

Town and Country Planning Act 1990
Neighbourhood Planning (General) Regulations 2012

**WIRKSWORTH
NEIGHBOURHOOD PLAN**

INDEPENDENT EXAMINATION

**A report to Derbyshire Dales District Council
by Charles Mynors FRTPI, FRICS, IHBC, Barrister**

6 March 2015

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1. Introduction

Neighbourhood Planning

- 1.1 Neighbourhood planning is the process introduced by Parliament in the Localism Act 2011 to enable those living and working in a community to take a more involved role in the process of deciding its future. They are able to establish general planning policies for the development and use of land in the neighbourhood; they are able to say, for example, where new homes and offices should be built, and what they should look like. The neighbourhood plan will set a vision for the future. It can be detailed or general, depending on what local people want.¹
- 1.2 The 2011 Act introduced the necessary amendments to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 to make the new process possible.² These came fully into force on 6 April 2012, along with the Neighbourhood Planning (General) Regulations 2012, which provided for the detailed procedures.³
- 1.3 The first step towards producing a neighbourhood plan is for a parish council or other qualifying body to define a “neighbourhood area” for which it considers that a plan should be produced, and to prepare a draft plan for that area – with the assistance of the local planning authority where appropriate. The draft plan must meet what are referred to in the legislation as “the Basic Conditions” – that is, in summary, it should be generally in line with national and other local planning policies; and it must conform to other laws.⁴
- 1.4 The draft plan is made available for inspection within the area in question, and anyone can make representations.
- 1.5 Once a neighbourhood plan has been prepared, and everyone has had a chance to comment on it, an independent examiner is appointed by the planning authority, with the consent of the qualifying body that produced the draft neighbourhood plan. The examiner must be someone who is independent of the qualifying body and the authority, has appropriate qualifications and experience, and has no interest in any land affected by the plan.⁵

¹ <https://www.gov.uk/neighbourhood-planning>

² Town and Country Planning Act [“TCPA”] 1990, ss 61E to 61P, Sched 4B (neighbourhood development orders); Planning and Compulsory Purchase Act [“PCPA”] 2004, ss 38A to 38C (application to neighbourhood plans).

³ The 2012 Regulations have been amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015, but the amendments do not apply to the Proposed Plan at Wirksworth.

⁴ TCPA 1990, Sched 4B, para 8, applied by PCPA 2004, s 38A(3); for more details, see below.

⁵ TCPA 1990, Sched 4B, para 7(6), applied by PCPA 2004, s 38A(3).

- 1.6 The role of the independent examiner is to check that the plan complies with the various statutory requirements or, if it does not comply, that it can be changed so that it does. The examiner produces a report, which contains one of three possible recommendations:
- “(a) that the draft plan is submitted to a referendum;
 - (b) that modifications specified in the report are made to the draft plan, and that the draft plan as modified is submitted to a referendum; or
 - (c) that the proposal for a plan is refused.”⁶
- 1.7 The recommended modifications can only be those that the examiner feels are necessary to ensure that the draft plan complies with the basic conditions and the other relevant statutory requirements or are needed for the purpose of correcting errors. The planning authority then decides whether it is willing to make any or all of those changes; if they are major, they may have to be the subject of a further round of consultation.
- 1.8 There is then a referendum on whether the draft plan should be “made”, subject to any changes recommended by the examiner and accepted by the planning authority. If more than half of those voting vote in favour of the plan, the planning authority must then make the plan.
- 1.9 Once it comes into force, the neighbourhood plan is part of the development plan for the area to which it relates, alongside the “saved” policies of the relevant local plan, any plans for minerals and waste disposal, and any saved policies of the relevant regional strategy. From then on, therefore, it is an integral part of the policy framework that guides the planning authority and the inspectorate in making all planning decisions in the area.

The proposed Wirksworth Neighbourhood Plan

- 1.10 Derbyshire Dales District Council (“the District Council”) is the local planning authority for all relevant purposes under the 1990 and 2004 Acts for the area including the civil parish of Wirksworth.
- 1.11 Wirksworth Town Council (“the Town Council”) is a parish council within the terms of the Local Government Act 1972. Each is therefore a qualifying body for the purposes of section 38A(12) of the 2004 Act. A parish council is entitled to submit to the local planning authority a proposal for the making of a neighbourhood plan for the whole or part of its area.
- 1.12 The application to the District Council for the designation of Wirksworth parish as a neighbourhood area recorded as follows:
- 1.13 The details of the process by which the proposed neighbourhood plan came into existence, and the dates on which each stage was reached, are set out in the *Consultation Statement*, produced in October 2014. In particular, a draft of the Proposed Plan was the subject of an extensive consultation exercise in 2012-2013.

⁶ TCPA 1990, Sched 4B, para 10(2), applied by PCPA 2004, s 38A(3).

My appointment

- 1.14 I have been appointed by the District Council to conduct an independent examination of the proposed Neighbourhood Plan. I am independent of the District Council and the Town Council.
- 1.15 I am a chartered town planner (FRTPI) and chartered surveyor (FRICS), a member of the Institute of Historic Buildings Conservation (IHBC), and a barrister in private practice. I have worked as a planning officer in a London borough council for nine years, and I have since then practised at the planning Bar for some 25 years, and written and lectured on planning matters generally. I have no interest in any land affected by the Proposed Plan.
- 1.16 I have been supplied with the following basic documents:
- *Wirksworth Neighbourhood Plan 2015-28* (“the Proposed Plan”), undated but apparently produced in September 2014;
 - *Consultation Statement for Wirksworth Neighbourhood Plan*, published in October 2014, together with the responses to the Proposed Plan; and
 - *Legal Requirements and Basic Conditions Statement*, published in October 2014;
 - *Wirksworth Neighbourhood Plan: Sustainability Appraisal and Strategic Environmental Assessment: Screening Report*, published in June 2014; and
 - *Evidence Base and Explanations Document*, undated but apparently published in 2014
- 1.17 I have also been supplied with (or have found on the web) a number of other relevant documents, including the following:
- the *Derbyshire Dales Local Plan*, adopted by the District Council in 2005 (“the adopted Local Plan”);
 - the list of policies in the Local Plan saved (still in force) after 27 September 2007, following a direction by the Secretary of State under paragraph 1(3) of Schedule 8 to the 2004 Act (see paragraph 2.34 below);
 - the emerging *Derbyshire Local Plan Pre-submission Draft 2013* (“the emerging Local Plan”), as it existed immediately prior to being withdrawn in October 2014;
 - the representations received by the District Council in response to the consultation carried out under regulation 16, and the response of the District Council to the Proposed Plan, as approved by the Community Committee on 22 January 2015;
 - the response by the Town Council to the District Council’s response, dated February 2015.

- 1.18 I have also had regard to the legislation referred to above, and to other relevant legislation and case law, and to policy guidance from central Government (considered in more detail below).

Procedure

- 1.19 The 2004 Act provides that the general rule is that the examination of the issues by the examiner is to take the form of a consideration of written representations; but there must be an oral hearing if the examiner considers that it is necessary to consider oral representations to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case.⁷
- 1.20 In this instance I did not consider that an oral hearing would be necessary.
- 1.21 I have visited Wirksworth, and explored carefully the various sites and locations referred to in the Proposed Plan.

Recommended modifications

- 1.22 I have highlighted **in bold type** within the body of this Report my principal recommendations, including as to modifications to the Proposed Plan.
- 1.23 In addition, in Annexe A, I have made a number of other recommendations – to rectify apparent errors spotted in the course of my examination of the Proposed Plan, to improve the clarity and consistency of the wording, and in particular to reflect the withdrawal of the 2013 Draft Local Plan.

⁷ PCPA 2004, Sched 4B, para 9(1).

2. The basic conditions

The legal requirement

- 2.1 In my examination of the Proposed Plan, I am required by paragraph 8(1)(a) of Schedule 4B to the 1990 Act to consider whether it meets “the basic conditions.”⁸
- 2.2 In the remainder of this Chapter, I outline what are the basic conditions; and in the following Chapters, I consider whether the Proposed Plan meets them.
- 2.3 The Regulations provide that the submission of a proposed neighbourhood plan by a qualifying body to a planning authority must be accompanied by a statement explaining how the plan meets the basic conditions, as well as other statutory requirements.⁹ In the case of the Proposed Plan for Wirksworth, a document has been produced to accompany it, entitled *Basic Conditions Statement*, which provides a helpful summary of the measures that have been taken in this case to ensure that the Plan does meet the conditions.

The basic conditions

- 2.4 Paragraph 8(2) of Schedule 4B provides that a neighbourhood development plan meets the basic conditions if:
- “(a) having regard to national policies and advice contained in **guidance issued by the Secretary of State**, it is appropriate to make [the plan],
 - (d) the making of [the plan] contributes to the achievement of **sustainable development**,
 - (e) the making of [the plan] is in general conformity with the strategic policies contained in **the development plan** for the area of the authority (or any part of that area),
 - (f) the making of [the plan] does not breach, and is otherwise compatible with, **EU obligations**, and
 - (g) **prescribed conditions** are met in relation to [the plan] and **prescribed matters** have been complied with in connection with the proposal for [the plan].”¹⁰
- 2.5 Basic conditions (b) and (c), relating to the built heritage, apply to the examination of proposed neighbourhood development orders, but not to that of neighbourhood plans.
- 2.6 Only one further basic condition has been prescribed under paragraph 8(2)(g), as follows:

⁸ TCPA 1990, Sched 4B, para 8(1), applied by PCPA 2004, ss 38A(3), 38C(5)(b), (c). Sub-para 8(1)(c) does not apply to neighbourhood development plans.

⁹ Neighbourhood Planning (General) Regulations [“NP(G)R 2012”], reg 15(1)(d); see below.

¹⁰ TCPA 1990, Sched 4B, para 8(2), applied by PCPA 2004, ss 38A(3), 38C(5)(d). Emphasis added.

“The making of the neighbourhood development plan is not likely to have a significant effect on **a European site** ... or a European offshore marine site ... (either alone or in combination with other plans or projects).”¹¹

- 2.7 It may be noted that a proposed plan must meet all of the basic conditions specified in paragraph 8(2), if it is to be submitted to a referendum, not just some of them. I consider each of them in turn.

National policies and advice: basic condition (a)

- 2.8 In carrying out the examination of the Proposed Plan, and deciding whether to recommend that it should be submitted to a referendum, I am required to have regard to national policies and advice contained in guidance issued by the Secretary of State. This principally comprises two strands:
- the National Planning Policy Framework; and
 - the web-based *Planning Practice Guidance*.

The National Planning Policy Framework

- 2.9 The most significant national policies relevant to planning matters are set out in the *National Planning Policy Framework* (“the NPPF”). This was issued in March 2012, and replaced almost all of the Planning Policy Guidance notes and Planning Policy Statements (PPGs and PPSs) that were extant at that time.
- 2.10 The Government’s understanding of plan-making is summarised at paragraphs 15 and 16, as follows:

“15. ... All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.

16. The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:

- develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development
- plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan
....”

- 2.11 The core principles that should underpin all planning are then summarised at paragraph 17, and elaborated in relation to specific topics in the remainder of the NPPF. That paragraph starts as follows:

17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the

¹¹ NP(G)R 2012, Sched 2, para 1. Emphasis added.

future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency; ...”

2.12 The principal policies of the NPPF specifically relating to neighbourhood planning are as follows:

“183. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:

- set planning policies through neighbourhood plans to determine decisions on planning applications; and
- grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order.

184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.

185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. ...”

2.13 Other policies directly relating to the making of neighbourhood plans are in paragraphs 28, 56-58, 69-70, 76-77, 97, 109-111, and 117.

