

Summary of main findings

0.1 It is a requirement of the Localism Act that this report should contain a summary of its main findings. The reasons for each of the recommendations are given in the following sections of the report.

0.2 The principal findings in this report are that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in the Town and Country Planning 1990 Act (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

0.3 It is recommended that the plan, as modified, be submitted to a referendum and that the referendum area need not be extended beyond that of the neighbourhood area. My main recommendations for modifications to the individual plan policies and accompanying text are, in plan order:-

- that Table 1 and the accompanying text in paragraphs 3.10-13 be updated;
- that the individual criteria referring to conservation areas be deleted from Policies YG3, 4, 6 and 8 with the addition of a textual note drawing attention to Policy YG14;
- that the wording of Policies YG5, 7, 12 be amended to clarify the purposes of Local Green Space designation and to refer to 'very special circumstances';
- that reference to 'type and tenure' be deleted from Policy YG9 references to 'housing for the elderly and starter homes' be deleted from Policies YG9 & 10;
- that paragraph 6.12 be updated to explain the consequences of the grant of planning permission for policy implementation;
- that Policy YG11 and accompanying text be deleted from the statutory plan;
- that Policy YG13 and accompanying text be deleted from the statutory plan;
- that criterion d) in Policy YG15 be reworded and criterion f) deleted;
- that Policy YG16 and the accompanying text be re-worded and updated;
- that the Policies Map for Yarpole be amended to exclude land at Mortimer House from within the settlement boundary at Cock Gate and to exclude land at South Bank and Maunds House from the area of Local Green Space.

Section 1 - Introduction

Appointment

1.01 I have been appointed by the Herefordshire Council (HC), acting as the Local Planning Authority (LPA), under the provisions of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, to carry out an independent examination of the Yarpole Neighbourhood Development Plan (YGNDP) as submitted to the LPA on 3rd April 2017. The HC carried out publicity for the proposed plan for a period of 7 weeks between 6th April and 20th March 2017 giving details of how representations might be made, in accordance with Regulation 16 of the Neighbourhood Plans (General) Regulations 2012 ('the 2012 Regulations')¹. I was sent the documentation required under Regulation 17 on 15th September 2017 including copies of all of the representations received under Regulation 16 although the examination did not commence formally until 30th October 2017. I have taken that documentation and all of the representations into account in carrying out the examination.

1.02 I am a Chartered Town Planner (Member of the Royal Town Planning Institute) with over 45 years post-qualification professional experience in local and central government and latterly as a sole practitioner specialising in development plan policy work. I am independent of the Yarpole Group Parish Council ('the Parish Council' – YGPC) and of the Local Planning Authority. I have no land interests in any part of the plan area.

My role as an examiner

1.03 The terms of reference for the independent examination of a Neighbourhood Development Plan are statutory. They are set out in the Localism Act 2011 and in the 2012 Regulations. As an examiner I must consider whether the plan meets what are called 'the basic conditions'². In summary, these require me to consider:-

¹ All subsequent reference to a Regulation followed by a number is a reference to the 2012 Regulations.

² These are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (as introduced in Schedule 10 of the Localism Act 2011)

- whether, having regard to national policies and to advice contained in guidance issued by the Secretary of State, it would be appropriate to make the plan;
- whether the making of the plan would contribute to the achievement of sustainable development;
- whether the making of the plan would be in general conformity with the strategic policies contained in the development plan for the area; and to ensure that:-
- the making of the plan would not breach, and would otherwise be compatible with EU obligations relating to Strategic Environmental and Habitats Assessment and that the plan would be compatible with Convention rights, within the meaning of the Human Rights Act 1998; and
- that 'prescribed conditions' would be met and 'prescribed matters' would be complied with in plan preparation and submission.

1.04 Legislation requires that my report on the draft plan should contain one of the following recommendations:-

- a) that the draft plan is submitted to a referendum, or
- b) that modifications are made to the draft plan and the modified plan is submitted to a referendum, or
- c) that the proposal for the plan is refused.

I may make recommendations for modifications which I consider need to be made to secure that the plan meets the basic conditions or for compatibility with EU obligations and (Human Rights) Convention Rights. The only other modifications which I may recommend are those to correct errors.

Section 2 – Statutory compliance and procedural matters

2.01 The Herefordshire Council formally designated the Yarpole Group of Parishes Neighbourhood Area on 8th February 2013. The Group, and area, comprises the two parishes of Croft with Yarpole and Lucton. The plan relates solely to the designated area and has been submitted by the YGPC as the 'qualifying body'.

2.02 The title of the plan is given on the front sheet as the YARPOLE GROUP Neighbourhood Development Plan 2011 to 2031. The statutory requirement³ that the plan 'must specify the period for which it is to have effect', has, therefore, been met. The plan does not include provision about development which is 'excluded development'⁴ and a plan showing the area to which the Neighbourhood Development Plan relates has been submitted as required by Regulation 15(1)(a). Accordingly, those statutory provisions are met also.

2.03 The legislation states that the 'general rule' is that the examination of the issues by the examiner should take the form of the consideration of written representations. However, an examiner must hold a hearing 'for the purpose of receiving oral representations about an issue' where he or she considers a hearing 'is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case'⁵. Before deciding whether a hearing would be required I issued⁶ a list of written questions seeking clarification and further information by way of justification for plan policies. I had also sought clarification from Herefordshire Council on the application of Policy YG9⁷ and the approach to affordable housing provision within the Leominster HMA⁸. Following my consideration of the Parish Council's written responses⁹ to the questions raised I was able to conclude that I had adequate information to proceed with the examination to proceed without recourse to a hearing. I will be referring to

³ These statutory requirements are to be found in Section 38B of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011),

⁴ Sections 61J(2) and 61K of the 1990 Act, introduced by section 2 of Schedule 9 to the Localism Act 2011

⁵ Paragraph 9 of Schedule 4B to the 1990 Act (as in reference 1 above)

⁶ On 21 November 2017

⁷ E-mail 31 October 2017

⁸ E-mail 23 November 2017

⁹ Received on 21 November 2017

my questions and the responses to them throughout this report which is structured along similar lines.

2.04 I visited the neighbourhood plan area on Thursday 16th November 2017. As well as obtaining a general overview of the character and appearance of the area I walked around the main part of Yarpole village and assessed its relationship with the hamlet of Cock Gate by the parish hall. I also looked at Lucton, including the school, and Bircher village. In particular, I focussed on the sites proposed or committed for housing development and those put forward in representations as well as the areas proposed in the plan to be designated as Local Green Spaces.

2.05 The YGPC have submitted a Basic Conditions Statement in accordance with the Regulations¹⁰. In section 2 includes a general analysis of the contribution to the achievement of sustainable development in terms of a table in which the plan provisions are assessed against the core planning principles in paragraph 17 of the NPPF. Section 3 includes a more detailed analysis of neighbourhood plan policies related to the strategic policies of the Herefordshire Local Plan (Core Strategy) and against the three dimensions of sustainable development as set out in paragraph 7 of the NPPF. It is a helpful analysis which I have taken into account. However, it is necessary for me to consider the implications and effectiveness of plan policies in rather more detail especially in terms of individual elements of Government policy and sustainable development criteria.

The Human Rights Act and EU Obligations

2.06 Section 4 of the Basic Conditions Statement includes a simple statement that the plan is considered to comply with the requirements of EU obligations in relation to human rights. There is no further analysis but no representations have been made to suggest that any infringement of human rights would be likely to occur as the result of the application of the policies in the plan. I have no reason to conclude other than that the approach taken in the plan is fully compatible with, and does not breach, Convention Rights. There is also a statement that there has been no indication by the Environment Agency that any

¹⁰ Regulation 15(1)(d)

plan proposals would conflict with obligations under the Water Framework Directive.

2.07 An initial screening opinion under the Environmental Assessment Regulations¹¹ was prepared by Herefordshire Council in June 2013. This was a desk based exercise concluding only that further assessment would be required. A scoping report followed in March 2015 and was made available to the statutory consultees for 5 weeks from 18 June 2015 with, I note, reports for 10 other plans being produced at the same time. The comments received¹² were, to a degree, of a generic nature with a few specific and more detailed comments.

2.08 An initial Environmental Report was prepared in April 2016 prior to the Regulation 14 consultation on the draft plan¹³. It included appendices detailing the environmental effects of the plan objectives, policies, proposals against SEA objectives and identifies alternatives. Its conclusions are that for the most part many of the policies score positively against environmental objectives or have a neutral effect. A revised version was produced in January 2017 taking account of amendments made to 11 policies as the result of that consultation process. These amendments are considered in section 6, detailed in Appendix 6 of the report with the conclusion that the outcome of the SEA Stage B process was unaffected or strengthened by the amendments to policy.

