

**Kippax Parish Council**

# **Kippax Neighbourhood Development Plan**

A report to Leeds City Council of the Independent Examination  
of the Kippax Neighbourhood Development Plan

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# Contents

Page

<b>Overall Finding</b>	<b>3</b>
<b>Neighbourhood Planning</b>	<b>4</b>
<b>Independent Examination</b>	<b>5</b>
<b>Basic Conditions and other statutory requirements</b>	<b>7</b>
<b>Documents</b>	<b>9</b>
<b>Consultation</b>	<b>10</b>
<b>The Neighbourhood Plan taken as a whole</b>	<b>13</b>
<b>The Neighbourhood Plan policies</b>	<b>27</b>
Policy HS1 Public realm	
Policy HS2 Shop frontage design	
Policy HS3 Improvement of shopping and associated services	
Policy HS4 Development of key locations	
Policy GE1 Local Green Spaces	
Policy GE2 Local green corridors	
Policy GE3 Enhancement of local biodiversity	
Policy BE1 Design of the built environment	
Policy BE2 Identification of non-designated heritage assets	
Policy BE3 Public rights of way improvement	
Policy H1 New housing development	
Policy H2 Housing type and mix	
Policy H3 Affordable housing	
Policy BCE1 New business and employment development	
<b>Summary and Referendum</b>	<b>52</b>
<b>Annex: Minor corrections to the Neighbourhood Plan</b>	<b>53</b>

## Overall Finding

This is the report of the Independent Examination of the Kippax Neighbourhood Development Plan. The plan area comprises the entire civil parish of Kippax within the Leeds City Council area. The plan period is 2018-2033. The Neighbourhood Plan includes policies relating to the development and use of land. The Neighbourhood Plan does not allocate land for development.

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

## Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”<sup>1</sup>
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Kippax Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Kippax Parish Council (the Parish Council). The draft Plan has been submitted by the Parish Council, a qualifying body able to prepare a neighbourhood plan, in respect of the Kippax Neighbourhood Area which was formally designated by Leeds City Council (the City Council) on 17 September 2012. The Neighbourhood Plan has been produced by the Kippax Neighbourhood Plan Steering Group, made up Parish Councillors and other volunteer residents.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to Leeds City Council. Leeds City Council arranged a period of publication between 20 August 2018 and 5.00pm on 1 October 2018. Leeds City Council has submitted the Neighbourhood Plan to me for independent examination.

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<sup>1</sup> Paragraph 183 National Planning Policy Framework (2012) (See paragraph 214 of the NPPF 2018 for an explanation why this Independent Examination is being undertaken in the context of the NPPF 2012)

## Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan.<sup>2</sup> The report makes recommendations to Leeds City Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. Leeds City Council will decide what action to take in response to the recommendations in this report.
6. Leeds City Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Once a neighbourhood plan has been independently examined, and the decision taken to put the plan to a referendum, it must be taken into account when determining a planning application, in so far as the policies in the plan are material to the application<sup>3</sup>.
7. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will form part of the Development Plan and be given full weight in the determination of planning applications and decisions on planning appeals in the plan area<sup>4</sup> unless Leeds City Council subsequently decide the Neighbourhood Plan should not be 'made'. The Housing and Planning Act 2016 requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan<sup>5</sup>. The Framework is very clear that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted<sup>6</sup>.
8. I have been appointed by Leeds City Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and Leeds City Council. I do not have any interest in any land that may be affected by the

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

<sup>3</sup> Paragraph 216 of the National Planning Policy Framework 2012 explains full weight is not given at this stage

<sup>4</sup> Section 3 Neighbourhood Planning Act 2017

<sup>5</sup> Section 156 Housing and Planning Act 2016

<sup>6</sup> Paragraph 198 National Planning Policy Framework 2012

Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Independent Examiner of Neighbourhood Plans. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.

9. As independent examiner, I am required to produce this report and must recommend either:

- that the Neighbourhood Plan is submitted to a referendum, or
- that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
- that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.

10. I make my recommendation in this respect and in respect to any extension to the referendum area,<sup>7</sup> in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.<sup>8</sup>

11. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.<sup>9</sup> The Planning Practice Guidance (the Guidance) states “*it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.*”

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

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<sup>7</sup> Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

<sup>8</sup> Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

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

## Basic Conditions and other statutory requirements

13. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.<sup>10</sup> A neighbourhood plan meets the Basic Conditions if:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.<sup>11</sup>

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

15. In addition to the Basic Conditions and Convention rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.<sup>13</sup> I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 (the Regulations) which are made pursuant to the powers given in those sections.

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<sup>10</sup> Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

<sup>11</sup> Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

<sup>12</sup> The Convention rights has the same meaning as in the Human Rights Act 1998

<sup>13</sup> In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

16. The Neighbourhood Plan relates to the area that was designated by Leeds City Council as a neighbourhood area on 17 September 2012. A map of the Neighbourhood Plan boundary is included as Map 1 of the Submission Version Plan. The Neighbourhood Plan designated area is coterminous with the Kippax parish boundary. The Neighbourhood Plan does not relate to more than one neighbourhood area,<sup>14</sup> and no other neighbourhood development plan has been made for the neighbourhood area.<sup>15</sup> All requirements relating to the plan area have been met.
17. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;<sup>16</sup> and the Neighbourhood Plan does not include provision about excluded development.<sup>17</sup> I am able to confirm that I am satisfied that each of these requirements has been met.
18. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.<sup>18</sup> The front cover of the Submission Version Plan clearly states the plan period to be 2018-2033.
19. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.<sup>19</sup> It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan, except where this arises as a result of my recommended modifications so that the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention rights, and the other statutory requirements.
20. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as,

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

<sup>15</sup> Section 38B (2) Planning and Compulsory Purchase Act 2004

<sup>16</sup> Section 38A (2) Planning and Compulsory Purchase Act 2004

<sup>17</sup> Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

<sup>18</sup> Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

<sup>19</sup> Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the National Planning Policy Framework 2012

or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.

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

## Documents

23. I have considered each of the following documents in so far as they have assisted me in determining whether the Neighbourhood Plan meets the Basic Conditions and other requirements:

- Kippax Neighbourhood Plan 2018-2033 Submission Draft Plan including Appendices 1 and 2
- Kippax Neighbourhood Plan 2018-2033 Basic Conditions Statement August 2018 [*In this report referred to as the Basic Conditions Statement*] including Appendix Strategic Environmental Assessment & Habitats Regulations Assessment Screening Report November 2016 [*In this report referred to as the SEA and HRA Screening Report*]
- Kippax Neighbourhood Development Plan Habitats Regulations Assessment Screening Report Update August 2018 [*In this report referred to as the HRA Screening Report Update*] and representations in respect of this document
- Kippax Neighbourhood Plan Consultation Statement [*In this report referred to as the Consultation Statement*]
- Kippax Neighbourhood Plan Evidence Base and other information available on the Kippax Parish Council website
- Representations received during the Regulation 16 publicity period
- Correspondence between the Independent Examiner and the City and Parish Councils published on the City Council website
- Leeds Core Strategy adopted November 2014

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<sup>20</sup> See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

- Leeds Core Strategy Selective Review (submitted to the Secretary of State 9 August 2018)
- Natural Resources and Waste Local Plan (adopted January 2013)
- Saved Leeds Unitary Development Plan Review (UDP) (2006) Policies
- Leeds City Council Revised Submission Draft Site Allocations Development Plan Document [*submitted to the Secretary of State 23 March 2018*]
- Heritage Background Paper (February 2017) to the Leeds City Council Site Allocations Plan Submission Version
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Permitted development rights for householders' technical guidance DCLG (June 2017) [*In this report referred to as the Permitted Development Guidance*]
- Planning Practice Guidance web-based resource MHCLG (first fully launched 6 March 2014) [*In this report referred to as the Guidance*]
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- The Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004 (as amended)
- The Localism Act 2011
- The Housing and Planning Act 2016
- The Neighbourhood Planning Act 2017 and Commencement Regulations 19 July 2017, 22 September 2017, and 15 January 2018
- The Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations*].
- The Neighbourhood Planning (General) (Amendment) Regulations 2015
- The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016.