2.14 More general policies relating to “plan making” are found throughout the NPPF, but they generally refer to the making of local plans. For example, paragraphs 47 and 158-159 contain important policies regarding the need to ensure an adequate supply of housing; but these specifically refer to action by local planning authorities. Nevertheless, since neighbourhood plans are to be in general conformity with strategic policies in local plans, those policies in the NPPF relating to local plans will still be indirectly relevant.

2.15 More generally, the NPPF sets out a whole suite of policies relating to a wide range of issues, including in particular transport, housing, design, climate change, the natural environment, and the historic environment. I have had regard to these where appropriate in carrying out my examination.

Planning Practice Guidance

- 2.16 More detailed guidance and advice, expanding on the general policies in the NPPF, has been available since March 2014 on the Planning Portal website, as *Planning Practice Guidance* (“PPG”).¹² This guidance relates to a whole range of planning issues.
- 2.17 In particular, the PPG includes specific guidance related to neighbourhood plans; and that guidance suggests that the main source of Government policy is simply the NPPF and in particular paragraphs 16 and 184, noted above.¹³ However, the PPG itself would seem to constitute national “advice”, whether or not it is “policy”; and I have had regard to it accordingly.
- 2.18 In particular, the PPG contains the following guidance:
- “How should the policies in a neighbourhood plan be drafted?**
- A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”¹⁴
- 2.19 A policy that is not “clear and unambiguous” is thus not in accordance with the basic conditions. The same would presumably apply if the purported justification for a policy was not clear and unambiguous, although that is not spelt out in the PPG.
- 2.20 In particular, a number of policies in the Proposed Plan are phrased “development *must* comply with [this or that requirement].” Whilst the intention behind such a policy may be laudable, any policy must of course always be considered alongside other policies in the same plan, as well as policies in other plans and all other material considerations. It follows that more helpful forms of words will be “development will normally only be allowed if it complies ...” or “development should comply ...”. I have wherever possible sought to introduce such wording when making recommendations as to specific policies.
- 2.21 It is also important that every policy in a neighbourhood plan be supported by appropriate evidence.
- 2.22 The requirement that a policy should be distinct, reflecting local circumstances, is less straightforward. Many policies in this Proposed Plan, and in many proposed neighbourhood plans, are to a greater or lesser extent generic policies that could apply to many if not all locations. But the fact that a particular community has chosen to include a particular generalised policy in its plan reflects its awareness that the issue in question is of special relevance in its circumstances. The inclusion of such general policies thus does not of itself mean that those policies, or the plan as a whole, are not in accordance with the basic conditions.

¹² <http://planningguidance.planningportal.gov.uk/blog/guidance/>

¹³ PPG, ref ID: 41-069-20140306, ID: 41-070-20140306.

¹⁴ PPG, ref ID: 41-041-20140306.

Other national policies and advice

- 2.23 The reference in the first basic condition to national policies and advice is not limited to the guidance in the NPPF and the PPG. In particular, there were still in existence at the time when the Proposed Plan was prepared a plethora of Circulars, practice guidance notes and other such documents. However, most of those documents were cancelled in March 2014.
- 2.24 None of those who submitted written representations have drawn attention to any other national policies and advice to be taken into account in my examination of the Proposed Plan.
- 2.25 Subject to the above, I have therefore assumed that the relevant national policies and advice are those that are now contained in the NPPF and the PPG.

Sustainable development: basic condition (d)

- 2.26 In carrying out the examination of the Proposed Plan, I am required to consider whether the making of it would contribute to the achievement of sustainable development.
- 2.27 Paragraph 6 of the NPPF states that:
- “The policies in paragraphs 18 to 219, taken as a whole [that is, virtually the whole of the NPPF], constitute the Government’s view of what sustainable development in England means in practice for the planning system.”
- 2.28 Slightly more helpfully, the following paragraph summarises the concept of sustainable development and the role of the planning system as follows:
- “7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:
- *an economic role* – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
 - *a social role* – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
 - *an environmental role* – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.
- 2.29 The NPPF then explains that there is a presumption in favour of sustainable development:

“14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.”

2.30 This is applied specifically to neighbourhood plans in paragraphs 15 and 16, quoted above.

2.31 None of those who submitted written representations have referred to any other definition of sustainable development, or any other documents relating to it, that I should take into account in my examination of the Proposed Plan.

The development plan: basic condition (e)

2.32 In carrying out the examination of the Proposed Plan, I am required to consider whether it is in general conformity with the strategic policies contained in the development plan for the area.

2.33 In this case, the development plan for the area including Wirksworth consists principally of the *Derbyshire Dales Local Plan* (“the Local Plan”), adopted in November 2005 by the District Council for the whole of its area (including Matlock, Wirksworth and Ashbourne) outside the Peak District National Park.¹⁵

2.34 In principle, that plan ceased to be effective on 27 September 2007, by virtue of paragraph 1(2)(a) of Schedule 8 to the 2004 Act; but on 20 November 2008 the Secretary of State issued a direction, under paragraph 1(3) of that Schedule, listing those policies of the Local Plan that would be “saved” and could therefore still be relied on after that date. That shows that the great majority of the policies in the Local Plan have been saved. Those provide, as would be expected, a complete suite of policies to deal with a wide range of issues, all of which were saved and are still in force.

2.35 The development plan also includes the saved policies of the separate local plans produced by Derbyshire County Council dealing with minerals (adopted in 2000 and amended in 2002) and waste disposal (adopted in 2005).¹⁶ However, the Proposed

¹⁵ <http://www.derbyshiredales.gov.uk/planning-a-building-control/planning-policy/local-plan>

¹⁶ http://www.derbyshire.gov.uk/environment/planning/planning_policy/minerals_waste_development_framework/default.asp

Plan contains no policies relating to those matters, and no policies relating to other matters that are in conflict with any strategic policies in those plans.

- 2.36 The Regional Spatial Strategy for the East Midlands (RPS8) and the joint Derby and Derbyshire Structure Plan (adopted in 2001) no longer have any formal status as part of the development plan; as far as I am aware, there are no saved policies from either plan.
- 2.37 I have therefore confined my examination in relation to basis condition (e) to considering the general conformity with the saved strategic policies in the Local Plan.
- 2.38 There has been no objection (either from landowners, local people or anyone else) that there has been a failure by those drafting the Proposed Plan to ensure that it is in general conformity with the strategic policies in the adopted Local Plan.

The emerging Local Plan

- 2.39 It would, obviously, be easier to produce a neighbourhood plan if there was available a local plan adopted in the last year or so containing up-to-date strategic policies on all topics and, in particular, as to the amount of housing and employment land required. However, there is no rule, either in the relevant statutory provisions or in central Government guidance, stating that a neighbourhood plan can only be prepared within a specific period after the adoption of a local plan.
- 2.40 This is no more than common sense, as from the moment a local plan is adopted it will become gradually more out of date, and arguably the policies within it less and less directly applicable. But the development plan will still govern planning decisions; and any neighbourhood plan will still have to be “in general conformity with” its strategic policies. And neighbourhood plans, where they exist, will provide the building blocks to help with the preparation of the next local plan, just as much as the local plan will form the basis of the next generation of neighbourhood plans.
- 2.41 In other words, following the adoption of the local plan, there will be a succession of neighbourhood plans made for the various areas within the local plan area; and in due course a new local plan will be produced and the whole cycle will start all over again. Every neighbourhood plan is thus produced after the previous local plan (which will still be in force) and before the next one; the question is therefore not whether a neighbourhood plan is produced “before” or “after” a local plan, but simply how long after the previous plan. Clearly, the longer the interval since the adoption of the local plan, the more caution will be required in applying the strategic policies within it.
- 2.42 That is presumably why the requirement that a neighbourhood plan should be in general conformity with the local plan is not the only basic condition, and why it has to be set alongside the equally important requirements that the neighbourhood plan should be in line with Government policy and advice – which itself will be gradually less and less up-to-date – and that it should help to achieve sustainable development.

2.43 There is thus no explicit requirement that a neighbourhood plan should be in general conformity with the strategic policies within an emerging local plan. However, those preparing the next local plan are required to ensure that it contributes towards the achievement of sustainable development; and in doing that they must have regard to national policies and advice contained in guidance issued by the Secretary of State.¹⁷ It follows that the need to ensure that the neighbourhood plan also contributes towards that goal and has regard to national policies and advice means that a neighbourhood plan should also be in harmony with an emerging local plan.

2.44 On the other hand, a local plan that has not yet been tested for soundness at an inquiry should not be given too much weight.

2.45 More generally, the NPPF notes that the preparation of a local plan is to take into account any existing neighbourhood plans:

“155. Early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses is essential. A wide section of the community should be proactively engaged, so that Local Plans, as far as possible, reflect a collective vision and a set of agreed priorities for the sustainable development of the area, including those contained in any neighbourhood plans that have been made.”

2.46 Further, paragraph 185 notes that:

“... Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.”

2.47 This seems to make it plain that a local plan may post-date a neighbourhood plan; and also, not surprisingly, that it must “reflect” the priorities contained in any relevant neighbourhood plan, and not repeat the non-strategic policies contained within it. That does not mean that the policies in a neighbourhood plan will necessarily determine what goes in to the next local plan – otherwise nothing would ever change – however, the more recent the neighbourhood plan, the more likely it will be that the local plan will closely reflect it. From which it follows that where a neighbourhood plan is being prepared at the same time as an emerging local plan, it makes sense for the two to be in harmony. But that is not, at least explicitly, one of the basic conditions.

2.48 In this case, the emerging local plan was until recently the *Derbyshire Dales Local Plan Pre-submission Draft 2013* (“the 2013 Draft Local Plan”). The current status of that draft Plan is summarised by the District Council on its website as follows:

“The Derbyshire Dales Local Plan Pre Submission Draft was submitted by Derbyshire Dales District Council to the Secretary of State for Independent Examination on 13 May 2014. The Secretary of State, in accordance with section 20 of the [2004 Act], appointed Inspector Keith Holland BA (Hons) Dip TP MRTPI ARICS to conduct the examination to determine whether the Local Plan was sound.

The Examination in Public of the Derbyshire Dales Local Plan opened on 22 July 2014 for a period of two days. During the two days of the Examination in Public, the Inspector considered the District Councils position in respect of the Duty to Cooperate and the Objectively Assessed Need for Housing. The Examination in Public was adjourned at the

¹⁷ PCPA 2004, s 39(1)(b), (2).

close of business on 23 July 2014 and the Inspector's Initial Report was presented to the District Council on 29 July 2014.

The Local Plan Inspector concluded that the current level of housing provision proposed is inadequate and the full Objectively Assessed Need (OAN) for housing within the Derbyshire Dales in the plan period 2006-2028 should be at least 6500 dwellings. The Inspector advised that in its current form the Local Plan would not be found sound.

In light of the outcomes of the Examination in Public a resolution to withdraw the Local Plan was made on 2 October 2014 by a decision of the authority's full Council. The resolution to withdraw was made under the provision of section 22(1) of the Act, which provides for a local planning authority to withdraw a local development document at any time up to its adoption.

The Council has issued a Notice of Withdrawal in accordance with regulation 27 of the Town and Country Planning (Local Planning) (England) Regulations 2012.¹⁸

2.49 An introductory note inside the cover of the Proposed Plan states as follows:

"Within this Submission Draft of the Wirksworth Neighbourhood Plan, there are many references to the 2013 draft local plan and its policies. Because of that, the neighbourhood plan is dependent on the draft local plan being adopted.

During the preparation of this plan, it was assumed that the June 2013 draft of the local plan would be adopted early in 2015, before or at the same time as the neighbourhood plan. However, in August 2014, the local plan suffered a set-back, and it is now unlikely to be adopted soon.