2.09 Section 5 of the Environmental Report deals with the assessment of the NDP options. Those options are listed in paragraph 5.2 and includes, in general terms, the allocation of sites in the villages. The options, which are clearly not mutually exclusive, have been assessed against SEA objectives. Stage B of the process then analyses each draft policy against those objectives, including the proposed housing site allocations under Policies YG4, 9 and 10. However, there is no indication of any assessment of other sites put forward in the 'call for sites' exercise which have been considered as 'reasonable alternatives'.¹⁴

2.10 It was necessary for me to request further information on the criteria methodology used by the plan steering group to inform decisions taken during the plan preparation stages on which sites should be allocated for housing and which ones should not. That information had not been submitted to the

¹¹ The Environmental Assessment of Plans and Programmes Regulations 2004

¹² Appendix 3 to the Environmental Report

¹³ 6 June – 27 July 2016

¹⁴ Regulation 12(2)(b) in the Environmental Assessment Regulations

Herefordshire Council as part of the evidence base nor was it initially available on the parish council web site. I was supplied that information by e-mail on 9 November 2017. Although this assessment was reasonably thorough it was not directly linked to the SEA objectives. Somewhat reluctantly I had to conclude that the failure to assess reasonable alternatives to the allocated sites as part of the SEA work meant that the Regulations had not been fully complied with and, consequently, I could not conclude that the relevant EU obligations had been met.

2.11 Accordingly I informed Herefordshire Council that it would be necessary to suspend the examination temporarily to enable any reasonable alternative sites put forward as the result of the 'call for sites' consultation to be evaluated against the SEA objectives with the results included in a revised Environmental Report to be consulted upon in accordance with the SEA Regulations. I issued a notice formal suspension notice on 24 November 2017. Herefordshire Council, as the 'responsible authority' under the SEA Regulations, produced a revised Environmental Report with the results of the alternative site evaluation included as Appendix 5. The consultation on this work took place between 11th December 2017 and 15th January 2018. No adverse comment was received as the result of that consultation and I am now satisfied that the final SEA assessment fully meets EU Obligations¹⁵. The examination recommenced on 16th January 2018.

2.12 The initial screening report also includes a section on the requirements of the Habitats Regulations.¹⁶ The group parish is within the hydrological catchment area for the River Lugg¹⁷ and within 10 km of the Downton Gorge SAC, both European sites. A further more detailed screening assessment was, therefore, undertaken in March 2016 concluding in paragraph 8.6 that the NDP will not have a likely significant effect on either the River Wye SAC nor the Downton Gorge SAC. In view of that conclusion an 'appropriate assessment' under the Regulations was not undertaken. Consultation responses did not raise a substantive issue with this decision. A further addendum dated December 2017 was produced by the Herefordshire Council and includes an appendix assessing the possible effect of the allocation of alternative sites but reaching the

¹⁵ European Directive 2001/42/EC

¹⁶ The Conservation of Habitats and Species Regulations 2010, Regulation 102

¹⁷ The River Wye (including the River Lugg) Special Area of Conservation (SAC)

same overall conclusion. That was also consulted upon with no adverse comments received.

2.13 From the above, I am satisfied that the submitted plan is compatible with EU environmental obligations and meets the basic condition prescribed by section 1 of Schedule 2 to the Habitats Regulations.

Section 3 - Preparation of the plan and the pre-submission consultation processes

3.01 As required by legislation¹⁸, the YGPC have submitted a Consultation Statement. It refers to work done on the review of the pre-existing Parish Plan which included questionnaires circulated to residents prior to the designation of the neighbourhood area. Nevertheless, the results of that survey formed an input to the NDP. The Consultation Statement sets out details of the public engagement undertaken for the plan starting with articles in the parish magazine and public meetings and drop-in sessions between June 2015 and July 2016. Section 2 is a full tabulation of every stage in the consultation process. From this I am satisfied that a very thorough process was undertaken to involve the community in the preparation of the plan.

3.02 The Consultation Statement includes a tabulated Schedule in which every representation received during Regulation 14 consultation is set out either in full or summary stating the Parish Council's responses to each. There is also a schedule setting out the changes made to the draft plan prior to submission to the LPA for examination. This goes well beyond the minimum statutory¹⁹ requirement for the statement to include a summary of the main issues and concerns raised. It does, however, provide a very useful check against the issues which still remain after the Regulation 16 consultation.

Section 4 - The Plan, meeting the basic conditions

4.01 This section of my report sets out my conclusions on the extent to which the submitted plan meets those basic conditions which are set out in the first three bullet points in paragraph 1.03 above. If I conclude that the inclusion of a policy in the plan means that, as submitted, it does not meet one or more of the

¹⁸ The Neighbourhood Development Planning (General) Regulations 2012, Regulations 15(1)(b) and 15(2)

¹⁹ Regulation 15

basic conditions, I recommend a modification to the plan policy in order to ensure that the plan, taken as a whole, does meet those conditions. The recommended modifications themselves are listed, and numbered, in plan order in Appendix 1 with only the modification number referenced within the main report. There are two further appendices. Appendix 2 lists the abbreviations used in this report and Appendix 3 is a check list of evidence base documents.

4.02 In the introductory section of my questions and comments issued on 21 November 2017 I commented:-

The Yarpole Group NDP is a well written and clear document which is logically organised. The policies are clearly distinguished within lime green boxes followed by text setting out background considerations and evidential justification for each policy. The concluding section on delivering the plan is helpful and an appendix sets out supplementary design criteria as guidance. The overall impression is one of a professionally prepared document.

I remain of that opinion. However, I also raised a number of issues about certain aspects of plan policy which are discussed in the following paragraphs referring to the YGPC responses as well as those by Herefordshire Council where applicable. I deal with the main issues first followed by an examination of more detailed aspects of policy wording and implementation. The latter is dealt with in plan order.

Main issue 1 – Housing provision, allocated sites and settlement policy and settlement boundaries

4.03 *Overall housing provision.* Part of the vision statement in paragraph 3.2 of the plan is that there should be sufficient housing to meet the needs of local people with an objective to control the level of new housing such that there are sufficient numbers but without over-provision. There is then dialogue within paragraphs 3.10 to paragraph 3.13 and a statistical tabulation in Table 1 on page 15 showing the way in which the NDP policies and allocations for housing will meet what is referred to a housing 'target' of 48 dwellings between 2011 and 2031 derived from Herefordshire Council's Core Strategy. That is a sensible and pragmatic approach to ensure that the plan is not only in general conformity with an important strategic local plan policy, designed to assist in achieving

sustainable development but also has had regard to Government policy to encourage the provision of new housing.

4.04 A difficulty with any such statistical analysis is that it becomes out of date quite quickly. At the time the plan was prepared the latest available information from HCs monitoring process was for 1 April 2016 but information on housing completions and permissions is now available, and has been provided to me by Herefordshire Council, for a 1 April 2017 monitoring date. It is a Core Planning Principle, as stated in paragraph 17 of the NPPF, that plans should be kept up-to-date and it is, therefore, good practice to ensure that an NDP should also be as up-to-date as possible.

4.05 The YGPC have responded to my question 1 by providing an update for Table 1 to November 2017 which takes account of the significant permissions granted either since or just before submission of the YGNDP to the HC in early April 2017. Permission was granted for no fewer than 33 dwellings during 2017 with a further 7, including the 5 at Croft Crescent (Policy YG9), during 2016. Taking account of those completed since 2011 the total housing provision envisaged by the Core Strategy for the 20 years to 2031 might well be met within the early part of the plan period. Bearing in mind that the HCS housing figure is expressed as a minimum that does not, in itself, mean that the NDP is not in general conformity with the strategic policies of the local plan. Indeed, it is in line with Government policy on encouraging housing growth.

4.06 The high level of permissions does, however, have implications for the scope of NDP policy to determine effectively the nature and scale of housing development in Yarpole village over the next few years. This is especially the case as the largest site allocated for housing in the plan, under Policy YG10, at Brook House and Lower House Farms now has permission in total for 18 dwellings, including one conversion. The implications of this are discussed further below.

4.07 I consider it important that the plan should properly reflect the latest position in order to show that a positive approach is being taken to housing provision in line with Government policy. That is necessary to meet the relevant basic condition. The YGPC have provided replacement text for paragraphs 3.11 to 3.13 and Table 1 and I recommend, with further amendments to paragraphs

3.12 and 3.13 as discussed in paras. 4.11 and 4.31 below, that the text should be included in the plan. **Modification 2.**

4.08 *Allocated sites.* The timing of the permissions in relation to the Neighbourhood Plan preparation process is unfortunate but the LPA had a duty to determine the applications once submitted and needed to follow Government policy on the weight to be accorded to the emerging NDP.

4.09 In the introduction to my question 2 I expressed the opinion that there was no point in allocating a site in a plan once full planning permission had been granted because it is then no longer possible for plan policy to influence the form of development. Reflecting the policy in NPPG paragraph 173 it is stated in the PPG²⁰ that: 'If the policies and proposals are to be implemented as the community intended a neighbourhood plan needs to be deliverable.' The unfortunate fact of the matter is that the policy is now most unlikely to be deliverable, at least in detail if not in crude housing numbers. That fact has to be recognised.

4.10 I have considered the YGPC's responses to my questions on this topic. I accept that there is a possibility, however slim that might be, that the recent permissions on the policy YG10 sites might not be implemented in their current form and further applications might be made. As drafted, the policy represents the wishes of the local community giving very clear guidance on the nature of the development which is favoured for the site, including that the whole allocation should be treated on an integrated basis. The allocation in its entirety is big enough to require the proportional provision of affordable housing in accordance with HCS Policy H1.

