

Leeds City Council

**Aberford
Neighbourhood Development Plan
2018-2028**

Independent Examiner's Report

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2 July 2019

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Summary

I have been appointed as the independent examiner of the Aberford & District Neighbourhood Development Plan.

Aberford and its surrounds are some 15km to the east north east of Leeds, in the shadow of the A1(M) motorway. The village is linear in form and boasts a rich history reflected in its Conservation Area and many listed buildings.

The production of the Plan has been a long journey starting in 2012 with a decision to undertake the Plan and build on earlier work on a Village Design Statement and Village Masterplan.

The local community has experienced considerable uncertainty in the light of emerging plans at Leeds City Council level including a potential new sustainable settlement and employment uses at the Parlington Estate. The Inspectors examining the emerging Site Allocations Plan have now recommended that this proposed allocation be deleted. In the light of this uncertainty, the Plan takes a commendably pragmatic approach.

Whilst the Plan does not include any site allocations, it contains 13 policies covering a wide variety of issues from the designation of Local Green Spaces to setting out the community's aspirations for brownfield sites.

The Plan has unfortunately been significantly delayed and the examination paused whilst clarity over the position with habitats regulations was sought; a source of frustration for everyone concerned.

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

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

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

Ann Skippers MRTPI
Ann Skippers Planning
2 July 2019



1.0 Introduction

This is the report of the independent examiner into the Aberford & District Neighbourhood Development Plan (the Plan).

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

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

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

2.0 The role of the independent examiner

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

The basic conditions¹ are:

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

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation

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

and referred to in the paragraph above. Only one is applicable to neighbourhood plans and was brought into effect on 28 December 2018.² It states that:

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

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

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

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

The examiner must then make one of the following recommendations:

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

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

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

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

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

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

3.0 The examination process

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

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

As a result of some modifications consequential amendments may be required. These can include changing section headings, amending the contents page, renumbering paragraphs or pages, ensuring that supporting appendices and other documents align with the final version of the Plan and so on. I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be taken and such editing carried out.

PPG⁷ explains that it is expected that the examination will not include a public hearing. Rather the examiner should reach a view by considering written representations. Where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.⁸

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

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

The examination was paused because of uncertainty surrounding the requirements for neighbourhood plans and EU obligations, particularly in relation to Habitats. This meant that the Plan has been significantly delayed in its progress towards referendum.

A full explanation of the action in relation to Habitats is given in that section. A second period of public consultation was held specifically on an update to the Basic Conditions

⁵ PPG para 055 ref id 41-055-20180222

⁶ *Ibid*

⁷ *Ibid* para 056 ref id 41-056-20180222

⁸ *Ibid*

Statement and a new screening report. Further information about the second consultation period which was held is given in the next section. The Parish Council were given an opportunity to comment on the representations received, but chose not to send any further comments.

I am very grateful to both Councils for the assistance given to me during the course of the examination and in particular Abbie Miladinovic of LCC.

I made an unaccompanied site visit to familiarise myself with the Plan area on 2 November 2018.

All letters, notes and correspondence is available on the LCC website and is appended to my report when indicated.

4.0 Neighbourhood plan preparation

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

Work began on the Plan in 2012. A Management Group was established of both Parish Councilors and residents. Regular meetings were held which were open to the public and minutes of those meetings are publicly available.

In Spring 2013, an explanatory newsletter and an 'issues' questionnaire was delivered to all households in the Plan area and an open day held. As well as residents, businesses, landowners and ward councillors and the local MP were invited. The event was advertised via leaflet drops, posters, advertisements in local press and the village newsletter. A dedicated website and email address were also set up. The open day was attended by some 100 people. The questionnaire attracted a good 27% response rate.

Consultation with the local community, stakeholders and LCC was conducted in Spring 2015 including a drop-in event. A Policy Intentions document was produced alongside a questionnaire. Both the questionnaire and event attracted a respectable response.

In early 2017, informal, but targeted consultation with landowners and the community was conducted, again with a drop-in event. This generated a healthy response that informed the final draft Plan.

Pre-submission consultation was held between 7 July – 18 August 2017. A public drop-in session was held during this period. As well as being available online, the Plan was available from 10 locations in the Plan area.

The Consultation Statement includes 14 appendices with further detail. It also includes a section which reflects on the consultation process and its outcomes. It seems to me that this section is a very welcome and commendable addition to the Consultation

Statement and its honesty will help other Groups to engage positively with their own communities.

Submission (regulation 16) consultation was held between 18 June – 30 July 2018. This stage of consultation is organised by LCC as once the Plan is submitted, it is the local planning authority who lead on the progress. Therefore it is the documents on the LCC website which formally constitute the consultation.

The Regulation 16 stage resulted in seven representations.

A second period of public consultation was held between 18 February - 1 April 2019 specifically on the Basic Conditions Statement Update January 2019 and the Habitats Regulations Assessment Screening Report January 2019. LCC helpfully prepared an explanatory note of this additional period of consultation. This resulted in five representations.

I have considered all of the representations and taken them into account in preparing my report.