## Consultation

24. The submitted Neighbourhood Plan is accompanied by a Consultation Statement which outlines the process undertaken in the preparation of the plan. In addition to detailing who was consulted and by what methods, it also provides a summary of comments received from local community members, and other consultees, and how these have been addressed in the Submission Plan. I highlight here a number of key

stages of consultation undertaken in order to illustrate the approach adopted.

25. The Neighbourhood Plan Steering Group comprising parish councillors and other local volunteers has met regularly throughout the plan preparation process. Agendas and minutes have been published on the Parish Council website and on noticeboards, and meetings have been open to public attendance following initial set-up meetings.
26. Initial publicity was achieved in April 2013 through distribution of flyers and a display at the library and at the Parish Council Annual Meeting. Since that time publicity has included use of the Parish Council magazine and local print media.
27. Feedback from the City Council Strategic Housing Land Availability Assessment (SHLAA) consultation in October 2012 informed the consideration of Neighbourhood Plan housing policies. The city-wide SHLAA consultation was supplemented by the Steering Group arranging an attended display of plans at the Co-operative store on two consecutive days in July 2013.
28. The Neighbourhood Plan was launched at two public meetings in September 2013. A questionnaire was distributed to every home in the Neighbourhood Area and trader's views were gathered through a separate questionnaire. Other engagement included meetings with School Councils and with key local organisations including Kippax Welfare and Social Club; Kippax Historical Society; the Scouts, Guides and Brownies; Kippax Women's Institute; Kippax Cabin; and other stakeholders. Extensive consultation took place on a draft plan in 2015.
29. Pre-submission consultation in accordance with Regulation 14 was undertaken in the period 13 February 2017 to 31 March 2017. The consultation included four drop-in sessions, two at the library and one each at Moorgate public house and the Leisure Centre. The consultation also included local deposit of copies of the draft Plan and a summary document and questionnaire was issued to all households. Contact was also made with national organisations; developers; businesses and neighbouring parish councils. The representations arising from the consultation are summarised in the Consultation Statement and comprehensively presented within the Evidence Base where Steering Group responses and changes made to the

Neighbourhood Plan, are set out. The suggestions have, where considered appropriate, been reflected in a number of changes to the Plan that was approved by the Parish Council, for submission to Leeds City Council.

30. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 period of publication between 20 August 2018 and 5.00pm on 1 October 2018. Representations from seven different parties were submitted during the period of publication. I have been provided with copies of each of these representations. In preparing this report I have taken into consideration all of the representations submitted during the Regulation 16 period even though they may not be referred to in whole, or in part.
31. The Leeds Local Access Forum and Gladman Developments have submitted representations in respect of specific policies of the Neighbourhood Plan. I refer to these representations when considering those policies later in my report.
32. The Coal Authority has stated *“As you will be aware the Neighbourhood Plan area lies within the current defined coalfield. According to the Coal Authority Development High Risk Area Plans, there are recorded risks from past coal mining activity in the form of 39 recorded mine entries, recorded and likely unrecorded shallow coal mine workings, surface mining, fissures and 10 reported hazards. It is noted that the Neighbourhood Plan does not allocate sites for future development, however if sites are allocated then consideration will need to be given to these risks to surface stability in accordance with the planning policy. In addition, any allocations on the surface coal resource will need to consider the impacts of mineral sterilisation”*. York Consortium Drainage Board has confirmed it has no specific comments to make. Natural England and Historic England have also stated they have no further comments to make. These representations and the representations of Highways England do not necessitate any modification of the Plan to meet the Basic Conditions.
33. I provided the Parish Council with an opportunity to comment on the Regulation 16 representations of other parties. I placed no obligation on the Parish Council to offer any comments but such an opportunity can prove helpful where representations of other parties include matters that have not been raised earlier in the plan preparation process. The Parish Council stated it did not wish to submit any

comments on the Regulation 16 representations of other parties but confirmed the representations had been noted.

34. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which:
- a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
  - b) explains how they were consulted;
  - c) summarises the main issues and concerns raised by the persons consulted; and
  - d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.<sup>21</sup>
35. The Consultation Statement and Evidence Base include information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Steering Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.
36. In the next section of my report I refer to additional consultation in respect of a Habitats Regulations Assessment Screening Report Update.

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

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

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<sup>21</sup> Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

background and supporting documents and copies of the representations provided to me.

Consideration of Convention rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and the making of the Neighbourhood Plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects

38. The Basic Conditions Statement states “*The Neighbourhood Plan has regard to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and complies with the Human Rights Act. This is evidence(d) through the Vision, the objectives and the policies that are proposed in the Plan.*” I have considered the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).<sup>22</sup> I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. Whilst no analysis has been undertaken to establish the impact the objectives and policies of the Neighbourhood Plan will have on persons with protected characteristics (as identified in the Equality Act 2010) from my own examination, the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics.

39. The objective of EU Directive 2001/42<sup>23</sup> is “*to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.*” The Neighbourhood Plan falls within the definition of ‘plans and programmes’<sup>24</sup> as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.<sup>25</sup>

40. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council, as the Qualifying Body, to submit to

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<sup>22</sup> The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

<sup>23</sup> Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

<sup>24</sup> Defined in Article 2(a) of Directive 2001/42

<sup>25</sup> Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

Leeds City Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.

41. The Basic Conditions Statement states “The Kippax NP has been subjected to a screening by Leeds City Council in consultation with the statutory bodies to determine whether the NP requires a Strategic Environmental Assessment (SEA).” The Screening Report concludes: “In conclusion, as a result of the assessment carried out in Table 2 above and the more detailed consideration of the draft policies, it is considered that it is unlikely that any significant environmental effects will arise as a result of the Kippax Neighbourhood Plan. Consequently, the assessment within Table 1 concludes (subject to HRA screening outcome), that an SEA is not required when judged against the application of the SEA Directive criteria. Notably, the draft neighbourhood plan does not propose any allocations. No sensitive natural or heritage assets will be significantly affected by proposals within the plan. The neighbourhood plan’s policies seek to guide development within the Neighbourhood Area and are required to be in general conformity with those within the Local Plan. It is unlikely that there will be any significant additional environmental effects that have not already been considered and dealt with through a SEA/SA of the Local Plan. Finally, none of the environmental consultation bodies raised any concerns regarding any likely significant environmental effects.”
42. The Draft Screening Report has been sent to Natural England, Environment Agency and Historic England for their opinions. The responses are included in the Screening Report. Natural England has also during the Regulation 16 publicity period confirmed it has no further comments to make on the SEA screening report. I am satisfied the requirements regarding Strategic Environmental Assessment have been met.
43. The SEA and HRA Screening Report states “It is considered that none of the policies in the KNP are likely to have a significant effect on the Kirk Deighton SAC, whether alone or in combination with other projects and programmes. The Plan does not specifically allocate land for development and does not promote more land for development than the Local Plan. Furthermore, the policies within the plan are required to be in general conformity with those of the Local Plan (inc Biodiversity policies) which has been subject to HRA assessment. Kirk

*Deighton SAC is protected due to the presence of Great Crested Newts which have a limited distance of movement of normally up to 500m. None of the Kippax Neighbourhood Area lies within 500m of the site. Furthermore, Natural England have stated within their consultation response that ‘there are no European designated sites in close proximity to Kippax, therefore the plan would be unlikely to have a significant effect, alone or in combination, on any European site’. It is therefore considered that the KNP is not likely to cause a significant effect on Kirk Deighton SAC or on any other European site. Consequently, the draft plan is not considered to require further assessment under Article 6 or 7 of the Habitats Directive (Art. 3.2(b)).”* The HRA Screening conclusion is summarised in the Basic Conditions Statement.