Because the set-back is due to concerns that the local plan may not have identified sufficient housing land, and there seem to be no other major concerns, it is likely that the policies in the eventually-adopted local plan will prove to be identical or very similar to those in the 2013 draft (except that there may be more housing sites). Therefore, there should be no need to alter the references that the neighbourhood plan policies make to the local plan."

2.50 More recently, at the start of February 2015, the Town Council has produced a document entitled *A Note on the effects on the Neighbourhood Plan policies of delays in Local Plan preparation* (which I refer to below as "WTC Note 1"). This quoted the third of the above paragraphs from the introductory note, and continued:

"Most of the neighbourhood plan policies make sense inherently, without it being necessary for a reader to refer back to the draft local plan. However, there are five policies which refer directly to the draft local plan and, despite the sentiment quoted above, it would probably be best if the references were removed, provided that the intention and meaning of the policies was not changed. The five policies are NP1, NP6, NP9, NP12 and NP19. The following paragraphs offer suggestions for how the references might be removed."

2.51 It clearly made sense that the Proposed Plan should have been prepared in the light of the emerging Local Plan. However, the statutory requirement is that it should be in general conformity with the strategic policies contained in "the development plan" – that is, the development plan that is, for better or worse, currently in force.

¹⁸ <http://www.derbyshiredales.gov.uk/planning-a-building-control/planning-policy/local-plan/revised-derbyshire-dales-local-plan>

And it is on that basis that I have considered the Proposed Plan in relation to Basic Condition (d).

- 2.52 However, in all the circumstances, it seems to me sensible that the Proposed Plan should not explicitly rely on the existing Local Plan, which is hopefully soon to be superseded. The 2013 Draft Local Plan may never see the light of day, at least in the form in which was published; but it did exist for a while as a publicly available document, and was evidence of the direction of travel of the District Council's thinking; it can therefore be referred to, but only on that basis.
- 2.53 The approach indicated in WTC Note 1 seems eminently sensible in relation to the five policies mentioned in it (NP1, NP6, NP9, NP12 and NP19). I have taken it fully into account in my suggested wording for those policies, and in making my recommendations for consequential changes to the supporting text.
- 2.54 Overall, therefore, whilst the general approach that was adopted in the drafting of the Proposed Plan, as updated in WTC Note 1, seem sensible, a number of alterations will now be required to the text to reflect the withdrawal of the 2013 Draft Local Plan. In Chapters 4 to 11 of this Report, I have made appropriate recommendations as to the more significant alterations in relation to each Chapter of the Proposed Plan. In Annexe A I have set out further drafting amendments; it may be that I have missed one or two references to the draft plan, but the general approach I have advocated should be clear enough.

EU obligations: basic conditions (f) and (g)

- 2.55 In carrying out the examination of the Proposed Plan, I am required to consider specifically whether the making of Proposed Plan is likely to have a significant effect on
- a European site (as defined in the Conservation of Habitats and Species Regulations 2010), or
 - a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007),
- either alone or in combination with other plans or projects (additional basic condition (g)) (see paragraph 2.6 above).¹⁹
- 2.56 More generally, I am required to consider whether the making of the Proposed Plan is in general conformity with "EU obligations" (basic condition (f)).
- 2.57 The principal relevant EU obligation is under the EC directive on the assessment of the effects of certain plans and programmes on the environment (strategic environmental assessment, or SEA) (Directive 2001/42/EC). That requires, where plans and programmes are likely to have significant effects on the environment, that an environmental assessment be carried out at the time they are prepared and before they are adopted.

¹⁹ NP(G)R 2012, regulation 32; Schedule 2, paragraph 1.

2.58 The applicability of that obligation was considered by the European Court of Justice in Case C-567/10 *Inter-Environnement Bruxelles ASBL v. Region de Bruxelles-Capitale*. The Court held that

“27. The European Commission considers that, where an authority is subject to a legal obligation to prepare or adopt a plan or programme, the test of being ‘required’ within the meaning of Article 2(a) of Directive 2001/42 is met. ...

28. ... an interpretation which would result in excluding from the scope of Directive 2001/42 all plans and programmes, inter alia those concerning the development of land, whose adoption is, in the various national legal systems, regulated by rules of law, solely because their adoption is not compulsory in all circumstances, cannot be upheld.

...

31. It follows that [such] plans and programmes ... must be regarded as ‘required’ within the meaning, and for the application, of Directive 2001/42 and, accordingly, be subject to an assessment of their environmental effects in the circumstances which it lays down.”²⁰

2.59 In other words, merely because the preparation of a plan is optional, rather than compulsory, that does not avoid the need for an SEA to be prepared. That confirms that an SEA is required as part of the process of preparing a neighbourhood plan, where such a plan is likely to have significant effects on the environment.

2.60 I note that the District Council, in its *Sustainability Appraisal and Strategic Environmental Assessment*, does not consider that any of the policies in the Proposed Plan are likely to have significant effects on the environment, such that an SEA needs to be prepared, and that Natural England and English Heritage agree. In particular, I note that the policies relating to the proposed housing at the Middleton Road site – which would be a significant development – are simply providing for the details of the layout and other matters; the principle of the development will be provided for in the Replacement Local Plan when it emerges in due course. I am therefore satisfied that an SEA is not required.

2.61 The second EU obligation is that:

“any plan or project not directly connected with or necessary to the management of [a European site] but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s nature conservation objectives.”²¹

This echoes the more specific requirement of basic condition (g), referred to above.

2.62 I am not aware that any of the policies in this Plan are likely to have a significant effect on any European site.

2.63 None of those who submitted written representations have drawn attention to any other relevant EU obligation that I should take into account in my examination of the Proposed Plan. In particular, other potentially relevant EU obligations might arise under the Waste Framework Directive, the Air Quality Directive, or the Water Framework Directive. However, none of those would seem to be relevant in this case.

²⁰ [2012] 2 CMLR 30, at paragraphs 27, 28, 31.

²¹ Habitats Directive 92/43/EEC, article 6(3).

3. Other statutory requirements

Introduction

3.1 There are number of matters that I am required to consider, in addition to the basic conditions:

- whether the Proposed Plan complies with the provision made by or under sections 38A and 38B of the 2004 Act;
- whether the area for any referendum should extend beyond the neighbourhood area to which the Proposed Plan relates; and
- such other matters as may be prescribed.²²

3.2 As to the matters in the first of these categories, there are a number of provisions for the making of neighbourhood plans:

- in sections 38A and 38B of the 2004 Act;
- in Schedule 4B to the 1990 Act (introduced by section 38A(3) of the 2004 Act); and
- in the 2012 Regulations (made under sections 38A(7) and 38B(4)).

I consider whether the Proposed Plan complies with the requirements of these provisions in the remainder of this Chapter.

3.3 At the end of the Chapter I consider briefly the question of the area for a referendum.

3.4 As to the third category of matters mentioned in paragraph 3.1, none have yet been prescribed.

3.5 The Regulations provide that the submission of a proposed neighbourhood plan by a qualifying body to a planning authority must be accompanied by a statement explaining how the plan meets the above requirements.²³ Indeed, the submission of such a document is itself one of those requirements. In the case of the Proposed Plan at Wirksworth, the document has been produced to accompany it, entitled *Legal Requirements and Basic Conditions Statement*, does indeed relate to most if not all of the statutory requirements referred to above, and not just the basic conditions.

²² TCPA 1990, Schedule 4B, paragraph 8(1), applied by PCPA 2004, sections 38A(3), 38C(5)(b), (c).

²³ NB(G)R 2012, regulation 15(1)(d).

The policies in the Proposed Plan must relate to the development and use of land

- 3.6 A neighbourhood development plan is to be a plan that sets out policies for the development and use of land in the whole or part of the area in question.²⁴ This is a fundamental provision, as a plan that contains only other types of policies may be a worthwhile and commendable document, but it is not a “neighbourhood development plan” within the terms of the relevant legislation.
- 3.7 In the present case, I have noted that there are some provisions in the Proposed Plan that do not relate to the development and use of land; however, they are all clearly distinguished from the policies in the Plan, and given the name “Town Council Action Points”.
- 3.8 I am satisfied that, provided that distinction is maintained in the published version of the Plan, all of the policies in the Proposed Plan as modified do relate to the development and use of land.

The contents of the Proposed Plan must comply with other statutory requirements

- 3.9 There are various statutory requirements that must be complied with before a proposed neighbourhood plan can go forward to a referendum. Some of these relate to the process that should have taken place in connection with its preparation, before, during and after the examination. But some relate to the contents of the plan.
- 3.10 First, a neighbourhood development plan must specify the period for which it is to have effect.²⁵ In this case, the Proposed Plan clearly states on the cover that the Plan will have effect for the period 2015 to 2028. It will therefore comply with this requirement.
- 3.11 Secondly, a neighbourhood development plan may not include provisions relating to “excluded development” – principally minerals, waste disposal and nationally significant infrastructure projects.²⁶ The Proposed Plan does not include any such provisions. It therefore complies with this requirement.
- 3.12 Thirdly, a neighbourhood development plan may not relate to more than one neighbourhood area; and only one such plan may be made for each area.²⁷ The Proposed Plan relates only to the civil parish of Wirksworth; and is the only neighbourhood development plan relating to that parish. It therefore complies with these requirements.
- 3.13 Fourthly, in the event of a conflict between a policy and other material in a neighbourhood development plan, the policy must prevail.²⁸ This is no more than a

²⁴ PCPA 2004, section 38A(2).

²⁵ PCPA 2004, section 38B(1)(a).

²⁶ PCPA 2004, section 38B(1)(b), (6).

²⁷ PCPA 2004, section 38B(1)(c), (2)

²⁸ PCPA 2004, section 38B(3)

principle of law, and therefore does not have to be stated explicitly within the plan. However, it would be helpful if the Wirksworth Plan were to contain such a provision.

3.14 I recommend that a paragraph be inserted (after paragraph 1.3.4, on page 6) to the following effect:

“1.3.5 If to any extent a policy in the Neighbourhood Plan conflicts with any other statement or information in the Plan, the policy is to prevail.”

The Proposed Plan may not be submitted to a referendum if it breaches EU obligations or the Human Rights Convention

- 3.15 The planning authority is not obliged to submit a plan to a referendum if it breaches any EU obligation or any rights under the Human Rights Convention.²⁹
- 3.16 Compliance with EU obligations has been considered already, in the previous Chapter (see paragraphs 2.52 to 2.60 above). I do not consider that the Proposed Plan is in breach of any such obligations.
- 3.17 None of those who submitted written representations have drawn attention to any particular right under the Human Rights Convention that I should take into account in my examination of the Proposed Plan. And I do not consider that the Proposed Plan is in breach of any Convention Rights.
- 3.18 I therefore see no reason under either of these headings why the District Council should not submit the Proposed Plan, subject to the recommended modifications, to a referendum.

The making of the Proposed Plan must comply with the statutory requirements

- 3.19 The production of a plan and its independent examination (as opposed to its contents) must be in accordance with the provisions of Schedule 4B to the 1990 Act, and the regulations made under that Schedule – in particular with reference to the publicity given to the proposal to prepare the plan and the contents of the draft plan once made.³⁰
- 3.20 The actual statutory requirement is in regulation 14 of the 2012 Regulations, and is as follows:
- “Before submitting a plan proposal to the local planning authority, a qualifying body must—
- (a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area—
 - (i) details of the proposals for a neighbourhood development plan;

²⁹ PCPA 2004, section 38A(6).

³⁰ TCPA 1990, Schedule 4B, paragraph 4, applied by PCPA 2004, sections 38A(3), 38C; NP(G)R 2012, regulations, 14, 16.