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

5.0 Compliance with matters other than the basic conditions

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

Qualifying body

Aberford & District Parish Council is the qualifying body able to lead preparation of a neighbourhood plan. This requirement is satisfactorily met.

Plan area

The Plan area consists of a smaller area than the Parish area. This is because LCC determined that the M1 to the south formed a physical barrier and the inclusion of land to the south would also have included the northernmost part of Garforth and therefore a smaller area was more appropriate for the purposes of neighbourhood planning.

LCC approved the designation of the area on 26 June 2013. The Plan relates to this area and does not relate to more than one neighbourhood area and therefore complies with these requirements. The Plan area is shown on page 10 of the Plan.

Plan period

The Plan period is 2018 – 2028.

Excluded development

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

Development and use of land

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable.⁹

In this instance, community actions have been included in amongst policies. The Plan explains what they are and that they do not form part of the policies.¹⁰ I consider this to be an appropriate approach for this particular Plan.

6.0 The basic conditions

Regard to national policy and advice

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

Paragraph 214 in Annex 1 of that document explains that:

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

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

⁹ PPG para 004 ref id 41-004-20170728

¹⁰ The Plan, pages 5, 11

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

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

The NPPF is the main document that sets out national planning policy. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the strategic development needs set out in Local Plans, plan positively to support local development, shaping and directing development that is outside the strategic elements of the Local Plan and identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with the neighbourhood plan to proceed.¹¹

The NPPF also makes it clear that neighbourhood plans should be aligned with the strategic needs and priorities of the wider local area. In other words neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. They cannot promote less development than that set out in the Local Plan or undermine its strategic policies.¹²

The NPPF indicates that plans should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.¹³

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

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

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

¹¹ NPPF paras 14, 16

¹² *Ibid* para 184

¹³ *Ibid* para 17

¹⁴ PPG para 041 ref id 41-041-20140306

¹⁵ *Ibid*

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

¹⁷ *Ibid*

Whilst this has formed part of my own assessment, Table 1 of the Basic Conditions Statement Update sets out how the Plan aligns with the NPPF's core planning principles¹⁸ and Table 2 discusses each policy in relation to key parts of the NPPF.¹⁹

Contribute to the achievement of sustainable development

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development. The NPPF as a whole²⁰ constitutes the Government's view of what sustainable development means in practice for planning. The Framework explains that there are three dimensions to sustainable development: economic, social and environmental.²¹

The Basic Conditions Statement Update explains that an "informal sustainability assessment" has been done to show how the Plan contributes to sustainable development.²² This is a useful document that demonstrates how the Plan might contribute to sustainable development has been considered in a systematic way and is distinct from any requirement to undertake a Strategic Environmental Assessment.

General conformity with the strategic policies in the development plan

The development plan consists of the Leeds City Council Core Strategy (CS) adopted on 12 November 2014 which sets out the spatial vision to 2028. Saved policies of the Leeds Unitary Development Plan Review (UDP), adopted in 2006, are also extant. The Natural Resources and Waste Local Plan adopted on 16 January 2013 may also be of relevance.

Whilst this has formed part of my own assessment, Table 3 of the Basic Conditions Statement Update²³ lists the Plan policies alongside the relevant UDP and CS policies with a brief comment on conformity.

Spatial Policy 1 of the CS focuses the majority of new development in the Main Urban Area and Major Settlements. Smaller Settlements will contribute to development with the scale of growth based on settlement size, function and sustainability. Aberford is not identified as a Smaller Settlement. The CS explains that all other settlements in the rural areas will continue to have limited development opportunities along with areas of Green Belt and countryside. Development will only be permitted if it functionally requires a rural location.²⁴

CS Spatial Policy 6 provides for some 70,000 new dwellings (net). It is recognised that a review of the Green Belt will be progressed through a Site Allocations Plan (SAP). Within this context about 70% is anticipated to be within existing settlements, mainly

¹⁸ Basic Conditions Statement Update February 2019 page 5

¹⁹ *Ibid* page 6

²⁰ NPPF para 6 which indicates paras 18 – 219 of the Framework constitute the Government's view of what sustainable development means in practice

²¹ *Ibid* para 7

²² Basic Conditions Statement Update February 2019 page 12 and Appendix 2

²³ *Ibid* page 9

²⁴ Core Strategy page 30

within the Main Urban Area, 21% on the edge of the Main Urban Area or Major Settlements and about 8% of urban extension land should be found on land adjoining the Smaller Settlements. In addition, it is recognised there may be opportunities outside the Settlement Hierarchy including in sustainable locations or on previously developed land.

CS Spatial Policy 7 seeks some 700 dwellings to be provided in “other rural” and distributes 5,000 dwellings (about 8%) to the Outer North East Housing Market Characteristic Area within which the Plan area falls.

CS Spatial Policy 10 commits to a review of the Green Belt. The UDP designated land outside of the Green Belt as Protected Areas of Search (PAS) and it is intended new areas of PAS will be identified. The policy indicates that Green Belt release will be considered exceptionally on sites unrelated to the Main Urban Area, Major Settlements or Smaller Settlements.

