

Herefordshire Council

**Pixley and District
Neighbourhood Development Plan
2011-2031**

Independent Examiner's Report

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4 March 2019

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Summary

I have been appointed as the independent examiner of the Pixley and District Neighbourhood Development Plan.

The Plan covers the Parishes of Aylton, Little Marcle, Munsley and Pixley. Together the Parishes have a population of around 554.

The Plan is well presented. It takes a commendable approach to development by not seeking to duplicate Core Strategy policies, but rather adding a local dimension to key issues important to the local community. It builds on earlier work on a Parish Plan and outlines a clear vision which is supported by a number of objectives. The vision is translated into 11 policies.

The Plan area does not contain any settlements identified in the Core Strategy as being suitable for development and therefore the Plan area does not have to accommodate any housing growth. No site allocations are made, but policies cover such topics as housing, employment and community facilities and therefore positively support appropriate development in these rural Parishes.

The quality of the Plan and its approach has meant that I have recommended relatively few modifications.

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 Pixley and District 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
4 March 2019



1.0 Introduction

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

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

2.0 The role of the independent examiner

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

The basic conditions¹ are:

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

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

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

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

The examiner is also required to check³ whether the neighbourhood plan:

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

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

The examiner must then make one of the following recommendations:

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

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

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

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

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

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

3.0 Neighbourhood plan preparation

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

The Parish Council resolved to produce a Plan in 2016. Initial concerns included the extent to which the community could control the type of development sought and how housing needs might be met.

A residents' survey was developed and built on earlier work on a Parish Plan in 2003. 433 questionnaires were hand delivered to residents in March 2017 with a prize draw to encourage responses. 268 were returned; a high response rate of nearly 62%.

A public meeting was held in June 2017 to feedback results and give an opportunity for further discussion. Two reports analysing the results were published in the same month.

Following the survey and public meeting, a draft Plan was prepared. Pre-submission (Regulation 14) consultation took place between 4 December 2017 – 29 January 2018. Flyers were distributed throughout the Parish to residents and businesses, posters placed on noticeboards and paper versions available at various locations including the Ledbury Customer Service Centre. Various individuals and organisations were contacted by letter or email. Section 5/Appendix 4 of the Consultation Statement⁵ details the responses received at this stage.

A range of consultation methods have been used throughout the process. These included the establishment of a dedicated Plan page on the Parish website and use of Parish noticeboards. Regular Parish Council and Steering Group meetings have been held and were open to the public with notes and minutes of the meetings posted on the website.

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

Submission (Regulation 16) consultation was carried out between 28 June – 23 August 2018.

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

⁵ Consultation Statement pages 8 and 22

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).⁶ PPG confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.⁷ 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.

PPG⁸ 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.⁹

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 the Parish Council to make any comments; it is only if they wish to do so. If a qualifying body wishes to make comments, the guidance indicates that any such comments should be made within two weeks after close of the Regulation 16 stage. The Parish Council sent comments and I have taken these into account.

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

I made an unaccompanied site visit to familiarise myself with the Plan area on 28 December 2018.

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.

⁶ PPG para 055 ref id 41-055-20180222

⁷ *Ibid* para 055 ref id 41-055-20180222

⁸ *Ibid* para 056 ref id 41-056-20180222

⁹ *Ibid*

I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be taken and any such necessary editing carried out and the Plan's presentation made consistent.

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

Pixley and District 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 coterminous with the administrative boundary of the Parishes. HC approved the designation of the area on 16 August 2016 (although the Basic Conditions Statement incorrectly notes this date as 24 February 2016). The Plan relates to this area and does not relate to more than one neighbourhood area and therefore complies with these requirements. The Plan area is shown on page four of the Plan.

Plan period

The Plan period is 2011 – 2031 to coincide with the Core Strategy timescale. This is confirmed in the Plan itself as well as being shown on the front cover. This requirement is therefore met.

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.¹⁰

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.¹¹

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

¹⁰ PPG para 004 ref id 41-004-20170728

¹¹ NPPF paras 14, 16

cannot promote less development than that set out in the Local Plan or undermine its strategic policies.¹²

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.¹³

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

PPG indicates that a policy should be clear and unambiguous¹⁴ to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the context and the characteristics of the area.¹⁵

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.¹⁶ It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.¹⁷

Whilst this has formed part of my own assessment, the Basic Conditions Statement¹⁸ sets out how the Plan aligns with the NPPF's core planning principles.

