Distribution and Policy RA2 – Housing in settlements outside Hereford and the market towns.
117. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; requiring good design; promoting healthy communities; enhancing the natural environment; and conserving and enhancing the historic environment. 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 influenced the final decision on the form and nature of Policy H2. The policy shapes and directs sustainable development. These considerations support my conclusion that subject to the modification recommended this policy meets the basic conditions.

**Recommended modification 5:  
In Policy H2**

- In b) delete “controlled” insert “appropriate”

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<sup>34</sup> Paragraph 102 National Planning Policy Framework 2012

- In h) delete “worthy” insert “capable”
- Delete part k

### H3: Housing Mix and Tenancy

118. This policy seeks to establish that development proposals on sites of 10 or more dwellings should take into account local housing needs and normally provide up to 40% affordable homes.
119. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The term “*should take into account local housing needs*” is imprecise and does not provide the guidance for decision makers required by paragraph 17 of the Framework. I recommend a modification in this respect.
120. The policy includes the word “*normally*”. This does not provide sufficient clarity for decision makers as required by paragraph 17 of the Framework. I recommend a modification that makes specific reference to the assessment of viability as set out in the Framework. The term “up to” is easily satisfied for example by the provision of one affordable home. I recommend a modification in this respect in order to achieve clarity for decision makers.
121. Herefordshire Council states “*to comply with national policy, the threshold for providing Affordable Housing contributions should be proposals of over 10 dwellings, which have a maximum combined floorspace of more than 1000 sq m*”. I recommend a modification to reflect the Guidance.
122. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy H1 – Affordable housing-thresholds and targets and Policy H3 – Ensuring an appropriate range and mix of housing.
123. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. Subject to the recommended modification this policy meets the basic conditions.

### Recommended modification 6: In Policy H3

- After “sites of” delete “ten or more dwellings” and insert “11 new dwellings or more or 1-10 new dwellings with a total gross floorspace of more than 1,000 sq m”
- Delete “take into account” insert “demonstrate they meet”
- Delete “normally”
- Delete “up to”
- And continue “unless viability considerations can be shown to necessitate an alternative percentage of provision”

#### **H4: Type of Housing**

124. This policy seeks to establish that development applications should favour specified types of homes.
125. The policy seeks to shape sustainable development to ensure that local people get the right type of development for their community.
126. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy H3 – Ensuring an appropriate range and mix of housing. The indication of local preference on smaller sites than those referred to in the strategic policy represents a distinct local approach without undermining the strategic policy.
127. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. This policy meets the basic conditions.

#### **H5: Provision of Affordable Housing**

128. This policy seeks to establish the basis of provision of affordable homes and the balance of tenure types.
129. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
130. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core

Strategy 2011-2031 and in particular Policy H1- Affordable Housing – thresholds and targets.

131. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. The policy does not however provide a practical framework within which decisions on planning applications can be made as it presents an alternative wording to a matter dealt with in Policy H3. I recommend a modification to remove this overlap and achieve clarity for decision makers. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 7:  
In Policy H5**

- **Delete the introductory text and part a) and the list designation “b)”.**
- **After “tenure types” insert “of affordable housing provision”**

**H6: Affordable Housing on Rural Exception Site**

132. This policy seeks to establish support for small scale affordable housing schemes on rural exception sites
133. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
134. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy H2 – Rural exception sites.
135. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. The use of the term “small sites” is imprecise however the Glossary to the Framework uses this term also. This policy meets the basic conditions.

**H7: Allocation of Affordable Housing for Local People**

136. This policy seeks to establish a sequential approach to the identification of persons with a local connection to be used in the allocation of affordable housing.

137. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
138. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy H1 Affordable Housing – thresholds and targets, to which the Neighbourhood Plan policy adds a local level of detail.
139. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. This policy meets the basic conditions.

#### **D1: Design Appearance**

140. This policy seeks to establish design principles for new development.
141. 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 does not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. However the policy does properly seek to promote or reinforce local distinctiveness.
142. The preservation of existing trees and hedgerows may not always be possible, for example in order to achieve road safety at a new junction. I consider the term “in addition to regulatory requirements” included in the policy would make provision for a consideration of this nature. Whilst the term “high quality” is more easily understood than “high class” I do not consider modification is necessary in order to meet the basic conditions.
143. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 in particular Policy SS6 – Environmental quality and local distinctiveness.
144. The policy has regard to the components of the Framework concerned with requiring good design and conserving and enhancing the natural environment. This policy meets the basic conditions.

