

**Eardisland Parish Council**

# **Eardisland Neighbourhood Development Plan**

A Report to Herefordshire Council of the Independent  
Examination of the Eardisland Neighbourhood Development  
Plan

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## Overall Finding

This is the report of the Independent Examination of the Eardisland Neighbourhood Development Plan. The plan area is the entire Eardisland Parish area. The Plan period ends in 2031. The Neighbourhood Plan includes policies relating to the development and use of land.

The report finds that subject to specified modifications the Neighbourhood Plan meets the basic conditions and other requirements to proceed to a local referendum within the Parish.

## Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”<sup>1</sup>
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Eardisland Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Eardisland Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the Eardisland Neighbourhood Area which was formally designated by Herefordshire Council on 24 February 2014. Plan preparation has been progressed through a Steering Group (the Steering Group) that includes Parish Councillors and other residents of the Parish.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to Herefordshire Council. Herefordshire Council has submitted the Neighbourhood Plan to me for independent examination.

## Independent Examination

5. This report sets out the findings of the independent examination into the Neighbourhood Plan.<sup>2</sup> The report makes recommendations to Herefordshire Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. Herefordshire Council will decide what action to take in response to the recommendations in this report.

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<sup>1</sup> Paragraph 183 National Planning Policy Framework (2012)

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

6. Herefordshire Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will be 'made' by Herefordshire Council. If 'made' the Neighbourhood Plan will come into force and subsequently be used in the determination of planning applications and decisions on planning appeals in the plan area.
7. I have been appointed by Herefordshire Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and Herefordshire Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Independent Examiner of Neighbourhood Plans. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.
8. As independent examiner I am required to produce this report and must recommend either:
  - that the Neighbourhood Plan is submitted to a referendum, or
  - that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
  - that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.
9. I make my recommendation in this respect and in respect to any extension to the referendum area,<sup>3</sup> in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.<sup>4</sup>
10. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.<sup>5</sup> The

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<sup>3</sup> Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

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

<sup>5</sup> Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

Guidance states “it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.”

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

## **Basic conditions and other statutory requirements**

12. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.<sup>6</sup> A neighbourhood plan meets the basic conditions if:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,
- the making of the neighbourhood plan contributes to the achievement of sustainable development,
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations, and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.<sup>7</sup>

13. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.<sup>8</sup> All of these matters are considered in the later sections of this report titled ‘The Neighbourhood Plan taken as a whole’ and ‘The Neighbourhood Plan policies’.

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<sup>6</sup> Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

<sup>7</sup> Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

<sup>8</sup> The Convention rights has the same meaning as in the Human Rights Act 1998

14. In addition to the basic conditions and Convention rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.<sup>9</sup> I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 which are made pursuant to the powers given in those sections.
15. The Neighbourhood Plan relates to the whole of the Parish of Eardisland. That area was designated by Herefordshire Council as a neighbourhood area on 24 February 2014. A map of the Eardisland Neighbourhood Plan Area is included as Map 1 of the Submission Draft Plan. The Neighbourhood Plan does not relate to more than one neighbourhood area,<sup>10</sup> and no other neighbourhood development plan has been made for the neighbourhood area.<sup>11</sup> All requirements relating to the plan area have been met.
16. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;<sup>12</sup> and the Neighbourhood Plan does not include provision about excluded development.<sup>13</sup> I am able to confirm that I am satisfied that each of these requirements has been met.
17. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.<sup>14</sup> The front cover of the Submission Version clearly shows the plan period to be to 2031.
18. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.<sup>15</sup> It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan. I have been appointed to examine whether the submitted Neighbourhood Plan meets the basic conditions and Convention rights, and the other statutory requirements.