Contribute to the achievement of sustainable development

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development. The NPPF as a whole¹⁹ 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.²⁰

Whilst this has formed part of my own assessment, the Basic Conditions Statement contains a table²¹ which explains how the Plan aligns with each of the three components of sustainable development outlined in the NPPF.

¹² NPPF para 184

¹³ *Ibid* para 17

¹⁴ PPG para 041 ref id 41-041-20140306

¹⁵ *Ibid*

¹⁶ *Ibid* para 040 ref id 41-040-20160211

¹⁷ *Ibid*

¹⁸ Basic Conditions Statement page 4

¹⁹ NPPF para 6 which indicates paras 18 – 219 of the Framework constitute the Government's view of what sustainable development means in practice

²⁰ *Ibid* para 7

²¹ Basic Conditions Statement page 9

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 Statement²² gives an assessment of how each Plan policy generally confirms 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).

PPG²³ 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 April 2018 has been submitted as an initial screening assessment of August 2016 indicates a SEA was needed.

The ER confirms that a Scoping Report dated April 2017 was prepared and sent to the statutory consultees from 12 April – 17 May 2017. Natural England and Historic England responded.

²² Basic Conditions Statement page 10

²³ PPG para 031 ref id 11-031-20150209

A draft ER dated October 2017 underwent a period of consultation alongside the pre-submission version of the Plan.

Following the Regulation 14 stage, some changes were made to Policies PIX4, PIX9 and PIX11. The only significant change related to Policy PIX4 and that has been rescreened and the ER of April 2018 includes this review.

The ER concludes that the Plan would be unlikely to have any significant effects. 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.²⁴ 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.²⁵ The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

A HRA dated October 2017 has been submitted. This explains that an initial screening undertaken in August 2016 confirmed that the Plan area did not fall within any European sites and given the distance to any European sites, they would not be affected by any policies or proposals in the Plan. The nearest site is the River Wye (including the River Lugg) Special Area of Conservation (SAC) some 7.5km away and the Plan area does not fall within its hydrological catchment area. As a result the HRA concludes that a full HRA is not needed.

There is no need to revisit this position following the Court cases of *People Over Wind*, *Peter Sweetman v Coillte Teoranta*,²⁶ and *Cooperation Mobilisation for the Environment v Verenigin Leefmilieu* (the so called Dutch Nitrogen case)²⁷ in particular as it has been found no pathways exist. National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning

²⁴ PPG para 030 ref id 11-030-20150209

²⁵ *Ibid* para 047 ref id 11-047-20150209

²⁶ Case C-323/17

²⁷ Case C-293/17

authority.²⁸ HC has considered the compatibility of the Plan in regard to EU obligations and does not raise any concerns in this regard.

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

I wrote to HC on 4 January 2019 drawing attention to this and asking whether this change to the basic conditions gave rise to any implications for the examination of this particular neighbourhood plan. My letter is attached as Appendix 2. HC has replied and indicated no implications arise as the initial screening report found that the Plan area did not fall within or in close proximity to any European sites.

Given the distance, 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.

European Convention on Human Rights (ECHR)

The Basic Conditions Statement contains a short statement in relation to human rights.²⁹ 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 clearly and contains 11 policies. There is a useful contents and index page at the start of the Plan.

1. Setting the scene

This is a helpful introduction to the Plan that takes the reader through the Plan sections and signposts supporting information.

²⁸ PPG para 031 ref id 11-031-20150209

²⁹ Basic Conditions Statement page 18

There is one issue to be addressed; reference is made to the NPPF published in 2010 (this should be 2012). A revised NPPF has now also been published. A modification is recommended to resolve this issue.

- **Delete “...published in March 2010...” from paragraph 1.8 on page 1 of the Plan**

2. Pixley and District neighbourhood area

This is an informative and well-written section that set outs a wealth of useful information about the Plan area. It sets the scene well for the Plan.

3. Vision, objectives and strategy

Vision and objectives

The clearly articulated vision for the area is:

- “Tranquil rural parishes whose landscape, wildlife and historic heritage are identified, protected and sustainably managed;
- A place where the next generation would want to raise their children;
- A location which supports farming, providing local employment;
- A thriving local community meeting the needs of all ages;
- A place that also supports small scale local businesses, tourism, well-designed affordable housing, and other services.”