44. The Strategic Environmental Assessment & Habitats Regulations Assessment: Screening Report of November 2016 was prepared prior to the EU Court of Justice ruling in *People Over Wind and Sweetman v Coillte Teoranta*<sup>26</sup> and the Court of Justice (Second Chamber) judgement of 25 July 2018 *Grace, Sweetman, and National Planning Appeals Board Ireland (ECLI:EU:C2018:593)*. In my initial letter to the Parish Council and City Council dated 22 August 2018 I requested that the Screening Report should be reviewed in the context of the EU Court of Justice rulings and that the City Council confirms, in consultation with Natural England, that the Screening Report is considered to be compliant with the identified EU Court of Justice rulings, or alternatively states what actions are proposed to rectify the situation.
45. On 28 August 2018 the City Council sent me an initial response as follows: “The Council has re-screened the Kippax Neighbourhood Plan for the purposes of the Habitats Regulations Assessment (HRA) in light of the Judgements and has sent the updated screening to Natural England for their consideration and comment. The Council has requested that Natural England respond within 10 working days. The Council will then finalise the updated HRA screening and send the update to the Examiner.” On 14 September 2018 the City Council sent me an updated HRA Screening Report and confirmed this had been prepared in consultation with Natural England as the Statutory Consultee.

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<sup>26</sup> Judgement of the Court Seventh Chamber 12 April 2018

46. The City Council stated *“The HRA Screening Update concludes that no mitigation measures were included in the 2016 Screening and the Kippax NP will not give rise to any Likely Significant Effects”* and *“Owing to the fact that the updated HRA Screening Report is supplemental to the 2016 HRA Screening Report, which forms part of the Basic Conditions Statement submitted to the City Council by the Parish Council, the HRA Update is subject to the same requirement for consultation as the other submission documents. The Council is going to publish the HRA Screening Update for a 6-week period between Monday 17<sup>th</sup> September and Monday 29<sup>th</sup> October (closing at 5pm) along with a statement that any interested parties may make representations. Representations will be sent to you for your consideration as part of the examination process, and will be made available on the Council’s website”*.
47. The HRA Screening Report Update concludes *“It is considered that none of the policies in the Kippax NP are likely to have a significant positive or negative effect on the Kirk Deighton SAC, and therefore the NP does not give rise to, or include, any mitigation measures. Indeed, the Kirk Deighton SAC is 20km away from the Kippax Neighbourhood Area boundary at its nearest point. It is noted that Natural England agree with the conclusions proposed in the HRA Update and have no further comments to make. In light of the above, it is considered that given that no likely significant positive or negative effects on the Kirk Deighton SAC are identified for the Kippax NP either alone or in combination with other plans or projects, this HRA Screening Update therefore concludes that the Screening is legally-compliant in respect of the Judgement and therefore does not require further appropriate assessment.”* With respect to the second European Court ruling the HRA Screening Report Update states *“On 25 July 2018 the Court of Justice (Second Chamber) ruled in the case of Grace, Sweetman and the National Planning Appeals Board Ireland (ECLI:EU:C2018:593). The Judgement relates to how the conclusions of the Appropriate Assessment should be interpreted which in turn determines whether Article 6(3) or Article 6(4) of the Directive applies. The trigger point for the Judgement to apply is once the Screening Stage has concluded that Appropriate Assessment of a plan or project is required. This HRA Screening Update concludes that Appropriate Assessment of the Kippax Neighbourhood Plan is not required. As such this Judgement is not applicable”*.

48. The six-week consultation on the HRA Screening Report Update resulted in Natural England commenting “*We welcome the updated screening report and agree with the conclusions reached*” and Historic England confirming HRA falls outside their statutory remit. From my own assessment I concur with the City Council conclusion. I conclude the Neighbourhood Plan meets the requirements of the EU Habitats Regulations.

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

50. I conclude that the Neighbourhood Plan:

- is compatible with the Convention rights
- does not breach, and is otherwise compatible with, EU obligations
- is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.

51. The Guidance states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. Leeds City Council as local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations:

- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).<sup>27</sup>

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

52. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having*

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<sup>27</sup> Planning Practice Guidance paragraph 080 Reference ID: 41-080-20150209

*regard to*". This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans<sup>28</sup> which requires plans to be "*consistent with national policy*".

53. Lord Goldsmith has provided guidance<sup>29</sup> that '*have regard to*' means "*such matters should be considered*." The Guidance assists in understanding "*appropriate*". In answer to the question "*What does having regard to national policy mean?*" the Guidance states a neighbourhood plan "*must not constrain the delivery of important national policy objectives*."
54. The Basic Conditions Statement includes Section 2.1 providing a description "how the Plan has regard to the National Planning Policy Framework". The Basic Conditions Statement also includes a Table that sets out how the Neighbourhood Plan meets each of the Core Planning Principles of the Framework. A further Table presents a commentary how each of the Neighbourhood Plan policies have regard to identified sections and paragraphs of the Framework. I am satisfied this assessment demonstrates how the Neighbourhood Plan has regard to relevant identified components of the Framework.
55. The revised National Planning Policy Framework was published on 24 July 2018 and sets out the government's planning policies for England and how these are expected to be applied. This revised Framework replaces the previous National Planning Policy Framework published in March 2012. Paragraph 214 of the revised Framework states "*The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted<sup>30</sup> 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*." I have undertaken this Independent Examination of the Neighbourhood Plan in the context of the Framework published in March 2012.

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<sup>28</sup> Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the National Planning Policy Framework 2012

<sup>29</sup> The Attorney General, (Her Majesty's Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the Lord's Grand Committee on 6 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 2006) and included in guidance in England's Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

<sup>30</sup> Footnote 69 of the Revised Framework states that "*for neighbourhood plans, 'submission' in this context 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*."

56. The Neighbourhood Plan includes a positive vision for Kippax Parish. The vision includes a component that acknowledges change with reference to *“the village’s population will inevitably have grown”*. The vision includes economic dimensions with reference to the village being self-sustaining in terms of job needs and *“The High Street will have been transformed into an attractive and thriving shopping centre offering a range of services and facilities”*. There is also reference to social components concerned with a *“thriving and cultural sporting life”*; *“friendly village atmosphere”*; a well-mixed and balanced population; self-sustaining in terms of educational needs; and crime continuing to be low. The vision also refers to environmental considerations including *“easy countryside access”*; *“green spaces”*; and *“remaining heritage assets”*. These statements are consistent with the underlying principles of the Framework, specifically, the need to jointly and simultaneously seek economic, social and environmental gains through the planning system.
57. The vision is supported by five objectives of the Neighbourhood Plan concerned with: improvement of the local built and natural environment; provision of opportunities for expansion of local retail and business development; ensuring new developments meet local housing needs; protection of open spaces, including sports, recreational and communal facilities; and promotion of improved transport links and traffic systems. These objectives provide a link between the vision and the policies of the plan. These objectives are consistent with the Framework.
58. The Neighbourhood Plan includes, at section 4.1 key areas identified as potentially benefitting from Community Infrastructure Levy funding, and at section 4.2 aspirations that the Parish Council intend to focus upon achieving during the plan period relating to highway network improvements; parking provision in key locations and in the High Street in particular; public transport; and work towards establishing a town centre Conservation Area. The Leeds Local Access Forum welcomes the identification of improvements to the PROW network and to local cycle routes as potentially benefitting from CIL monies.
59. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The

Guidance states, *“Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements.”* The acknowledgement in the Neighbourhood Plan of issues raised in consultation processes that do not have a direct relevance to land use planning is consistent with this guidance and represents good practice. The Guidance states, *“Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”* I am satisfied the approach adopted in the Neighbourhood Plan presenting the projects and aspirations in a separate section, and listing that section separately in the contents page, adequately differentiates the community actions from the policies of the Plan and has sufficient regard for the Guidance.

60. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that the need to *‘have regard to’* national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition *“having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.”*

61. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision-taking.<sup>31</sup> The Guidance states, *“This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order*

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<sup>31</sup> Paragraph 14 National Planning Policy Framework 2012

*contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions*<sup>32</sup>.

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

63. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement confirms the Neighbourhood Plan has taken account of the need to contribute to the achievement of sustainable development and states “*The Tables in 2.1 above give an explanation of how the Kippax Neighbourhood Plan has regard to the Core Planning Principles and specific paragraphs of the NPPF which, in turn, demonstrate how the Neighbourhood Plan contributes to the achievement of sustainable development as defined by the NPPF*”. The Table included at pages 10 to 13 of the Basic Conditions Statement presents the results of an assessment of sustainability of the Neighbourhood Plan policies. The assessment shows every one of the policies makes at least a positive contribution to at least one of the three dimensions of sustainability, namely economic, social and environmental factors. Eight of the fourteen policies are found to make a very positive contribution to two or more dimensions. No policy is found to have any negative impact.

64. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes are of an appropriate quality; will enhance social facilities; and will protect important environmental features. In particular, I consider the Neighbourhood Plan seeks to:

- Ensure development in the Local Centre enhances the public realm;

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<sup>32</sup> Planning Practice Guidance (Ref ID:41-072-20140306)

- Establish principles for shop front design;
- Support commercial or retail development in the Local Centre and establish criteria to assess hot food takeaway proposals;
- Establish principles for development at key locations;
- Designate Local Green Spaces in 27 locations;
- Protect three local green corridors;
- Identify and protect two local wildlife sites;
- Establish development design principles;
- Identify non-designated heritage assets and support protection and enhancement of such assets;
- Support public right of way improvement;
- Establish criteria for support of new housing development;
- Ensure new housing development meets local needs;
- Support provision of affordable housing;
- Establish conditional support for new business and employment development.

Subject to my recommended modifications of the Submission Plan including those relating to specific policies, as set out later in this report, I find it is appropriate that the Neighbourhood Plan should be made having regard to national policies and advice contained in guidance issued by the Secretary of State. I have also found the Neighbourhood Plan contributes to the achievement of sustainable development.

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

65. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.<sup>33</sup> “*Neighbourhood plans must be in general conformity with the*

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<sup>33</sup> Paragraph 16 National Planning Policy Framework 2012

*strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies”.*<sup>34</sup>

66. The Guidance states, “A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.”<sup>35</sup>
67. In this independent examination, I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). Leeds City Council has informed me that the Development Plan applying in the Kippax neighbourhood area and relevant to the Neighbourhood Plan comprises the Leeds Core Strategy (adopted November 2014) and the Saved UDP Review (2006) Policies. The Natural Resources and Waste Local Plan (adopted January 2013) also forms part of the Development Plan but much of that document relates to excluded development for the purposes of neighbourhood planning.
68. Leeds City Council is preparing a Site Allocations Plan which at the time of this Independent Examination of the Neighbourhood Plan is currently at Examination with Stage 2 Hearing Sessions having commenced on 9 July 2018. An opportunity to comment on a sustainability appraisal on identified HG1 sites concluded on 11 September 2018. The City Council is also preparing a Core Strategy Selective Review. The Leeds Core Strategy Selective Review has been submitted to the Secretary of State 9 August 2018.
69. The Neighbourhood Plan can proceed ahead of preparation of the Site Allocations Plan and the Core Strategy Selective Review. The Guidance states: “Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan. A draft neighbourhood

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<sup>34</sup> Paragraph 184 National Planning Policy Framework 2012

<sup>35</sup> Planning Practice Guidance Paragraph 077 Reference ID: 41-077-20140306

*plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:*

- *the emerging neighbourhood plan*
- *the emerging Local Plan*
- *the adopted development plan*

*with appropriate regard to national policy and guidance. The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan. Neighbourhood plans should consider providing indicative delivery timetables and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new Local Plan.”<sup>36</sup>*

70. I am mindful of the fact that should there ultimately be any conflict between the Neighbourhood Plan, and the emerging Site Allocations Plan and the emerging Core Strategy Selective Review when they are adopted; the matter will be resolved in favour of the plan most recently becoming part of the Development Plan, however the Guidance is

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<sup>36</sup> Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20160211

clear in that potential conflicts should be minimised. The Neighbourhood Plan states *“The Leeds Core Strategy and Site Allocations Plan (part of the Leeds Local Plan) will together determine the level of development and the sites which will accommodate it in the Outer South East Leeds Housing Market Characteristic Area of which Kippax is a part.”* This approach will avoid potential conflicts.

71. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. The emerging Site Allocations Plan is not part of the Development Plan and this requirement does not apply in respect of that. Emerging planning policy is subject to change as plan preparation work proceeds. The Guidance states *“Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood areas. They can be developed before or at the same time as the local planning authority is producing its Local Plan”*. In *BDW Trading Limited, Wainholmes Developments Ltd v Cheshire West & Chester BC* [2014] EWHC1470 (Admin) it was held that the only statutory requirement imposed by basic condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted development plan as a whole.

72. In considering a now repealed provision that *“a local plan shall be in general conformity with the structure plan”* the Court of Appeal stated *“the adjective ‘general’ is there to introduce a degree of flexibility.”*<sup>37</sup> The use of ‘general’ allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

73. The Guidance states, *“When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:*

- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;*
- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;*

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<sup>37</sup> *Persimmon Homes v. Stevenage BC* the Court of Appeal [2006] 1 P &CR 31

- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy;*
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.*<sup>38</sup>

My approach to the examination of the Neighbourhood Plan policies has been in accordance with this guidance.

74. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole and each of the plan policies below. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

## The Neighbourhood Plan policies

75. The Neighbourhood Plan includes 14 policies as follows:

Policy HS1 Public realm

Policy HS2 Shop frontage design

Policy HS3 Improvement of shopping and associated services

Policy HS4 Development of key locations

Policy GE1 Local Green Spaces

Policy GE2 Local green corridors

Policy GE3 Enhancement of local biodiversity

Policy BE1 Design of the built environment

Policy BE2 Identification of non-designated heritage assets

Policy BE3 Public rights of way improvement

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<sup>38</sup> Planning Practice Guidance (ID ref: 41-074 201 40306)

Policy H1 New housing development

Policy H2 Housing type and mix

Policy H3 Affordable housing

Policy BCE1 New business and employment development

76. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.”* *“Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”*<sup>39</sup>

77. The Guidance states *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”*<sup>40</sup>

78. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.*<sup>41</sup>

79. *“A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations*

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<sup>39</sup> Paragraphs 184 and 185 National Planning Policy Framework 2012

<sup>40</sup> Planning Practice Guidance Paragraph 041 Reference ID: 41-041-20140306

<sup>41</sup> Planning Practice Guidance Paragraph 040 Reference ID: 41-040-20160211

*indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004).<sup>42</sup>*

80. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is made they will be utilised in the determination of planning applications and appeals, I have examined each policy individually in turn. I have considered any inter-relationships between policies where these are relevant to my remit.

