

Herefordshire Council

**Withington Group Parish  
Neighbourhood Development Plan  
2017-2031**

**Independent Examiner's Report**

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19 July 2019

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## Summary

I have been appointed as the independent examiner of the Withington Group Parish Neighbourhood Development Plan.

The Plan area consists of three rural Parishes with the main development in the village of Withington. The Parishes are located between 3 and 8 miles to the east/north east of Hereford and have a combined population of around 1760.

The Plan contains 17 policies. It takes an ambitious approach to the revision and definition of settlement boundaries including for the settlements of Preston Marsh, Westhide and Withington Marsh for the first time.

Whilst the Plan does not allocate any new sites for residential development that do not already have the benefit of planning permission, it contains a range of policies aimed at ensuring that any new development respects the character and special qualities of the area.

It builds on work started by a Parish Plan in 2009. It is a well-written and presented document.

It has been necessary to recommend some modifications. In the main these are intended to ensure the Plan is clear and precise and provides a practical framework for decision-making as required by national policy and guidance. My reasoning is set out in detail in this report. These do not significantly or substantially alter the intention or overall nature of the Plan.

Subject to those modifications, I have concluded that the Plan does meet the basic conditions and all the other requirements I am obliged to examine. I am therefore pleased to recommend to Herefordshire Council that the Withington Neighbourhood Development Plan can go forward to a referendum.

In considering whether the referendum area should be extended beyond the Neighbourhood Plan area I see no reason to alter or extend this area for the purpose of holding a referendum.

Ann Skippers MRTPI  
Ann Skippers Planning  
19 July 2019



## 1.0 Introduction

This is the report of the independent examiner into the Withington Group Parish Neighbourhood Development Plan (the Plan).

The Localism Act 2011 provides a welcome opportunity for communities to shape the future of the places where they live and work and to deliver the sustainable development they need. One way of achieving this is through the production of a neighbourhood plan.

I have been appointed by Herefordshire Council (HC) with the agreement of the Group Parish Council to undertake this independent examination. I have been appointed through the Neighbourhood Planning Independent Examiner Referral Service (NPIERS).

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

## 2.0 The role of the independent examiner

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

The basic conditions<sup>1</sup> are:

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

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

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to in the paragraph above. Only one is applicable to neighbourhood plans and was brought into effect on 28 December 2018.<sup>2</sup> It states that:

- The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

The examiner is also required to check<sup>3</sup> whether the neighbourhood plan:

- Has been prepared and submitted for examination by a qualifying body
- Has been prepared for an area that has been properly designated for such plan preparation
- Meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one neighbourhood area and that
- Its policies relate to the development and use of land for a designated neighbourhood area.

I must also consider whether the draft neighbourhood plan is compatible with Convention rights.<sup>4</sup>

The examiner must then make one of the following recommendations:

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

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

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

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<sup>2</sup> Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

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

<sup>4</sup> The combined effect of the Town and Country Planning Act Schedule 4B para 8(6) and para 10 (3)(b) and the Human Rights Act 1998

### 3.0 Neighbourhood plan preparation

A Consultation Statement has been submitted. It meets the requirements of Regulation 15(2) of the Neighbourhood Planning (General) Regulations 2012.

The catalyst for the Plan was the production of a Community Led Plan in 2009. This previous engagement and evidence gathered provided a firm foundation for the Plan. Work on the Plan began in 2013 with the Plan area approved and a Steering Group established. Early publicity included open day events and flyers and articles.

Throughout the process there has been a dedicated section on the Group Parish website, regular items at Parish Council meetings, regular articles in the Withington News delivered to all households in the Parish and flyers and banners advertising progress and events.

Engagement with the local school included a competition to design a logo which is used on the front cover of the Consultation Statement and on Facebook amongst other things.

A questionnaire was delivered to every household and business in June 2014. Results were presented at a Parish Council meeting and helped to formulate draft policy options. An open event was held in January 2015 alongside Facebook and articles to publicise the results and offer options.

In 2015, work paused on the Plan until the Core Strategy was adopted in 2016. Discussions were held about the merits of continuing with the Plan.

In late 2017, an event was held to receive feedback on the draft Plan. Events were held in January 2018.

Pre-submission consultation was held between 18 June – 30 July 2018. As well as being available online, the Plan was available on request from the Parish Clerk.

Submission (regulation 16) consultation was held between 17 December 2018 – 11 February 2019.

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

The Regulation 16 stage resulted in 13 representations. I have considered all of the representations and taken them into account in preparing my report.

## 4.0 The examination process

I have set out my remit earlier in this report. It is useful to bear in mind that the examiner's role is limited to testing whether or not the submitted neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).<sup>5</sup> PPG confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.<sup>6</sup> Where I find that policies do meet the basic conditions, it is not necessary for me to consider if further amendments or additions are required.

PPG<sup>7</sup> explains that it is expected that the examination will not include a public hearing. Rather the examiner should reach a view by considering written representations. Where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.<sup>8</sup>

After consideration of all the documentation, I decided that it was not necessary to hold a hearing.