The vision is supported by a number of objectives which are grouped under the headings of housing, the local economy, the environment and the community. All are articulated well and will help to deliver the vision.

One housing objective requires modification to bring it in line with a later modification in this report and for the same reasons.

- **Delete the words “...which excludes market housing” from the first housing objective on page 9 of the Plan**

Sustainable development

Policy PIX1: Sustainable development

The Plan focuses on how it might deliver sustainable development recognising that the three aspects of sustainable development are mutually dependent. Policy PIX1 sets out four principles that seek to help deliver sustainable development in the Parish. It is a

positive policy that takes account of national policy and guidance, reflects the principles in the CS and helps to achieve sustainable development. This clearly worded policy meets the basic conditions and no modifications are therefore recommended.

4. Housing

Housing in Pixley and District

It is useful for me to set out the strategic context for the Plan. The CS does not identify any settlements within the Plan area under CS Policy RA2 and therefore the Plan area is classified as countryside. As a result there is no requirement for the Plan to set out any housing growth target as development will be limited in line with CS Policy RA3.

CS Policy RA3 applies to rural areas and restricts housing development to certain categories including agricultural or other rural workers, replacement dwellings, reuse of existing buildings, rural exception housing, design of exceptional quality or gypsy and traveller sites. The Plan explains that most housing under this policy is anticipated to be through the reuse of existing rural buildings; this is subject to CS Policy RA5.

Policy PIX2: Housing in Pixley and District

This policy refers to CS Policy RA3 in particular which in turn refers to other relevant CS policies. It seeks to ensure that existing buildings are given priority over new buildings and that any housing is of a type and size that reflects housing needs. The policy is clearly worded. It reflects the NPPF and the CS in particular CS Policies SS2, RA3, RA4, and RA5 and will help to achieve sustainable development. It therefore meets the basic conditions. No modifications are therefore proposed.

Rural exception housing

Policy PIX3: Rural exception housing

CS Policy RA3 refers to rural exception housing and CS Policy H2 which deals with such proposals in more detail. It explains that such sites should meet local needs, remain in perpetuity as affordable housing and be in a suitable location and respect character and appearance. It permits some market housing to subsidize any such schemes as long as it is satisfactorily demonstrated that the scale of market housing is required to deliver the scheme.

Policy PIX3 supports a single site for affordable housing which meets CS Policy H2, but with the proviso that no market housing will be permitted. The NPPF³⁰ is clear that local

³⁰ NPPF para 54 and glossary

planning authorities should consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs. HC has indicated that to fully accord with CS Policy H2 some flexibility for the possibility of market housing would be required. Therefore HC is not supportive of the policy. However, I note that the residents survey did not support the provision of market housing on such schemes.

For Policy PIX3 to be supported, evidence needs to be put forward to indicate why local circumstances in this Plan area mean that all elements of CS Policy H2 and the stance taken by the NPPF should not apply. I do not consider that sufficient or compelling justification has been put forward.

Therefore as it stands, Policy PIX3 does not have regard to the NPPF, is not in general conformity with the CS and in particular CS Policy H2 and would not contribute to the achievement of sustainable development; in fact it may, however inadvertently, prevent it. The policy would potentially mean that local needs were not provided for or at least to address local needs would be significantly harder.

This policy does not therefore meet the basic conditions and should be deleted as to remove the element of the policy that refers to market housing would retain a policy that simply duplicates CS Policy H2.

- **Delete Policy PIX3 and its supporting text**

5. The local economy

Economic development in Pixley and District

Policy PIX4: Economic development in Pixley and District

Employment in the Parish is in a variety of sectors; agriculture including apples and pears, small businesses and home working.

Policy PIX4 supports proposals which generate employment and rural diversification where they are of an appropriate type, scale and nature in relation to their countryside location and setting. Five criteria are included within the policy which particularly supports the reuse of rural buildings for business and live/work units, the extension of existing premises, home working, the development and diversification of rural land-based business and tourism and leisure proposals.

The policy will help to achieve sustainable development. It is in line with national policy's support for the rural economy and the NPPF's support for economic growth in rural areas and for sustainable tourism and leisure developments that benefit the local community and visitors. It is in line with the general thrust of CS Policies SS5, RA5, RA6,

E1, E3 and E4. This clearly worded policy therefore meets the basic conditions and no modifications are suggested.

Polytunnels

Policy PIX5: Polytunnels

Concern has been raised by the community about the visual impact of large-scale polytunnels and their effect on drainage and soil quality whilst recognising this extends the growing season and helps to protect crops for the industry.