### **Policy HS1 Public realm**

81. This policy seeks to establish that within the Local Centre development should improve the public realm in specified ways.

82. The policy refers to the imprecise term “*the Local Centre*”. In a joint response to a request for clarification I made, the City and Parish Councils stated “*The boundary shown on Map 2 is the boundary of the Kippax Higher Order Local Centre proposed in the Submission Draft Site Allocations Plan. The City Council is awaiting the Inspector’s report on the new boundary, however there are no outstanding objections therefore it is not anticipated that the boundary will change. The Leeds Core Strategy (2014) downgraded the UDP Town Centre to a Local Centre and the Site Allocations Plan proposes a smaller area to be protected by the Local Centre designation. There is a need for consistency in how this area is referred to within the Neighbourhood Plan and the use of “local centre” would be consistent with higher order policies and the convention used by Leeds City Council. The Parish Council intends that the term Local Centre used in the Neighbourhood Plan matches the Local Centre designation within higher order policies (Core Strategy Policy P1). The extent of this policy would be applicable within the boundary shown on Map 2 (page 25 of the neighbourhood plan), which is an extract from the Site Allocations Plan, giving effect to the Core Strategy. A modification to the policy to refer to the centre boundary shown on Map 2 would be welcomed and appropriate*”. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high

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<sup>42</sup> Planning Practice Guidance Paragraph 004 Reference ID: 41-004-20140306

degree of predictability and efficiency as required by paragraph 17 of the Framework.

83. The term “*should seek to*” does not provide a basis for the determination of planning applications. It may not be viable or practical for all development proposals to address each of the issues identified. Paragraph 173 of the Framework requires careful attention to viability, and deliverability of plans. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
84. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
85. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with ensuring the vitality of town centres; requiring good design; promoting healthy communities; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

#### **Recommended Modification 1:**

##### **In Policy HS1**

- **after “Local Centre” insert “identified on Map 2”**
- **delete “should seek to” and insert “proposals will be supported where, subject to viability and practicality, they”**

#### **Policy HS2 Shop frontage design**

86. This policy seeks to establish four principles that proposals for new shop frontages or alterations to shop frontages should have regard to.
87. The policy refers to the imprecise term “*town centre*”. In a joint response to a request for clarification I made, the City and Parish

Councils stated “*The reference to the ‘Town Centre’ in Policy HS2 is incorrect, and should refer to Local Centre (as designated by higher order policies), a modification to correct this error would be welcomed. As above, a modification to the policies to refer to the centre boundary shown on Map 2 would be welcomed and appropriate.*” I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

88. The term “*should have regard to*” does not provide a basis for the determination of planning applications. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
89. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
90. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with ensuring the vitality of town centres; requiring good design; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended Modification 2:  
In Policy HS2**

- **before “Proposals” insert “To be supported”**
- **after “should” insert “demonstrate how they”**
- **delete “town centre” and insert “Local Centre identified on Map 2”**

### **Policy HS3 Improvement of shopping and associated services**

91. This policy seeks to establish support for specified types of commercial or retail development in Kippax Local Centre and seeks to discourage new hot food takeaways and establish principles for any new development.
92. The policy refers to the imprecise terms “*Kippax Local Centre*” and “*the Local Centre*”. In a joint response to a request for clarification I made, the City and Parish Councils stated a modification to the policy to refer to the centre boundary shown on Map 2 would be welcomed and appropriate. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
93. The terms “*is encouraged, in particular*”; “*are discouraged*”; and “*seek to*” do not provide a basis for the determination of planning applications. It should be made clear the types of development referred to in the first paragraph are not all required for support to be given. It should also be made clear the criteria for support must all be met for a proposal to be supported. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
94. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
95. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with ensuring the vitality of town centres; promoting sustainable transport; requiring good design; promoting healthy communities; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended Modification 3:  
In Policy HS3**

- delete “is encouraged, in particular” and insert “identified on Map 2 will be supported where it proposes”
- in the first paragraph at the end of points a) b) and c) insert “; or”
- delete “are discouraged but any new development should seek to” and insert “will only be supported where it is demonstrated they will”
- in the second paragraph after “environment” insert “;” and after “parking” insert “; and”

**Policy HS4 Development of key locations**

96. This policy seeks to establish principles for development at Key Locations.

97. The term “*should seek to*” is without consequence and does not provide a basis for decision making on development proposals. The term “*appropriate development*” is imprecise. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework

98. The policy refers to “*the Key Locations on the Policies Map and Map 3*”. Neither of these maps provides an accurate identification of the nature or extent of the Key Locations. In a joint response to a request for clarification I made, the City and Parish Councils stated “*the Key Locations are identified within the URS Study, which forms part of the evidence base to the Neighbourhood Plan, and a modification to show the precise boundaries would be welcomed and achievable*”. I have recommended Map 3 should be adjusted, or alternatively new maps be included in the Neighbourhood Plan, so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

99. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core

Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

100. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with ensuring the vitality of town centres; promoting sustainable transport; requiring good design; promoting healthy communities; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended Modification 4:  
In Policy HS4**

- **commence the policy with “To be supported”**
- **after “Locations “insert “at The Hermitage and surrounding land; at Hanover Place; and at the central High Street”**
- **delete “appropriate development should seek to” and insert “development proposals must demonstrate how they will”**

**Map 3 should be adjusted or new maps be included in the Neighbourhood Plan so that the precise boundaries of the Key Locations can be identified**

**Policy GE1 Local Green Spaces**

101. This policy seeks to designate 27 Local Green Spaces. A representation states *“Gladman would like to remind the Parish Council that the designation of land as Local Green Space (LGS) is a significant policy designation and once designated effectively provides protection that is comparable to that of Green Belt land. Paragraph 77 of the previous framework explicitly states, ‘Local Green Space designation will not be appropriate for most green areas or open space’. Accordingly, it is imperative that the plan-makers can clearly demonstrate that the requirements for LGS designation are met. The designation should only be used;*
- *Where the green space is in reasonably close proximity to the community it serves*
  - *Where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its*

*beauty, historic significance, recreational value (including as a playing field), tranquility or richness of its wildlife*

- *Where the green area concerned is local in character and is not an extensive tract of land*

*Gladman note that two of the proposed Local Green Spaces are wholly in Green Belt. National Guidance states if the land is already protected by Green Belt policy then consideration should be given to whether any additional local benefit would be gained by the designation as Local Green Space. Whilst Gladman acknowledge that some evidence is contained within Appendix 1, we do not consider any additional local benefit would be gained by designating the two sites in the Green Belt as Local Green Spaces. Consequently, these proposed designations do not have regard to national policy and guidance, therefore failing to meet basic condition (a). We suggest this element of the policy is therefore deleted.”*

102. The Framework states “*the Local Green Space designation will not be appropriate for most green areas or open space*”. Designating a green area as Local Green Space would give it protection consistent with that in respect of Green Belt. Decision makers must rely on paragraph 78 of the Framework that states “*local policy for managing development within a Local Green Space will be consistent with policy for Green Belts*” and the part of the Framework that relates to ‘Protecting Green Belt land’, in particular paragraphs 87 to 91 inclusive. Where the Neighbourhood Plan seeks to designate Local Green Space in areas of Green Belt it is necessary to consider whether any additional local benefit would be gained by that designation.