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<sup>9</sup> In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

<sup>10</sup> Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

<sup>11</sup> Section 38B (2) Planning and Compulsory Purchase Act 2004

<sup>12</sup> Section 38A (2) Planning and Compulsory Purchase Act 2004

<sup>13</sup> Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

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

<sup>15</sup> Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

19. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.
20. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans are a reflection of thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.
21. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the basic conditions and the other requirements I have identified.<sup>16</sup>

## Documents

22. I have given consideration to each of the following documents in so far as they have assisted me in considering whether the Neighbourhood Plan meets the basic conditions and other requirements:
- Eardisland Neighbourhood Development Plan to 2031 Submission Draft April 2016
  - Eardisland Submission Neighbourhood Development Plan Basic Conditions Statement March 2016
  - Eardisland Submission Neighbourhood Development Plan Consultation Statement March 2016 [*In this report referred to as the Consultation Statement*]
  - Eardisland Neighbourhood Area Environmental Report March 2016
  - Eardisland Neighbourhood Area Habitats Regulations Assessment and Addendum March 2016
  - Eardisland Policies Map and Eardisland Village Policies Map
  - Herefordshire Council Progression to Examination Decision Document 20 May 2016
  - Representations received during the Regulation 16 publicity period

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<sup>16</sup> See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

- Herefordshire Local Plan (Council Strategy) adopted 16 October 2015
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Department for Communities and Local Government Permitted development for householders' technical guidance (April 2016) [*In this report referred to as the Permitted Development Guidance*]
- Department for Communities and Local Government Planning Practice Guidance web-based resource (first fully launched 6 March 2014) [*In this report referred to as the Guidance*]
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004 (as amended)
- Localism Act 2011
- Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations*]

## Consultation

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

24. Plan preparation has built on earlier work undertaken to prepare a community-led plan in June 2012. An awareness raising campaign in September and October 2014 was followed by a well-advertised two-day Open Event held in November 2014. Consultation opportunities were afforded to those unable to attend the Open Event. Results of liaison with the Neighbourhood Planning Team at Herefordshire Council were fed back to parishioners. Further local meetings of the Steering Group, open to the public, continued and were followed by another two-day consultation event in October 2015 in Eardisland Village Hall.

25. Pre-submission consultation in accordance with Regulation 14 was undertaken in the period 3 December 2015 to 20 January 2016. This

consultation resulted in 16 responses to the Draft Plan. Responses resulted in adjustment of the Draft Neighbourhood Plan prior to approval by the Parish Council and submission to Herefordshire Council.

26. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 publicity period between 6 April and 18 May 2016. A total of 8 representations were submitted during the publicity period which I have taken into consideration in preparing this report, even though they may not be referred to in whole, or in part.
27. Natural England and The Coal Authority have confirmed they have no comments to make in respect of the Submission Draft Plan. National Grid has provided information on pipeline and apparatus location. The Environmental Health service of Herefordshire Council confirm the Plan does not raise any site specific issues regarding potential contamination. Representations including comments have been submitted by Historic England; Environment Agency; Welsh Water; Councillor Phillips (Ward Councillor); and by the Strategic Planning, Economic Development, and Environmental Health services of Herefordshire Council. I have considered representations relating to the whole of the Submission Draft in the next section of my report titled 'The Neighbourhood Plan taken as a whole'. Where representations relate to specific policies only I have considered the matters raised when examining the policies in question later in my report.
28. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which –
- a) Contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
  - b) Explains how they were consulted;
  - c) Summarises the main issues and concerns raised by the persons consulted; and
  - d) Describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.<sup>17</sup>
29. The Consultation Statement includes information in respect of each of the requirements set out in the Regulations. On this basis I am satisfied the requirements have been met.

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<sup>17</sup> Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

## The Neighbourhood Plan taken as a whole

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

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

31. The Basic Conditions Statement states *“The Submission Neighbourhood Plan is fully compatible with the European Convention on Human Rights.”* I have given consideration to the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).<sup>18</sup> I have seen nothing in the submission draft of the Neighbourhood Plan that indicates any breach of the Convention. Although no equalities impact assessment has been undertaken the submission draft of the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics.