Last year NPIERS published guidance to service users and examiners. Amongst other matters, the guidance indicates that the qualifying body will normally be given an opportunity to comment upon any representations made by other parties at the Regulation 16 consultation stage should they wish to do so. There is no obligation for a qualifying body to make any comments; it is only if they wish to do so. The Group Parish Council sent comments and I have taken these into account.

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

I made an unaccompanied site visit to familiarise myself with the Plan area on 25 May 2019.

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

As a result of some modifications consequential amendments may be required. These can include changing section headings, amending the contents page, renumbering paragraphs or pages, ensuring that supporting appendices and other documents align with the final version of the Plan and so on.

I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be

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

<sup>6</sup> Ibid

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

<sup>8</sup> Ibid

taken and any such necessary editing carried out and the Plan's presentation made consistent.

## **5.0 Compliance with matters other than the basic conditions**

I now check the various matters set out in section 2.0 of this report.

### **Qualifying body**

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

### **Plan area**

The Plan area is the whole of the Group Parish area which consists of the three Parishes of Withington, Preston Wynne and Westhide. The area is shown on Map 1 on page 4 of the Plan. HC approved the designation of the area on 12 July 2013. The Plan relates to this area and does not relate to more than one neighbourhood area and therefore complies with these requirements.

### **Plan period**

The Plan period is variously indicated in the Plan as 2017 – 2031 (page 2) or 2011 – 2031 (page 4). The Basic Conditions Statement also indicates 2017 – 2031 and I consider it would be helpful for the dates to align with the time period for the Core Strategy. This means that some consequential amendments will be required to, for example the foreword.

- **Amend the dates of the Plan period to “2011 – 2031”**
- **Ensure that the Plan period is consistent throughout the documents**

### **Excluded development**

The Plan does not include policies that relate to any of the categories of excluded development and therefore meets this requirement. This is also helpfully confirmed in the Basic Conditions Statement.

### **Development and use of land**

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because wider



community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable.<sup>9</sup>

## 6.0 The basic conditions

### Regard to national policy and advice

The Government published a National Planning Policy Framework (NPPF) in 2012. On 24 July 2018, a revised NPPF was published. On 19 February 2019, the revised NPPF was updated and replaces the previous NPPF published in March 2012 and revised last July.

Paragraph 214 in Annex 1 of that document explains that:

“The policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.”

Footnote 69 explains that for neighbourhood plans “submission” means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.

It is therefore clear that it is the previous NPPF published in 2012 that is relevant to this particular examination.

Any references to the NPPF in this report refer to the NPPF published in 2012 unless otherwise stated.

The NPPF is the main document that sets out national planning policy. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the strategic development needs set out in Local Plans, plan positively to support local development, shaping and directing development that is outside the strategic elements of the Local Plan and identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with the neighbourhood plan to proceed.<sup>10</sup>

The NPPF also makes it clear that neighbourhood plans should be aligned with the strategic needs and priorities of the wider local area. In other words neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. They

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

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

cannot promote less development than that set out in the Local Plan or undermine its strategic policies.<sup>11</sup>

The NPPF indicates that plans should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.<sup>12</sup>

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

PPG indicates that a policy should be clear and unambiguous<sup>13</sup> to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the planning context and the characteristics of the area.<sup>14</sup>

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

Whilst this has formed part of my own assessment, a table in the Basic Conditions Statement<sup>17</sup> sets out how the Plan aligns with the core planning principles of the NPPF alongside other tables which go into more detail.

### **Contribute to the achievement of sustainable development**

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development. The NPPF as a whole<sup>18</sup> constitutes the Government's view of what sustainable development means in practice for planning. The Framework explains that there are three dimensions to sustainable development: economic, social and environmental.<sup>19</sup>

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

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<sup>11</sup> NPPF para 184

<sup>12</sup> Ibid para 17

<sup>13</sup> PPG para 041 ref id 41-041-20140306

<sup>14</sup> Ibid

<sup>15</sup> Ibid para 040 ref id 41-040-20160211

<sup>16</sup> Ibid

<sup>17</sup> Basic Conditions Statement page 4

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

<sup>19</sup> Ibid para 7

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

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

Whilst this has formed part of my own assessment, the Basic Conditions Statement offers an assessment of how each Plan policy generally conforms to the relevant CS policies.

## **European Union Obligations**

A neighbourhood plan must be compatible with European Union (EU) obligations, as incorporated into United Kingdom law, in order to be legally compliant. A number of EU obligations may be of relevance including Directives 2001/42/EC (Strategic Environmental Assessment), 2011/92/EU (Environmental Impact Assessment), 92/43/EEC (Habitats), 2009/147/EC (Wild Birds), 2008/98/EC (Waste), 2008/50/EC (Air Quality) and 2000/60/EC (Water).

PPG<sup>20</sup> confirms that it is the responsibility of the local planning authority, in this case HC, to ensure that all the regulations appropriate to the nature and scope of the draft neighbourhood plan have been met. It is HC who must decide whether the draft plan is compatible with EU obligations when it takes the decision on whether the plan should proceed to referendum and when it takes the decision on whether or not to make the plan.