Emerging Planning Policy Context

LCC have helpfully provided me with an Update regarding emerging Leeds Development Plan Documents.

The Leeds Site Allocation Plan (SAP) was submitted for examination in May 2017. The Inspectors identified a need for Main Modifications and consultation was carried out on these between 21 January – 4 March 2019. The Inspector’s Report was published on 18 June 2019.

The Leeds Core Strategy Selective Review (CSSR) was submitted for examination in August 2018. Spatial Policies 6 and 7 are amongst those policies under review. The Inspector issued a Schedule of Main Modifications in April 2019. A six week period of consultation commenced on 17 May 2019.

European Union Obligations

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

PPG²⁵ confirms that it is the responsibility of the local planning authority, in this case LCC, to ensure that all the regulations appropriate to the nature and scope of the draft neighbourhood plan have been met. It is LCC who must decide whether the draft plan is compatible with EU obligations when it takes the decision on whether the plan should

²⁵ PPG para 031 ref id 11-031-20150209

proceed to referendum and when it takes the decision on whether or not to make the plan.

Strategic Environmental Assessment

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

A Screening Report dated May 2017 prepared by LCC concludes that a SEA will not be needed. The requisite consultation was carried out with the statutory consultees and all three concurred with the conclusions of the Screening Report.

EU obligations in respect of SEA have been satisfied.

Habitats Regulations Assessment

Directive 92/43/EEC on the conservation of natural habitats, commonly referred to as the Habitats Directive, is also of relevance to this examination. A Habitats Regulations Assessment (HRA) identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects.²⁶ The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

The Screening Report of May 2017 prepared by LCC explains that the Kirk Deighton Special Area of Conservation (SAC) lies about 10km away from the Plan area at its nearest point. The SAC falls within the administrative area of Harrogate Borough. Its primary reason for designation is Great Crested Newts. The Screening Report detailed the work carried out on the CS back in 2012 and the work being carried out on the emerging SAP as well as the Leeds Natural Resources and Waste Development Plan Document. In addition as the SAC falls within Harrogate Borough, relevant plans for that area were also detailed. The Screening Report explains that it was determined that the “higher order” plans would not significantly affect any SAC. However, where plans were at an early stage of preparation it was considered that “mitigation measures could address any potential effects”.²⁷

The Screening Report concluded that the Plan was unlikely to have significant effects on the Kirk Deighton SAC, alone or in combination with other plans. Natural England concurred with this conclusion.

²⁶ PPG para 047 ref id 11-047-20150209

²⁷ SEA and HRA Screening Report of May 2017 page 15

I wrote to LCC on 10 July 2018 regarding the case of People Over Wind, Peter Sweetman v Coillte Teoranta.²⁸ That letter is attached at Appendix 2. I asked LCC to consider any implications arising from the judgment that meant that measures intended to avoid or reduce effects could not be taken into account at the screening stage when considering whether a plan would be likely to have a significant effect on a European site.

LCC responded by email of 28 August 2018 and an updated HRA Screening Report and further consultation with Natural England was undertaken. The updated Screening Report dated August 2018 indicates that the original Screening Report of July 2017 did not include any mitigation measures and therefore its conclusions remain valid. Natural England responded but did not offer any firm conclusions in the light of the recent European Court judgments as at that time, Natural England was itself considering any implications arising from the Court cases.

I wrote to LCC on 20 September 2018; I noted that the Screening Report relied to some extent on the HRA Screening for the emerging SAP. I asked LCC to consider any implications arising from this including the extent to which the HRA Screening Report for the emerging plan could be relied upon. I also suggested that the HRA Screening Report Update be subject to consultation. My note to LCC is attached as Appendix 3.

LCC responded on 27 November 2018 indicating that it was considered appropriate in the light of the uncertainty around HRA and neighbourhood planning that the examination be paused. It must be pointed out that this uncertainty applied across England and was not specific to Leeds City or Aberford and resulted in many neighbourhood plan examinations being paused until the situation became clear.

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

I wrote to LCC on 4 January 2019 drawing attention to this and asking whether this change to the basic conditions gave rise to any implications for the examination of this particular neighbourhood plan. My letter is attached as Appendix 4.

LCC responded on 21 January 2019. LCC suggested that in the light of the stage the SAP had reached, the HRA Screening Report Update should be updated. The original Basic Conditions Statement would also be updated to take account of the new basic condition and updated Screening Report and that a further period of six weeks consultation be undertaken.

A Screening Report of January 2019 has therefore been submitted. It concludes that no likely significant effects will occur. It also considers the Screening and Appropriate Assessment of the SAP carried out in December 2018. Consultation has also taken place

²⁸ Case C-323/17

with Natural England on the SAP. The Plan area falls outside the buffer zone for the Kirk Deighton SAC. The Screening Report therefore concludes the Plan alone or in combination will not give rise to any likely significant effects on the SAC.

A further six week period of public consultation has also been carried out. I have had regard to the representations made. Natural England responded to that consultation indicating agreement with the conclusions of the Screening Report Update and welcoming the clarity of the updated assessment report.²⁹

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

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.³⁰ In undertaking a great deal of work on HRA, LCC has considered the compatibility of the Plan in regard to EU obligations and does not raise any concerns in this regard.