- (ii) details of where and when the proposals for a neighbourhood development plan may be inspected;
- (iii) details of how to make representations; and
- (iv) the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first publicised; ...”

- 3.21 It is clear that this cannot require a neighbourhood plan to be brought to the attention of all the people who live or work in an area, including children and hospital patients. There has to be a balance between what might be ideal, in the absence of financial and other constraints, and what is practical.
- 3.22 Such concerns were no doubt anticipated by those creating the statutory scheme for neighbourhood plans, as the Regulations provide that the submission of a proposed neighbourhood plan by a qualifying body to a planning authority is to be accompanied by a “consultation statement”, which is to explain who was consulted, how, and with what result.³¹ It appears that the statement is not to be limited to the consultation required to be carried out under regulation 14.
- 3.23 In this case, the consultation that was carried out in this case was described fully in the *Consultation Statement*, issued in October 2014. This makes it plain that a large number of the residents of Wirksworth were involved in the preparation of the Proposed Plan, along with all the relevant statutory bodies.
- 3.24 No objections on procedural grounds to the Proposed Plan have been made by any of those who responded to the consultation exercise; indeed some respondents have commended the Town Council for the thorough way in which the exercise has been carried out.
- 3.25 I am satisfied that the consultation exercise undertaken in this case was sufficient to publicise the Proposed Plan, in a manner that was likely to bring it to the attention of people who live, work or carry on business in Wirksworth. The requirements of regulation 14 and 15 have therefore been satisfied.

Other statutory obligations

- 3.26 Where a planning authority is faced with a proposal to make a neighbourhood plan that is in essence very similar to a previous proposal that has been rejected, it may decline to consider it. That does not apply in this case. In any other case, it must consider whether the proposal to prepare a draft plan has been properly made, and submit it for independent examination.³² The District Council in this case has acted entirely correctly.
- 3.27 The Town Council and the District Council are also under a duty under section 11 of the Countryside Act 1968 to ensure that in the exercise of their functions relating to land they have regard to the desirability of conserving the natural beauty and

³¹ NP(G)R 2012, regulation 15(1)(b), (2).

³² TCPA 1990, Schedule 4B, paragraphs 5, 6, applied by PCPA 2004, sections 38A(3).

amenity of the countryside. It is clear that the Proposed Plan has been prepared with such concerns very much in mind.

- 3.28 It is also necessary for the Town Council (as a public body within the scope of Schedule 19 to the Equality Act 2010), in preparing a neighbourhood plan, to satisfy the public sector equality duty under section 149 of that Act. Subject to the concerns raised in relation to the proposals for the part-pedestrianisation of the town centre, to which I return later in this Report, I see no problem in that regard.
- 3.29 I see no need to recommend any modifications to comply with these obligations.

The area for a referendum

- 3.30 In the event that I recommend that the Proposed Plan be submitted to a referendum, the area for that referendum could extend beyond the area to which the Plan relates – that is, the parish of Wirksworth.
- 3.31 However, Wirksworth (including Bolehill) is a largely self-contained community, and the policies and proposals in the Proposed Plan will have a very limited impact on the area outside the parish.
- 3.32 I am therefore satisfied that, if a referendum is to be held, it should be only in the parish of Wirksworth.

4. Introduction, and Chapter 1

Overall structure

- 4.1 The starting point is that a neighbourhood plan should contain clear policies, and provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency (see paragraphs 2.10, 2.11, 2.18 above).³³ It is therefore important that the plan has a clear and coherent structure, and is well drafted. That is not true of all draft neighbourhood plans; but fortunately this Proposed Plan for Wirksworth is well-structured, if not always clearly drafted.

The introductory note

- 4.2 The introductory note inside the cover of the Proposed Plan needs to be re-worded to reflect the withdrawal of the 2013 Draft Local Plan (see paragraphs 2.37 to 2.51 above). I suggest the following:

“A NOTE ON THE DERBYSHIRE DALES LOCAL PLAN CONTEXT

The Plan’s relationship with the development plan is important, and is set out in statute, regulations and Government policy. The development plan for the area including Wirksworth consists principally of those policies of the Derbyshire Dales Local Plan, adopted by the District Council in 2005, that were “saved” by the Secretary of State in his direction of November 2008, together with the related explanatory text. Those are here referred to collectively as “the Local Plan”.

This Plan is to be in general conformity with the strategic policies in the Local Plan – as well as guidance from central Government, EU obligations, and the need to achieve sustainable development. This relationship is explained in the *Evidence and Explanations* document that accompanies this Plan.

This Plan has also been prepared in the light of the emerging Replacement Local Plan, and in particular the pre-submission draft of that plan produced in June 2013, to which there are many references through this Plan (as “the 2013 Draft Local Plan”). That draft was withdrawn in October 2013, but is likely to re-emerge in a broadly similar form in 2015 or 2016; and it is now unlikely to be adopted soon.

Because the set-back is due to concerns that the 2013 Draft Local Plan may not have identified sufficient housing land, and there seem to be no other major concerns, it is likely that the policies in the replacement Local Plan,

³³ NPPF, paras 15, 17.

when it re-emerges, will prove to be similar to those in the 2013 draft (except that there may be more housing sites) – although they may be subject to further change in the course of the adoption process.

It is therefore expected that there will be few conflicts between the replacement Local Plan, once it has finally been adopted, and this Plan. However, the two plans will both be part of the development plan, and will both need to be taken into account in any future decisions on planning applications.”

- 4.3 The second sentence of paragraph 1.1.3 should be deleted, together with footnote 2. New paragraphs should be added after paragraph 1.1.3, as follows:

“1.1.4 This plan is required by law to be in general conformity with the strategic policies of the Local Plan. However, it has also been drafted so as to be in conformity with the 2013 Draft Local Plan. That draft was withdrawn in October 2013, but is likely to re-emerge in a broadly similar form in 2015 or 2016.

1.1.5 This plan covers the period until 2028, which is likely to be the period covered by the replacement Local Plan when it re-emerges.”

Paragraphs 1.1.4 to 1.1.9 will need to be renumbered 1.1.6 to 1.1.11.

Other general points

- 4.4 I have already noted that, in the event of a conflict between a policy and other material in a neighbourhood development plan, the policy must prevail.³⁴ This is no more than a principle of law, and therefore does not have to be stated explicitly within the plan. However, it would be helpful if the Wirksworth Plan were to contain such a provision.

- 4.5 **I recommend that a paragraph be inserted (after paragraph 1.3.4, on page 6) to the following effect:**

“1.3.5 If to any extent a policy in the Neighbourhood Plan conflicts with any other statement or information in the Plan, the policy is to prevail.”

- 4.6 Secondly, the overall clarity of the Plan would be improved if the Vision, set out at section 1.5, were slightly redrafted so as to link more clearly to the remainder of the Plan.

- 4.7 **I recommend that section 1.5 be redrafted as follows:**

“The Vision for Wirksworth

1.5.2 The Town Council’s vision for the town and the parish sees:

- **A vibrant and prosperous market town with a caring, tolerant and active community at its heart; and**

³⁴ PCPA 2004, section 38B(3)

- **A place that is forward-looking and where people can live, work, shop, visit, and enjoy themselves in an outstanding environment that is cherished and cared-for.**

1.5.3 That vision will be achieved by balanced growth, including:

- **Addressing the declining youth population;**
- **Bringing forward sites for development to meet the current and future needs of the community; and**
- **Ensuring that such development is sustainable in its use of energy and complements the town's character.**

1.5.4 The following chapters of this Plan show how this vision will be achieved in relation to particular topics, by:

- **Insisting ... distinctive character (Chapter 2);**
- **Supporting ... live here (Chapter 3);**
- **Sustaining ... local people (Chapter 4);**
- **Encouraging development and investment to build the local economy; Supporting growth and innovation within the local economy, in particular building on the area's distinctive strengths, including its creative entrepreneurial community; and Striving to become a more energy-efficient / low carbon town (Chapter 5);**
- **Promoting ... pedestrians and cyclists (Chapter 6); and**
- **Maintaining ... are met (Chapter 7)."**

It will be appreciated that the wording of the bullet points in the new paragraph 1.5.4 follow precisely the wording at the head of each of the following chapters.

5. Chapter 2, and Appendixes 1 and 2: Quality and character of development

- 5.1 This Chapter is in essence requiring new development to be of high quality. In the light of the recent history of Wirksworth, and in particular the Wirksworth Project, that seems entirely sensible.
- 5.2 The District Council suggests that Policy NP1 imposes more onerous requirements than it would require. That may be so, but it does not mean that it is not in conformity with the strategic policies in the Local Plan (and thus not in compliance with the Basic Conditions). And the NPPF does in several places emphasise the importance of creating a high quality environment (for example, at paragraphs 7, 9, 17, 50 and 55, and section 7).
- 5.3 The District Council has also noted that the reference in Policy NP2 to sites whose immediate environment has no local distinctiveness is perhaps unfortunate, in a plan that goes to great lengths to analyse the character of each sub-area of the town. I agree. The recommended rewording accordingly reflects the response of the Town Council to that comment.
- 5.4 A significant strand of the policies and supporting text in this chapter relates to the Building for Life (BfL) criteria. These relate only to residential development; and would be more appropriately located in Chapter 3, which deals with housing, so that residential developers can find in one place all the requirements relating specifically to housing. See further paragraph 6.13 of this Report.
- 5.5 Policies NP1 and NP2, as currently drafted, are slightly confusing. Policy NP1 appears to relate only to development outside the settlement boundary. Policy NP2 is headed “quality and character of development within the settlement”, but the first third refers to “development in the plan area”, which is more extensive than the area for which Character Guidance has been prepared, which in turn is more extensive than the settlement area. It is not clear whether the remainder of Policy NP2 refers to only to development within the settlement boundary, or also to development elsewhere. And paragraph 2.7.2 suggests that all development must comply with both policies, which cannot be right as Policy NP1 only applies to development that involves the growth of the settlement.
- 5.6 There is however no reason why the whole of Policy NP2 should not apply in principle throughout the plan area, recognising that the references to Character Guidance will only apply in areas where it exists.
- 5.7 Further, the first third of Policy NP2 relates to the information that is to be provided with planning applications; the remainder relates to the criteria by which to determine whether proposed development is acceptable. Part B of Policy NP2 refers to the particular cases noted there; and since the policy states that A or B are

alternatives, presumably Part A applies wherever Part B does not; but this is not clear. Points iii and iv are referred to in both parts A and B, and therefore presumably apply in all cases – although point iii (relating to BfL criteria) relates only to residential development.