103. Paragraph 79 of the Framework states “*the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence*”. Planning Practice Guidance states “*If land is already protected by Green Belt policy, or in London, policy on Metropolitan Open Land, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space. One potential benefit in areas where protection from development is the norm (eg villages included in the green belt) but where there could be exceptions is that the Local Green Space designation could help to identify areas that are of particular*

importance to the local community.”<sup>43</sup> Neither section 3.4.1 nor Appendix 1 of the Neighbourhood Plan consider the case for additional benefit. In a joint response to a request for clarification I made, the City and Parish Councils stated “Out of the 27 areas identified for designation as Local Green Space under Policy GE1, the following sites fall within Green Belt:

- Site 2 Kippax Welfare Playing Fields (south eastern corner only)
- Site 17 Kippax Meadows
- Site 24 Bowling green and tennis courts off Brigshaw Lane
- Site 26 Green space above sports centre.”

104. “The table below sets out the designation history of these 4 sites within the Leeds Unitary Development Plan and the submission draft Leeds Site Allocations Plan”.

<b>SITE NUMBER AND NAME</b>	<b>DESIGNATION IN UDP</b>	<b>PROPOSED DESIGNATION IN SAP</b>
2 Kippax Welfare Playing Fields	Green Space (all but the south eastern corner.) South east corner is Green Belt	Green Space (whole site). South eastern corner also Green Belt.
17 Kippax Meadows	Green Belt.	Green Space (all but the north eastern corner). Green Belt.
24 Bowling green and tennis courts off Brigshaw Lane	Green Belt.	Green Space. Green Belt.
26 Green space above sports centre	Green Space. Green Belt.	Green Space (part of larger area extending north and west). Green Belt.

105. “Most of the areas proposed for designation which lie within the Green Belt are either long standing green spaces designated in the UDP or sites proposed for designation through the SAP as they have been identified as in a green space use. Site 24 is a well-used sports facility and the small part of Site 2 is part of the wider sports and social

<sup>43</sup> Planning Practice Guidance Paragraph: 010 Reference ID:37-010-20140306

*club. Site 26 is long standing green space and part of the wider proposed Town Close Hills Green Space in the SAP. This consists of open grassland and woodland (classified as “natural” typology) which is crossed by footpaths and accessible for informal recreation. None have been subject to objections during the SAP process. Site 17 is a nature reserve and as such is recognised for its importance as a wildlife habitat as well as its use as a country park, promoted by the Parish Council and the City Council. The sites are proposed as Local Green Spaces due to their local significance, and the Parish Council wishes to demonstrate to the community that sites of importance are appropriately recognised by the Parish Council through the Neighbourhood Plan.”* I recognise the non-inclusion of locally significant green spaces would call into question the comprehensiveness, and to a degree the credibility, of the Neighbourhood Plan in the eyes of the local community. I am satisfied designation is appropriate under these circumstances.

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

107. Designation of Local Green Space can only follow identification of the land concerned. For a designation with important implications relating to development potential it is essential that precise definition is achieved. The proposed Local Green Spaces are presented on Map 4 and on the Policies Map in the Neighbourhood Plan at a scale that is insufficient to identify the precise boundaries of each Local Green Space proposed for designation. The areas proposed for designation are however presented individually on detailed maps in Appendix 1 to the Neighbourhood Plan. On this basis I consider the areas of land concerned have been adequately identified. I recommend a modification so that maps of the areas of land designated as Local Green Space included in Appendix 1 of the Neighbourhood Plan are referred to in the policy.

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

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

- *where the green space is in reasonably close proximity to the community it serves;*
- *where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- *where the green area concerned is local in character and is not an extensive tract of land.”<sup>44</sup>*

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

110. I now consider whether there is sufficient evidence for me to conclude that the 27 areas proposed for designation as Local Green Space are demonstrably special to a local community and hold a particular local significance. The Neighbourhood Plan sets out in Appendix 1 a justification for the designations. Whilst the justification in each case is brief they do relate to the appropriate criteria. I conclude each of the areas proposed for designation as Local Green Space is demonstrably special to a local community and holds a particular local significance.

111. I find all the areas proposed as Local Green Space are suitable for designation and have regard for paragraphs 76 and 77 of the Framework concerned with the identification and designation of Local Green Space. The policy is in general conformity with the strategic

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<sup>44</sup> Paragraph 77 National Planning Policy Framework 2012

policies included in the Development Plan, the Leeds Core Strategy including Unitary Development Plan Saved UDP Review 2006 Policies, and provides an additional level of detail or distinct local approach to that set out in Spatial Policy 13, and Strategic Policies P12 and G6. I consider that subject to the modification recommended this policy meets the basic conditions.

**Recommended modification 5:  
In Policy GE1 after “Policies Map” insert “and on maps included in Appendix 1”**

**Policy GE2 Local green corridors**

112. This policy seeks to ensure that the function of three local green corridors as wildlife, amenity and/or recreational resources should not be undermined by development.
113. It is confusing that there is variation between names used to identify local green corridors in the policy wording, and on Map 5, and on the Policies Map. In a joint response to a request for clarification I made, the City and Parish Councils has advised me of the preferred name for each local green corridor. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
114. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
115. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with promoting sustainable transport; promoting healthy communities; and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

### **Recommended Modification 6:**

**Policy GE2, and Map 5, and the Policies Map must identify the local green corridors using the same name, as follows:**

- **Part of the Lines Way (the correct name is within the Policy GE2)**
- **Kippax Back (the correct name is on the key to Map 5)**
- **Roman Road (the correct name is on the key to Map 5)**

### **Policy GE3 Enhancement of local biodiversity**

116. This policy seeks to identify Oxford Drive Limestone Quarry Face, and Kippax Polo Pond, as local wildlife sites and ensure development should seek to contribute to their wildlife and biodiversity value through stated means. The policy also seeks to encourage all new development to have regard to existing onsite ecological value.

117. A representation states *“Paragraph 113 of the previous Framework refers to the need for criteria-based policies in relation to proposals affecting protected wildlife or geodiversity sites or landscape areas, and that protection should be commensurate with their status which gives appropriate weight to their importance and contributions to wider networks. As currently drafted, Gladman do not believe this policy fully aligns with the previous Framework. The policy fails to make a distinction and recognise that there are two separate balancing exercises which need to be undertaken for national and local designated sites and their settings. We therefore suggest that the policy is revisited to ensure that it is consistent with the approach set out within the previous Framework.”* Paragraph 113 of the Framework refers to the approach of Local Planning Authorities in policy making but is silent with respect to the role of Qualifying Bodies in preparing neighbourhood plans. The first two sentences of Policy GE3 are proposing locally designated sites and seeking to establish criteria for assessment of proposals affecting those sites. I have recommended a modification of the final sentence of the policy to have regard for national policy.

118. The Oxford Drive Limestone Quarry Face and Kippax Polo Pond areas presented on Map 5, and on the Policies Map, are at a scale that is insufficient to identify the precise boundaries of each area. This is not acceptable as the policy refers to proposals *“on or adjacent to”* the sites. In a joint response to a request for clarification I made, the

City and Parish Councils have stated “a modification to show the precise boundaries of the sites referred to in Policy GE3 would be welcomed and achievable”. I have recommended a modification so that maps of the areas concerned, at sufficient scale to identify their boundaries, are included in the Neighbourhood Plan.