European Convention on Human Rights (ECHR)

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

7.0 Detailed comments on the Plan and its policies

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

The Plan is presented very well and very clearly. Photographs of the area add a distinctive and local flavour. It contains 13 policies. It starts with a useful contents page and a foreword that sets the scene.

It is worth noting at this point that the Plan makes reference to a proposal in the emerging SAP for a new settlement at Parlington. The Inspectors examining the emerging SAP have recommended a Main Modification to delete the MX2-39 Parlington Allocation from the SAP. The outcome of this is still uncertain, but the Parish Council may wish to update the Plan to reflect this situation in agreement with LCC, but this is not a modification I feel I need to suggest given my remit.

²⁹ Email from Natural England of 9 April 2019

³⁰ PPG para 031 ref id 11-031-20150209

1 Introduction

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

2 The Neighbourhood Plan Area

Succinctly detailing the importance of Aberford historically and its present position in the shadow of the A1(M) motorway, this well written section is a useful introduction to both the past and present issues.

3 The Neighbourhood Plan Preparation Process

This well written and useful section describes the rationale for the Plan area boundary and sets out a summary of the preparation and community engagement process. It outlines the structure of the Plan document and signposts where the evidence base that supports the Plan can be found.

Some natural updating of this section will be needed as the Plan progresses towards being made.

4 The Vision and Aims for Aberford

The vision statement for the Plan is:

“In 2028, the village of Aberford and its surrounding rural hinterland will be very much the same. Its essential countryside character and historic architectural legacy will be intact and enhanced, with a distinctive and little-changed linear village still at the heart of a centuries old parkland estate landscape.

The village itself will have grown incrementally and, within its extensive conservation area, in keeping with the historic and architectural character of existing buildings and spaces, providing new homes for young and old. Key community assets will remain and have been improved, with a transformed village hall facility at the hub. The green spaces at the village’s heart will have prospered and will radiate out into the surrounding countryside, while public transport links will be wider and much improved.

Opportunities for all to live, work and play in a safe, healthy and attractive environment will have been sustained and expanded.”

The vision statement is supported by seven aims.

Both the vision statement and the aims are clearly articulated.

5 The Plan Policies and Community Actions

5.1 Green Environment

The supporting text to this section explains the rationale for the policies and links them directly to the aims set out for the Plan which in turn directly links to the vision statement.

It explains that the west of the Plan area is the Parlinton Estate. Landscape to the north of the motorway is rural with views across arable farmland to Parlinton Hollins. To the east of this area, the land formed part of a deer park for the Estate. To the north of Parlinton Lane, the Estate is bounded by Cock Beck to the west and north following the Parish boundary. To the west, the valley bank is a wooded escarpment whilst to the north the beck turns into a wider valley becoming Becca Banks. The Estate is a Historic Garden.

A part of the Ledsham/Ledston Special Landscape Area (SLA) around the listed Lotherton Hall falls within the Plan area.

Policy GE1: Special Landscape Areas

The NPPF states that the planning system should contribute to and enhance the natural and local environment.³¹

UDP Policy N37 designates Special Landscape Areas (SLA). Two fall within the Plan area and the extent of the SLAs are shown on the Plan Map and are the same as the UDP designations.

The policy seeks to add a local layer of detail to the UDP policy. Within the SLAs, development is permitted provided it would not “seriously harm” the character and appearance of the landscape. The second element of the policy goes into more detail about the particular features attention should be paid to. I feel the wording of the first element of the policy is ambiguous and could be open to some interpretation; for that reason, whilst the wording reflects the UDP policy, a modification is suggested to ensure the policy provides a practical framework for decision making in line with national policy and guidance.

³¹ NPPF para 109

Historic England (HE) point out that the second paragraph under the subheading Special Landscape Areas erroneously refers to the “Celtic/Roman period”. This should be corrected in the interests of accuracy. HE also suggest that a reference to Aberford Dyke be included. These suggestions from HE would improve the practical application of the policy and its supporting text.

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

- **Delete the word “seriously” from the first paragraph of the policy**
- **Change the second paragraph of the policy to read: “In terms of siting, design and materials, development or change in land use should have regard to the *landscape’s significance*, character and special features and, *take every available opportunity to contribute positively to landscape restoration or enhancement, paying particular attention to: -...”***
- **Amend “Celtic/Roman period” in the second paragraph under the [existing] subheading Special Landscape Areas on page 15 of the Plan to “*Iron age/Roman period*”**
- **Add a reference to Aberford Dyke in the second paragraph under the [existing] subheading Special Landscape Areas on page 15 of the Plan**

Policy GE2: Local Green Infrastructure

The Plan rightly recognises that green infrastructure has an important multi-functional role. It delivers a wide range of environmental and quality of life benefits including supporting healthy lifestyles, helping to address climate change and as part of flood risk management.