- 5.8 There is no explicit reference in the Policies to Appendix 1, and to the useful material in it, merely a general reference to “character guidance”. That should be rectified.
- 5.9 Nor is there an explicit reference (other than in footnote 17) to the concept statements in Appendix 2. That too should be rectified; and the material common to all of the sites incorporated into the main body of the Plan. Appendix 2 should then be split into separate appendices, each dealing with a specific site.
- 5.10 As noted earlier (see paragraph 2.19), a policy that is not “clear and unambiguous” is not in accordance with the basic conditions.
- 5.11 The wording of Policies NP1 and NP2, and the explanatory text preceding them, should thus be clarified. The following recommendations have been framed so as to retain what seems to be the intention behind the two policies, as presently drafted. If I have misinterpreted the precise ambit of some part of those policies, the recommended wording of the policies and the explanatory text can be amended accordingly.
- 5.12 The first part of the existing Policy NP2 relates to the need to include certain information within a planning application. The policy itself should properly include only an indication of the criteria that will determine whether or not an application is successful; clearly it will be for applicants to prove that such criteria apply in relation to their applications. But it is helpful to set out what is likely to be required. The relevant requirements should accordingly be set out in the supporting text (see proposed paragraph 2.7.4).
- 5.13 I recommend that**
- **paragraphs 2.5.4 and 2.5.5, and footnote 11,**
 - **the last sentence of paragraph 2.7.2, and**
 - **those parts of Policy NP2 relating to BfL criteria**
- are moved to Chapter 3, in accordance with paragraph 6.xx of this Report.**
- 5.14 I recommend that a new paragraph 2.5.4 is inserted:
- “2.5.4 As housing development is likely to be the largest new use of land during the plan period, its impact on Wirksworth’s visual environment will be significant. Therefore, it is important that the quality and character of new housing is of a high standard, and has a beneficial impact on Wirksworth’s townscape. Chapter 3 addresses this in the context of housing generally.”**
- 5.15 I recommend that for paragraphs 2.7.1 to 2.7.2 there should be substituted:

- “2.7.1 Policy NP1 applies where development is proposed that involves the growth of the settlement beyond the boundary shown on the Proposals Map. Policies NP1 and NP2 both seek to apply the character guidance set out in Appendix 1 to the determination of all planning applications. All new development will be expected to comply with these two policies, as appropriate.**
- 2.7.2 Policy NP3 applies the concept statements in Appendixes 2 to 5 to the determination of applications affecting the following sites:**
- **The Middleton Road housing site identified in the 2013 Draft Local Plan (Appendix 2);**
 - **Coneygreave House, Cromford Road (Appendix 3),**
 - **Haarlem Mill, Derby Road (Appendix 4); and**
 - **Wards Yard, Derby Road (Appendix 5).**
- 2.7.3 The concept statement in each of the Appendices provides supplementary guidance on what will be expected in a development proposal for the site in question. It is not a detailed design proposal, but a set of guiding principles and ideas, allowing flexibility in proposals whilst ensuring that fundamental priorities are delivered. The concept statements should be considered alongside the other policies of this Plan and the Local Plan.**
- 2.7.4 In order to demonstrate compliance with policies NP1 to NP3, all applications for development should explain:**
- 1 How the development relates to the site and the wider area, in the context of the Character Guidance, and how that has affected the design of the proposed development; and**
 - 2 How the development and its proposed soft and/or hard landscape design will contribute positively to the quality of development in Wirksworth.**
- 2.7.5 The policies in this Chapter apply to all new development. In addition, Policy NP4, in Chapter 3, will apply to new residential development.”**

5.16 I recommend Policies NP1 and NP2 are re-worded as follows:

“Policy NP1:

Setting and shape of the settlement

Planning permission will be granted for development which involves the growth of the settlement, but normally only if it:

- 1 is in line with the vision for Wirksworth set out in Chapter 1 and**
- 2 strengthens and improves on the defining landscape and settlement qualities identified in the Character Guidance in Appendix 1 to this Plan, so far as relevant.**

Policy NP2

Quality and character of development

Planning permission will be granted for proposed development only if it accords with A or B below:

- A** In cases where the immediate environment of the site has less visual, social, natural or historic quality or little sense of place, or where the proposed use of innovative technology requires innovative design, the development:
- i.** should take its lead from the characteristics of Wirksworth recognised in the Character Guidance, so far as relevant; and
 - ii.** should contribute positively to the quality of development in Wirksworth.
- B** In other cases, the development:
- i.** should respect the local character and historic and natural assets of the surrounding area;
 - ii.** should take every opportunity, through its use of appropriate materials and landscape design, to reinforce local distinctiveness and a strong sense of place as identified in the Character Guidance; and
 - iii.** should take every opportunity to achieve ecological sustainability and a carbon neutral development, including the use of energy efficiency measures and low-carbon energy generation.

Policy NP3

Sites with concept statement

In cases where there is a concept statement for a site, in Appendixes 2 to 5 of this Plan, proposed development should be generally in accordance with that statement.”

Concept statements for specific sites

- 5.17 The existing Appendix 2 contains much valuable material on the possible development of various specific sites; but its structure is not entirely clear. As noted above, it would be simpler for users if the material relating to each site was in a separate appendix, each with a list of contents, and relevant illustrative and explanatory material. The introductory material to each part of Appendix 2 (headed “Status of the Concept Statement”) can then be omitted.
- 5.18 It is perhaps important to note that the combined effect of paragraphs 2.7.2 and 2.7.3 and Policy NP3 is not to be a clear zoning of the sites in question for

development, but rather simply “a set of guiding principles and ideas”, which will have to be taken into account by the District Council when considering any planning application for any of the sites. If, once the replacement Local Plan has been adopted, it transpires that one or more of the sites has not been allocated for development, for whatever reason, the fact that more detailed guidance has been given in the Neighbourhood Plan will cease to be relevant, since the Neighbourhood Plan will, by definition, no longer be up-to-date.

- 5.19 Lafarge, the prospective developer of the land at Middleton Road, the largest of the sites, comments that the vision for the site set out in the Concept Statement does not accord with its vision or the District Council’s thinking. And it has produced a proposed master plan for the site.³⁵ Future Wirksworth comments that the scheme in the drawings produced on behalf of Lafarge is largely (80%) in accordance with the Concept Statement.
- 5.20 I am not in a position to comment on which vision for the site is more appropriate, nor as to whether the Lafarge scheme is in fact consonant with the vision in Appendix 2. However, there is no reason why a Neighbourhood Plan should not set out one possible view of how a particular site could be developed. Clearly, once a planning application has been submitted, that vision will have to be taken into account alongside all other policies in the Development Plan, and any explanatory material submitted in support of the proposal, and a decision made accordingly.
- 5.21 But I see no reason to suggest that the new Policy NP3, and the Appendixes to which it refers, do not together comply with the Basic Conditions.
- 5.22 It would be helpful to include on the Proposals Map the four sites that are the subject of the Concept Statements in the appendixes.

Character guidance

- 5.23 Paragraphs 2.3.4 and 2.3.5 are identical to paragraphs 2.4 and 2.5 of Appendix 1. It would therefore be possible to omit them, and the references to them in paragraph 2.3.3. There could then be a new paragraph 2.3.4:

“2.3.4 These characteristics are explored in detail in paragraphs 2.5 and 2.6 of Appendix 1 to this Plan.”

³⁵ The Lafarge representations also refer to NP Policy NP3 and paragraphs 5.3.7 and 5.3.17. There are no paragraphs with those numbers, either in the main body of the Proposed Plan or in Appendix 2 relating to the Lafarge site; and the comments do not appear to relate to Policy NP3 in Chapter 3.

6. Chapter 3: Social sustainability and housing

Affordable housing

6.1 Clearly the principal policy base for requirements as to affordable housing will continue to be in the adopted Local Plan, until such time as it is replaced. However, that Plan contains suitable policies that are broadly similar to those that were included in the 2013 Draft Local Plan. The policies and supporting text in the Proposed Plan were drafted to complement those in the 2013 Draft Local Plan; but they would stand equally well, at least on an interim basis, alongside those in the Local Plan for as long as they remain in force. But the current position does need to be reflected in the wording of this Chapter.

6.2 **I recommend that the first half of paragraph 3.1.4 is redrafted as follows:**

“The Local Plan contains a suite of policies supporting the provision of affordable housing. The 2013 Draft Local Plan also addressed the issue of social sustainability, and sought “a mix of housing that contributes positively to the promotion of sustainable and inclusive communities” ... including “a proportion of housing suitable for newly forming local households. Policy DMP17 in the 2013 Plan sought “to maximise the delivery of affordable housing”, and set out clearly the proportions of housing that would be required in new residential developments. Strongly supporting that approach, this Plan does not need to have a suite of policies addressing ...

6.3 Subject to that amendment, the approach taken in the Proposed Plan towards the provision of affordable housing meets the Basic Conditions.

Size of new homes (Policy NP3)

6.4 I note the concern that has been expressed by the District Council as to Policy NP3 and the supporting text, and the response of Future Wirksworth to those comments. It seems to me that, in relation to the 3-dwelling threshold, the adoption of the Greater London standards, and the 65% figure for larger units, the approach taken in the Proposed Plan is justified. That does not mean that it is the only approach that could be taken in relation to those issues, but the reasons given by Future Wirksworth, they reflect the particular circumstances in Wirksworth, and do not lead to the Proposed Plan failing to comply with the Basic Conditions. But those requirements should not be mandatory.

6.5 However, the requirements of Part C of Policy NP3, in relation to marketing material, are not appropriate to form the subject matter of either a planning condition or a planning obligation, in that they would not relate to the acceptability of the development. It is true that vendors and others now have to provide energy

performance certificates in certain circumstances, but that is as a result of the Energy Performance of Buildings Regulations 2012, not under planning legislation. The proposed requirement would in any event be uncertain in operation and wholly unenforceable in practice.

6.6 Following the withdrawal of the 2013 Draft Local Plan, the last sentence of paragraph 3.1.9 is redundant.

6.7 Footnote 21 should contain the website address of the Greater London standards. The existing Appendix 4 is then redundant.

6.8 **I recommend that:**

- **footnote 21 be amended to read:**
“The Greater London standards may be found at [web address].”
- **the last sentence of paragraph 3.1.9 be omitted;**
- **Policy NP3 be re-numbered NP4;**
- **in Parts A and B of that policy the word “must” be replaced by “should” on each of the four occasions where it occurs;**
- **Part C of that policy be omitted; and**
- **Appendix 4 be omitted.**

Second homes (Policy NP4)

6.9 This policy, and supporting text, is not directly reflecting the Local Plan, but it is designed to supplement the policies of the Local Plan (and in due course its replacement), in the interests of achieving a sustainable community. The District Council, on balance, considers that it is appropriate; and it notes that the Policy will be operated through the imposition of conditions when planning permission is granted for new housing.

6.10 Lafarge considers that the imposition of such a condition would be inappropriate in the case of a Middleton Road site. But, as the District Council points out, such a condition need not be imposed where circumstances suggest that it would be inappropriate. And Mr Gibbons points out that second homes are not always such a bad thing, a view for which there may be some support. In the light of such concerns, and in view of the relatively experimental nature of such policies, it would be appropriate to soften slightly the wording of the policy.

6.11 **I recommend that in Policy NP4 (renumbered NP5), the word “normally” be inserted before “be granted”.**

6.12 Subject to that amendment, I consider that existing Policy NP4 is in accordance with the Basic Conditions.

Quality of residential development

- 6.13 As noted above, a significant strand of the policies and supporting text in Chapter 2 of the Plan relates to the Building for Life (BfL) criteria. Since these relate only to residential development, they would be more appropriately located in this Chapter (3), so that residential developers can find in one place all the requirements relating specifically to housing.
- 6.14 More specifically, the policy aim that new residential development should comply with BfL criteria should be phrased as such. Thus paragraph 2.5.4, as drafted, states that compliance with all 12 BfL criteria is an “ideal”; paragraph 2.5.5 states that “BfL 12 should be mandatory”; and paragraph B(iii) of Policy NP2 states that development “should score 12 greens”. A mandatory requirement is not appropriate, as circumstances may suggest that a compromise on one or more of the BfL greens may be appropriate in a particular case.
- 6.15 The provision of open space in association with residential development, referred to in passing in the existing paragraph 3.3.1, is best dealt with in Chapter 4, which does not relate specifically to residential development.
- 6.16 **I recommend that in paragraph 3.3.1,**
- **after “standard,” the word “and” is inserted; and**
 - **the words after “townscape” are omitted.**
- 6.17 **I recommend that, after paragraph 3.3.1, the following new material is inserted:**
- “3.3.2 An excellent way of getting residential development to add to the overall quality of the area and avoid mediocrity is to apply Building for Life 12 (BfL 12), a Government-backed standard for well-designed homes and neighbourhoods which can help ensure that a high standard of design is achieved for new development.**
- 3.3.3 The 2013 Draft Local Plan did not make BfL12 mandatory. Because it was looking at the local plan area as a whole and making policy for such an extensive area, that decision was justifiable. For Wirksworth, however, the standards set out in BfL12 should be aspired to wherever possible. BfL 12 sets out twelve criteria to assess the quality of a development scheme. Proposals coming forward in Wirksworth should thus be exemplary, ideally scoring twelve out of twelve greens when assessed against those criteria.**
- 3.3.4 In order to show that good design is at the heart of proposed new developments, applicants should include with their residential planning applications an assessment which clearly explains how they perform against each of the twelve criteria in BfL12.**

Policy NP6

Quality of residential development

Planning permission will normally only be granted for residential development if it scores 12 greens under the criteria in *Building for Life 12* (BfL12).