4.11 As submitted, most of Policy YG10 meets the basic conditions. Nevertheless, an update of the position with regard to this site is clearly necessary within the supporting text. The YGPC have suggested wording in a modification to paragraph 3.13, last two sentences, dealing with both Yarpole housing allocations (YG9 and 10) but I do not recommend that approach. As discussed below, different considerations apply for the two policies. For Policy YG10 there should be explicit recognition that the policy can only be applied by

²⁰ Reference ID: 41-005-20140306

the LPA should a further application (or applications) be made for the development of the site. Such a statement would be most appropriately included in direct association with Policy YG10 as an update to paragraph 6.12. That paragraph is also out-of-date with reference to the Brook House Farm Barns which have been given permission for permanent residential use. I recommend updating. **Modification 9.**

4.12 Policy YG9 is different to Policy YG10 in that outline planning permission had been granted²¹ before the submission draft plan was finalised and this is explicitly recognised in the policy itself which lists criteria to be taken into account for the approval of details. This is also stated in paragraph 6.11. However, as the HC have confirmed, the matters reserved for subsequent approval on the outline consent are the layout, scale, appearance, access and landscaping. The term 'scale' applies to the size of the dwellings but there is no condition relating to either dwelling type or tenure and in that respect the policy cannot be implemented and, therefore, does not meet the basic conditions as drafted.

4.13 In response to my question 4 the YGPC repeat that a future developer might seek a new permission or a variation. However, should that happen Policy YG9 as drafted could apply only within the three year period for the submission of reserved matters. Otherwise full permission would be required to which the policy does not apply.

4.14 The only modification which I consider I am able to recommend for the plan to meet the basic conditions is to delete the reference to 'type and tenure' in criterion b) for the reasons given above. Also, the reference to the Design and Access Statement in the third sentence of paragraph 6.11 is incorrect because that was submitted in support of the outline application.

Modification 8.

4.15 It would be a step too far for me to recommend that Policy YG9 be re-cast to cover the uncertain possibility that the reserved matters might not be submitted within the terms of the outline consent or that the permission might not be implemented otherwise.

²¹ On 23 June 2016, ref. 160073

4.16 As part of my question 4 on Policy YG9 I queried the references in the last part of the policy to 'small and medium sized family homes' and also to the meaning of the last sentence. The same wording appears in part g) of Policy YG10. I accept that, in so far as there remains any control of the dwelling sizes on either site, they might reasonably be related to the proportions shown in Table 2. However, it is to be noted that the Local Housing Market Assessment work undertaken in support of the Core Strategy is already some 5 years old. It might, therefore, be expected that 'local community needs' would require justification from more up-to-date and local, rather than HMA level, evidence.

4.17 The reference at the end of the two policies to 'housing for the elderly or starter homes' is given as an example of 'local community needs' but is not backed up by proportionate, robust, evidence²². The LHMA work looks at housing needs across the board and the proportions shown for different bedroom sizes allows for identified needs. The terms are also undefined. Paragraph 5.1.19 in the HCS makes reference to housing for older people recognising that this either takes the form of specialist accommodation or by ensuring that general housing if designed for easy adaptation to meet the needs of all households. Furthermore, there is no clear policy context for the provision of starter homes, at least at present, beyond the limited circumstances envisaged in Government policy²³ and guidance²⁴. Those circumstances do not apply to the sites allocated in the YNDP and there is no assessment of the effect of such provision on the viability or deliverability of the development. For these reasons the reference to both housing for the elderly and starter homes does not meet the basic conditions and, as that is given only as an example, I recommend deletion for clarity. **Modifications 8 and 9.**

4.18 *Settlement Policy – Lucton.* Lucton is listed, along with Bircher and Yarpole, in Figure 4.14 of the adopted Herefordshire Core Strategy as a settlement which is to be 'the main focus of proportionate housing development' for the purpose of the implementation of HCS Policy RA2. However, it is indicated in paragraph 4.8.21 of the HCS that there is 'appropriate flexibility' for

²² PPG, Reference ID 41-040-20160211

²³ Written Ministerial Statement, 2 March 2015

²⁴ PPG, Reference IDs 55-001 to 55-009 inc.

the apportionment of the minimum housing requirement to be dealt with in a Neighbourhood Development Plan. The position is clearly explained in plan paragraphs 5.1 and 5.2 in justification of Policy YG6 but, in view of the representation²⁵ seeking an allocation of land south of Farm Close in Lucton, I provided an opportunity for the YGPC to respond further. In that response they have repeated the points about the size of the village and it being the least sustainable of the three villages in the area. Since then the site has been assessed as a 'reasonable alternative' in the further revision to the SEA Environmental Report.

4.19 I do not agree with the proposition that the failure to make any allocation of land for housing in Lucton means that the NDP is not, as a matter of principle, in general conformity with the strategic policies of the development plan (the HCS). The YGPC state that they opposed the listing of Lucton in paragraph 4.14 of the HCS but, be that as it may, that HCS clearly provides scope for the NDP to decide on the distribution of housing numbers between settlements, which must include not specifically allocating any. The identification of settlement boundary and the wording of Policy YG6 and paragraph 5.2 suggests that some infill development might take place. The reasons given by the YGPC for not making allocations in Lucton are clear.

4.20 Questions are raised in the representation about the deliverability of the sites allocated in the plan for housing development and what is suggested as an over-reliance on windfalls to deliver the minimum HCS requirement for the NDP area of 48 dwellings. However, as mentioned in paragraph 4.05 above, the larger allocated site (YG10) now has permission and a further permission outside the plan provisions given on appeal. It may reasonably be assumed that any site with permission might be developed within 5 years. There is, therefore, a very high likelihood that the strategic housing provision will be met and might well be exceeded over the full 20 year plan period as additional sites are brought forward beyond those identified in this plan. The plan is, therefore, in line with national policy in taking a proactive approach to housing provision within the context provided by the HCS.

²⁵ By C R Solutions on behalf of A&M Machinery

4.21 Comparisons are made in the representation between the Lucton site and those in Bircher in terms of their potential effect on the setting of the respective conservation areas. However, the allocations at Bircher lie within the conservation area and any housing development there fall to be considered individually under Policies YG3(e) and YG14 as well as HCS and national policies. It is also of a small scale such that it might reasonably be assimilated within the village fabric.

4.22 It is true that the representation seeking an allocation for housing at Lucton does not include an indication of either the nature or the scale of any development which might take place on it although the area is stated as 0.72 ha.²⁶ The site lies outside the conservation area but I consider, having visited the area, that the description of the village setting given in paragraph 5.1 of the NDP is reasonable and accurate. It is a small village nestling in a hollow. That is evident when descending past the school from the B4362 but it also applies, to a somewhat lesser extent when approaching along the country lane from the south-east. From that direction, the farm buildings situated on the northern edge of the site help to maintain and reinforce the essentially rural character of the village and the setting of the conservation area. That would be significantly altered should the field to the south be developed for housing at any density which is likely to prove viable.

4.23 My conclusion is, therefore, that the plan does not fail to meet any of the basic conditions in making no specific allocation for housing in Lucton. A modification to allocate the field to the south of Farm Close for housing is not justified.

4.24 *Settlement Policy - Cock Gate.* Representation has been made by the Herefordshire Council in respect of the identification on the Policies Map for Yarpole village of a separate settlement boundary around Cock Gate. It is a distinct grouping physically separated from the main part of Yarpole village and it lies on the B4362 road. Representations have also been made about the unsatisfactory nature of vehicular accesses directly to the B road which is winding

²⁶ The current application ref. 17/1291 is not part of the NDP representation

and has limited visibility. Further, it is suggested that development at Cock Gate, which is not recognised as a settlement in the HCS, would not be sustainable.

4.25 It is notable that a modern parish hall has been provided off Green Lane just to the south of its junction with B4362 road. That somewhat changes the status of what has, in previous local plans, been regarded as a group of houses within the open countryside. Yet, the YGPC emphasise that Cock Gate has historically and socially always been regarded as part of Yarpole with the village school having been located there. It seems to me that the identification of Cock Gate as part of Yarpole is in line with the spirit of paragraph 55 of the NPPF which refers to the identification of groupings of smaller rural settlements. The drawing of a settlement boundary at Cock gate does not, in itself, run counter to any basic condition. As the YGPC state, any concerns about the safety of access to the B4362 may be considered under normal development management criteria.

4.26 Nevertheless, the fact remains that apart from the village hall access from Cock Gate to the main facilities in Yarpole is along the narrow Green Lane as is recognised in paragraph 6.17 although, as discussed below, however desirable traffic calming measures might be there is no direct relationship with the development proposed in the plan. Consequently, there is no clear justification for the drawing of the settlement boundary in such a way that it includes land beyond the existing natural confines of the settlement. This applies in particular to the land to the east of Mortimer House (site 17) which is a relatively large pasture field lying at a low level beyond the existing curtilage. The one dwelling envisaged on that field, albeit with shared access to the B road, would be seen as a clear extension of development into open countryside despite tree screening and, for that reason, would not contribute to sustainable development. To meet the relevant basic condition I recommend that the settlement boundary be redrawn around the curtilage of Mortimer House including the outbuildings.

Modification 18A. A consequential amendment is included in the recommended replacement Table 1, as in Modification 2.