CS Spatial Policy 13 maintains and enhances strategic green infrastructure corridors. Policy GE2 therefore seeks to identify more locally based green links which connect the community with surrounding green space and act as environmental buffers and wildlife corridors. It designates three areas as “local green infrastructure” to complement the CS’s approach. The three areas are shown on the Plan Map. Appendix 1 gives more detail about each area.

The wording of the policy seeks to maintain these areas with any development within them recognises their “operation” which I think would read better as “function” as part of a wider network.

Lastly, the policy seeks enhancement to those areas where appropriate.

With the change in word to better clarify the wording of the policy, the policy will meet the basic conditions.

- **Change the word “operation” in the policy to “function”**

Policy GE3: Local Green Space

This policy seeks to designate 16 areas of Local Green Space (LGS).

The NPPF explains that LGSs are green areas of particular importance to local communities.³² The effect of such a designation is that new development will be ruled out other than in very special circumstances.

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

A Local Green Space Assessment has been carried out (Appendix 2).

I saw all the proposed areas on my site visit. Taking each one in turn:

Aberford Albion FC Football Pitch is valued for its recreational use, but also forms part of the green infrastructure network and afford views across to open fields.

Aberford Bowling Green is valued for its community and recreational use.

Aberford Playing Fields and Tennis Courts (Jubilee Fields) is next to the Bowling Green and particularly valued for its recreational use.

Beckside Play Area and Surrounds is a play area and forms part of the land either side of Cock Beck. It also forms part of the green infrastructure network.

Aberford Church of England Primary School Playing Fields is part of the green infrastructure network. It is valued for its community and recreational use.

Aberford Allotments, Field Lane valued for its recreation.

St Ricarius South Churchyard, School Lane valued for its community and historical importance.

Bunkers Hill Allotments valued for its recreation opportunities.

Field by Beckside Play Area (Beckside Farm/Simpson’s Field) valued for its community functions with events such as galas held here as well as its recreational purpose. Identified in the Conservation Area Appraisal (CAA) as a key green space.

³² NPPF paras 76, 77 and 78

Land in front of Markham Cottages/The Granary is a grassed frontage area contributing to the character and appearance of the area in the heart of the village.

Land to the north of Markham Cottages identified in the CAA as important and valued for its community, landscape and historic contribution.

Pump Hill is considered to be the 'village green' and acts as a focus for community events and is of landscape and historic value as well as for recreational uses.

Waterside Meadows at the heart of the village and is valued for its landscape and historical associations.

Drovers' Verges North and **Drovers' Verges South** are areas of verge with historical connections as remnants of droving lanes valued by the community for their history and landscape value.

Hook Moor Woodland is an area of private land with public footpaths across it which forms an approach to the village. It is valued for its landscape and wildlife.

In my view, all the proposed LGSs meet the criteria in the NPPF satisfactorily apart from Hook Moor Woodland. This is because the Sites Assessment in Appendix 2 indicates that it is of limited local or community value. Therefore given this, I do not consider it is appropriate to designate as a LGS and the reasons given for doing so are adequately covered by existing designations.

I have also considered whether there is any additional benefit to be gained by the designation for sites located in the Green Belt or falling within other designations such as a Conservation Area. I consider that there is additional local benefit to be gained by identifying those areas of particular importance to the community.

The policy is clearly worded.

Subject to the following modification, the policy meets the basic conditions.

- **Delete area xvi. Hook Moor Woodland from the policy**
- **Consequential amendments to the Plan Map will be needed**

Policy GE4: Local Green Space Enhancement

CS Policy G4 indicates that where there is adequate provision of green spaces as in the case of Aberford, contributions of an equivalent value towards the safeguarding and improving of existing green spaces will be prioritised over the creation of new areas.

This policy seeks to add a layer of local detail to that CS policy by identifying those sites in particular need of enhancement. It supports enhancement of any of the LGSs, but particularly identifies three areas.

The policy meets the basic conditions and no modifications are recommended.

Community Actions

A number of community actions follow. All are clearly worded.

Three under the title “Countryside Management and Improvement” could be interpreted as statements of planning policy. Therefore to ensure there is no confusion with the planning policies within the document, a modification is recommended.

- **Delete the words “Conserve and” from bullet points two, three and four under the heading “Countryside Management and Improvement” on page 19 of the Plan**

5.2 Built Heritage

Historic England suggests the title of this section of the Plan is changed to better reflect its contents. Should the Parish Council be minded to do this, this would be an acceptable minor change to the Plan which would not affect my overall conclusions on whether the Plan meets the basic conditions.

The preamble to the two policies and a variety of community actions in this section of the Plan refers to Map 2 on page 25 of the Plan. It portrays this map as showing the current extent of the Conservation Area (CA) which it does do. However, it shows a previous boundary for the CA when it was first designated in 1983. I consider this to potentially be confusing for users of the Plan. The current CA boundary should be shown in the interests of clarity.

- **Change Map 2 on page 25 of the Plan to only show the current extent of the CA boundary by removing the two boundaries for 1983 and 2011; the CA could be depicted by a colour wash or line as preferred**

Policy BH1: Aberford Conservation Area – Design and Development

This policy covers any development within or adjacent to the CA for Aberford village. However, the title of the policy may mean that applicants do not realise it also covers development adjacent to the CA. In the interests of clarity, a modification to the policy’s title is therefore recommended.