- 6.18 I recommend that a new footnote is included, referred to at the end of the new paragraph 3.3.2:**

“The Building for Life (BfL) criteria may be found at [web address]. References to BfL 12 refer also to any successor documents which may replace or modify it.”

The existing Appendix 3 can then be omitted.

The impact of carbon emissions (Policy NP5)

- 6.19 This policy is in advance of the requirements of the adopted Local Plan, but it is in accordance with the desire to achieve full sustainability. The supporting text rightly pointed out that the NPPF warned against imposing idealistic requirements that threatened viability. And some of those making representations objected to introducing the possibility of developers having a chance to justify departure from the standards being imposed (by the production of “open book evidence”). I note that the District Council recognises the problems that could be caused by a policy such as this, but nevertheless supports it.
- 6.20 As with Policy NP4, in the light of such concerns, and in view of the relatively experimental nature of such policies, it would be appropriate to soften slightly the wording of this policy. It will then be for developers in particular cases to seek to justify lower standards than those referred to – either in the light of general experience with the impact of such requirements on financial viability, or by reference to particular site-specific circumstances – by providing open-book evidence. It would certainly not be appropriate for such a policy to be mandatory, however much that might seem desirable to some.
- 6.21 Subject to such amendment, I consider that this policy is in line with the Basic Conditions.
- 6.22 Footnote 23 should contain the website address of the Code for Sustainable Homes. The existing Appendix 5 is then redundant (see also paragraph 8.13 below).
- 6.23 I recommend that:**
- **footnote 23 be amended to read:**

“The Code for Sustainable Homes may be found at [web address].”
 - **Policy NP5 be re-numbered NP7;**

- **in that policy the word “must” be replaced by “should”, and the last paragraph of that be omitted; and**
- **Appendix 5 be omitted.**

Complementary sites and self-help development

- 6.24 I can see that the absence of a formal policy relating to the additional sites referred to in paragraph 3.4.1 may help to give them a lower priority for development than the two main sites identified in the 2013 Draft Local Plan. I have no basis on which to make any recommendations in this regard.

7. Chapter 4: Community well-being

Youth centre, community space and sports facilities (Policies NP6 to NP8)

- 7.1 Policies NP6, NP7 and NP8, and the supporting text are in accordance with the Basic Conditions, provided that Policy NP6 is amended as proposed by the Town
- 7.2 Council in the light of the withdrawal of the 2013 Draft Local Plan.
- 7.3 **I recommend that Policies NP6 to NP8 are renumbered NP8 to NP10, and that the new Policy NP9 is amended as proposed by the Town Council.**

Protecting existing community spaces (Policy NP9)

- 7.4 Section 4.4 of the Proposed Plan was drafted in relation to the then emerging replacement Local Plan. But a similar approach was also taken – albeit phrased slightly differently, and in less detail – in the adopted Local Plan, for example at Policies L2 and L3. And some of the actions required are in the list of Council Action Points. I am therefore satisfied that, subject to suitable amendments to paragraph 4.4.1 and Policy NP9 itself, this section is in accordance with the Basic Conditions.
- 7.5 **I recommend that:**
- **in paragraph 4.4.1, for the second and third sentences be substituted:**

The first steps in protecting them were to be taken by the 2013 Draft Local Plan (policies DMP 15, SP 10, DMP 20 and DMP 21). Those policies strongly resisted the loss of community facilities and recreational areas and other open spaces, but did not identify those places in a list or on the Proposals Map (other than the National Stone Centre and The Meadows); this Plan does so, in policy NP9.
 - **Policy NP9 (renumbered Policy NP11) be amended as suggested by the Town Council.**

Allotments (Policy NP10)

- 7.6 The District Council notes that the supporting text to Policy NP10 identifies the need for allotments, but that the policy itself does not identify any specific site that could be used for that purpose. I agree with that concern, but I agree too with the Town Council's response – namely that it has failed so far to identify a suitable site, and that it is not a sufficient reason to delay the whole plan. But it might be sensible to add to the end of the last of the Town Council action points: “, and in particular to identify a suitable site”. Once a site has been identified, and its

acquisition has been funded, its allocation for allotments will no doubt have an easy passage through the planning process.

- 7.7 Subject to that, Policy NP10 (**to be renumbered NP12**) meets the Basic Conditions.

8. Chapter 5: Economy, tourism and energy

Tourism (Policy NP11)

- 8.1 Policy NP11 and the supporting text in section 5.2 were drafted by reference to the 2013 Draft Local Plan, and will need to be adjusted to take account of its withdrawal (see Annexe A for suggested wording).
- 8.2 As for the policies themselves, the District Council in its representations on the Proposed Plan indicates that Policy NP11 A is satisfactory, but that NP11 B should be amended to take account of tourism-related development that may not in itself exist primarily to inform and interpret the local area but which is nevertheless appropriate. In response the Town Council suggests that such development may be appropriate within the settlement framework, but not in the surrounding countryside.
- 8.3 The NPPF, at paragraph 28, indicates as follows:
- “To promote a strong rural economy, local and neighbourhood plans should: ...
- support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres; ...”
- 8.4 This seems to be wholly in line with the approach taken by the District Council. It follows that the retention of the first criterion in Policy NP11B would not be in accordance with guidance issued by the Secretary of State, and thus not meet the Basic Conditions.
- 8.5 I note that Policy NP11B refers to planning permission being granted for “new buildings *for* other tourism development”. I do not know whether the word “for” is simply a misprint for “or”, or whether it was deliberately used to limit the scope of the policy to buildings (as opposed to outdoor activities). However, Policy L2 in the Local Plan relates to new sport and recreation facilities, and the word “or” would therefore be more appropriate.
- 8.6 **I recommend that Policy NP11 is reworded as follows:**
- “NP13**
- Overnight accommodation and tourism development***
- Planning permission will be granted for**
1. **changes of use to hotel and other overnight accommodation and for extensions to existing hotels or bed and breakfasts, and**
 2. **new buildings and other development related to tourism,**

provided that they would not have significant harmful impacts on the local community, the wider visitor experience or the character or appearance of natural and historic environment of the plan area and the surrounding countryside.”

- 8.7 Such a rewording would also support any viable proposals that may come forward of the kind suggested by Mr Gibbons.
- 8.8 The Derbyshire Eco Centre has commented that the planned greenway / cycle route from the Old Lane car park to the Porter Lane, and on to Middleton, should be shown on the Proposals Map. That appears to be the route of the High Peak Trail, which is already shown on the Proposals Map – and referred to at paragraphs 5.2.2, 6.3.1, 6.4.8, and 6.5. It might be helpful if this was clarified by the insertion into paragraph 5.2.2, after “The High Peak Trail”, of the words “(part of National Cycle Network 54 and the White Peak Loop)”.

Business and employment (Policies NP12 and NP13)

- 8.9 The two policies and the supporting text in sections 5.4 and 5.5 are sensible, site-specific proposals. The sites concerned could usefully be shown on the Proposals Map. The text was, once again, drafted by reference to the 2013 Draft Local Plan, and will need to be adjusted to take account of its withdrawal (see Annexe A).
- 8.10 Subject to that, and subject to the amendment proposed by the Town Council to Policy NP12B, I consider that Policies NP12 and NP13 **(to be renumbered NP14 and NP15)** meet the Basic Conditions.
- 8.11 Mr Gibbons makes a number of points about the future of the Haarlem Mill site; but that will no doubt form the subject of detailed negotiations in relation to specific proposals; and generalised policy commitments would not assist at this stage.

Renewable energy (Policies NP14, NP15 and NP16)

- 8.12 Policy NP14 is for non-residential buildings the equivalent of Policy NP5 for residential buildings. The same considerations, outlined earlier in this Report (at paragraphs 6.19 – 6.22), apply in relation to both policies.
- 8.13 **I recommend that:**

- **footnote 33 be amended to read:**

“The BREEAM standards may be found at [web address].”
- **Policy NP14 be re-numbered NP16;**
- **in that policy the word “must” be replaced by “should”, and the last paragraph of that be omitted; and**
- **Appendix 5 be omitted.**

8.14 The principle underlying Policy NP15 – relating to the upgrading of existing buildings – is commendable, but it needs to be adjusted to ensure that it does not conflict with policies relating to the conservation of heritage assets if it is to comply with the Basic Conditions.

8.15 I recommend that:

- **the third and fourth sentences of paragraph 5.7.8 are replaced with:**
“Policy NP16, which applies to both residential and non-residential development, will help to facilitate the upgrading of buildings where the necessary works require planning permission, although it will need to be read alongside national and local policies requiring the protection of heritage assets from harm.”
- **Policy NP15 be re-numbered Policy NP16, and reworded as follows:**
“Planning applications for alterations to buildings required to improve their energy conservation qualities will be considered sympathetically, provided that works to heritage assets do not cause harm to their significance.”

8.16 Similarly, Policy NP16, providing for development to generate renewable energy, is commendable in principle; but, as pointed out by Natural England, such development would not be sustainable if it were to cause harm to landscape character, biodiversity or geodiversity. Nor would it be in accordance with national and local policies if it harmed heritage assets or their setting.

8.17 Such energy-generating development may be in the rural parts of the plan area, and may in some cases supply energy to the surrounding area. The Policy needs to be adjusted to allow for this.

8.18 I recommend that:

- **at the end of the last sentence of paragraph 5.7.9 be added:**
“, and they should respect their surroundings.”
- **Policy NP16 be re-numbered Policy NP18, and reworded as follows:**
“Planning permission will normally be granted for developments the main purpose of which is to provide power from renewable energy sources primarily for use in the plan area and its immediate vicinity, provided that they do not cause harm to:
 - landscape character, biodiversity and geodiversity interests; or
 - heritage assets or their setting.”

8.19 Subject to the above amendments being accepted, I consider that Policies NP14, NP15 and NP16 are in accordance with the Basic Conditions.

9. Chapter 6: Transport and movement

- 9.1 This Chapter, in spite of its name, largely concerns facilities for pedestrians and cyclists. That is not a criticism, but it does highlight the limited nature of what is proposed. The issues raised in paragraph 6.3.2 thus remain largely unaddressed, save in relation to the more detailed consideration given to the town centre in the following chapter.
- 9.2 The District Council draws attention to a number of deficiencies in the wording of Policy NP17. I agree that it is not happily phrased. The existing Part D of the policy relates to a quite specific issue – the provision of a new pedestrian and cycle link along the Hannages. The remainder of the policy appears to be dealing with pedestrian and cycle facilities in fairly general terms, emphasising the desirability of protecting existing facilities and providing new ones wherever possible.
- 9.3 Some degree of clarification would be helpful, emphasising that the issues relating to pedestrians and cyclists are merely one material consideration that must be taken into account alongside any others that might be relevant in a particular case. This would ensure that the policies would be capable of being applied when determining planning applications (see paragraph 2.18 above), and thus meet the Basic Conditions.
- 9.4 I recommend that Policy NP17 is re-worded as follows:

“Policy NP19

Provision for pedestrians and cyclists

Favourable consideration will be given to proposals for development that:

- 1. enable users to reach the town centre, schools, and other social facilities on foot or by cycle by routes avoiding difficulties such as busy roads, narrow footways, and steep inclines; or**
- 2. improves conditions for pedestrians and cyclists using existing routes.**

Development that would adversely affect other existing footpath and cycling routes will normally be refused.