Policy PIX5 seeks to establish the basis of consideration for polytunnel proposals. As well as six criteria for each proposal, it seeks to ensure that cumulative impacts will be taken into account. Given the Plan explains that a relatively high proportion of the Parish is covered by polytunnels, this is not an unreasonable requirement. I also saw at my visit how conspicuous some polytunnels were.

The six criteria are visual impact, amenity and highways considerations, drainage matters, impact on the natural and historic environments and effect on public rights of way.

The policy is clearly worded and subject to satisfactory impacts, polytunnels can be supported. It therefore meets the basic conditions and no modifications are recommended.

Economic and social infrastructure

Policy PIX6: Communications and broadband

Telecommunications infrastructure for both home and business use is supported by this policy. This is in line with the NPPF's support for high quality communications infrastructure³¹ and CS Policy SS5. The policy is clearly worded and meets the basic conditions. As a result no modifications are recommended.

³¹ NPPF Section 5

6. Environment

Natural environment

Policy PIX7: Natural environment

A variety of natural environment features are to be found in or near the Plan area. These include the Mains Wood Site of Special Scientific Interest, local wildlife sites and ancient woodland as well as deciduous woodland, traditional orchards, wood pasture and parkland.

Policy PIX7 seeks proposals to demonstrate that they protect, conserve and enhance the natural environment and makes reference to CS Policies LD1, LD2 and LD3. It has five criteria; all are clearly worded. The NPPF is clear that the planning system should contribute to and enhance the natural and local environment.³² Criterion 2. of the policy recognises that a distinction should be made between the hierarchy of international, national and locally designated sites so that protection is commensurate with their status as the NPPF advises.³³

The policy takes account of national policy and guidance. It generally conforms to CS Policies SS6, LD1, LD2 and LD3 and will help to achieve sustainable development. Therefore it meets the basic conditions and no modifications are recommended.

Historic environment

Policy PIX8: Historic environment

There are a number of designated heritage assets in the Plan area including various listed buildings and the Aylton Conservation Area. There is also an unregistered park and garden.

Policy PIX8 seeks to ensure that development proposals take account of the heritage assets and their settings in the Plan area. The conservation or enhancement of the historic environment is reflected in the NPPF. One of the core planning principles in the NPPF is that heritage assets should be conserved in a manner appropriate to their significance.³⁴ CS Policy LD4 addresses the historic environment and makes a reference to their significance which aligns with the stance taken by the NPPF. For completeness, a modification is suggested to ensure that the policy also makes reference to significance.

³² NPPF para 109

³³ *Ibid* para 113

³⁴ *Ibid* para 17

Otherwise the policy is clearly worded, takes account of national policy and guidance, reflects CS Policies SS6 and LD4 in particular and will help to achieve sustainable development. With this modification, it will meet the basic conditions.

- **Add the words “*in a manner appropriate to their significance and*” after “...including their settings...” in the first sentence of the policy**

Design and access

Policy PIX9: Design and access

Policy PIX9 seeks to add a local level of detail to CS policies. Of particular concern to the community is the need for new development to be in keeping with its surroundings.

The policy has eight criteria. All are aimed at ensuring that new development is of a high standard and is appropriate in its setting and respects the character of the area.

The policy reflects CS Policies SS4, SS6, MT1 and SD1 in particular whilst seeking to address areas of concern in the locality. It will help to achieve sustainable development. It takes account of national policy and guidance. It meets the basic conditions and no modifications are recommended.

7. Community

Renewable energy

Policy PIX10: Renewable energy

Small-scale renewable energy schemes, including community-led renewable energy proposals, are supported by this policy subject to acceptable effects on the natural and historic environments, amenity and highway safety and capacity.

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.³⁵ It generally conforms to CS Policy SD2 adding detail to it at the local level and will help to achieve sustainable development. It meets the basic conditions and no modifications are recommended.

³⁵ NPPF para 97

Community facilities

Policy PIX11: Community facilities

This policy supports provision for new community facilities and supports the enhancement of existing facilities. It refers to the co-location of services to assist with viability and transport considerations. It is flexible with respect to diversification that will enable or increase viability of services and facilities.

It is a clearly worded policy. It takes account of the NPPF³⁶ which promotes the retention, and development, of local services and 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. As a result the policy meets the basic conditions and no modifications are suggested.