119. The terms “such sites”, “seek to contribute” and “encouraged to” are imprecise and do not offer a basis for the determination of planning applications. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
120. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
121. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended Modification 7:  
In Policy GE3**

- **delete “such sites should seek to contribute” and insert “these sites must demonstrate how it contributes”**
- **delete “is encouraged to have” and insert “must demonstrate”**
- **continue the final sentence “commensurate with the status and wildlife or geodiversity importance of the site and any contribution it makes to wider ecological networks”**

**Maps of the Oxford Drive Limestone Quarry Face and Kippax Polo Pond local wildlife sites at sufficient scale to identify their boundaries should be included in the Neighbourhood Plan**

**Policy BE1 Design of the built environment**

122. This policy seeks to establish development design principles.
123. The Leeds Local Access Forum supports part e) of the policy. A representation states *“Whilst Gladman recognise the importance of high-quality design, planning policies should not be overly prescriptive and need flexibility in order for schemes to respond to sites specifics and the character of the local area. There will not be a 'one size fits all' solution in relation to design and sites should be considered on a site by site basis with consideration given to various design principles. Gladman consider the policies as currently drafted to be overly prescriptive and therefore suggest that more flexibility is provided in the policy wording to ensure that a high quality and inclusive design is not compromised by the requirements alone. We consider that to do so could act to impact on the viability of proposed residential developments. We suggest that regard should be had to paragraph 60 of the previous Framework which states that: ‘Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles’.”*
124. Paragraph 58 of the Framework in stating planning policies should aim to ensure that developments establish a strong sense of place makes specific reference to *“streetscapes and buildings to create attractive and comfortable places to live, work and visit.”* The Framework states *“local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally”* and *“Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local*

*distinctiveness*<sup>45</sup>. I am satisfied Policy BE1 seeks to reinforce local distinctiveness whilst avoiding unnecessary prescription. The policy has regard for these elements of national policy.

125. The policy is without consequence. The term “*paying*” does not offer a basis for determination of planning applications. The term “*positive buildings*” is imprecise. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

126. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

127. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended Modification 8:  
In Policy BE1**

- **commence the policy with “To be supported”**
- **delete “paying” and insert “demonstrating”**
- **delete “positive” and insert “position of”**
- **delete “Adequate” and insert “Sufficient”**

**Policy BE2 Identification of non-designated heritage assets**

128. This policy seeks to establish support for protection and enhancement of 10 non-designated heritage assets.

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<sup>45</sup> Paragraphs 59 and 60 National Planning Policy Framework 2012

129. A representation states *“Gladman are concerned that this policy is elevating the significance of locally identified non-designated heritage assets to that of designated heritage assets. For non - designated heritage assets, the policy must be reworded to reflect the guidance set out within paragraph 135 of the Framework. This states that the effect of an application on the significance of a non-designated heritage asset should be taken in to account when determining the application. A balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

130. The Guidance states *“Where it is relevant, neighbourhood plans need to include enough information about local heritage to guide decisions and put broader strategic heritage policies from the Local Plan into action at a neighbourhood scale.”*<sup>46</sup> The Guidance also states *“Local Planning Authorities may identify non-designated heritage assets”*<sup>47</sup> and *“Local lists incorporated into Local Plans can be a positive way for the local planning authority to identify non-designated heritage assets against consistent criteria so as to improve the predictability of the potential for sustainable development.”*<sup>48</sup> The Leeds Core Strategy at Policy P11 states that the City Council will conserve and enhance locally significant undesignated assets and their settings, particularly those which help to give Leeds its distinct identity. The Heritage Background Paper (February 2017) to the Leeds City Council Site Allocations Plan Submission Version states *“Non-designated heritage assets are buildings, monuments, sites, places, areas or landscapes that are not designated but have a degree of significance meriting consideration in planning decisions, because of their heritage interest. Non-designated heritage assets are identified by the local planning authority.”*

131. It is appropriate for a community to use the neighbourhood plan preparation process to identify buildings and structures of local interest and to include policies to require particular consideration of assets that have been formally recognised by the City Council in the determination of planning applications. It is not appropriate for Policy BE2 to refer to the named assets as non-designated heritage assets unless the City Council has added those assets to a local list. In a joint response to a request for clarification I made, the City and Parish Councils stated

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<sup>46</sup> Planning Practice Guidance Reference ID: 18a-007-20140306

<sup>47</sup> Planning Practice Guidance Reference ID: 18a-039-20140306

<sup>48</sup> Planning Practice Guidance Reference ID: 18a-041-20140306

*“Whilst it is recognised that the Council does not have a formal Local List of Non-Designated Heritage Assets, the Examiner is referred to the City Council’s proposed modification to the Site Allocations Plan (page 4), which amends the generic considerations for all proposed sites in the Revised Submission Draft SAP. The Council’s position is that the existing work on non-designated heritage assets is not exhaustive or exclusive. It is noted that the Examiner is minded to recommend that Policy BE2 of the Neighbourhood Plan is changed to a Community Action. The Parish Council would be comfortable with this recommendation as the list would remain in the Plan (although not as part of a formal planning policy), and would ask that the Examiner considers how support for the protection and enhancement of heritage assets in Kippax can still remain a part of the Neighbourhood Plan as part of a planning policy, if appropriate”.*

132. I recommend that the second part of Policy BE2 of the Neighbourhood Plan is changed to a Community Action so that the list would remain in the Plan, although not as part of planning policy. The status of the locally identified non-designated heritage assets should be clarified and the process to achieving their formal recognition should be explained.

133. Paragraphs 131 to 136 of the Framework establish a policy regime for the determination of proposals that affect designated and non-designated heritage assets. The balancing of considerations is a part of the judgement necessary in the determination of proposals. In the case of harm to non-designated heritage assets the Framework states it is necessary to balance the scale of any harm or loss and the significance of the asset. Paragraph 135 of the Framework states *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”* Whilst Policy BE2 provides an additional level of detail or local approach to guide the determination of planning applications it does not reflect the balanced judgement required by national policy. I have recommended a modification in this respect.

134. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary

Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in Core Strategy Strategic Policy P11.

135. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended Modification 9:  
In Policy BE2:**

- **replace the first sentence with “Development proposals that directly or indirectly affect non-designated heritage assets will be assessed having regard to the scale of any harm or loss and the significance of the heritage asset including their importance to local history, distinctiveness, character, and sense of place.”**
- **delete the second sentence with list of heritage assets and transfer those to a Community Action which states “The following buildings and features of the built environment are nominated for assessment by Leeds City Council as potential Non-Designated Heritage Assets”. The supporting text will require adjustment and the process for formal recognition by the City Council should be explained.**

**Policy BE3 Public rights of way improvement**

136. This policy seeks to establish support for proposals for improvement of the public right of way network and seeks to ensure development retains, or where possible enhances, pedestrian, cyclist and horse-riding routes, and respects their character and visual outlook.

137. The Leeds Local Access Forum supports the policy but recommends “*approved*” is replaced by “definitive” and that “*footways*” is deleted as those areas for pedestrians alongside roadways are not usually shown on the Definitive Map. The terms referred to do not appear in the policy itself but in supporting text. I agree with the points

made and have, in the annex to my report, recommended a correction in these respects.

138. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
139. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport. This policy meets the Basic Conditions.

### **Policy H1 New housing development**

140. This policy seeks to establish five principles that new housing development should seek to achieve.
141. The term “*should seek to*” does not provide a basis for the determination of planning applications. The terms “*minimise*” and “*appropriate to*” are imprecise. In a joint response to a request for clarification I made, the City and Parish Councils stated “*it is the intention that new development should not result in additional on-street parking, where possible, and that parking provision is incorporated in development proposals from the outset*”. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
142. The Framework states “*Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*”. I have recommended a modification in this respect so that the policy has sufficient regard for national policy.
143. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely

the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

144. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with promoting sustainable transport and delivering a wide choice of high-quality homes. Subject to the recommended modification this policy meets the Basic Conditions.