## **D2: Technical Design**

145. This policy seeks to establish design principles of a technical nature that development proposals should adhere to.
146. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Whilst use of the word “adequate” with respect to off-street parking provision is imprecise the policy wording provides sufficient guidance to decision makers as to how provision should be assessed.
147. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy SS7 – Addressing climate change.
148. The policy has regard to the components of the Framework concerned with promoting sustainable transport; requiring good design; meeting the challenge of climate change, and flooding. This policy meets the basic conditions.

## **SD1: Promoting a Sustainable Community**

149. This policy seeks to establish support for measures that promote sustainable development.
150. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
151. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy SS1 – Presumption in favour of sustainable development. Herefordshire Council states “*this seems to be an overarching policy that outlines the main objectives of the NDP’s policies – would this be better placed at the start or end of the document/policies section?*”
152. The policy does not have sufficient regard to components of the Framework. The policy contains a number of phrases that are imprecise. These include “*suitable phases over the plan period to maintain a balanced and integrated community*”, “*ensuring that any new development does not detract from the environmental quality of*

*the parish through ensuring its scale, location and appearance is appropriate*”, “*Development should contribute to creating a resilient and high quality local environment*”, “*high quality countryside*”, and “*in phase*”. The policy fails to provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. This policy does not meet the basic conditions.

**Recommended modification 8:  
Delete Policy SD1**

**SD2: Community Facilities**

153. This policy seeks to establish support for proposals to increase community facilities (including a new village school), recreation and local services within Weston village. The policy also conditionally supports enabling development that would enhance the viability of services and facilities.
154. The policy states loss of or harm to listed Assets of Community Value will be vigorously resisted. Paragraph 70 of the Framework refers to guarding against unnecessary loss of valued facilities and services. I have recommended a modification that reflects the balanced approach of the Framework.
155. 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 requirement for developers to contribute to enhancing community facilities should refer to viability considerations as required by paragraph 173 of the Framework. I recommend a modification in this respect. Herefordshire Council states it would give greater flexibility if a caveat was added “*unless it can be demonstrated that an equivalent alternative facility is available; or it can be demonstrated that it is no longer fit for purpose or unviable*”. I recommend a modification in this respect also.
156. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy SC1 – Social and community facilities and Policy OS3 – loss of open space, sports or recreation facilities.

157. The policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 9:**

**In Policy SD2**

- **Delete “be resisted vigorously” insert “only be supported where it is clearly demonstrated they are no longer fit for purpose or viable, or that an equivalent alternative facility is available within the Parish”**
- **Continue the final paragraph “subject to viability considerations as set out in paragraph 173 of the Framework.”**

**ST1: Accommodating Traffic within the Parish**

158. This policy seeks to establish measures that development proposals should ensure in accommodating traffic.

159. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. It is necessary to clarify the provision of footpaths and cycleways, and improvements to storm water drainage systems are to be subject to viability considerations as set out in paragraph 173 of the Framework. I have recommended a modification in this respect.

160. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy MT1 – traffic management, highway safety and promoting active travel.

161. The policy has regard to the components of the Framework concerned with promoting sustainable transport; requiring good design; promoting healthy communities; and meeting the challenge of climate change, and flooding. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 10:**

**In Policy ST1**

- **In d) after “developments but” insert “, subject to viability,”**
- **In f) after “designed to” insert “not have adverse effect and subject to viability”**

### **SB1: Supporting Local Business**

162. This policy seeks to establish conditional support for proposals, particularly for agriculture and tourism, which sustain or increase local business activity, and offer employment and appropriate skill training in the Parish.
163. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
164. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy E1 – Employment provision.
165. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; supporting a prosperous rural economy; requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. This policy meets the basic conditions.

### **SB2: Workspace Development**

166. This policy seeks to establish conditional support for new development that includes linked residential and small scale employment space and proposals for home working.
167. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
168. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy E1 – Employment provision and Policy E3 – home working.
169. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; supporting a prosperous rural economy; promoting sustainable transport; delivering a wide choice of high quality homes; and requiring good design. This policy meets the basic conditions.

### **SB3: Change of Use**

170. This policy seeks to establish conditional support for change of use of existing buildings on existing employment sites.
171. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
172. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy E2 – Redevelopment of existing employment land and buildings.
173. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; and supporting a prosperous rural economy. This policy meets the basic conditions.