## ***Strategic Environmental Assessment***

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment is relevant. Its purpose is to provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes. This Directive is commonly referred to as the Strategic Environment Assessment (SEA) Directive. The Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR).

An Environmental Report (ER) dated November 2018 has been submitted as the initial screening assessment of June 2013 indicated a SEA was needed.

The ER confirms that a Scoping Report dated October 2014 was prepared and sent to the statutory consultees from 14 July – 18 August 2014. Natural England and Historic England responded.

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<sup>20</sup> PPG para 031 ref id 11-031-20150209

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

Following the Regulation 14 stage, changes were made to the Plan. The ER of November 2018 includes a review of the revisions.

The ER concludes that the Plan "...is in general conformity with both national planning policy...and strategic policies...It also does not propose any growth that would be over and above the growth prescribed by strategic policies...".<sup>21</sup> It was published for consultation alongside the submission version of the Plan.

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

The ER is a comprehensive document that has dealt with the issues appropriately for the content and level of detail in the Plan. This in line with PPG advice which confirms the SEA does not have to be done in any more detail or using more resources than is considered to be appropriate for the content and level of detail in the Plan.<sup>22</sup> In my view, it has been prepared in accordance with Regulation 12 of the Regulations.

Therefore EU obligations in respect of SEA have been satisfied.

### ***Habitats Regulations Assessment***

Directive 92/43/EEC on the conservation of natural habitats, commonly referred to as the Habitats Directive, is also of relevance to this examination. A Habitats Regulations Assessment (HRA) identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects.<sup>23</sup> The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

A HRA dated November 2018 has been submitted. This explains that an initial screening undertaken in June 2013 concluded that a full HRA screening would be needed. This was because the River Wye (including the River Lugg) Special Area of Conservation (SAC) is within the River Lugg catchment area.

A HRA of May 2018 was undertaken. This concluded that there would be no likely significant effects on the SAC.

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

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<sup>21</sup> ER Non-technical summary

<sup>22</sup> PPG para 030 ref id 11-030-20150209

<sup>23</sup> Ibid para 047 ref id 11-047-20150209

On 28 December 2018, the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) was substituted by a new basic condition brought into force by the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

HC produced a note regarding the new basic condition dated 15 January 2019. This is attached as Appendix 2.

Given the nature and characteristics of the SAC concerned and the nature and contents of this Plan, I consider that the requisite requirements have been met and that the prescribed basic condition is complied with.

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.<sup>24</sup> In undertaking a great deal of work on HRA, HC has considered the compatibility of the Plan in regard to EU obligations and does not raise any concerns in this regard.

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

The Basic Conditions Statement contains a statement in relation to human rights. There is nothing in the Plan that leads me to conclude there is any breach of the fundamental rights and freedoms guaranteed under the ECHR or that the Plan is otherwise incompatible with it or does not comply with the Human Rights Act 1998.

## **7.0 Detailed comments on the Plan and its policies**

In this section I consider the Plan and its policies against the basic conditions. Where modifications are recommended they appear in **bold text**. As a reminder, where I suggest specific changes to the wording of the policies or new wording these appear in **bold italics**.

The Plan is presented very well and very clearly. It contains 17 policies. It starts with a foreword and useful table of contents.

Unfortunately there are a couple of inaccurate points in the foreword which should be changed in the interests of accuracy.

- **Add the words “*and the public*” at the end of bullet point four on page 2 of the Plan**
- **Add a new bullet point that reads: “*A period of formal consultation*” after bullet point five**

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

- Delete the words “a government appointed” in bullet point six and replace with “*an independent*”

## 1. Context

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

Some natural updating for example in respect of the NPPF published in February 2019 after submission of the Plan will be needed.

## 2. The Parishes and the Villages

A well-written and informative section, this explains that the Group Parish covers three rural Parishes and the main development is in Withington. It paints an interesting background to the settlements and wider area.

## 3. Vision and Objectives

The vision for the Plan is:

- “The village should evolve, but ensure that their integrity is kept and not developed into a suburb or a small town of urban sprawl. The parishioners have chosen to live in a rural village.
- To take into consideration the existing needs of the community. To ensure the community facilities (transport, employment etc.) are developed and maintained in line with this.
- Monitor and control traffic flows and infrastructure through the villages.”

The vision is supported by ten objectives.

Whilst the vision is a little unusual, I am mindful that this has evolved through community engagement and the objectives are more detailed and akin to the type of content usually found in a vision. Both the vision and the objectives are clearly articulated.

#### 4. Policies for New Housing and Development

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

The strategy for the rural areas in the CS<sup>25</sup> is positive growth. CS Policies SS2 and RA1 Indicate that 5,300 dwellings will be delivered throughout the rural housing market areas (HMA).

The strategy is based on seven HMAs. This Plan area falls within the Hereford HMA. This HMA has an indicative housing growth target of 18% according to CS Policy RA1.