4.27 *Updating settlement boundaries.* It is entirely in accord with the HCS that an opportunity has been taken in the NDP to review existing settlement boundaries and propose new ones. In general I am satisfied that the

methodology used and the boundaries shown on the Policies Maps meet with the basic conditions. The only outstanding matter is whether the boundaries should be updated in the final plan to include those sites which have been granted permission since the submission plan was prepared. Settlement boundaries are normally drawn quite tightly around existing built-up areas and residential curtilages unless there is a specific intention to allow peripheral development of a settlement with large development sites being allocated. That is the approach which has been taken in this plan.

4.28 It is put forward in a representation²⁷ that boundaries should be drawn more loosely to allow for organic growth and provide greater variety and flexibility for peripheral development sites but in view of the overall sufficiency of the allocated sites and likely windfalls there would be no strategic justification for such an approach.

4.29 I have considered the YGPC response to my question 3 on this point. There has to be consistency in approach. If a site outside the NDP settlement boundary has been granted permission it means that the development of that site is acceptable, whatever reservations the Parish Council may continue to hold. However, until such time as development takes place there is no actual change on the ground from the time the plan was submitted. On that basis, there is no need to amend the settlement boundaries at least until there is a more general update and/or review of the plan.

Main issue 2 – The lack of explicit provision for affordable housing

4.30 In my initial comments and questions on the plan I drew attention to the fact that in paragraph 3.2 of the YGNPD it is stated that the vision means there is sufficient housing to meet the needs of local people, including affordable homes. Also, the objectives for housing provision as set out in paragraph 3.3 indicate that new housing should contribute to a sustainable and balanced community, with bullet points to provide a mix of properties in terms of size, tenure and price and to satisfy locally identified needs for all life stages including affordable homes. Yet, the only explicit reference in the plan is in paragraph 3.12 where it is stated that 'the need for affordable housing is currently unquantified'.

²⁷ By John Green

4.31 Only a very minor wording to paragraph 3.12 has been suggested by the YGPC to mention the existence of the 2014 local housing needs report, but almost in passing. The important point, in my opinion, is that there is no up-to-date survey to establish what any local housing needs might be; in that sense 'local' means 'parish'. Without such information it is difficult to see how the vision or objectives for housing provision could be met, or indeed how Policies YG9 and YG10 might be delivered, at least in terms of 'type and tenure'. I recommend an adjustment in the wording of paragraph 3.12 as part of Modification 2.

4.32 There is no recognition anywhere in the plan of the results of the GL Hearn Local Housing Market Assessment (LHMA) which, although now somewhat dated, indicate that in the rural parts of the Leominster Housing Market Area 25% of all housing provided over the 20 year HCS period from 2011 should come within definition of affordable housing in the Glossary to the NPPF. That includes intermediate housing of which shared ownership is one type but it does not include self-build housing or starter homes, at least at present. Nevertheless, I acknowledge that the LHMA evidence was collected to inform the policies in the Core Strategy, within which Policy H1 actually sets a requirement for 40% affordable housing on sites above the size threshold. There is clearly a tension between HCS Policy H1, reflecting Government policy, and the community desire in rural communities to encourage smaller developments which are considered to more closely reflect local character. That is an important consideration in villages which include conservation areas. I agree that the grant of the two planning permissions on the YG10 site has removed any likelihood of achieving any affordable housing provision under HCS Policy H1 within this NDP area.

4.33 In the circumstances I felt it expedient to ask the Herefordshire Council for further information on the provision of affordable housing more widely within the rural part of the Leominster HMA and the view they take of the absence of any affordable housing provision within any one NDP area. They have made it clear that they do not look to each NDP to achieve the proportional provision of affordable housing envisaged in the HCS, only the minimum target derived from HCS Policies RA1 and RA2 and paragraph 4.8.21. The statistics provided by HC on the provision of affordable housing across the rural parts of the Leominster HMA since 2011 on 4 'qualifying sites' (31) and on 4 rural exception sites (43)

does suggest that the provision is not so far from the GL Hearn recommendations.

4.34 I am in no doubt at all that an essential element in promoting the social sustainability of rural areas is in the provision of affordable housing which will help young people stay within their communities. I accept that how that is achieved is a matter which is more appropriately dealt with at the strategic, that is local plan, level rather than in individual neighbourhood plans.

4.35 For these reasons I conclude that the absence of specific provision for a development which would provide affordable housing under HCS Policy H1 does not result, in itself, in the plan failing either to contribute to sustainable development or take it out of general conformity with the strategic policies of the development plan. There is a stated intention on the part of the YGPC as stated in paragraph 3.12 of the plan to investigate the establishment of a Community Land Trust to meet any future (local Housing) needs. I agree that the way forward is through the identification of 'exception sites' under HCS Policy H2 and national policy on the subject. Such sites do not need to be identified or allocated in a plan nor does there need to be a separate NDP policy to set the criteria for identifying such sites. Reliance on HCS policy is adequate.

Main Issue 3. The treatment of non-land-use policy matters in the plan

4.36 Although I did not identify this as a main issue in my comments and questions I have decided to do so in view of the nature of the YGPC's written response to my Questions 8 and 9 in respect of the content of Policies YG11 headed 'Highway Measures at Yarpole' and YG16 'Use of Community Infrastructure Levy'.

4.37 My introduction to Question 8 on Policy YG11 was as follows:-

Some of the policies in the plan do not relate to land-use planning but to other aspects of council activity. Section 38A(2) of The Town and Country Planning Act 1990 (as amended by the Localism Act 2011) defines a "neighbourhood development plan" as a plan which sets out policies (however expressed) in relation to the development and use of land Furthermore, it is stated in paragraph 183 of the National Planning Policy Framework(NPPF) that neighbourhood planning can

be used: to set planning policies through neighbourhood plans to determine decisions on planning applications. *However, in the Planning Practice Guidance (PPG), it is also recognised that:* neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land.²⁸ *It goes on to state that:* 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.

What this means in practice is that the policies in the statutory part of a neighbourhood development plan should deal only with those matters which come within the purview of the Local Planning Authority in making decisions on planning applications. Traffic speeds, pedestrian safety and traffic management measures fall within the responsibility of the Local Highway Authority. It is absolutely understandable that such issues are a major concern for the local community and that the Parish Council might well wish to promote road safety measures but, if they are included in a neighbourhood plan, they have to be treated in a different way from policies concerned with the development and use of land. This also applies to works on highway land, such as speed bumps, which do not require planning permission. The only matters which may be covered in a planning policy are those which are directly related to a development proposal and necessary for that development to take place. In other words they need to meet the tests for planning conditions and/or planning obligations as set out in paragraph 204 of the NPPF. These considerations apply to YGNP Policy YG11 and the accompanying text.

4.38 In my question I invited the Parish Council to consider whether Policy YG11 might be re-worded to relate it to the development and use of land or, alternatively, to deal with the community's concerns about highway safety in some other way within the document. They have not responded positively to my invitation. Rather they have referred me to HCS Policy SS4 saying there is no apparent difference in approach.

²⁸ Ref. ID. 41-004-20140306

4.39 It is not for me to comment on the conclusions of the Inspector who undertook the examination of the Core Strategy. However, I see an important difference in that although the introduction to the policy talks in general terms about working with various transport agencies that is clearly in the context of the delivery of the transport proposals listed thereunder. In so far as they represent infrastructural improvements they would fall within the definition of development requiring planning permission and are, therefore, legitimate land-use planning matters.

4.40 There is no parallel with NDP Policy YG11 as worded in the submitted plan. It is solely concerned with highway measures and transport measures and is not related to development which would require planning permission, in other words to the development and use of land. It is not, therefore, a form of 'policy' which should be treated in the same way as other statutory policies. It is clear from the wording that is aspirational in nature which will involve discussions with Herefordshire Council as Local Highway Authority or in sustaining public transport provision. Even where development is involved, such as that of providing bus shelters, they would be 'permitted development'²⁹ on highway land.

4.41 The second part of Policy YG11 refers to traffic calming measures along Green Lane and the justification is in paragraph 6.17. Traffic calming measures within the highway do not require planning permission and the wording of paragraph 6.17: 'assistance from developers would be welcome' is clearly aspirational in tone. There is no suggestion that such contributions would meet the statutory tests for planning obligations (see paragraph 4.37 above).

4.42 For these reasons, adequate regard has not been had to Government guidance in the content of neighbourhood plans in the drafting of Policy YG11 which is not a policy which could be used by the LPA in the determination of planning applications. In order to ensure that the plan meets the relevant basic condition I recommend that Policy YG11 along with the accompanying text in paragraphs 6.16 and 6.17 be moved to a non-statutory appendix to the plan.

Modification 11.

²⁹ The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 9, Class C(d).

4.43 Turning to Policy YG16, the YGPC have supplied a copy of a policy which I understand has been included in other Herefordshire Neighbourhood Plans but it is very little different to that included in the submission plan other than in the title. An alternative title has been suggested³⁰ which I endorse. The reservations I have expressed about the scope of the policy, especially with reference to CIL, still apply. The policy may apply to contributions made through obligations under s106 of the 1990 Act but there are no 'other agreements' which can be required through a statutory land-use policy.