8. Delivering the Neighbourhood Development Plan

This section explains how the Plan will be used. It sets out how the Parish Council will seek to implement the Plan's objectives including through proactive working with applicants. This is a useful way of bringing the Plan together and linking back to the Plan's vision and objectives.

Community actions

Six community actions are identified in the Plan on pages 15, 19, 20, 21 and 26. This section explains that these relate to matters which cannot be addressed through development and use of land policies, but nevertheless are important to the achievement of the Plan's vision and objectives.

The community actions are brought together in Table 2 on page 29 of the Plan. Community action 1 (CA1) relates to Policy PIX3 which I have recommended for deletion. There is however, no reason why CA1 cannot be retained if desired.

Appendices

Two appendices are included at the end of the Plan. Appendix A contains details of the evidence base that supports the Plan. Appendix B contains details of national and local planning policies referred to in the Plan. Given the presentation of the Plan, this is helpful in this particular instance.

³⁶ NPPF para 28

In relation to Appendix B, it would be useful to acknowledge, given the passage of time, that a revised NPPF was published last July.

- **Add a note to section B.2 in Appendix 2 acknowledging the publication of the revised NPPF in July 2018 and stating the references refer to the earlier version**

8.0 Conclusions and recommendations

I am satisfied that the Pixley and District 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 Pixley and District 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 Pixley and District Neighbourhood Development Plan should proceed to a referendum based on the Pixley and District Neighbourhood Plan area as approved by Herefordshire Council on 16 August 2016.

Ann Skippers MRTPI

Ann Skippers Planning

4 March 2019

Appendix 1 List of key documents specific to this examination

Pixley and District Neighbourhood Development Plan 2011 – 2031 May 2018
Submission draft

Basic Conditions Statement May 2018

Consultation Statement May 2018

Pixley and District Parish Policies Map

Environmental Report April 2018

Habitats Regulations Assessment Report October 2017

Herefordshire Core Strategy 2011-2031 October 2015 and Appendices

Saved Policies of the Unitary Development Plan 2007

Comments from Pixley and District Parish Council on the Regulation 16 representations

List ends

Appendix 2 Letter from the examiner

Letter to Karla Johnson
Herefordshire Council

4 January 2019

Dear Karla,

Examination of the Pixley and District Group Neighbourhood Plan Amendment to the Basic Conditions

I am writing to draw your attention to the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 which came into force on 28 December 2018.

Amongst other things, these Regulations amend the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) which stated:

- The making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site either alone or in combination with other plans or projects.

The Regulations substitute a new basic condition which states:

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

The Conservation of Habitats and Species Regulations 2017 include regulations on the assessment of plans (including neighbourhood plans) and projects on European sites or European offshore marine sites. The first stage is to screen the plan to see whether it is likely to have a significant effect on any European site. If the plan is 'screened in' because significant effects cannot be ruled out, the next stage is for an appropriate assessment to be carried out considering the impact on the European site's conservation objectives. Consent for the plan can only be given if it is 'screened out' at the first stage or the appropriate assessment concludes the integrity of the European site will not be adversely affected.

Case law (*People Over Wind, Peter Sweetman v Coillte Teoranta*) ruled that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage. This represented a move away from what was common practice. Any 'mitigation' measures can now only be considered at the appropriate assessment stage.

This resulted in some confusion as to whether neighbourhood plans 'screened in' could progress because of the wording of the basic condition.

The substituted basic condition removes this confusion; it gives certainty that those neighbourhood plans which have been 'screened in' and therefore require appropriate assessment can continue to progress (provided that the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 are met).

The process for appropriate assessment of neighbourhood plans is the same as assessments for Local Plans.

There are no transitional arrangements and so the substituted basic condition applies from 28 December 2018. It will therefore apply to any neighbourhood plans currently at examination or those submitted for examination on or after 28 December 2018.

As all basic conditions must be met by a neighbourhood plan before it can proceed, I would be grateful if you would consider this change to the basic conditions and let me know of any implications arising from it for the examination of this neighbourhood plan. I will reach my own view on this matter as well.

Once you have had an opportunity to consider what, if any, further work needs to be undertaken, I suggest that we agree a way forward for the examination of the Neighbourhood Plan, including any new timescales should further work be required.

This letter should be placed on the relevant Council websites.

With many thanks,

Ann Skippers MRTPI
Ann Skippers Planning
Independent Examiner