This is a long policy with 18 bullet points. The NPPF³³ recognises that heritage assets are an irreplaceable resource; they should be conserved in a manner appropriate to their significance. It continues that great weight should be given to the conservation of a designated heritage asset. Each of the bullet points seeks to add a local layer of detail highlighting aspects of the CA which are particularly important to the community's vision and aims.

The policy is in general conformity with the CS and in particular CS Policy P11.

With the exception of the first criterion, all read clearly and to provide the practical framework for decision making sought by national policy and guidance. The first criterion is open to interpretation and it is difficult to know how to comply with it. In recommending its deletion, I consider that the remaining criteria will ensure that the essence of this bullet point will be covered.

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

- **Change the title of the policy to “*Development Affecting the Aberford Conservation Area*”**
- **Delete the first bullet point that starts “relate well to the geography...” from the policy**

Policy BH2: Non-designated Heritage Assets

This policy identifies a number of non-designated heritage assets based on earlier work on the Village Design Statement and updated as part of the Plan's evidence base.

The policy seeks to protect these heritage assets indicating that “any conflict” between the conservation of the asset and any development proposed should be avoided or minimised. It then supports enhancement of these assets.

In relation to non-designated heritage assets, the NPPF indicates that significance should be taken into account and that a “balanced judgment” will be needed having regard to the scale of any harm or loss and the significance of such heritage assets.³⁴ Whilst I understand the intention of the policy, it is out of kilter and does not take account of the NPPF's stance on such assets. A modification is made to address this.

With this modification, the policy will take account of national policy and guidance, be in general conformity with CS Policy P11 in particular and will help to achieve sustainable development.

³³ NPPF Section 12

³⁴ *Ibid* para 135

In addition, HE and another representation from AECOM point out that a number of the assets are now listed. Therefore this and the accompanying appendix should be updated in the interests of accuracy.

- **Delete the second sentence of the policy which begins “Any conflict between...” and replace it with “A balanced judgment will be made having regard to the scale of any harm or loss caused by any development and the asset’s significance.”**
- **Ensure that the most up to date information is included on the list of assets**

Community Actions

To ensure that there is a clear distinction between elements of the community actions which could be construed as a planning policy position or stance and community actions which should not relate to development and use of land matters, a number of recommendations are made.

- **Delete the words “...preserved and...” from the third sentence under the heading “Green Spaces within the Conservation Area” on page 24 of the Plan**
- **Delete the second paragraph under the heading “Green Spaces within the Conservation Area” which begins “Ensure that any future proposals...”**
- **Replace the word “developments” in the fourth sentence in the paragraph under the heading “The Great North Road” with “highway improvements”**

5.3 Community Facilities and Services

Policy CF1: Protection and Enhancement of Community Facilities

The supporting text to the policy seeks to protect specified community facilities and services which are named in the policy and shown on the Plan Map. However, the wording of the policy permits the loss of these facilities provided alternative, equivalent provision is made within the Central Village Core which is also defined by the policy and identified on the Plan Map. I have assumed this is deliberate.

The policy then refers to commercially provided facilities in relation to viability and a common requirement of at least a year’s marketing.

It then refers to the Aberford Albion FC Clubhouse requiring alternative facilities accessible from the football pitch in the event of any development that causes the loss of the clubhouse.

The enhancement of facilities is supported.

The NPPF encourages planning policies to plan positively for the provision of facilities and other local services to enhance the sustainability of communities and to guard against the unnecessary loss of valued facilities and services.³⁵

Seven facilities are identified appropriately. The Central Village Core is logically defined and given the linear character of the village, appropriate in this particular context.

The policy takes account of national policy and has sufficient flexibility recognising community need. It is in general conformity with CS Policy P9 which recognises the importance of community facilities and services seeking to ensure new services are accessible and encouraging alternative provision should services or facilities be lost. It will help to achieve sustainable development. As a result it meets the basic conditions and it is not necessary to recommend any modification to it.

Policy CF2: Provision of New Community Facilities

Policy CF2 supports new community facilities directing them to the Central Village Core but recognising that some types of facilities will need to be outside that area. It is in general conformity with CS Policy P9.

A second paragraph of the policy then cross references Policy CF1 indicating any such facilities would then be subject to Policy CF1. This is not necessary because all relevant policies must be taken into account. If development were permitted under Policy CF2, then it would not be specifically identified under Policy CF1. Therefore this element of the policy should be deleted in the interests of providing a practical framework for decision making.

- **Delete the second paragraph of the policy which begins “Once provided...”**

Policy CF3: Aberford Village Hall Site

The Plan explains that the Village Hall is in need of work. Recognising its accessible location, this policy sets a framework for alternative uses on the site of the current Village Hall should it be relocated to another site within the Central Village Core.

It is clearly worded and meets the basic conditions. No modifications are therefore recommended.