### **SB4: Provision of Broadband and Mobile Telephone Services**

174. This policy seeks to establish support for proposals that enhance broadband and mobile telephone equipment infrastructure
175. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
176. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031.
177. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; supporting a prosperous rural economy; and supporting high quality communications infrastructure. This policy meets the basic conditions.

### **SE1: Sustaining the Parish Environment and Landscape**

178. This policy seeks to establish measures to preserve and enhance the local ecological network and the setting and character of settlements. It is intended development should contribute positively to

the area's rural character and not adversely affect it. Vistas and panoramic views that should be protected are listed at Appendix B of the submission plan.

179. A representation draws attention to the need to ensure adequate consideration of effects on European sites. The policy includes a provision to “*ensure that any adverse effects on the European sites can be avoided or mitigated*”. There is also a provision that proposals should “*not compromise the ability of the Nutrient Management Plan to deliver the necessary overall nutrient reductions along those stretches of the River Wye SAC which are already exceeding water quality targets, or at risk of doing so.*”
180. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
181. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 in particular Policy LD1 – Landscape and townscape and Policy LD2 – Biodiversity and geodiversity.
182. The policy has regard to the components of the Framework concerned conserving and enhancing the natural environment. This policy meets the basic conditions.

## **SE2: Sustaining Local Heritage and Character**

183. This policy seeks to establish support for developments that conserve or enhance the parish's historic character and local distinctiveness.
184. 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 properly seeks to promote or reinforce local distinctiveness.
185. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy LD4 – historic environment and heritage assets.

186. Criterion a) seeks to retain the parish's historic landscape character, distinctive features and surrounding countryside, including their settings. This element of the policy is not sufficiently aligned with national policy in relation to the presumption in favour of sustainable development; supporting a prosperous rural economy; and the conservation and enhancement of the natural environment. Criterion a) also includes the term "surrounding countryside". This element of the policy is not sufficiently precise to provide decision makers with a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
187. The policy is also not sufficiently aligned with national policy in relation to the conservation and enhancement of the historic environment. The policy does not reflect the need to weigh the public benefit of schemes against unavoidable harm to the significance of heritage assets as set out in the Framework. I recommend a modification in this respect.
188. Subject to the recommended modification this policy meets the basic conditions.

#### **Recommended modification 11:**

##### **In Policy SE2**

- **Delete a)**
- **Replace b) with "Development proposals should demonstrate that negative impacts to the significance, including impacts to the setting, of heritage assets, including those listed in Appendix A, have been either avoided or minimised. Where the harm of any residual impacts of a proposed scheme is not justified by the public benefits that would be provided, it will not be supported."**

#### **SE3: Sustaining Open Spaces**

189. This policy includes four components. I will initially consider component a) which relates to Local Green Space. This element of the policy seeks to designate the land known as Church Field and the parish recreation ground, including the play park and an area around the village hall as Local Green Space. The implication of Local Green Space designation is that new development is ruled out other than in very special circumstances.

190. The Framework states *“Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.”*

191. In respect of the areas intended for designation as Local Green Space I find the Local Green Space designation is being made when a neighbourhood plan is being prepared, and I have seen nothing to suggest the designation is not capable of enduring beyond the end of the plan period. The intended designations have regard to the local planning of sustainable development contributing to the promotion of healthy communities, and conserving and enhancing the natural environment, as set out in the Framework.

192. The Framework states that: *“Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:*

- *where the green space is in reasonably close proximity to the community it serves;*
- *where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- *where the green area concerned is local in character and is not an extensive tract of land.”*

I find that in respect of each of the intended Local Green Spaces the designation relates to green space that is in reasonably close proximity to the community it serves; and the green area is local in character and is not an extensive tract of land.

193. The Neighbourhood Plan sets out a one line supporting statement in respect of the all four components of the policy. It is stated *“A very large majority of residents consider that the protection of open space is important”*. This is accompanied by information about the community feedback from the questionnaire of August 2014.

There is no justification for the specific proposed designations stated in the Neighbourhood Plan.