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

The main focus for development is within or adjacent to existing settlements listed in two figures, 4.14 and 4.15. CS Policy RA2 translates this into policy. Withington is identified in Figure 4.14 as a settlement which will be the main focus of proportionate housing development. Preston Wynne, Westhide and Withington Marsh identified in Figure 4.15 as other settlements where proportionate housing is appropriate.

The Plan sets out commitments and completions since 2011 to end March 2017. A figure of 254 is identified. However, this includes an allowance for windfalls of 20 to the period to 2031 which, as far as I can see, is not based on historic trends and 80 for a care home at Whitestone. Without these two elements, a total of 154 results. Whether or not the windfall allowance of 20 is included (and a windfall allowance can in principle be included) and 80 for the care home, what is clear is that the Parish has already met the CS growth target through commitments and completions.

The CS explains that settlement boundaries for settlements identified in CS Policy RA2 will be defined in neighbourhood plans or the Rural Areas Sites Allocation Development Plan Document. Once a settlement boundary is defined, CS Policy RA3 will apply to land outside of settlements.

There is a small typo in line 8 of paragraph 4.1 which should be corrected.

- **Add the word “in” after “...Withington which is...” in paragraph 4.1 on page 10 of the Plan**

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

## Policy P1 Allocated Sites in Withington

The Plan explains that three sites, two at Whitestone and one to the rear of Vine Tree Close have been granted permission, but little progress has been made. Both of the sites at Whitestone are therefore allocated in the Plan to try and rekindle development being delivered on these sites and I see no reason why this is an inappropriate approach.

This short policy allocates these two sites for development; the first is land adjacent to Whitestone Baptist Chapel for 33 dwellings and the second is the age restricted residential development on land on the south side of the A4103.

Both sites are shown clearly on the Withington Policies Map. I consider a cross-reference to this Map would be helpful in the interests of clarity and providing a practical framework for decision-making.

A representation also points out a correction for the supporting text which the Group Parish Council agrees should be carried out. A modification is therefore made.

- **Add the words “*and as shown on the Withington Policies Map*” after “The following sites...” in the policy**
- **Replace the words “...allocated for residential care...” with “....allocated for *age restricted residential development...*’ in paragraph 4.3 on page 11 of the Plan**

## Policy P2 Withington Settlement Boundary

The Plan has inherited a settlement boundary for Withington from the Herefordshire Unitary Development Plan (UDP), but has rightly taken the opportunity to review that boundary. The boundary now includes any commitment sites and the Whitestone Business Park.

A representation draws my attention to two recently approved housing schemes along Veldo Lane and Duke Street. It would be sensible to include these sites within the settlement boundary so that it is up to date.

The representation also requests the inclusion of Stonehouse Farm within the settlement boundary. It points out that the Farm was included in the settlement boundary in the UDP. I have carefully considered this matter and visited the area. Just as the settlement boundary has been reviewed to include new areas, I cannot see any reason in principle why other areas should now be excluded should there be reason to do that. I saw at my visit that the character of the area changes after the school and becomes more rural in nature; indeed it appeared to me as a working farm. I therefore



consider the revised boundary is appropriately drawn. I am also mindful that the settlement boundary was not a saved policy of the UDP.

A new settlement boundary is created for Withington Marsh has also been put forward. This is appropriately designated.

The policy defines both boundaries and cross-references the Policies Maps which show the boundaries clearly. However, no mention is made of Withington Marsh in the policy's title and it is necessary to ensure that this is not missed by users of the Plan.

The wording of the policy is clear and refers to CS Policy RA3 for development on land outside the settlement boundaries.

With this modification, the policy will meet the basic conditions and in particular be in general conformity with CS Policies RA2 and RA3 and help to achieve sustainable development.

- **Change the title of the policy to “Withington Settlement Boundary and Withington Marsh Settlement Boundary”**

### Policy P3 Westhide and Preston Wynne

This policy defines settlement boundaries for Westhide and Preston Wynne and makes an allocation in Westhide.

The Plan explains that Westhide is the smallest of the three Parishes in the Group. A settlement boundary has been defined which includes a group of redundant farm buildings which is allocated for up to six dwellings. There is no explanation of why six dwellings would be appropriate or any evidence to support such a definite figure and so a modification is made to support a design-led approach to the redevelopment of this site.

Preston Wynne is a small settlement and the boundary proposed reflects this.

The proposed settlement boundaries are clearly shown on the respective Policies Maps and are logically defined.

The policy limits infill developments to no more than three dwellings. I can see that the character of both settlements is such that only small-scale development could be satisfactorily accommodated. However, the supporting text seeks to impose a further 'cap' on development which is not justified and so a modification addresses this.

There is also an anomaly between the supporting text for this policy and the policy itself which I consider creates confusion. The policy should take precedent and therefore I amend the text accordingly.

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

- **Change the second sentence of the policy to read: “A site is allocated for *approximately six dwellings at Townsend Farm in Westhide.*”**
- **Delete the sentence “No further individual redundant sites or adjacent sites taken together should provide for more than three dwellings.” From paragraph 4.16 on page 14 of the Plan**
- **Change the fourth sentence in paragraph 4.17 on page 15 of the Plan to read: “It is considered that within the settlement boundary only infill development *of no more than three dwellings will be acceptable.*”**

### **Policy P4 Local Distinctiveness – Housing Layout and Design**

The NPPF states that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people.<sup>26</sup> It continues that neighbourhood plans should set out robust and comprehensive policies that set out the quality of development expected for the area.