4.44 As at the time of writing there is no CIL Charging Schedule in effect in Herefordshire. I understand that following consultation on a draft Schedule further work is 'on hold' pending a Government review of the working of the CIL Regulations³¹. In that context, paragraph 8.4 of the plan has been overtaken by events and requires amendment. The additional text suggested by the YGPC would be better placed there. There can be no certainty that a CIL regime will be introduced in the future but, even if it is, it would not be a matter for statutory plan policy as to how any funds arising should be spent. It would be absolutely right that the YGPC might seek to influence HC priorities, including for highway and transport schemes, and I am sure they would have their own priorities for the proportion (25%) which would come to the Parish Council to support schemes of community benefit. However, unlike s106 obligations, CIL would not be directly related to decisions on planning applications and so is not an appropriate matter for reference in policy. On the other hand, there is no reason why the position with regard to CIL or to parish council funding priorities should not be included in the plan³² but within the plan text or an implementation schedule/action plan.

4.45 Both Policy YG16 and its suggested replacement do not, in my view, have adequate regard to Government policy on the making of planning obligations as mentioned in paragraph 4.38 above. The three 'tests' for planning obligations are statutory ones³³, not just a matter of policy. A planning obligation can only³⁴ (my emphasis) constitute a reason for granting planning permission if all of the

³⁰ YGPC response to my question 23

³¹ As confirmed in the latest Budget Statement

³² PPG Reference ID: 41-003-20140306

³³ Regulation 122 in the Community Infrastructure Levy Regulations 2010

³⁴ Regulation 122(2)

tests are met. What that means is that any offer of a financial contribution by a developer in the form of a unilateral undertaking cannot be taken into account by a decision-maker unless the statutory tests are met. For those reasons, the wording in the policy has to relate much more explicitly to individual development proposals rather than to new development generally. It might well be that 'to support the social dimension of sustainable development' is a valid consideration but only within the context of all three statutory tests. As worded that is not clear and a restructuring of the policy is required to remedy that. The only valid reference in the last part of the policy is to contributions through s106 obligations, not just agreements.

4.46 Reference is made at the end of paragraph 8.5 to the traffic calming measures mentioned in Policy YG11. I have mentioned this in paragraph 4.41 above. If a s106 obligation would meet the tests for a particular development then that should be stated in policy as a pre-requisite for any permission. For now at least the effect of CIL Regulation 123 is to severely restrict the scope for any pooling of s106 contributions³⁵. There would need to be very clear and specific justification for such an approach. It has not been established that the introduction of traffic calming measures along Green lane, however desirable they be, would be directly related to any specific development proposal in the plan or reasonably related in scale and kind to such development. The last sentence will need to be deleted accordingly and, if felt appropriate, included in the appendix along with 'policy' YG11. The text suggested by the YGPC referring to a list of intended 'supporting and enabling actions' should replace it.

Modification 16.

Clarification of interpretation and implementation of other plan policies

4.47 In the following paragraphs I consider other aspects of plan policies, in plan order. These are dealing with the issues raised in my comments and questions 10-24. As indicated in paragraph 4.37 above, the statutory part of a neighbourhood plan can only deal with land-use matters and any policy statements are to provide the statutory basis for taking decisions on planning applications. That is by the Herefordshire Council in the first instance, acting as Local Planning Authority but may involve the Secretary of State on appeal when the precise meaning of policy statements may come under scrutiny for the

³⁵ This restriction is under review by Government

purpose of applying s38(6) of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act'). That also applies should there be a challenge to a decision through the courts. The PPG includes a statement³⁶: '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.' For those reasons, if a policy is not sufficiently clear and unambiguous to provide the basis for planning decisions I cannot conclude that, without modification, the plan meets the basic condition of having regard to Government policy and guidance. The recommendations below are made in order to ensure the plan does meet that condition.

4.48 *Policy YG1.* I have questioned what this policy is intended to achieve because it is not phrased in such a way that it is likely to be of direct application to in the determination of planning applications. Furthermore, it is not necessary to state that HCS policies will apply if a proposal is not covered by NDP Policy. Also, with regard to the last sentence, it may very well be that benefits 'will be sought' but, as emphasised above, any obligation would only be relevant for decision-making if the statutory tests were met. There may be an unrealistic expectation in that regard. The statement that development proposals 'should comply' with the policies in the plan has to be understood in the context of s38(6) of the 2004 Act as correctly referenced in paragraph 3.6.

4.49 The policy is has very clearly taken account of the basic condition that the plan should contribute to sustainable development and it will assist in 'setting the scene'. Therefore, even though I consider the policy to provide no more than a general indication of priorities it does not conflict with any other plan policies and, consequently, I do not recommend any modification to it.

4.50 *Policy YG2.* Although this policy is intended to set out the development strategy in broad terms some of the wording may cause difficulty in implementation of the plan. I maintain that to state, in part c), 'new residential and other development will (my emphasis) support the retention and possible expansion of facilities' is presumptive but the statement does not conflict with any other policy and does not, in itself, fail to meet a basic condition.

³⁶ Reference ID: 41-041-20140306

4.51 To state that development outside the identified settlements should be 'exceptional' is not reflected by the wording in the middle of the first paragraph of the same policy referring to small-scale employment opportunities or by the last sentence in part d) itself. HCS Policy RA4 relates to dwellings in association with agricultural or rural enterprises to which that sentence appears to relate. Also, as recognised in paragraph 8.2 of the NDP, HCS Policy RA6 applies to employment development in the countryside. In addition, Government policy is generally supportive of allowing the re-use or conversion of redundant buildings in the countryside to residential or other uses as allowed for in HCS Policies RA3(4) and RA5. Given all of the circumstances in which development outside of settlements may be permitted the word 'limited' as used in HCS Policy RA3 rather than 'exceptional' would be more accurate and I recommend substitution.

4.52 Cross-references to Local Plan policies are not strictly necessary because nothing is added to the development plan. However, including them does not contravene a basic condition provided there is no unsubstantiated contradiction and the meaning is clear. It appears that part d) is intended to relate to proposals for residential development rather than all forms of development and that needs to be clear. Moreover, the reference 'in particular but not exclusively Policy RA3' is imprecise and unnecessary given that there is already reference to the 'relevant' policies of the HCS. All NDP policies should be 'necessary' but may not be 'applicable' in a particular circumstance. Clarification is required.

4.53 I also draw attention to the wording of the second sentence in paragraph 3.9 following Policy YG2. There is no suggestion within the policy that it would be appropriate to meet 'the needs of the community', at least for residential development, in the countryside. If that is intended to be a reference to rural housing exception sites that should be stated explicitly. **Modification 1.**

4.54 *Policy YG3.* Criterion e) in this policy cross-references to Policy YG14 which sets policy for all conservation areas but a different form of words is used. Very similar considerations apply to Policies YG4(c); YG6(a) and YG8(a). Use of different wording would be likely to result in uncertainty in implementation and does not result in policies which are 'clear and unambiguous'. It is Policy YG14 which containing the words 'development should preserve or, where possible,

enhance the character ...' which most closely reflects statutory provisions³⁷ For clarity and to avoid ambiguity, as suggested by the YGPC, it is recommended that criterion e) in Policy YG3 should be deleted along with the first part of criterion c) in Policy YG4 and criterion (a) in both Policies YG6 and YG8. I accept that it would assist in interpretation of the plan to refer in the text for each of the three villages of Bircher, Lucton and Yarpole to the fact that there is a conservation area covering parts of those villages and that Policy YG14 will apply to them. **Modification 3.**

4.55 *Policies YG3(h) and YG4(e), references to improvements to the junction of Leys Lane, Bircher with the B4362.* As correctly identified in paragraph 4.4 of the plan Leys Lane joins the B road at an oblique angle making it difficult to exit Leys Lane to go west or to enter Leys Lane from that direction. The YGPC state that the Highway Authority have made no comment on this aspect of the plan and that it would need to be resolved should any planning applications be made. As a result, the wording of the policies is uncertain and does not provide the basis for a decision-maker to apply the policies with confidence³⁸.

4.56 To meet the basic conditions the plan must provide certainty. Although the situation at the road junction is unsatisfactory it has to be assumed that the lack of comment by the LHA means that the limited amount of development proposed in the plan would not necessitate the envisaged improvement. If it did there would be a significant question mark over the capacity of the site allocated under Policy YG4 to deliver the 5 dwellings envisaged if part of the site was to be made available for the road improvement. There is no analysis of the effect of any such requirement on the viability of any development here especially, as commented upon in representations, the site is not only steeply sloping but lies within the conservation area. Furthermore, the courts have held that s106 does not provide for a positive obligation to transfer land³⁹ although the development or use of land may be restricted under s106(1)(a). It has not been demonstrated that any requirement for s106 obligations would meet the statutory tests to which I make reference in paragraph 4.46 above.

³⁷ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

³⁸ PPG, Reference ID: 41-041-20140306

³⁹ Because it would be contrary to s2 of the Law of Property (Miscellaneous Provisions) Act 1989

4.57 For these reasons, I conclude that there is insufficient evidence to show that the nature and scale of the development envisaged by Policy YG4 or otherwise within the settlement boundary along Leys Lane, Bircher, would necessitate works to provide for vehicles to leave or enter Leys Lane to/from a westerly direction on the B4362. Planning obligations could not, therefore, require financial contributions towards the cost of any such scheme.