³⁵ NPPF paras 28 and 70

Policy CF4: Coal Staithes

This site comprises a brownfield site that has historic interest. The Plan explains that the majority of the site falls within the Green Belt bizarrely stating the Plan has no remit in this respect. As a result, the policy deals with a small portion of the site that does not fall within the Green Belt. The NPPF is clear that limited infilling or the partial or complete redevelopment of previously developed sites which would not have a greater impact on the openness of the Green Belt than the existing development is identified as an exception.

The policy supports community uses or a mix of community and affordable housing on the site setting out criteria for any proposal to be considered against. Its stance is in general conformity with CS Policies H2 and P9.

I do not see any conflict with Policy CF2 because the policy is site-specific.

The policy is clearly worded. The site to which it relates is shown on the Plan Map. The policy meets the basic conditions and no modifications are made.

Community Actions

A number of well worded community actions follow.

5.4 Housing

Policy H1: New Housing Development – Key Guiding Principles

This policy seeks to influence housing development on allocated or identified sites within the Plan area. The sites will be allocated or identified in other plans such as the emerging SAP. The way in which the Plan will influence such sites is through the submission of a design brief, transport study and infrastructure delivery plan which together address a number of guiding principles which reflect the community's concern that new development should reflect and respect the locality.

The policy is a local expression of CS Policies P10 and T2 in particular and will help to achieve sustainable development. However, it does require some minor rewording to achieve clarity. With these modifications, the policy will meet the basic conditions.

- **Change the policy to read:**

“Promoters of major development proposals on allocated or identified sites should prepare, as appropriate, the following documents in order for an

approach to new housing development be agreed with the local planning authority and the local community:-

- a. A comprehensive development brief and concept masterplan;**
- b. A comprehensive transport study;**
- c. An infrastructure delivery plan.**

These documents *should address the following key guiding principles:-*
[retain criteria ii. to xi, but renumber them i. to x.]

Policy H2: Development on Non-Allocated Sites

Policy H2 adds a local layer to CS Policy H2 of the same title by seeking to ensure that any new housing is matched by appropriate levels of infrastructure. It is clearly worded and will also help to ensure development is sustainable. It meets the basic conditions and no modifications are recommended.

Policy H3: Housing Mix

Any developments of five or more dwellings within or adjacent to the built up area of Aberford village are required to have an appropriate mix of dwelling types and to particularly consider the needs of older people and smaller households.

The NPPF is clear that a mix of housing should be planned for to widen opportunities for home ownership and to create sustainable, inclusive and mixed communities.³⁶ This policy is a local expression of that aim. It reflects CS Policy H4. It is clearly worded. It meets the basic conditions and no modifications are suggested.

Community Actions

A well worded community action follows.

6 Monitoring, Review, Implementation

Although monitoring is not, at present, a requirement for neighbourhood plans, this section explains that the Parish Council will monitor the Plan annually.

A list of priorities for spending the Community Infrastructure Levy (CIL) is also helpfully set out.

³⁶ NPPF para 50

How the community actions which appear throughout the Plan might be implemented is also explained in more detail with a useful Project Delivery Plan.

Appendices

There is a separate volume of appendices.

Appendix 1 is Local Green Infrastructure.

Appendix 2 is an assessment of Local Green Spaces considered for inclusion in the Plan.

Appendix 3 details key views affecting the Conservation Area.

Appendix 4 is an assessment of potential non-designated heritage assets.

Appendix 5 is a list of community facilities.

Neighbourhood Plan Map

A Neighbourhood Plan Map accompanies the Plan and shows the proposed designations such as LGS, the Central Village Core Boundary and so on. I have found it difficult to interpret the Map because of its scale and small nature of the key. This has meant that it is difficult to decipher the precise boundaries of smaller areas. Therefore whilst this overall Map can be retained, a series of more detailed maps at a larger scale should be produced.

In addition the key covers some parts of the Plan area obscuring some of the proposed designations shown.

Therefore in the interests of clarity and providing a practical framework for decision making, the following recommendation is made.

- **Produce a series of larger scale maps to show a) Local Green Infrastructure, b) [retained] Local Green Spaces, c) Local Green Space Enhancement Sites, d) Non Designated Heritage Assets, e) Aberford Village Hall Site, f) Coal Staites Site, g) Central Village Core Boundary**

8.0 Conclusions and recommendations

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

I am therefore pleased to recommend to Leeds City Council that, subject to the modifications proposed in this report, the Aberford & District Neighbourhood Development Plan can proceed to a referendum.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Neighbourhood Plan area. I see no reason to alter or extend the Plan area for the purpose of holding a referendum and no representations have been made that would lead me to reach a different conclusion. I therefore consider that the Plan should proceed to a referendum based on the Aberford & District Neighbourhood Plan area as approved by Leeds City Council on 26 June 2013.