Policy P4 is a long policy with numerous and varied criteria covering a wide range of issues. In essence, the policy seeks to deliver locally distinctive development of a high quality that protects, reflects and enhances local character.

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

The policy aligns with the NPPF’s stance that good design is a key aspect of sustainable development and is indivisible from good planning.<sup>27</sup> It builds on CS Policies SS6, LD1 and SD1.

However, two criteria are of concern; the first is criterion d. which HC suggests may be difficult to interpret. A modification is therefore made to make this clearer.

The second is criterion h. This indicates that new residential occupiers should not be adversely affected by existing agricultural or commercial activity. If the living conditions of new residents would be adversely affected by existing uses, then the site is not suitable for residential use if those adverse effects cannot be suitably mitigated by the new development itself. Existing activities and operations should not be adversely affected. In line with the agent of change principle, and in the interests of achieving sustainable development, a modification is made.

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<sup>26</sup> NPPF para 56

<sup>27</sup> Ibid para 56

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

- **Change criterion d. to read: “*Detached garages to dwellings should not usually project beyond the front or principal elevation of the dwelling and attached garages should be designed to appear subservient to the main dwelling and not visually dominate the street scene.*”**
- **Change criterion h. to read: “*If the amenity of new residential occupiers might be adversely affected by existing agricultural or commercial activity, suitable mitigation measures must be included in the design of the scheme and its layout. Where it is not possible to satisfactorily mitigate against any potential harm, planning permission will not be granted.*”**

### Policy P5 Affordable Housing

The supporting text to this policy indicates that 42 affordable homes are needed given the housing growth target of 127 dwellings. It is not clear to me how this figure has been devised or how given the commitments the affordable housing needed can be said to have been provided.<sup>28</sup>

Regardless of this, Policy P5 refers to CS Policy H1 on affordable housing targets and thresholds. The policy then seeks to ensure that separate sites of less than 10 dwellings (as CS Policy H1 only applies to sites of more than ten) which have a connection, defined as proximity or ownership, are considered together. This would prevent smaller sites just falling below the threshold and no affordable housing being provided. However, PPG makes it clear that the provision of affordable housing should only be sought from major residential developments<sup>29</sup> which are 10 or more units or where the site has an area of 0.5 hectares or more. Lower thresholds can be set in designated rural areas<sup>30</sup> but this is not the case here.

Therefore the policy does not take national policy and guidance into account and as a result does not meet the basic conditions. The policy and its supporting text should therefore be deleted.

- **Delete Policy P5 and its supporting text (paragraphs 4.22 – 4.25)**

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<sup>28</sup> Para 4.22, page 18 of the Plan

<sup>29</sup> PPG para 023 ref id 23b-023-20190315

<sup>30</sup> Section 157(1) of the Housing Act 1985

## Policy P6 Local Green Spaces

Seven areas of Local Green Space (LGS) are proposed.

The NPPF explains that LGSs are green areas of particular importance to local communities.<sup>31</sup> The effect of such a designation is that new development will be ruled out other than in very special circumstances.

The identification of LGSs should be consistent with local planning of sustainable development and complement investment. The NPPF makes it clear that this designation will not be appropriate for most green areas or open space. Further guidance about LGSs is given in PPG.

The supporting text and policy appears to confuse the proposed designation of LGSs and their relationship to CS Policies LD3 and OS3. This is because Policy P6 applies CS Policies LD3 and OS3 whereas the designation of the green areas as LGS would create a new and separate designation in its own right.

CS Policy LD3 refers to green infrastructure and is not incompatible with the LGS designation. However, CS Policy OS3 refers to the loss of open space, sports or recreation facilities. This policy allows development subject to certain criteria and I do not regard it as compatible with LGS designation which seeks to protect specific areas which are particularly important to the local community; if their loss is acceptable in certain circumstances, then the areas themselves are not demonstrably special. From the evidence before me though, this is clearly not the case. References to CS Policy OS3 should therefore be deleted and the policy reworded to reflect its intended purpose.

A Background Paper No. 2 – Analysis of Candidate Local Green Spaces has been produced.

This document also refers to land around St Peter's Church. This area is shown on the Policies Map. However, unfortunately it has not been included in the list of proposed LGSs in the policy. As a result, it cannot be proposed as a LGS. I appreciate that this will come as a disappointment to the Group Parish, but an early review of the Plan can remedy this (without prejudice to any assessment of the area's suitability as a LGS) and as the Church is listed and falls within the Conservation Area, it is afforded some protection. In addition, the same area is subject to Policy P16 which will also afford it protection.

All (the other) seven proposed LGSs are shown clearly on the Policies Maps. I saw each at my site visit.

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<sup>31</sup> NPPF paras 76, 77 and 78

Taking each area in turn:

**Withington Fields and Copse, Withington**, is adjacent to the Village Hall and its car park. There are playing fields, a BMX, sports pitches and play area together with a copse. This was a pleasant and well-used recreational area at the time of my visit.