Consequently, I find that neither criterion (h) in Policy YG3 nor criterion e) in Policy YG4 has been adequately justified and the plan does not meet the basic conditions with such policies included in it. I recommend the deletion of both criteria and consequential amendments to paragraph 4.4 will need to be made.

Modification 4.

4.58 *Policies for Local Green Space (Bircher YG5, Lucton YG7 and Yarpole YG12)*. These three policies identify Local Green Spaces, as shown on the respective village Policies Maps, and apply an identical policy in each of them. I drew attention in the introduction to my question 14 to the very specific, and strict, requirements for the designation of Local Green Space (LGS) stated in paragraph 77 of the NPPF which the Government states is not appropriate for most areas of open space. It is also indicated in paragraph 78 of the NPPF that the policies applying to Local Green Spaces should be consistent with the national policy for green belts. Only brief information is included in the plan on the justification for identifying each area as Local Green Space.

4.59 The areas shown for Bircher and Lucton are stated to be as provided for in the Leominster Local Plan whereas the reference for Yarpole is to the Herefordshire Unitary Development Plan (UDP). The 1999 Leominster Local Plan was superseded by the Herefordshire UDP in 2007 but policy HBA9 in that plan only applied in main villages as indexed in the Policies Map Inset (46a) for Yarpole. In turn the latter policy is listed in Appendix 1 to the Herefordshire Core Strategy as being replaced by a number of different criterion-based policies none of which are indexed on the adopted Policies Map.

4.60 The green space areas in Lucton and Bircher have not, therefore, been subject to specific protection since 2007 and that for Yarpole not since adoption of the HCS in 2015 but all of the areas lie within conservation areas and the criteria-based policies in the HCS apply, most particularly HCS Policy LD3 for Green Infrastructure. The Leominster Local Plan is no longer available nor may it be accessed online. The footnote references are, therefore, of little or no help to the reader. Furthermore, paragraph 5.4 duplicates 5.3. The statement at the end of paragraph 6.18, that the Yarpole area 'continues' the protection given in the UDP, is incorrect. I recommend corrections to clarify that these are historic references and the deletion of the footnotes. **Modifications 5, 6 and 12.**

4.61 Any designation of Local Green Space (LGS) in a neighbourhood plan must have regard to the policy context provided by paragraph 77 of the NPPF. It is made very clear therein that the Local Green Space designation is not appropriate for most green areas or open space and that they have to be demonstrably special to a local community. Furthermore, as all of the LGS areas

proposed in the YGNP lie within conservation areas it needs to be considered whether additional local benefit would be gained by LGS status⁴⁰.

4.62 The justification given in the plan text for the designation of LGS areas is brief and overly relies on the fact that the areas were previously protected. It is also not a reason for an LGS that it would protect the setting of a listed building or the character of a conservation area. That is why I asked⁴¹ the YGPC to provide more detailed justification for the LGS areas. I will take each in turn.

4.63 Bircher (Policy YG5). Even though this area lies well within the conservation area, national and local policy would not in itself ensure that the area remained undeveloped especially as it lies in a central position in the village, within the settlement boundary. The identification of the site as an orchard and of a habitat type considered important within the Herefordshire Biodiversity Action Plan leads me to conclude that there is justification for identifying this land as Local Green Space in accordance with the NPPF, paragraph 77.

4.64 Lucton (Policy YG7). Although this site is also an orchard and close to archaeological remains it lies outside the settlement boundary and within the conservation area which, unusually, includes an area of open countryside to the north, presumably to protect the village setting. The added benefit of LGS status is, consequently, less clear. However, I do accept that open nature of the site is important in its own right especially as part of it is within the curtilage of a bungalow. I am satisfied that the NPPF criteria are met. The YGPC have suggested an amendment to the policy wording to more clearly relate the purpose of designation to the paragraph 77 requirements. Although that would be better done in the text rather than in policy, as it stands the policy does not give a full picture and I recommend a wording based on that suggested by the YGPC.

4.65 Yarpole (Policy YG12). The justification in paragraph 6.18 for the two areas in Yarpole proposed as LGS is particularly brief and has to be read with paragraph 6.6 with which it overlaps (see below). There is an undue emphasis on the function of the open space in relation to protecting the setting of listed

⁴⁰ PPG Reference ID: 37-011-20140306

⁴¹ Question 14

buildings, the church and Vicarage Farm itself. The case for identifying the cemetery as LGS is not strong as such areas are listed in Figure 5.2 of the HCS as an aspect of local green infrastructure subject to HCS Policy LD3. However, the response by the YGPC has clarified for me that it is the contribution of the cemetery together with the land opposite within what is described as a 'pinch point' at the centre of the village which is important to its local distinctiveness. It is that which needs to be emphasised within the policy rather than 'setting'. I agree that the additional wording suggested by the YGPC for Policy YG12 in line with that for Policies YG5 and 7 would help to clarify what the special qualities are that warrant LGS designation and help to strengthen policy implementation to meet the basic conditions. **Modification 12.**

4.66 However, it is not the case that the whole area shown on the Yarpole village Policies Map, being the same area as shown on the UDP Proposals Map necessarily performs all of the functions identified in the NPPF paragraph 77. The green shading extends westwards to the rear of South Bank and Maunds House which cannot easily be seen from any public vantage points. I observed that the garden area in front (west) of Maunds House is almost completely isolated by buildings from the area further down the hill towards the central area described above. Similar considerations apply to the restricted area to the rear of South Bank. I consider that only the area stretching to the east of South Bank meets the NPPF requirements for designation as LGS and the area shown on the Policies Map will require modification in order to meet the basic condition of having had regard to that policy statement. **Modification 18B.**

4.67 I have also drawn attention to the fact that paragraph 78 in the NPPF states that the development management policy for LGS should be 'consistent' with the national policy for green belts, which is that 'inappropriate' development should not be permitted except in very special circumstances. The YGPC have suggested rewording the three policies to refer to their 'special qualities' and to state that 'no development' will be permitted to adversely affect the 'contribution these special qualities make to the village's environment.' That may be regarded as a definition of development which would not be appropriate, and partially meet the point. It would, however, make no allowance for very special circumstances. For consistency with national policy, and hence to meet the basic

condition, I recommend the addition of the words 'except in very special circumstances.' within each policy. **Modifications 5, 6 and 12.**

4.68 Finally, for clarification, some of the wording in paragraph 6.6 would be better included in paragraph 6.18 with the additional text suggested by the YGPC replacing it within paragraph 6.6. **Modification 7.**

4.69 *Policy YG8. Definition of 'small developments'.* In my question 16 I queried the meaning of the terms 'small developments' and 'infilling'. My concern is that it should be 'clear and unambiguous' (see para. 4.37 above) whether or not a development proposal accords with the policy. However, although a definition would assist, given the nature of the criteria within the policy as well as the limited scope remaining for development within the settlement boundary for Yarpole, the policy as drafted can be said to meet the basic conditions.

4.70 *Paragraph 6.8.* I have drawn attention to the error in paragraph numbering. This paragraph is referring to a 'site' which lies outside of the proposed NDP settlement boundary for Yarpole. In the circumstances, any development would be contrary to Policy YG2(d) and to HCS Policy RA3. Despite planning permission⁴² having been granted for one dwelling set well back within the area the YGPC do not suggest that the settlement boundary be amended. It is, therefore, totally inconsistent to advocate that two dwellings might be accommodated on the site. Also, there is no reason to assume that the existing permission will not be implemented. The inclusion of this paragraph means that the plan lacks clarity. I recommend deletion of the whole paragraph.

Modification 9.

4.71 *Policy YG13.* Welsh Water/Dŵr Cymru have confirmed that works to increase the capacity of the Luston Sewage Treatment Works, which serves Yarpole, will be completed in March this year. That is an update on the response given at the Regulation 14 consultation stage when they confirmed that, although the works were overloaded, at that time once completed there would be 'no issue' in accommodating all of the growth proposed over the NDP period.

⁴² Reference 160075

4.72 Further to the YGPC response to my questions on this matter Welsh Water have stated the following⁴³:-

'...we have a scheme at Luston and Yarpole WwTW to meet the requirements of the Water Framework Directive (WFD) for 'no deterioration for ammonia' as part of our AMP6 Capital Investment Programme (2015-2020). The new permit will come into force on the 31st of March 2018. The works are currently progressing on site, and when complete will be able to meet all the environmental requirements in the permit. Further to this, the development growth proposed in the Neighbourhood Plans of both Luston Group Parish and Yarpole Group Parish will be able to be accommodated.'