Ann Skippers MRTPI

Ann Skippers Planning
2 July 2019

Appendix 1 List of key documents specific to this examination

Aberford & District Neighbourhood Development Plan 2018 – 2028 Submission Draft 8 March 2018 and Appendices

Basic Conditions Statement June 2018 including Appendix 1 Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report dated May 2017 and Appendix 2 Sustainability Assessment dated 9 April 2018

Basic Conditions Statement Update February 2019 including Appendix 1 Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report dated May 2017, Appendix 2 Sustainability Assessment dated 9 April 2018 and Appendix 3 Habitats Regulation Assessment Screening Report Update January 2019

Habitats Regulations Assessment Screening Report May 2017

Habitats Regulations Assessment Screening Report Update August 2018

Habitats Regulations Assessment Screening Report January 2019

Consultation Statement June 2018 and Appendices 1 -14

Leeds Core Strategy adopted 12 November 2014

Unitary Development Plan Review 2006 Volume 1 Written Statement and Volume 2 Appendices adopted 19 July 2006

Natural Resources and Waste Local Plan adopted January 2013
Core Strategy Selective Review Submission Draft Plan July 2018

Core Strategy Selective Review Proposed Main Modifications May 2019

Leeds Site Allocations Plan Submission Draft May 2017

Leeds Site Allocations Plan Proposed Main Modifications January 2019

Leeds Site Allocations Plan Proposed Additional Main Modifications to the Submission Draft Plan May 2017 Version 2 – Update February 2019

Various documents on the Parish Council website www.aberford-pc.gov.uk/neighbourhood-plan/

Comments from the Parish Council on the Regulation 16 representations

List ends

Appendix 2

Letter to Abbie Miladinovic
Neighbourhood Planning
Leeds City Council

cc Aberford Parish Council

10 July 2018

Dear Abbie,

Examination of the Aberford Neighbourhood Plan

The examination of the Aberford Neighbourhood Plan is due to commence next month, but I am writing to draw your attention to a recent judgment of the Court of Justice of the European Union now so that any delay to the examination process can be minimised.

In the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Court ruled that Article 6 (3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of appropriate assessment (AA) and that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage.

Earlier case law had established that reduction or avoidance measures could be taken into account when considering whether a plan or proposal would be likely to have a significant effect on a European site. However, the implications of the more recent judgment is that this is no longer the case.

I would therefore be grateful if the Council could consider the HRA Screening Report and advise me on whether it considers it to be legally compliant in the light of the judgment. If it is considered not to be legally compliant and to have fallen foul of the judgment, I would ask that the Council advises me of what further work would be required to rectify this, together with an indicative timescale for that work, including any further consultation.

I will clearly reach my own view on this matter as well. Once you have had an opportunity to consider what, if any, further work needs to be undertaken, I suggest that we agree a way forward for the examination of the Neighbourhood Plan.

Your early response would be appreciated. This letter is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI
Independent Examiner

Appendix 3

**Independent Examination of the Aberford Neighbourhood Plan
Note from the Independent Examiner on Habitats Regulations Assessment (HRA)
20 September 2018**

My letter of 10 July 2018 which drew attention to a recent judgment of the Court of Justice of the European Union in the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*.

On 28 August 2018, I received an update to the HRA of May 2017, dated August 2018 undertaken by Leeds City Council (LCC). The update takes account of the above case and a further case *Grace, Sweetman and the National Planning Appeals Board Ireland* (ECLI:EU:C2018:593). Natural England has been consulted on the update. A reply was received on 24 August 2018. This explained that the implications of the judgments are being considered and offered no further substantive comments at that time.

I note that the update relies to some extent on the HRA Screening for the emerging Leeds Site Allocation Plan (SAP). I recommend LCC ascertain whether or not the Screening Report for an emerging Plan can be relied upon particularly in relation to any 'in combination' effects. This is particularly the case should there be outstanding matters related to the SAP that might affect any part of the Aberford Plan area.

Once this has been ascertained, I consider it would then be prudent for the HRA update to be publicly consulted upon for a six week period. It should be made clear that this additional period of public consultation is only in relation to the HRA update report and that all other representations made at the submission stage consultation period will be 'rolled forward'. As soon as the consultation period ends, any representations received should please be forwarded to me.

The Parish Council will have an opportunity to comment on any representations that may be received but only should they wish to do so. To expedite matters, the Parish Council may like to receive any representations made at the time they are submitted. I will however set aside a period of two weeks following the end of the public consultation for the Parish Council to submit any comments unless the Parish Council confirms to me they do not wish to make any comments soon after the public consultation period ends.

I appreciate that this and the ensuing delay will come as a disappointment to everyone concerned in the development of this Plan. Yet it is important to ensure that all the basic conditions are satisfactorily met and that the Plan, once it proceeds to its latter stages, can do so with confidence.

To avoid any unnecessary delay it would also be helpful to me to indicate when the consultation period might start so I can ensure that I can continue with the examination promptly after the consultation period ends.

The comments made in this note are without prejudice to my conclusions on any other issue. This note is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI, Ann Skippers Planning, Independent Examiner

Appendix 4

Letter to Abbie Miladinovic
Leeds City Council

4 January 2019

Dear Abbie,

Examination of the Aberford Neighbourhood Plan Amendment to the Basic Conditions

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

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

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

The Regulations substitute a new basic condition which states:

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

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

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

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

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

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

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

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

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

This letter should be placed on the relevant Council websites.

With many thanks,

Ann Skippers MRTPI
Ann Skippers Planning
Independent Examiner