Policy NP20

New pedestrian and cycle route

Planning permission will be granted for the new footpath and cycle route along the Hannages, shown on the proposals map. Development that would prejudice the provision of that route will be refused.”

10. Chapter 7: Retail and Wirksworth town centre

Retail impact

10.1 Policy NP18, and the supporting text at paragraphs 7.5.1 to 7.5.4, seek to assist in maintaining the viability of the town centre by imposing a requirement on developers of new retail floorspace to submit a retail impact assessment. This is said to be broadly in line with the policy in the NPPF, paragraph 26 of which provides as follows:

“26. When assessing applications for retail ... development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.”

10.2 The proposed policy requires an impact assessment for new development of over 200 sq m. That is a very low figure, but is said to be justified as being the size of the largest shop in Wirksworth at present. Given that the NPPF explicitly requires plans to set a locally determined threshold, that approach seems reasonable.

10.3 I note that the District Council raises no objection to the principle of the policy, but suggests that it should be referable to the impact of proposed retail development on town centre viability generally, rather than specifically to traders selling similar goods. I agree.

10.4 The proposed policy also departs from the NPPF in that it applies to new development within the town centre as well as out of centre. Given that detrimental impact can be caused by either type of development, that approach seems entirely reasonable, and in accordance with the principle of sustainable development. However, in the light of paragraph 7.5.16, the first paragraph of the policy is superfluous.

10.5 I recommend that Policy NP18 be moved so as to follow paragraph 7.5.4, and reworded as follows:

“Policy NP21

Impact of new retail development

All planning applications for new retail floorspace exceeding 200 sq m must be accompanied by an impact assessment, to include assessment of:

- **the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and**
- **the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.”**

Primary frontage

- 10.6 Policy NP20 seeks to extend the Primary Shopping Frontage. The policy as drafted refers to the defined area in the Derbyshire Dales Local Plan. Elsewhere in the Proposed Plan, references to the Local Plan are to emerging 2013 Draft Local Plan; and I note that the 2013 Plan contains a policy (DMP14) which refers to Primary Shopping Frontages a defined on the Proposals Map. I have not been supplied with a copy of that Proposals Map; nor have I been able to find it on the District Council website. However, it is the existing Local Plan that is the starting point for my consideration of the Proposed Plan for Wirksworth, so I have primarily had regard to the Proposals Map in the existing Plan. And of course I have myself visited Wirksworth.
- 10.7 The existing Local Plan contains three relevant policies:
- Policy S1 encourages the grant of permission for retail and other appropriate uses in “the Town Centre” as defined on the Proposals Map;
 - Policy S4 discourages the loss of retail uses within “the Primary Shopping Frontage”, as defined on the Map; and
 - Policy S5 discourages amusement centres only if they are within the Town Centre but not within the Primary Shopping Frontage.
- 10.8 The Local Plan Proposals Map shows the Town Centre (in pale blue) as including:
- the whole of the Market Place, up to the junction with Dale End,
 - both sides of St John’s Street down to just south of the junction with St Mary’s Gate,
 - the first few properties on either side of Coldwell Street and Harrison Drive.
- 10.9 Within that area, the Primary Shopping Frontage is defined (by an orange line) to include:
- the north / west side of the Market Place, and
 - the east side of St John’s Street down to just south of the junction with St Mary’s Gate.

- 10.10 The Proposals Map forming part of the Wirksworth Plan suggests that the “existing” primary shopping frontage (shown in green) includes:
- the north / west side of Market Place, up to the junction with Dale End, and
 - the east side of St John’s Street, from just south of the junction with St Mary’s Gate to a point midway between Wood Street and Canterbury Rd.

The proposed extension to the primary shopping frontage (in purple) includes both sides of St John’s Street from just south of the junction with St Mary’s Gate up to the junction with Coldwell Street, and round the corner to include the Library.

- 10.11 That suggests to me, firstly, that the two designations in the Wirksworth Plan Proposals Map have been inadvertently transposed. Presumably the extensions to the frontage would be at either end of the existing frontage, not vice versa. Secondly, assuming that the designations are therefore reversed, the resulting primary frontage does not accord with the primary frontage in the existing Local Plan – although it may of course accord with the map forming part of the 2013 Draft Local Plan, which I have not seen.
- 10.12 Leaving aside the difficulties of definition, the District Council takes issue with the proposed extension of the primary frontage in the Proposed Plan, considering that it leads to a greater risk of vacant premises and a resulting threat to viability. The Town Council responds by acknowledging that possibility – which is indeed noted in the Proposed Plan itself – but considering that is a risk worth taking; if the centre does not grow, it will decline.
- 10.13 The Retail and Town Centre Study emphasised that the priority for Wirksworth should be to retain existing local services and retail; provision, and seek to distinguish the centre qualitatively by emphasising the strength and attractiveness of the local independent offer.³⁶ Against that evidential background, and looking at the position on the ground, it seems to me that the hope of the Town Council (as reflected in paragraph 7.5.6 of the Proposed Plan) that extending the primary shopping frontage may encourage the growth of the centre is wishful thinking. As it points out, this policy will be subject to review; and if there is indeed significant pressure to expend the centre, that could be accommodated; but I should be very surprised if that were to occur.
- 10.14 Overall, therefore, I see no firm evidence that it is justifiable to expand the primary shopping frontage at this time. And the definition of the primary shopping frontage in the existing Local Plan seems to accord with the factual position on the ground. I therefore see no need for the first part of Policy NP19.
- 10.15 The policy relating to temporary changes of use seems unexceptionable in principle; but it would seem to be appropriate for it to apply to the Town Centre, as defined in the Local Plan, rather than just in the Primary Shopping Frontage.

³⁶ *Peak Sub-Region Retail and Town Centre Study: Final Report*, February 2009, para 14.13; see also paras 9.70, 9.75.

- 10.16 I recommend that paragraph 7.5.6 be omitted, and that Policy NP19 be moved so as to follow existing paragraph 7.5.7, and reworded as follows:**

“Policy NP22

Temporary uses in the town centre

Within the town centre, as defined in the Proposals Map, permission will normally be granted ... residents.”

- 10.17 The extent of the Town Centre, as shown on the existing Local Plan Proposals Map, should also be shown on the Proposals Plan for the Neighbourhood Plan – not least as the Local Plan will hopefully cease to exist at some time in the next five or so years.

The Tuesday market

- 10.18 As pointed out by the District Council, the first part of Policy NP20 is largely superfluous; but it could be appropriate if there is a need in the future for permanent structures of any kind.

- 10.19 I recommend that Policy NP20 be moved so as to follow the existing paragraph 7.5.12, and is reworded as follows:**

“Policy NP23

Tuesday market

Proposals to improve the Tuesday market, or to relocate it to an appropriate new location within the town centre, will be considered sympathetically, and in the light of other policies in the development plan, provided that it does not lead to a net loss of car parking.”

Pedestrian / traffic relationship

- 10.20 The proposal for a major re-ordering of the footways and carriageways in the town centre, in line with the shared surface approach, seems to be a generally commendable initiative, albeit that – as rightly pointed out by some of those responding to the draft Plan – any works of this kind will need to be designed (presumably by or on behalf of the highways authority) with the needs of disabled people firmly in mind.

- 10.21 It is likely the necessary works will either be outside the definition of development requiring planning permission, by virtue of section 55(2)(b) of the 1990 Act, or that any necessary permission will be granted by Part 13 of Schedule 2 to the 1995 Order. It is thus entirely correct that such a proposal is more properly categorised as a Town Council Action Point. However, it may do no harm to include a policy facilitating the implementation such a scheme as appropriate.

- 10.22 I recommend that Policy NP21 be moved so as to follow paragraph 7.5.16, and reworded as follows:**

“Policy NP24

Pedestrians and traffic in the town centre

Permission will not be granted for any development that would prejudice the coming forward and implementation of a scheme for the improvement of the footways and carriageways in central Wirksworth, to improve the relationship between pedestrians and vehicles.

Where planning permission is required for works to be carried out in association with such a scheme, any application will be considered sympathetically in the light of other policies in the Plan.

Parking

- 10.23 There is clearly a problem with town centre parking. Policy NP22 **(to be renumbered NP25)** is thus a prudent measure to ensure that at least it does not get any worse.
- 10.24 The identification of the site at Wood Street for the extension of an existing car park is also prudent; and the fact that there is no indication that such a proposal is likely to come forward in the immediate future is no reason for the Policy to be excluded. It is true that the NPPF indicates that local plans should not seek to protect a site allocated for a particular use when there is no reasonable prospect of the site in question being used for that purpose.³⁷ But the Proposed Plan is seeking to consider the position over the next two decades; and it would be wise at least to note the possibility of the site being used at some time in the future for parking.
- 10.25 **I recommend that Policy NP23 be reworded as follows:**

“Policy NP26

Possible car parking at Canterbury Road

The land at the junction of Wood Street and Canterbury Road, shown on the Proposals Map, is particularly suitable for a new car park, and may in the long term be used for that purpose. Any planning application for other forms of development on this site will therefore be determined in the light of the likelihood, at the time of the application, of the site coming forward for parking, and the extent to which the proposed development would prejudice that possibility.”

That at least ensures that the possibility of a new car park will not be thoughtlessly ignored; and would enable permission to be granted for a temporary use on the site.

- 10.26 The Wellspring Church has raised concerns as to Policy NP23; but it appears that no amendment is required, in the light of discussions with the Church that took place to clarify the same issue as it arose in relation to the draft Plan.

³⁷ NPPF, para 22 (employment).

- 10.27 Subject to the amendments above, the Policies in this chapter of the Proposed Plan comply with the Basic Conditions.

11. Chapter 8, and Proposals Maps: Implementation

Implementation of policies in the Plan

- 11.1 Throughout the Chapter, the numbers and titles of the policies will need to be adjusted to accord with my recommendations earlier in this Report. And I suggest that it may be wise for those responsible to revisit the text in this Chapter when considering the recommendation relating to each policy and the text supporting it.
- 11.2 I have however made no specific recommendations in relation to this Chapter.
- 11.3 I recommend that Chapter 8 be revisited and amended in the light of the other recommendations in this Report.**

Town Council action points

- 11.4 In view of paragraph 1.2.3, I see no need to include in Chapter 8 a list of the Town Council Action Points, which are of course also listed in the earlier chapters of the Proposed Plan; and indeed to do so possibly gives them greater importance than the land use policies.
- 11.5 I recommend the omission of the table at paragraph 8.4.**

Proposals maps

- 11.6 The key to Proposals Map 2 is almost illegible. It would be helpful if it were to be enlarged – it might be possible to have that key alongside an enlarged version of the inset map of the central area on a separate A4 sheet.
- 11.7 I have already noted that it would be helpful to include on the Proposals Map:
- the four sites that are the subject of the Concept Statements in the Appendixes to the Proposed Plan (see paragraph 5.21 of this Report), and
 - the four sites referred to in sections 5.4 and 5.5 of the Plan (see paragraph 8.9 of this Report); and
 - the extent of the Town Centre, as shown on the Proposals Map forming part of the existing Local Plan (see paragraph 10.17 of this Report).
- 11.8 I recommend that the Proposals Map be amended to include sites with concept statements in the existing Appendix 2 and those referred to in Chapter 5.**
- 11.9 I have already noted the suggestion from the Derbyshire Eco Centre to the effect that the greenway cycle route should be included on the Proposals Map; since that route is coincident with the High Peak Trail, which is included, I see no reason for any amendment in that regard.