32. The objective of EU Directive 2001/42<sup>19</sup> is *“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”* The Neighbourhood Plan falls within the definition of ‘plans and programmes’<sup>20</sup> as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.<sup>21</sup>

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<sup>18</sup> The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

<sup>19</sup> Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

<sup>20</sup> Defined in Article 2(a) of Directive 2001/42

<sup>21</sup> Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

33. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council to submit to Herefordshire Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required. The plan documents include an Environmental Report dated March 2016. This report details the method followed including appraisal of objectives, appraisal of options, and appraisal of policies. The report includes details of consultation undertaken and a non-technical summary. I am satisfied that the requirements in respect of Strategic Environmental Assessment have been met.
34. The plan documents include a Habitats Screening Assessment dated November 2015 that includes the statements *“It is concluded that the Eardisland NDP will not have a likely significant effect on the River Wye (including the River Lugg) SAC.”* and *“None of the Eardisland NDP objectives and policies (November 2015) were concluded to be likely to have a significant effect on the European site”*. A Habitats Regulations Assessment Addendum dated March 2016 concludes *“the Eardisland NDP will not have a likely significant effect on the River Wye SAC remains valid.”* I conclude the requirements of the EU Habitats Regulations have been met. I have not seen anything that suggests the Neighbourhood Plan will have a significant effect on a European offshore marine site.
35. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.
36. I conclude that the Neighbourhood Plan:
- is compatible with the Convention rights
  - does not breach, and is otherwise compatible with, EU obligations
  - is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects
37. The Guidance<sup>22</sup> states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The local

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<sup>22</sup> National Planning Policy Guidance paragraph 031 reference ID:11-031-20150209

planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations (including obligations under the Strategic Environmental Assessment Directive):

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

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

38. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans<sup>23</sup> which requires plans to be “*consistent with national policy*”.

39. Lord Goldsmith has provided guidance<sup>24</sup> that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”

40. The Basic Conditions Statement seeks to demonstrate that the Neighbourhood Plan has been prepared with regard to national policies as set out in the Framework. A table presents commentary linking the Neighbourhood Plan with the Core Planning Principles of the Framework. The Submission Draft Plan includes Appendix 1 where there is reference to several aspects of the Framework.

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<sup>23</sup> Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

<sup>24</sup> The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the Lord’s Grand Committee on 6 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

41. The Neighbourhood Plan includes a positive Vision seeking to “conserve our heritage” and “enhance our community”. The Vision is supported by six objectives. The objectives of the Neighbourhood Plan are consistent with the core planning principles of the Framework. The Policies of the Neighbourhood Plan are presented in the context of the identified objectives. Historic England has expressed support for the vision, objectives and content of the Plan “*particularly its’ emphasis on local distinctiveness including undesignated heritage assets and the maintenance of historic rural character*”. The Neighbourhood Plan taken as a whole seeks to shape and direct development. This is precisely the role national policy envisages for a neighbourhood plan.
42. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that need to ‘have regard to’ national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.*”
43. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision-taking.<sup>25</sup> The Guidance states, “*This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions*”<sup>26</sup>.
44. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable

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<sup>25</sup> Paragraph 14 National Planning Policy Framework 2012

<sup>26</sup> National Planning Policy Guidance (Ref ID:41-072-20140306)

development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.

45. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes a Table that seeks to demonstrate the economic, social and environmental attributes of the Neighbourhood Plan. The Submission Draft Plan includes Appendix 1 where there is reference to the “*delivering sustainable development*” aspects of the Framework.

46. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by seeking to establish appropriate development principles so that new development safeguards aspects of the built and natural environment that are highly valued by residents to the area. In particular, I consider the Neighbourhood Plan contributes to the achievement of sustainable development in that it seeks to:

- Encourage re-use of brownfield land;
- Reduce the need to travel and improve walking and cycling opportunities;
- Prevent loss of significant open spaces;
- Ensure appropriate flood resilience measures;
- Protect important heritage assets and landscape character
- Encourage improvement and prevent loss of community facilities
- Ensure new homes are developed so as to be appropriate to their location and the needs of the community;
- Manage change in agriculture;
- Support new and existing employment.

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

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

48. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.<sup>27</sup> “*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 should not promote less development than set out in the Local Plan or undermine its strategic policies*”.<sup>28</sup>

49. The Guidance states, “*A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.*”<sup>29</sup> In this independent examination I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). Herefordshire Council has informed me that the Development Plan applying in the Eardisland neighbourhood area and relevant to the Neighbourhood Plan is the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015 and that the whole of the Core Strategy is considered to be the strategic policy of the Development Plan.

50. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. There is no requirement for a neighbourhood plan to include particular types of development and land use policies, nor is there any requirement for a neighbourhood plan to deal with any particular development and land use issues.

51. In considering a now repealed provision that “*a local plan shall be in general conformity with the structure plan*” the Court of Appeal stated “*the adjective ‘general’ is there, “to introduce a degree of flexibility.*”<sup>30</sup> The use of ‘*general*’ allows for the possibility of conflict. Obviously

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<sup>27</sup> Paragraph 16 National Planning Policy Framework 2012

<sup>28</sup> Paragraph 184 National Planning Policy Framework 2012

<sup>29</sup> National Planning Policy Guidance (ID: 41-04720 140306)

<sup>30</sup> Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P & CR 31

there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

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

- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with*
- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy*
- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy*
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.”<sup>31</sup>*

53. My approach to the examination of the Neighbourhood Plan policies has been in accordance with this guidance. If there were to be a conflict between a policy in a neighbourhood plan and a policy in a local plan the conflict must be resolved in favour of the policy contained in the last of those plans to become part of the Development Plan.<sup>32</sup>

54. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole and each of the plan policies below. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan. I have noted the Strategic Planning service of Herefordshire Council has in a representation confirmed the view the Plan’s policies are in general conformity with those equivalent in the Herefordshire Core Strategy with a comment in respect of Policy E9 that “*It is accepted that allocation of any sites within or adjacent to the settlement boundary is difficult due to flooding constraints.*”

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<sup>31</sup> National Planning Policy Guidance (ID ref: 41-074 201 40306)

<sup>32</sup> Section 38(5) Planning and Compulsory Purchase Act 2004

## The Neighbourhood Plan policies

55. The Neighbourhood Plan includes 18 policies:

Policy E1 General Development Principles

Policy E2 Protecting Heritage Assets

Policy E3 Landscape Character

Policy E4 Protection and Enhancement of Features of Ecological Value

Policy E5 Design to Reduce Surface Water Run Off

Policy E6 Dark Skies

Policy E7 New Communications Technologies

Policy E8 Protection of Local Community Facilities

Policy E9 Scale and Type of New Residential Development

Policy E10 Ensuring an Appropriate Range of Tenures, Types and Sizes of Houses

Policy E11 Protection of Local Green Spaces

Policy E12 Public Rights of Way/Connectivity

Policy E13 Managing Agricultural Land and Businesses

Policy E14 New Agricultural Development

Policy E15 Supporting Existing Local Employment

Policy E16 New Local Employment Opportunities

Policy E17 Supporting Tourism and Local Business Development

Policy E18 Community Facilities and Public Funds

56. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.”* *“Outside these strategic*

*elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”<sup>33</sup>*

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

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

59. “A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.”<sup>34</sup>

60. If to any extent a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is made they will be utilised in the determination of planning applications and appeals, I have examined each policy individually in turn.

61. The Neighbourhood Plan includes six Parish Actions. The matters included in these Parish Actions do not relate to the development and use of land and as such cannot serve a role in the determination of planning applications. I consider the Parish Actions do not form part of the Neighbourhood Development Plan and as such has not been considered as part of this independent examination. The Parish actions would not be the subject of any referendum and would not become part of the Development Plan for the area. The

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<sup>33</sup> Paragraphs 184 and 185 National Planning Policy Framework 2012

<sup>34</sup> See section 38(6) of the Planning and Compulsory Purchase Act 2004.

Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. However, the Guidance states, “*Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.*” Whilst the Parish Actions are presented as boxed text and therefore identifiable their status is not entirely clear especially to a reader referring to particular chapters and policies who may not have read paragraph 1.6. I recommend a modification in accordance with the Guidance so that the Parish Actions are transferred to a non-statutory annex to the Neighbourhood Plan.