There is, therefore, every likelihood that the works will have been completed and the new permit will have come into effect well before the YNDP progresses to the next stage. In the circumstances the policy no longer serves any useful purpose. It is negative in tone and, consequently, does not meet the basic conditions. Should circumstances change in the future a review of the plan may be desirable. It is also the case that HCS Policy SD4 will apply in the consideration of any planning application for development over and beyond the provisions of the YNDP. That policy provides a safeguard against any environmental impacts which might arise to the future. For these reasons Policy YG13 and paragraphs 6.19 and 6.20 should be deleted. **Modification 13.**

4.73 *Policy YG14.* Although paragraph 137 of the NPPF refers to local authorities 'looking for opportunities' for new development to enhance conservation areas the approach to development management decisions is given in paragraphs 131-135 and refers to degree of harm to heritage asset, whether it 'significant' or 'less than significant'. Nevertheless, to refer to development preserving or enhancing the character or appearance of the area is a reflection of the wording in s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. I do not consider it contrary to any basic condition for the words 'where possible' to qualify 'enhance' because if something 'preserves' it is likely to be regarded as less than significant harm. Development cannot be refused because it fails to enhance. It is, perhaps, a somewhat fine point but it is

⁴³ By e-mail on 19 January 2018

possible for development to have an effect on appearance but not on overall character, particularly so with minor householder developments. Always to require both character and appearance to be at least preserved is too strict a test. The YGPC have accepted that the words 'will not be resisted' in section 2 of this policy mean 'will be permitted' and such wording would have regard to the positive approach to the planning of sustainable development of paragraph 16 in the NPPF.

4.74 Turning to criterion 4 in the policy, as indicated above, national policy does not require all development in conservation areas to result in enhancement. Although words could be added such as, 'where opportunities arise', this is an unnecessary duplication of the first criterion and it should be deleted for the sake of clarity.

4.75 The wording of the fifth criterion is somewhat presumptive. Despite what is said in paragraph 7.7 it may not be the case that trees and hedgerows are always 'essential components' and those words do not add force to the policy. There might very well be circumstances when there may be insufficient space for additional tree planting, taking account of the effect of roots on buildings over time, or it is simply not appropriate in a location where trees or hedgerows would not be in character. Also, as the YGPC concede, taken from paragraph 7.7, the policy approach may not apply to minor works. Clarification of wording is required to ensure effective implementation. **Modification 14.**

4.76 *Policy YG15.* The HC view on this policy is that it is too wordy and would be clearer if it was split into several policies dealing with different issues. Although I agree with that comment in principle it is not a change which the YGPC have chosen to make and the issue is not one of such import that the plan fails to meet any basic condition in this regard.

4.77 The YGPC have explained that the reference 'in addition to regulatory matters' in the fourth and fifth lines of this policy is intended to convey to the community that such things as energy or water conservation measures are subject to control under the Building Regulations. However, that is not clear from the policy. If an explanation is needed it should be in the text. The words make the meaning of the policy unclear contrary to good practice and should be deleted.

4.78 In criterion d) there is reference to 'areas where flooding is identified as an issue' but does not define what is meant by that term. Clarification is required. An area is shown on the Yarpole village Policies Map as 'Land Liable to Flood'. That is the same area shown on the smaller scale plan as that to which HCS Policy SD3 applies. A check with the Environment Agency plans shows that this area is Flood Zone 3 and does not show the smaller areas within Flood Zone 2 despite there being no differential in national policy between those two zones. Site-specific flood risk assessments are required for any development within both of those zones⁴⁴.

4.79 Clarity is needed so that the plan user will know when and where the policy applies. The revised wording for criterion d) suggested by the YGPC would be factually correct on the assumption that the Environment Agency have not notified Herefordshire Council that any areas in zone 1 within the NDP area have critical drainage problems. Strictly speaking, this criterion is not needed at all because it is the same as national policy but, with the amendment, it would satisfy the relevant basic condition. For completeness, flood zone 2 should be added to the area shown as 'liable to flood' on the Policies Map for Yarpole. **Modification 18C.**

4.80 I have also questioned the intended means to implement criterion f). This is because it is referring to off-site measures and enabling 'a sustainable drainage system 'to serve a wider range of properties'. I have to refer once more to the statutory tests for planning obligations, including unilateral undertakings. In particular, any such provision would have to be directly related in scale and kind to the development being proposed. In view of the nature and scale of the development being proposed in this plan there appears to be little or no scope to implement such a policy. It might also be regarded as imposing an unreasonable burden on development. For those reasons the criterion has not had regard to current Government policy and I recommend deletion.

Modification 15.

4.81 *Policy YG16.* See paragraphs 4.43-46 above.

⁴⁴ NPPF paragraph 103 and footnote 20 together with PPG Ref. ID 7-003-20140306

4.82 *Appendix 2.* Finally in this section, the detail in Appendix 2 relates to the statistics in Table 1. As the YGPC have acknowledged its primary purpose was at the Regulation 14 stage showing those small sites, which are not allocated in the plan, which lie within the settlement boundaries. Not only would the table require updating should it remain but it has served its purpose. The plan would lack clarity if it were to remain and, consequently, I recommend deletion along with the reference to it in paragraph 4.3. **Modification 17.**

4.83 *The correction of errors.* Within this category and for the sake of completeness I recommend that updates and corrections to the text should be made which are required consequentially upon recommended modifications to the plan policies and which are not otherwise specifically mentioned in this report.

4.84 In addition, I have noticed the following minor errors which I recommend be corrected:-

Paragraph 2.10. Line 5 '34.9 households': Decimal point misplaced.

Paragraph 4.3. Penultimate sentence on page 17: First 'parcel' should be 'site'.

Paragraph 4.4 Third line from end: 'may be required to *give effect to these.*'

Section 5 - Formal conclusion and overall recommendations including consideration of the referendum area

Formal Conclusion

5.01 I conclude that the draft plan, subject to the modifications recommended in this report and listed in Appendix 1, meets the basic conditions as set out in Schedule 4B to the Town and Country Act 1990 (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

Overall Recommendation A.

I recommend that the modifications listed in Appendix 1 to this report be made to the draft Yarpole Group Neighbourhood Development Plan 2011 to 2031 and that the draft plan as modified be submitted to a referendum.

The referendum area

5.02 As I have recommended that the draft plan as modified be submitted to a referendum I am also required under s10(5)(a) of Schedule 4B to the Town and Country Planning Act 1990 to recommend whether the area for the referendum should extend beyond the neighbourhood area.

5.03 There have been no representations seeking an extension of the referendum area. The fact that the neighbourhood area covers two parishes with a single group council suggests a strong commonality within the group. No cross-boundary issues have been identified. Consequently, I find there to be no justification for extending the referendum area beyond the designated neighbourhood area.

Overall Recommendation B.

The area for the referendum should not extend beyond the neighbourhood area to which the plan relates.

Signed:

John R Mattocks

JOHN R MATTOCKS BSc DipTP MRTPI FRGS

23 January 2018

APPENDIX 1 – LIST OF RECOMMENDED MODIFICATIONS TO THE PLAN

The following modifications are recommended in order that the plan meets the basic conditions. The modifications are listed in plan order giving a reference, in italics, to the paragraph numbers within the main body of this report where the reasons for recommending the modification are given.

Modification 1.

Policy YG2. *Paragraphs 4.50-53.*

In part d) of Policy YG2 insert the word 'Residential' before 'development' both at the start of the paragraph and in the fifth line after 'accommodate';

In the second line of part d) replace the word 'exceptional' by 'limited';

In lines 3 and 4 of part d) delete the words 'in particular but not exclusively Policy RA3, and replace 'necessary' by 'applicable';

Clarify the context for the reference to 'the needs of the community' in the second line of paragraph 3.8 on page 14.

Modification 2.

Text paragraphs 3.10-3.13 and Table 1. *Paragraphs 4.03-07 and 4.31.*

Replace this section of the plan by updated text as below:-

- 3.11 The target for new housing within the Group Parish indicated for the period 2011 to 2031 by Herefordshire Council is 48 dwellings. Herefordshire Council advised that at April 2017 some 8 new dwellings had been constructed since 2011 and a further 17 had received planning permission but as yet were not completed. Between April and November 2017, a further 20 dwellings resulted from the grant of planning permission, of which all were within or adjacent to Yarpole village. A modest estimate of the allowance for dwellings that are likely to come forward outside of the village within the remainder of the Group Parish and based upon past trends suggest at least a further 8 dwellings would result. These would come forward through rural building conversions, agricultural dwellings and other acceptable forms of housing development in the countryside. Accordingly, it is anticipated that the minimum outstanding level of proportional growth of 3 dwellings will be met and most probably exceeded during the outstanding plan period – see Table 1.
- 3.12 Housing provision associated with the three villages will continue to be met through a combination of individual or small plots within a settlement boundary together with the three site allocations, one in Bircher and two in Yarpole. The site allocations will enable a mixture of house types, sizes

and tenures as is necessary to be brought forward. A local housing needs report was prepared by Herefordshire Council in 2014 but there is no up-to-date information on the need for affordable housing in the plan area. Should any future requirement be identified the most appropriate way to provide this would be through Herefordshire Local Plan Core Strategy policy H2 which enables exceptions to be made where there is a proven need for such housing. Such schemes have proved successful in nearby villages. A group within the Parish is investigating the establishment of a Community Land Trust to meet any future needs that might be identified.

- 3.13 The approach to accommodating housing within each village together with supporting infrastructure is identified in the following three sections. However, the summary of how these will meet and exceed the required level of proportionate growth is set out in Table 1 below. It should however be recognised that these figures represent the expected minimum potential number for the relevant sites and plots in order to indicate that the required target can be met. A modest figure for developable sites is used in all instances.