**Withies Close, Withington** is a green area which surrounds a circular garage court. This sloping land is an integral part of the setting and amenities for this housing area and was well used at the time of my visit.

**Vine Tree Close, Withington** is a grassed, open area with mature trees which is integral to the character of this area.

**Springfield Road, Withington** is a grassed, open area with trees important to the setting and character of this area.

**Hill View Avenue, Withington** is a grassed, open area with trees important to the setting and character of this area.

**Duke Street, Withington** comprises three areas; the first area includes the school and its playing fields. As LGS designation is for green spaces, it is not appropriate for a school and its buildings to be included. Such a designation would also prevent any reasonable extension of the school or new school buildings potentially. In addition, the same area is identified under Policy P16 which will be a more appropriate form of 'protection' for this area.

The other two areas are on either side of the Duke Street. The area adjacent to the school is well contained and fenced to three sides. I saw it has mature trees and a footpath with land sloping upwards. I found it to be an area of beauty which affords views of the Church and its spire. It falls within the Conservation Area.

On the other side of the road is a larger area which is especially visible from Duke Street from the north heading south and for a shorter section along Duke Street broadly opposite the school.

The Background Paper indicates that the fields provide a "very important break" between the two areas of Withington and Duke Street and protect views of the Conservation Area and Church. It indicates that the area(s) are part of the setting of the Church. It states it "...is required to be retained to prevent the visual coalescence of two historic areas". It appears with the words "Strategic Gap" in brackets in the policy; this points to a confusion with the proposed LGS designation and the function of the land concerned.

It was evident from my site visit that this area makes a contribution to the setting of the village. However, the justification seems to focus on this area's role in separating the two more built up areas. This is supported by the words in the Plan itself which refer to

development pressures which are illustrated by two proposals for residential development on this land that have received permission.

I have already indicated that the school and its environs is inappropriate to designate as LGS. The area to the east of Duke Street and adjacent to the school is, in my view, appropriate to designate, as it is demonstrably special because of its beauty and historic significance within the Conservation Area.

However, the larger area to the west of Duke Street has not been sufficiently justified. That is not to say it is not appropriate as a LGS, but that, at this point in time, insufficient evidence has been put forward to support its designation. It differs in nature and character from the other areas included in this proposal as it does not fall within the Conservation Area. It also appears to have had two permissions granted for small-scale residential development that would alter the extent of the area designated in any case. Furthermore the definition of an up to date settlement boundary will ensure that this land is subject to CS Policy RA3.

There is an objection to the designation of the two areas outside of the school site. LGS designation does not confer any rights of public access over what exists at present.<sup>32</sup> PPG is clear that land can be considered for designation even if there is no public access. It gives the examples of green areas valued for their wildlife, historic significance or beauty.<sup>33</sup>

**Land north side of C1131, Westhide** is important to the setting of the settlement. It has long distance views across the land.

In my view, all of the proposed LGSs meet the criteria in the NPPF satisfactorily with the exception of the school site and the field to the west of Duke Street.

- **Delete reference to CS Policy OS3 in paragraph 4.26 on page 19 of the Plan**
- **Delete St Peter's Church area notated as a LGS from the Policies Map**
- **Delete the school and playing fields site and the area west of Duke Street from the proposed Duke Street area**
- **Change the wording of Policy P6 to read:**

***"The following green spaces and identified on the Policies Maps are designated as Local Green Spaces. These are protected from development which would detract from the character, appearance and function.***

**[list retained spaces by name/address only i.e. deleting "(Strategic Gap)" from existing number 6]**

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<sup>32</sup> PPG para 017 ref id 37-017-20140306

<sup>33</sup> Ibid

- **Consequential amendments will be required to the Policies Maps**

### **Policy P7 Transport and Traffic**

This policy seeks to direct developer contributions towards a set of transport related priorities.

Planning obligations should only be sought where they meet the statutory tests<sup>34</sup> which are also set out in the NPPF.<sup>35</sup> The tests are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

As drafted, this element of the policy reads as though it is a list of desirable priorities whether or not they might meet these tests given the circumstances of an individual site or development. Therefore this element requires modification.

Subject to this modification, the policy will take account of national policy and guidance, will generally conform to the CS and in particular Policies SS4 and MT1 and will help to achieve sustainable development.

- **Reword Policy P7 to read:**

***“Where appropriate, development will be required to make a proportionate contribution towards the provision of transport infrastructure in the Parish. The priority list includes: [retain list a. – e. as currently presented]”***

### **Policy P8 Conserving Historic Character**

Withington has a Conservation Area (CA and the Parish as a whole boasts many heritage assets.

The NPPF<sup>36</sup> recognises that heritage assets are an irreplaceable resource; they should be conserved in a manner appropriate to their significance. It continues that great weight should be given to the conservation of a designated heritage asset. In relation to non-designated heritage assets, the NPPF indicates that significance should be taken into account and that a “balanced judgement” will be needed having regard to the scale of any harm or loss and the significance of such heritage assets.