**Recommended modification 1:**

**The Parish Actions should be transferred to a non-statutory annex to the Neighbourhood Plan and paragraph 1.6 should be adjusted accordingly**

62. Several policies include the phrases “*will be permitted*” or “*will not be permitted*”. With regard to the issue of decision making the Framework states “*the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise*”. This basis for decision making should be made clear. Policies should use the term “will be supported” or “not be supported” in recognition that the basis of decision making is the development plan unless material considerations indicate otherwise. The material considerations at the time of determination of a future planning application are unknown and therefore cannot be dismissed through a policy that states development will be permitted or not permitted. I have recommended a modification to relevant policies so that the basis of decision making on planning applications should be clarified.

**Policy E1 General Development Principles**

63. This policy seeks to establish general development principles that all new development should follow. The Policy also seeks to establish the optimum size of development as 4-5 dwellings, and requires development to make a positive contribution to the distinctive rural nature and character of the area.

64. In a representation the Environment Agency states “*As part of the recently adopted Herefordshire Council Core Strategy updates were*

*made to both the Strategic Flood Risk Assessment (SFRA) and Water Cycle Strategy (WCS). This evidence base ensured that the proposed development in Hereford City, and other strategic sites (Market Towns), was viable and achievable. The updated evidence base did not extend to Rural Parishes at the NP level so it is important that these subsequent plans offer robust confirmation that development is not impacted by flooding and that there is sufficient waste water infrastructure in place to accommodate growth for the duration of the plan period. We note (paragraph 1.5) that no sites have been put forward for allocation within the plan, in part due to the extensive flooding experienced within the Parish. It is stated that, due to the riverine location, there are limited development opportunities within the Settlement Boundary. Notwithstanding the above it is important that any forthcoming windfall/infill development sites are located on land at the lowest risk of flooding and will accord with Herefordshire Councils Core Strategy (Policy SD3 – Sustainable Water Management and Water Resources) and your own Development Policy (E1). It is also noted (paragraph 5.5), and welcomed, that the Parish Council commissioned Parsons Brinkerhoff to produce a feasibility study of potential ways to alleviate flooding within Eardisland. Whilst there are no sites allocated within Eardisland, primarily due to flood risk, we welcome consideration of reduction to flood risk in the Parish and recommend continued discussion with Herefordshire Council as the Lead Local Flood Authority (LLFA), especially with regard to channel improvements to the Southall Brook (Ordinary Watercourse). The feasibility study also makes reference to possible hydraulic modelling within the Parish to fully ascertain the mechanisms and severity of flooding.”* I am satisfied the Policy, and indeed Policy E9 that relates to scale and type of new residential development have satisfactorily taken into consideration flood risk issues in accordance with national and Local Plan policies.

65. I have earlier in my report referred to the need to use the term “supported” instead of “permitted”. The introductory sentence uses the phrase “*should meet*” however in the case of several criteria it is not clear how it will be judged that the criterion has been met, for example whether a proposal gives priority to re-use of brownfield sites/conversion of existing buildings, or has maximised the use of existing services and facilities, or has minimised the use of water in garden maintenance. I recommend a modification so that proposals must demonstrate regard for the criteria set out in the first part of the Policy. In this way the Policy will provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

66. The Policy refers to the unique identity of the parish. When all characteristics are considered every place is undoubtedly unique. The approach of the Policy to focus on those special attributes and characteristics that make the Parish locally distinctive will suitably provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. I have recommended a modification to delete the reference to “*all relevant Policies in this Plan*” as this is unnecessary, and not being made in every Policy, is confusing.
67. The policy refers to the optimum size of development being 4-5 dwellings. This statement does not provide a basis for decision making in respect of proposals. I have recommended a modification in this respect.
68. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; meeting the challenge of climate change and flooding; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the basic conditions.