#### **Recommended Modification 10:**

##### **In Policy H1**

- **commence the policy with “To be supported”**
- **delete “should seek to” and insert “must demonstrate it will”**
- **replace b) with “not be detrimental to road safety and will not result in severe traffic congestion”**
- **replace e) with “not result in additional on-street parking”**

#### **Policy H2 Housing type and mix**

145. This policy seeks to establish new housing development will provide a mix of types and tenures to meet demonstrated local need, and requires priority is given to provision of stated types of accommodation.

146. The terms “*should seek to*” and “*should prioritise*” do not provide a basis for the determination of planning applications. I have recommended a modification so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

147. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources

and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

148. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with delivering a wide choice of high-quality homes. Subject to the recommended modification this policy meets the Basic Conditions.

#### **Recommended Modification 11:**

##### **In Policy H2**

- **commence the policy with “To be supported proposals for”**
- **delete “should seek to” and insert “must demonstrate they will”**
- **delete “should prioritise” and insert “of the following types of accommodation will be supported”**

#### **Policy H3 Affordable housing**

149. This policy seeks to establish principles for the provision of affordable housing.

150. The term “*is a priority*” does not provide a basis for the determination of planning applications. The term “*wherever possible*” is imprecise. I have recommended a modification so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

151. Strategic Policy H5 requires affordable housing to be provided at specified target levels in schemes above a threshold number of units. Strategic Policy H5 also specifies a requirement for the affordability of the affordable housing. It is inappropriate for a neighbourhood plan to seek provision above the requirements of the strategic policy. Policy H3 is not in general conformity with the strategic policy. I have recommended a modification in this respect.

152. Strategic Policy H5 requires affordable housing to be provided on-site unless off site provision or a financial contribution can be robustly justified. Strategic Policy H5 is silent with respect to the location of any off-site provision or in respect of where any financial

contribution is to be spent. Policy H3 seeks to introduce an additional level of detail or distinct local approach in this respect. I am satisfied this approach has been sufficiently justified not least in the Re'New housing market assessment.

153. Strategic Policy H5 requires affordable housing units to be suitably integrated throughout a development site. Policy H3 requires, wherever possible, affordable housing to be “*pepper-potted throughout the development*”. I understand the intention is to achieve a sprinkling of affordable housing throughout a development site so that it is fully integrated throughout the development, and not located in an identifiable cluster. I have recommended a modification in this respect.

154. In a joint response to a request for clarification I made, the City and Parish Councils stated “*The proposed modification does reflect the intention of the Parish Council within the context of strategic policy. The Parish Council wishes to encourage the increased provision of Affordable Housing within Kippax and appreciate that the recommended modification provides a locally-distinctive application and interpretation of extant strategic policy.*” Subject to the recommended modification the policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

155. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with delivering a wide choice of high-quality homes. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended Modification 12:**

**Replace Policy H3 with “On-site affordable housing should be integrated throughout the development concerned and not located in an identifiable cluster. Where affordable housing is not provided on-site in accordance with Strategic Policy H5 all necessary provision should be made within the Neighbourhood Area unless it can be demonstrated this is not practical”**

## **Policy BCE1 New business and employment development**

156. This policy seeks to establish three principles for new employment development.
157. The term “*is encouraged and should seek to*” does not provide a basis for the determination of planning applications. The terms “*if applicable*”, “*be appropriate*”, “*respect*”, and “*minimise*” are imprecise. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
158. The policy is in general conformity with the strategic policies included in the Development Plan applying in the Kippax Neighbourhood Area and relevant to the Neighbourhood Plan (namely the Leeds Core Strategy [adopted November 2014]; the Saved Unitary Development Plan Review [2006] Policies; and the Natural Resources and Waste Local Plan [adopted January 2013]) and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
159. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Subject to the recommended modification the policy has regard to the components of the Framework concerned with building a strong, competitive economy; ensuring the vitality of town centres; requiring good design; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

### **Recommended Modification 13:**

**Replace Policy BCE1 with “New employment development will be supported where it does not adversely affect visual or residential amenity including through noise or traffic generation**

## Summary and Referendum

206. I have recommended 13 modifications to the Submission Version Plan. I have also made a recommendation of modification in the Annex below.

207. I am satisfied that the Neighbourhood Plan<sup>49</sup>:

- is compatible with the Convention rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the statutory requirements set out in paragraph 8(1) of schedule 4B of the Parish and Country Planning Act 1990 and meets the Basic Conditions:
  - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
  - the making of the neighbourhood plan contributes to the achievement of sustainable development;
  - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
  - does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
  - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.<sup>50</sup>

**I recommend to Leeds City Council that the Kippax Neighbourhood Development Plan for the plan period up to 2033**

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<sup>49</sup> The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

<sup>50</sup> Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

**should, subject to the modifications I have put forward, be submitted to referendum.**

208. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.<sup>51</sup> I have seen nothing to suggest that the policies of the Plan will have “*a substantial, direct and demonstrable impact beyond the neighbourhood area*”<sup>52</sup>. I conclude the referendum area should not be extended beyond the designated Neighbourhood Area.

**I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Leeds City Council as a Neighbourhood Area on 15 November 2016.**

#### Annex: Minor Corrections to the Neighbourhood Plan

209. A number of consequential modifications to the general text, and in particular the justification of policies sections, of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies.

210. I am able to recommend modification of the Neighbourhood Plan in order to correct errors.<sup>53</sup> I recommend the following minor changes only in so far as they are to correct an error or where it is necessary so that the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework:

Paragraph 3.3 Policies in summary delete “frontages” and insert “frontage”

Paragraph 3.4 iii Policy title delete “space” and insert “spaces”

Paragraph 3.4 Policies in summary before “Green” insert “Local” and replace “Green” with “green”

Paragraph 3.6 Policies in summary H1 before “Housing” insert “New”

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<sup>51</sup> Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

<sup>52</sup> Planning Practice Guidance Reference ID: 41-059-20140306

<sup>53</sup> Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990

211. The Leeds Local Access Forum (LLAF) states Map 6, part of the on-line version of the Definitive Map, does not show the whole of the Neighbourhood Area or mark its boundary. To maintain consistency with the other Maps in the Plan, Map 6 should include the whole of the Neighbourhood Area and mark the boundary of the Neighbourhood Area. To complement Map 6, the LLAF recommends that the descriptions of each route in the Definitive Statement of Public Rights of Way which accompanies the Definitive Map of Public Rights of Way are included in an Appendix. The LLAF strongly commends the Bardsey cum Rigton Neighbourhood Plan as an exemplar of clearly identifying the public rights of way (PROW). It clearly informs developers of the extent of the PROW network within the Neighbourhood Area. In any planning application developers need to take PROWs into account where they cross or are adjacent to potential development sites. Whilst I agree the recommendations of the Leeds Local Access Forum would improve the Neighbourhood Plan I have not made a recommendation in these respects as a modification is not necessary to meet the Basic Conditions and the suggestions do not relate to the correction of errors.

212. The Leeds Local Access Forum also recommends adjustment of the general text in paragraph 3.5.3ii so that “*approved*” is replaced by “definitive” and that “*footways*” is deleted as those areas for pedestrians alongside roadways are not usually shown on the Definitive Map. I agree with the points made and recommend a correction in these respects.

**Recommended modification 14:  
Modification of general text will be necessary to achieve consistency with the modified policies, and to correct identified errors including those arising from updates.**

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2 November 2018  
REPORT ENDS