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<sup>34</sup> Regulation 102 Community Infrastructure Levy Regulations 2010.

<sup>35</sup> NPPF para 204

<sup>36</sup> Ibid Section 12

The policy takes account of national policy and guidance, is in general conformity with CS Policies SS6, LD1 and LD4 in particular and will help to achieve sustainable development. It is clearly worded and no modifications are recommended.

### **Policy P9 Herefordshire and Gloucestershire Canal**

The Plan explains that the route of the former canal passes through the Parish and its restoration is supported. The policy refers to CS Policy E4 which safeguards the historic route of the canal from any development that would prevent or compromise the restoration. The policy extends to the former canal basin at Withington Marsh. Both this and the route are clearly shown on the Policies Map. The policy is a local expression of CS Policy E4 and will help to achieve sustainable development.

The policy is clearly worded and no modifications are recommended.

### **Policies P10 Telecommunications – Broadband and P11 Telecommunications – Mobile Phone Coverage**

In common with many rural areas, the availability and quality of broadband is an important issue. Policy P10 supports its provision subject to satisfactory visual impact. Policy P11 supports improvements to the quality of mobile phone coverage. This is in line with the NPPF's support for high quality communications infrastructure<sup>37</sup> and CS Policy SS5. Both policies cross-reference CS Policy LD1 appropriately. The policies are clearly worded with the exception of a small typo in both policies and meet the basic conditions.

- **Delete the first “and” from the first sentence of Policy P10**
- **Delete the “and” from Policy P11**

### **Policy P12 Employment**

The Withington Business Park is an important source of employment and important to the local economy. Policy P12 supports the continued operation of the Business Park, but only if any harm to the living conditions on nearby residents can be suitably mitigated. The supporting text refers to the proposed residential care home allocated on an adjacent site. I have already explained why this stance is not appropriate in my discussion of Policy P4. Therefore modifications are made to address this.

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<sup>37</sup> NPPF Section 5



The policy's second element refers to an employment area at Westhide restricting it to Use Class B1 because of nearby residential dwellings and the nature of the local road network. There is no reference to this area in the supporting text and therefore no evidence to support this element of the policy. It should therefore be deleted.

The third element of the policy refers to homeworking and references CS Policy E3. It does not add anything to this CS policy which contains more detail and is therefore unnecessary duplication.

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

- **Delete the words “...provided that any adverse affects on nearby residential properties can be suitably mitigated.’ from the first sentence of the policy**
- **Delete the second sentence of the policy**
- **Delete the third sentence of the policy**
- **Delete the second sentence of the supporting text in paragraph 4.32 on page 21 after “The Parish Council fully supports its continued operation.”**
- **Delete the last sentence of paragraph 4.32**

### **Policy P13 Agriculture and Tourism**

The Plan area is predominately agricultural. It is recognised that farm diversification is important to the rural economy. This policy supports that, but simply refers to CS Policies RA6 and E4. Therefore it does not add anything to those CS policies and is an unnecessary duplication. As a result it should be deleted.

- **Delete Policy P13 and its supporting text**

### **Policy P14 Poly tunnels**

Concern has been raised by the community about the visual impact of polytunnels and their effect on drainage whilst recognising they are part of modern agricultural practices.

Policy P14 requires any new proposals to have a Landscape Impact Assessment as well as ensuring that rainwater is managed properly. I consider that the two topics of concern – landscape impact and drainage – are proper considerations, but recommend rewording the policy so that the issues are considered, but the mechanism for so doing is not necessarily through the submission of a Landscape Impact Assessment. This is

because requirements for documents accompanying planning applications are a matter for the local planning authority and a proportionate approach should be taken.<sup>38</sup>

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

- **Reword Policy P14 to read:**

***“Proposals for new polytunnels must take account of existing landform, trees and hedgerows on and near the site and demonstrate that the effect on the character and appearance of the landscape will be acceptable. Measures to ensure proper management of any rainwater run-off from the site should also be detailed at the planning application stage.”***

### **Policy P15 Renewable energy**

Small-scale renewable energy schemes are supported by this policy subject to acceptable effects on the natural and historic environment and amenity.

The policy is clearly worded and is a local expression that takes account of the NPPF’s drive to meet the challenge of climate change and can be viewed as a positive strategy promoting such energy whilst ensuring that adverse impacts are satisfactorily addressed.<sup>39</sup> It generally conforms to CS Policies SS7 and SD2 adding detail at the local level and will help to achieve sustainable development. It meets the basic conditions and no modifications are recommended.

### **Policy P16 Social and Community Facilities**

This policy seeks to protect and enhance social, cultural and community facilities in line with CS Policy SC1. A number of such facilities are identified in the supporting text and on the Policies Maps. This then adds a local dimension to the CS policy.

In addition, the policy supports new community facilities adjacent to Withington Village Hall as long as residential amenity is not compromised.

Finally, the policy sets out a number of priorities for developer contributions. Planning obligations should only be sought where they meet the statutory tests as I have discussed in relation to Policy P7. Therefore this element requires modification.