12. Summary and overall recommendation

- 12.1 The Wirksworth Plan, taken as a whole, is clearly structured, and well written. It sets out a positive vision for the future of Wirksworth; and will provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and efficiency. It therefore complies with the core principles in the NPPF.³⁸
- 12.2 In the course of this Report I have made a number of recommendations as to changes to the Plan, but these are largely as to details – in particular, to take account of the withdrawal of the 2013 Draft Local Plan. Subject to those recommendations, I am satisfied that the Proposed Plan complies with the strategic policies in the development plan
- 12.3 In particular, the general policies in Chapter 1 of the Plan and the policies relating to specific topics in Chapters 2 to 7 are in accordance with national policy and advice and, so far as applicable, with adopted and emerging local plan policy, and will contribute to the achievement of sustainable development.
- 12.4 I therefore conclude that the Wirksworth Plan, as proposed to be amended, does comply with the Basic Conditions and the other relevant statutory requirements. I am therefore pleased to recommend:
- that the modifications specified in my report are made to the draft Plan as it was submitted to me, and
 - that the Proposed Plan as thus modified be submitted to a referendum.

CHARLES MYNORS

FRTPI, FRICS, IHBC, Barrister

6 March 2015

³⁸ See para 2.18 above.

Annexe A.

Minor modifications for the purpose of correcting errors or to improve clarity

General points

- A1. I suggest that throughout the Proposed Plan the phrases “the town council” and “the district council” be replaced by “the Town Council” and “the District Council”, to make it clear that in each case it is a specific body that is being referred to.
- A2. In view of the various references to the Local Plan, the Replacement Local Plan, the 2013 Draft Local Plan, the Neighbourhood Plan, and the Town Plan, I suggest that throughout the Proposed Plan the words “the plan” are – wherever appropriate – replaced by either “this plan” or “the Neighbourhood Plan”, to make it clear what is being referred to.
- A3. There are throughout the Proposed Plan a number of paragraphs containing references to “we” and “our”. In some cases (for example paragraphs 1.1.1 and 5.1.2) these refer to the whole community of those who live or work in Wirksworth; in others (for example, paragraphs 3.3.6 and 3.3.7) they refer to those who prepared the Plan. To improve clarity, I suggest that those in the second category are redrafted to make them impersonal – for example, in paragraph 3.3.7 (and in many other places), replace “our plan area” with “the plan area”; and replace “we consider the proposed standards to be viable” with “the proposed standards are considered to be viable”. In some cases, for example at paragraph 6.4.2, the phrase “in our plan area” can simply be omitted – all of the Proposed Plan allies only in the plan area.

Specific points

- A4. In the list of contents,
- In the title of Chapter 4, remove the words “including allotments”; and
 - amend the titles of Appendixes 2 to 5 and the numbers and titles of the Neighbourhood Plan policies to accord with the recommendations in the bulk of this Report.
- A5. In relation to the remainder of the Proposed Plan, I suggest that for the words in the first column, the words in the second column are substituted.

Location	Words to be omitted and words to be inserted
Footnote 7	“is a policy of the draft local plan, and is”	“was a policy of the 2013 Draft Local Plan. Its boundary is”
Para 2.1.2	“draft Derbyshire Dales Local Plan”	“2013 Draft Local Plan”
Para 2.4.1	“the draft DDLP policies”	“the policies in the Local Plan”
	...	Add at end: “The policies in the 2013 Draft Local Plan were similar.”
Para 2.4.4	“improves”; “are”	“improved”; “were”
Para 2.4.5	“in the local plan’s proposals for Wirksworth”	“in Wirksworth identified in the 2013 Draft Local Plan”
Para 2.6.2	“designed”	“designs”
	“Quality and Character of Development Policy 2”	“Policy NP2”
Para 2.3.3	[the text after the first sentence]	“Policy SP9 in the 2013 Draft Local Plan required new homes, except for those on small sites, to achieve the highest viable rating in the Code for Sustainable Homes (CSH) – in particular, to meet or exceed the requirements of the Building Regulations, which currently do not require a higher rate than Level 3. It did not set a specific standard.”
Para 3.4.1	“the DDLP”	“the 2013 Draft Local Plan”
	“the DDLP housing target”	“the target in the Draft Plan”
Para 3.4.2	“the DDLP sites”	“the sites in the Draft Plan”
	Omit: “with the DDLP”	...
Para 4.1.2	“the Consultation identifies”	“the consultation exercise identified”
Para 4.2.1	“the Consultation shows”	“the consultation exercise identified”
Para 4.3.1	“the Consultation says”	“the consultation exercise identified”

Para 4.3.5	“football or hockey pitches”	“football pitches”
Para 4.8, second point ³⁹	“sports group”	“sports community”
Para 4.5.2	“The local Plan states”	“The 2013 Draft Local Plan stated”
	“It adds”	“It added”
	“The local plan acknowledges”	“The Draft Plan acknowledged”
	“seeks”	“sought”
	“The local plan says”	“It said”
Para 5.2.4	“the growth of visitors”	“an increase in the number of visitors”
	“bed and breakfast and holiday lets are rising”	“the number of bed and breakfast and holiday lets is rising”
Heading above paragraph 5.2.6	“Derbyshire Dales Local Plan”	“The 2013 Draft Local Plan”
Para 5.2.6	[first five lines of paragraph]	“Policy SO6 of the 2013 Draft Local Plan stated that the District Council would support the development of tourism and culture, and gave a list of ways on which that would be done. They included supporting and ...”
	“does”	“did”
Para 5.2.7	“sets”; “says”; “prefers”; “means”; “are”	“set”; “said”; “preferred”; “meant”; “were”
	“adapts DMP12”	“adopts the approach of the Draft Plan”
Para 5.2.8	[first three lines of paragraph]	“The Hotel Demand Survey for Derbyshire and the Peak District, referred to in the Draft Local Plan, states that Buxton, ...”

³⁹ A corresponding amendment would be needed to the list of action points in Chapter 8, if retained.

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Para 5.2.9	"DMP13 has"	"Policy DMP13 in the 2013 Draft Local Plan had"
	"is"	"of both the adopted Local Plan and the and the Draft Local Plan is"
Para 5.2.10	Omit "to add to Derbyshire Dales Local Plan Policy SP6's intention"	...
Para 5.4.1	"The Derbyshire Dales Local Plan has"	"The 2013 Draft Local Plan had"
	"go"; "seeks"	"went"; "sought"
Para 5.4.2, line 3	"is"	"are"
Para 5.4.3, line 8	"has"	"have"
Para 5.4.6, last sentence	"the draft DDLP has"	"the 2013 Draft Local Plan had"
Section 5.5, heading	"DERBYSHIRE DALES"	"2013 DRAFT"
Para 5.5.1	"As that requirement has not been interpreted into a local plan policy, this"	"This"
Heading above para 5.5.2	"DDLDP"	"2013 Draft Local Plan"
Para 5.5.2	"Draft DDLP Policy SP1 says that one"	"One"
	"At paragraph 6.29, it says that the"	"The"
Para 5.5.3	Omit: "without specific policies in the draft DDLP, "	...
	The words after "Action Point."	"In addition, policies in the 2013 Draft Local Plan supported this vision."
Para 5.5.4	"encourages"	"encouraged"
Para 5.5.5	"identifies"	"identified"
Para 5.5.6	"seeks"	"sought"
Para 5.5.7	"enables"; "justifies"	"enables"; "justifies"
Para 5.5.8	Omit last sentence	...

Para 5.5.10	“is”	“was”
	“the draft DDLP”	“the 2013 Draft Local Plan”
Para 5.5.13	Omit first sentence	...
	“it”	“the Ecclesbourne Valley Railway”
Para 5.7.2	“the Derbyshire Dales Local Plan”	“the 2013 Draft Local Plan”
Heading above para 5.7.4	“Derbyshire Dales Local Plan”	“Peak Sub-Region Feasibility Study”
Para 5.7.4	“The draft DDLP” summarises a feasibility study which”	“A feasibility study commissioned by the District Council and other local authorities, cited in the 2013 Draft Local Plan, ”
Para 5.7.5	“DDLp policy SP9 reflects”	“Policy SP9 in the 2013 Draft Local Plan reflected”
	“seeks”	“sought”
Para 5.7.7	[third, fourth and fifth sentences]	“The requirements for residential properties were set out in Chapter 3 of this Plan. The corresponding requirements for non-residential buildings, based on BREEAM standards, are in Policy NP17.”
Para 6.2.5	“The draft Derbyshire Dales Local Plan follows the NPPF guidance. It does not identify many sites and routes but it does have general policies”	“The 2013 Draft Local Plan followed the NPPF guidance. It did not identify many sites and routes but it did have general policies”
Page 38	Omit footnote 37	...
Para 6.3.2	<ul style="list-style-type: none"> • “In Wirksworth town centre specifically: <ul style="list-style-type: none"> - There is vehicular / pedestrian conflict, arising from the following main problems:” 	<ul style="list-style-type: none"> • “In Wirksworth town centre specifically, there is vehicular / pedestrian conflict, arising from the following main problems:”

Para 6.4.7	“policy NP17”	“Policy NP20”
Para 6.4.8	Omit: “(part of National Cycle Network 54)”. ⁴⁰	...
Para 7.3.1	“four headings: Retail; Market; Tarmac; Parking”	“five headings: Retail; Market; Appearance of the town centre; Usability of the streets; Parking”
Para 7.4.2	“local plan”	“national and local policy background”
Heading above para 7.4.3	“Draft Derbyshire Dales Local Plan”	“2013 Draft Local Plan”
Para 7.4.4	[whole paragraph]	“The 2013 Draft Local Plan did not provide for a significant new food shop since, at the time it was prepared, there was apparently no suitable site either in the town centre or at the edge of the centre.”
Para 7.4.5	“The local plan’s”	“National”
	Omit: “, in line with national policy.	...
	“They say”	“in line with that policy, the 2013 Draft Local Plan said”
	“They require”	“It required”
Para 7.4.6	“local plan”	“Draft Plan”
	“include” [in lines 3 and 5]	“included”
Para 7.4.7	“The “resisting” of development elsewhere is not explained in detail in the local plan, so the NPPF policy is relevant. The”	“As for development elsewhere, the”
	“town centres”	“a town centre”
Para 7.5.1	“The draft local plan summarises the Town Centre Study but, because it is a district-wide plan, does”	“The 2013 Draft Local Plan summarised the Town Centre Study but, because it was a district-wide plan, it did”

⁴⁰ See paragraph 8.8 of this Report.

Para 7.5.3	“The proposed policy would”	“Policy NP21 does”
	“it would require the”	“but it does require an”
	“the proposal for the”	“a proposal for a”
7.5.4	“, the policy would apply in that location also”	“as much as by such a development elsewhere, Policy NP21 applies throughout the plan area.”
7.5.8	“NP9”	“NP11”
7.5.12, line 6	...	After “fair-trade”, insert “items”
7.5.19	[First four lines]	“Whilst the Wood Street site is not”
	Omit: “in the plan period”	...
Policy NP22	Omit last sentence.	...
8.3.1	[last three lines]	“policies in the Local Plan, and will be applied by the local planning authority alongside them.”
8.3.4	“need”	“want”
8.3.6	“are achievable”	“are likely to be achievable”

- A6. In Chapter 8, the headings to the paragraphs in section 8.3 will need to be adjusted to take account of the revised number and title of each policy.