Table 1: Summary of Proposals to Meet and Exceed the Housing Target (At November 2017)

Housing Target 2011 to 2031:- 48		
Completions 2011- 2017:- 8		
Outstanding planning permissions November 2017 (not covered below):- 10		
Remainder to be provided through this plan:- 30		
		Number of dwellings-on available sites Immediate term
1	Bircher	
	a) Site allocations (Policy YG3)	5
	b) Small site/conversion (YG4)	8
2	Lucton (Policy YG6)	0
3	Yarpole	
	a) Small sites (Policy YG8)	9
	b) Allocation, Croft Crescent (YG9) (PP granted)	5
	c) Allocation, Brook House Farm and adjacent land (YG10)(PP granted)	18

	Dwellings resulting from this Neighbourhood Plan	46
4	Rural windfall based on past trends.	8
	Total	53

Modification 3.

Policy YG3(e) and Policies YG4(c), YG6(a) and YG8(a). *Paragraph 4.54.*

Delete criterion e) in Policy YG3 and criteria a) in Policies YG6 and YG8;

In Policy YG4, criterion c) Delete 'Development shall ... (to) ... in particular,' and commence 'Proposals ...'

Include additional text following these policies drawing attention to the fact that Policy YG14 will apply within the conservation areas for Bircher, Lucton and Yarpole.

Modification 4.

Policy YG3(h) and Policy YG4(e). *Paragraphs 4.55-57.*

Delete criterion h) in Policy YG3 and criterion e) in Policy YG4 and make a consequential adjustment to the wording of paragraph 4.4

Modification 5.

Policy YG5. *Paragraphs 4.58-63 and 4.67.*

In the second line of Policy YG5, after the words 'in order to protect' insert the words 'its biodiversity value and for' and, in the third line, delete ', biodiversity';

Delete the second part of the policy and substitute the following: -

Except in very special circumstances, no development will be permitted which would adversely affect the special qualities of the area and the contribution these make to the village's environment.

In paragraph 4.5, final line, delete the words 'was identified in an earlier plan.' and footnote 3.

Modification 6.

Policy YG7. *Paragraphs 4.58-62, 4.64 and 4.67*

At the end of the second line in Policy YG7, between the words '...protect' and 'the ...' insert the words 'its biodiversity and heritage value and for';

Delete the final sentence of the policy and substitute the following:-

Except in very special circumstances, no development will be permitted which would adversely affect the special qualities of the area and the contribution these make to the village's environment.

Delete paragraph 5.5 including footnote 4 on page 22.

Modification 7.

Paragraph 6.6. *Paragraph 4.68.*

Delete the two sentences in paragraph 6.6 between 'Both the land ...' at the end of line 7 and '... also Listed Buildings.' in line 12. Merge that text into paragraph 6.18 in justification of Policy YG12.

Insert the following text in place of the two deleted sentences in paragraph 6.6:-

The green wedge and pinch point contribute to the character of the village by dividing it into its three settlement character areas which might influence the approach to determine how the settlement should develop. In addition, given the absence of any Conservation Area Appraisal, this broad characterisation is also useful to defining some of the qualities that need to be preserved. The characterisation is presented at Diagram 1.

Modification 8.

Policy YG9 and paragraph 6.11. *Paragraphs 4.12-14 and 4.17*

In criterion b) of Policy YG9 delete ',type and tenure' in line 2 and all after '...local community needs' in the last two lines;

Delete the second sentence in paragraph 6.11.

Modification 9.

Paragraph 6.8. *Paragraph 4.70.*

Delete the whole of paragraph 6.8.

Modification 10.

Policy YG10 (g) and paragraph 6.12. *Paragraphs 4.10 and 4.11.*

Delete all after ‘...local community needs’ in the last two lines of Policy YG10;

Update paragraph 6.12 to refer to the planning permissions granted for development on this site. Include an explicit recognition that the policy can only be applied by the LPA should a further application (or applications) be made for the development of the site;

Delete the last two sentences in paragraph 6.12 and include a statement referring to the planning permission granted for the permanent residential use of the barns.

Modification 11.

Policy YG11 and paragraph 6.16 and 6.17. *Paragraph 4.37-42.*

Delete the whole of Policy YG11 and the text in paragraphs 6.16 and 6.17 from the statutory plan and include it within a non-statutory appendix to the plan.

Modification 12.

Policy YG12 and paragraph 6.18. *Paragraph 4.58-62 and 4.65.*

At the end of point i) in Policy YG12 add the words ‘which contributes especially to the tranquillity of the village.’ after ‘... cemetery’

At the end of point ii) in Policy YG12 add the words ‘which contributes especially to the character and appearance of the village through protecting an important setting.’ after ‘Vicarage Farm.’

Delete the last part of the policy and substitute the following: -

Except in very special circumstances, no development will be permitted which would adversely affect the special qualities of the area and the contribution these make to the village’s environment.

Delete the last sentence in paragraph 6.18.

Modification 13.

Policy YG13 and paragraphs 6.19 and 6.20. *Paragraphs 4.71-2*

Delete Policy YG13 and the accompanying text in paragraphs 6.19 and 6.20.

Modification 14.

Policy YG14. *Paragraphs 4.73-5.*

In criteria 2 of policy YG14, third line, replace the words 'will not be resisted' by 'will be permitted';

Delete criterion 4 in policy YG14;

Preface the fifth criterion by the words 'For all but minor works and in so far as practicable'. Delete the word 'any' in the first line and the words 'as essential components.' on line 2.

Modification 15.

Policy YG15. *Paragraphs 4.76-80.*

Delete the words ', in addition to regulatory requirements,' in lines 4 and 5 of the introductory section to Policy YG15;

Replace criterion d) by the following text:-

Where development falls within flood risk zones 2 or 3, or elsewhere comprises sites of 1 hectare or greater, proposals will need to be supported by an appropriate flood risk assessment, including taking into account climate change, to inform decisions upon planning applications;

Delete criterion f)

Modification 16.

Policy YG16. *Paragraphs 4.43-46.*

Amend the heading for Policy YG16 to read: 'Contributions to Community Services, Youth Provision and Recreation Facilities'

Delete Policy YG16 and replace it by the following policy:-

When a proposed development would result in demands on community facilities, services and physical or social infrastructure which necessitates additional provision, permission will be granted subject to a planning obligation under s106 of the Town and Country Planning Act 1990 to secure a contribution towards the provision, improvement, replacement, operation or maintenance of those facilities, services or infrastructure in the interests of supporting sustainable development and in so far as the statutory tests for planning obligations are met.

Delete paragraph 8.4 and replace it with the following text:-

Herefordshire Council intends to introduce a charging system for the Community Infrastructure Levy during the plan period. Currently it operates a system for related payments through Planning Obligations.

Delete the last sentence in paragraph 8.5 and replace it by the following text:-

The Group Parish Council will maintain a list of supporting and enabling actions that might benefit from contributions made through developer contributions. This list will be reviewed from time to time in order to support growth within the community.

Modification 17.

Appendix 2. *Paragraph 4.82.*

Delete appendix 2 and the reference to it in paragraph 4.3 of the plan.

Modification 18. Alterations to the Policies Map for Yarpole.

A. Redraw the settlement boundary to the east of Mortimer House, Cock Gate, to exclude the area of land referred to as 'site 17' from the settlement.

Paragraph 4.26

B. Delete the area of land to the north and west of South Bank and Maunds House and within the curtilage of those dwellings from the designation of Local Green Space under Policy YG12. *Paragraph 4.66.*

C. Include those areas of land within flood risk zone 2 as 'land liable to flood' on the Policies Map as subject to YG15. *Paragraph 4.79.*

APPENDIX 2 – ABBREVIATIONS USED IN THIS REPORT

'the 1990 Act'	The Town and Country Planning Act 1990, as amended
'the 2004 Act'	The Planning and Compulsory Purchase Act 2004
CIL	Community Infrastructure Levy
HC	Herefordshire Council
HCS	Herefordshire Local Plan – Core Strategy (CS)
HMA	Housing Market Area
EU	European Union
LGS	Local Green Space
LHA	Local Housing Authority
LHMA	Local Housing Market Assessment
LPA	Local Planning Authority
NP	Neighbourhood Plan (generic term)
NPPF	The National Planning Policy Framework ('the Framework')
PPG	(national) Planning Practice Guidance
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
s106	Section 106 of the Town and Country Planning Act 1990 dealing with planning obligations, including agreements
'the 2012 Regulations'	The Neighbourhood Plans (General) Regulations 2012 (any reference to a Regulation number is to these Regulations)
UDP	(Herefordshire) Unitary Development Plan
YGNDP (`the Plan')	Yarpole Group Neighbourhood Development Plan (also `the NDP')
YGPC	Yarpole Group Parish Council (`the Parish Council')

APPENDIX 3.

Main local evidence base documents to which reference has been made in preparing this report in addition to Regulation 15 submission documents:

Herefordshire Core Strategy (adopted October 2015)

Herefordshire Local Housing Market Assessment, 2012 Update, GL Hearn (November 2013)

Call for sites April 2015

List of sites offered as at November 2015 and site plans

NDP Site Allocation Update January 2016

NDP Development Criteria

Site Deliverability Assessment

Local Affordable Housing Needs Survey for Croft and Yarpole 2014 (Herefordshire Council)

Environment Agency Flood Risk Maps

Herefordshire UDP Proposals Map Inset 46a - Yarpole