With this modification, the policy will meet the basic conditions. It takes account of the NPPF<sup>40</sup> which promotes the retention, and development, of local services and

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<sup>38</sup> PPG para 038 ref id 14-038-20140306

<sup>39</sup> NPPF para 97

<sup>40</sup> Ibid para 28

community facilities. It generally conforms to CS Policy SC1 in particular which protects, retains and enhances existing social and community infrastructure. It will help to achieve sustainable development.

- **Change 2. of the policy to read: “Where appropriate, development will be required to make a proportionate contribution towards the provision of community infrastructure in the Parish. The priority list includes: [retain list a. – f. as currently presented]”**

### **Policy P17 Minimising Flood Risk in Withington Marsh**

The NPPF<sup>41</sup> is clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Flood risk is something that neighbourhood plans can address and forms part of planning for new development in relation to a range of impacts arising from climate change.

Given the concern and issues over flooding in this part of the Plan area, this policy seeks to set out expectations in relation to development. It takes account of national policy and guidance, generally conforms to the CS and in particular Policies SS1, SS7, SD3 and SD4 and will help to achieve sustainable development. It therefore meets the basic conditions and no modifications to it are recommended.

## **5. Implementation, Monitoring and Review**

Whilst monitoring is not yet a requirement for neighbourhood plans, I welcome the intention to regularly review the Plan and commend this as good practice to others.

## **Appendices**

Two appendices are included.

The first has more details about the process of producing the Plan. It will need some natural updating as the Plan progresses towards adoption.

The second is a list of listed buildings in the Parish. This is referred to in relation to Policy P8. It would be useful to add a note that this information may change over the lifetime of the Plan and the most up to date information should always be sought.

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<sup>41</sup> NPPF paras 99 - 104

- Add a sentence to Appendix 2 that reads: *“The information on this map reflects information correct at the time of writing the Plan. Up to date information should be sought from the local planning authority, the Parish Council or appropriate statutory body.”*

## 8.0 Conclusions and recommendations

I am satisfied that the Withington Group Parish Neighbourhood Development Plan, subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined earlier in this report.

I am therefore pleased to recommend to Herefordshire Council that, subject to the modifications proposed in this report, the Withington Group Parish Neighbourhood Development Plan can proceed to a referendum.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Neighbourhood Plan area. I see no reason to alter or extend the Plan area for the purpose of holding a referendum and no representations have been made that would lead me to reach a different conclusion. I therefore consider that the Plan should proceed to a referendum based on the Withington Group Parish Neighbourhood Plan area as approved by Herefordshire Council on 12 July 2013.

*Ann Skippers* MRTPI

Ann Skippers Planning

19 July 2019

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

Neighbourhood Development Plan 2017 – 2031 Submission Version

Basic Conditions Statement September 2018

Consultation Statement December 2018 Issue 1.0

Environmental Report November 2018

Habitats Regulations Assessment Regulation 16 Report November 2018

Habitats Regulations Assessment Report May 2018

Withington Group Parish Policies Map

Preston Marsh Policies Map

Westhide Policies Map

Withington Policies Map

Withington Marsh Policies Map

Background Paper No. 1 – Land for Housing August 2018

Background Paper No. 2–Analysis of Candidate Local Green Spaces

Herefordshire Core Strategy 2011-2031 October 2015 and Appendices

Saved Policies of the Unitary Development Plan 2007

Comments from the Group Parish Council on the Regulation 16 representations

Various documents on the Group Parish Council website  
[www.withingtongroupparishes.co.uk](http://www.withingtongroupparishes.co.uk)

**List ends**



### **Amendment to the Prescribed Basic Condition: Neighbourhood Development Plans**

**The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 ("the 2018 Regulations")**

**15 January 2019**

The 2018 Regulations have introduced amendments to the basic condition relating to Habitat Regulation Assessments as required within the Neighbourhood Planning (General) Regulations 2012. This basic condition must be met by a neighbourhood plan to be successful at examination.

The 2018 Regulations insert "the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017" (assessment of implications for European Site: neighbourhood development plans) Herefordshire Council prior to the 2018 Regulations sought Counsel advice in light of the implication of the European judgment *the case of People Over Wind and Sweetman v Coillte Teoranta (C-323/17)* ("*Sweetman*").

Counsel advice indicated that policies which form part of the development plan and have been considered through the Core Strategy assessment Policy SD4 (for example) remove the pathway to harm and 'likely significant effects'. Therefore an Appropriate Assessment would not be required and NDPs met the EU obligations.

As all neighbourhood plans need to be in conformity with the Core Strategy and the policies of the development plan read as a whole, there is no need for the NDPs to include additional mitigation covered within these policies as it is within the higher level plan (the Core Strategy).

Neighbourhood Plans which are currently at examination as well as submitted for examination on or after 28 December 2018 have been subject to a revised HRA post the recent European judgement of *the case of People Over Wind and Sweetman v Coillte Teoranta (C-323/17)* ("*Sweetman*") and concluded as having 'no likely significant effects' without the inclusion of mitigation measures that would have required an Appropriate Assessment.