194. The SEA Scoping Report states “*The Play Facilities Study 2012 updates the previous play facilities analysis under the Open Spaces Study 2006 and provides guidance and a framework for the development, delivery and continued sustainability of providing new and improved play facilities for children and young people in Herefordshire in 2031. In terms of Weston under Penyard itself, the assessment found that the playing fields adjoining the Village Hall are well used by all age groups. It would be appropriate for the Weston under Penyard NDP to safeguard the playing fields from alternative forms of use.*” The SEA assessment framework also refers to the protection or enhancement of local green spaces helping to maintain the quality of the ‘townscape’ and character of the area. I have noted The Parish Plan is presented on the Parish Council website. This locally produced document includes reference to “*retention of open land which is intrinsic in maintaining the character of the village and outlying settlements*”. The Church Field and The Recreation Ground are identified in this context. I consider that there is sufficient evidence for me to conclude that these areas are demonstrably special to a local community and hold a particular local significance.
195. Given the significance of designation of land as Local Green Space it is important that the precise areas of land concerned can be easily identified in order to provide a practical framework within which decisions on planning applications can be made. On this basis I recommend the boundaries of the Local Green Space designations are added to the Weston under Penyard Village Policies Map.
196. The remaining three components of the policy (b, c and d) relate, respectively to, archaeological remains; requirements for provision of open space; and situations where off-site provision of open space and play areas may occur. These components of the policy are in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy OS1 – Requirement for open space, sports and recreation facilities; Policy OS2 – meeting open space, sports and recreation needs; and Policy LD4 Historic environment and heritage assets.
197. Elements b, c and d of the policy have regard to the components of the Framework concerned with promoting healthy communities; conserving and enhancing the natural environment; and conserving

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

**Recommended modification 12:  
Delineate the Local Green Space areas designated in Policy SE3  
on the Weston under Penyard Village Policies Map**

**SE4: Polytunnel Development**

198. This policy seeks to establish the basis of consideration of proposals for polytunnel development.
199. The policy in effect is merely signposting the relevant policy in the Core Strategy and additional considerations established in the Polytunnel Supplementary Planning Document. Whilst the policy does not add any local level of interpretation its inclusion in the Neighbourhood Plan is understandable given the significance of the issue locally.
200. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031.
201. The policy has regard to the components of the Framework concerned with supporting a prosperous rural economy; meeting the challenge of climate change, and flooding; and conserving and enhancing the natural environment. This policy meets the basic conditions.

**SE5: Renewable Energy**

202. This policy seeks to establish conditional encouragement of renewable energy proposals that will benefit the community and businesses
203. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
204. Gloucestershire County Council states the policy needs to have a cross reference to European Sites particularly as the risk to bats is mentioned in the policy. Cross referencing between Neighbourhood

Plan policies is not necessary to meet the basic conditions and therefore I have not recommended a modification however I have dealt with this matter in the annex to my report. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031. In particular I note Policy SD2 relating to renewable and low carbon energy generation includes provision relating to international or national designated natural and heritage assets.

205. The policy has regard to the components of the Framework concerned with meeting the challenge of climate change, and flooding; and conserving and enhancing the natural environment. This policy meets the basic conditions.

### **SE6: Sustainable Water Management**

206. This policy seeks to establish six provisions relating to sustainable water management.
207. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
208. The policy includes at component e) a statement that development will only be permitted on land which is within flood zone 1 (low risk). A representation expresses concern that the policy is over restrictive in its approach to flood risk and not consistent with the Sequential testing approach set out in the Framework. The Framework states *“inappropriate development in areas at risk of flooding should be avoided by directing development away from areas of highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.”* The Framework states that Local Plans should be supported by Strategic Flood Risk Assessment, apply a Sequential Test, and if necessary apply an Exception Test. The Framework and Technical Guidance issued with the Framework is silent with respect to neighbourhood plans in this respect. The Framework does however state that *“a sequential approach should be used in areas known to be at risk of any form of flooding”*<sup>35</sup> and *“if following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if*

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<sup>35</sup> Paragraph 101 National Planning Policy Framework 2012

*appropriate. For the Exception Test to be passed it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible will reduce flood risk overall. Both of these tests will have to be passed for development to be allocated or permitted.”<sup>36</sup>*

The Neighbourhood Plan policies approach of only permitting development on land which is within Flood Zone 1 is inconsistent with national policy. National policy is clearly defined and should not be repeated in the Neighbourhood Plan. I recommend that provision e is deleted.

209. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan Core Strategy 2011-2031 and in particular Policy SD3 – Sustainable water management and water resources.

210. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 13:  
In Policy SE6 delete part e)**

## **Summary and Referendum**

211. I have recommended the following modifications to the Submission Version Plan:

**Recommended modification 1:  
Transfer Section 11 ‘Neighbourhood Planning Projects’ to a non-statutory annex to the Neighbourhood Plan**

**Recommended modification 2:  
In Policy H1 delete “Plan”**

**Recommended modification 3:  
In Policy HS1**

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<sup>36</sup> Paragraph 102 National Planning Policy Framework 2012

- In the heading delete “Max” insert “Approximate”; and delete “houses” insert “dwellings”; and delete “7” after “Affordable homes”
- Insert “approximately” before “18”
- In a) delete “all with Tree Preservation Orders in place prior to tree planting”
- In d) after “play areas” insert “to a stated recognised standard of provision”
- Delete part i)

**Recommended modification 4:**

**In Policy HS2**

- In the heading delete “Max” insert “Approximate”; and delete “houses” insert “dwellings”; and delete “15” after “Affordable homes”
- Insert “approximately” before “37”
- In a) delete “strengthening” insert “reinforcing” and insert “increasing the number of” before “trees”
- In d) after “green space” insert “to a stated recognised standard of provision”
- Delete part j

**Recommended modification 5:**

**In Policy H2**

- In b) delete “controlled” insert “appropriate”
- In h) delete “worthy” insert “capable”
- Delete part k

**Recommended modification 6:**

**In Policy H3**

- After “sites of” delete “ten or more dwellings” and insert “11 new dwellings or more or 1-10 new dwellings with a total gross floorspace of more than 1,000 sq m”
- Delete “take into account” insert “demonstrate they meet”
- Delete “normally”
- Delete “up to”
- And continue “unless viability considerations can be shown to necessitate an alternative percentage of provision”

**Recommended modification 7:**

**In Policy H5**

- Delete the introductory text and part a) and the list designation “b)”.
- After “tenure types” insert “of affordable housing provision”

**Recommended modification 8:  
Delete Policy SD1**

**Recommended modification 9:  
In Policy SD2**

- Delete “be resisted vigorously” insert “only be supported where it is clearly demonstrated they are no longer fit for purpose or viable, or that an equivalent alternative facility is available within the Parish”
- Continue the final paragraph “subject to viability considerations as set out in paragraph 173 of the Framework.”

**Recommended modification 10:  
In Policy ST1**

- In d) after “developments but” insert “, subject to viability,”
- In f) after “designed to” insert “not have adverse effect and subject to viability”

**Recommended modification 11:  
In Policy SE2**

- Delete a)
- Replace b) with “Development proposals should demonstrate that negative impacts to the significance, including impacts to the setting, of heritage assets, including those listed in Appendix A, have been either avoided or minimised. Where the harm of any residual impacts of a proposed scheme is not justified by the public benefits that would be provided, it will not be supported.”

**Recommended modification 12:  
Delineate the Local Green Space areas designated in Policy SE3 on the Weston under Penyard Village Policies Map**

**Recommended modification 13:  
In Policy SE6 delete part e)**

212. I also make the following recommendation in the Annex below.

**Recommended modification 14:  
Identified errors that are typographical in nature or arising from updates should be corrected. Modification of general text will be necessary to achieve consistency with the modified policies**

213. I am satisfied that the Neighbourhood Plan<sup>37</sup>:

- 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.<sup>38</sup>

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

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

<sup>38</sup> 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

214. 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.<sup>39</sup> I have seen nothing to suggest the referendum area should be extended beyond the designated Neighbourhood Area.

**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 7 November 2013**

### Annex: Minor Corrections to the Neighbourhood Plan

I am able to recommend modification of the Neighbourhood Plan in order to correct errors.<sup>40</sup> The Neighbourhood Plan includes a number of errors that are typographical in nature or arising from updates. I recommend these are corrected as follows:

Check for confusion between Wye Valley AONB and Wye Valley Woodland SAC in accordance with the Natural England Regulation 16 representation

Page 13 Policy H6 add “Rural” to title

Policy HS1 f line 2 delete “of”

Policy HS1 h delete “for any site”

Policy HS2 h delete “for any site”

Policy H2 standardise approach to use of capital letters for “settlement boundary” and “parish”

Policy H6 delete “be” from last line

Policy ST1 new paragraph after parish

Policy ST1 commence lettering of points with “There will be safe”

Policy SE5 delete underlining and substitute (e) for (d)

Policy SE6 after “serve” delete “the” and insert “any”

Policies Map add boundaries of Local Green Space designations

Environmental Report change reference to Callow and Haywood in paragraph 4 of the non-technical summary

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

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

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 14:  
Identified errors that are typographical in nature or arising from updates should be corrected. Modification of general text will be necessary to achieve consistency with the modified policies**

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27 November 2015  
REPORT ENDS