#### **Recommended modification 2:**

##### **In Policy E1**

- delete “should meet” and insert “must demonstrate how it meets”
- delete “the optimum size of any development is 4-5 dwellings” and insert “developments comprising more than 5 dwellings will not be supported”
- delete “permitted” and insert “supported”
- delete criterion v

##### **Policy E2 Protecting Heritage Assets**

69. This policy seeks to establish an approach to the assessment of development proposals affecting heritage assets or their setting.
70. The Policy states “*Development will only be permitted where it does not have a detrimental impact on any heritage asset.*” This approach

does not have sufficient regards for the balanced approach set out in the Framework. I have earlier in my report also referred to the need to use the term supported rather than permitted. I therefore recommend a modification to delete this sentence. It is not necessary and indeed confusing for some policies to refer to “*all relevant policies in this Plan*”. I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

71. In seeking to influence the proportion of solid to void, and detailing in design solutions the Policy does not have sufficient regard to the aspect of the Framework that states “*design policies should avoid unnecessary prescription or detailing*”. I recommend a modification in this respect.
72. As Planning Policy must serve the public interest I recommend a modification to clarify the identified view corridors highlighted in Map 3 and Appendix 6 are restricted to those visible from locations that are freely accessible to the general public.
73. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 3:  
In Policy E2**

- **delete “Development will only be permitted where it does not have a detrimental impact on any heritage asset.”**
- **delete requirement d**
- **after “Respect views” insert “that are visible from locations that are freely accessible to the general public”**
- **delete requirement j**

**Policy E3 Landscape Character**

74. This policy seeks to ensure development proposals show regard to the distinctive landscape character of the Herefordshire Lowlands Character Area.

75. The Policy includes provision relating to hedgerows. The Hedgerows Regulations 1997 establish a balanced regime to protect hedgerows in specified locations. It is however appropriate for the Neighbourhood Plan to seek to introduce an additional regime of protection to apply in the context of development proposals.

76. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment. This policy meets the basic conditions.

#### **Policy E4 Protection and Enhancement of Features of Ecological Value**

77. This policy seeks to safeguard features of ecological value. The criterion "*Ensures no loss of landscape features, trees, vistas, verges, and views*" is imprecise and does not demonstrate sufficient regard for the presumption in favour of sustainable development established in the Framework. I recommend a modification to delete this criterion.

78. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the basic conditions.

#### **Recommended modification 4: In Policy E4 delete criterion c**

#### **Policy E5 Design to Reduce Surface Water Run Off**

79. This policy seeks to establish development principles and requirements designed to achieve effective water management.

80. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic

policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with meeting the challenge of climate change and flooding. This policy meets the basic conditions.

### **Policy E6 Dark Skies**

81. This policy seeks to establish an approach to limit external lighting and to limit internal lighting that can be seen externally.
82. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with limiting the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation. This policy meets the basic conditions.

### **Policy E7 New Communications Technologies**

83. This policy seeks to establish conditional support for the development of new high speed broadband infrastructure and requires all new development to provide for connections.
84. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with supporting high quality communications infrastructure. This policy meets the basic conditions.

### **Policy E8 Protection of Local Community Facilities**

85. This policy seeks to protect existing community facilities. I have earlier in my report referred to the need to use the term supported rather than permitted.

86. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 5:**

**In Policy E8 delete “permitted” twice and insert “supported”**

**Policy E9 Scale and Type of New Residential Development**

87. This policy seeks to establish criteria against which the acceptability of proposals for new housing development can be assessed. Three representations state the identification of land for residential development is problematic given the constraints imposed by the floodplain issue. I have earlier in my report when considering Policy E1 concluded I am satisfied that Policy E1 and Policy E9 have satisfactorily taken into consideration flood risk issues in accordance with national and Local Plan policies. Welsh Water has in a representation repeated a Regulation 14 representation that there is no public sewerage in the Plan area and therefore alternative foul drainage options will be required. The Environmental Health service of Herefordshire Council confirm satisfaction with the inclusion of residential amenity considerations. I have earlier in my report referred to the need to use the term “supported” rather than “permitted”.

88. The loss of community facilities is adequately dealt with as an issue in Policy E8 and reference here in an incomplete way does not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. I therefore I recommend a modification to delete the criterion. For the same reason of achieving a practical framework for decision making I recommend deletion of the reference to Policy E1 which applies across the Plan area.

89. The term “*or as close as constraints allow*” in criterion b is imprecise. Clearly flood risk considerations are a very significant factor in the Eardisland situation. I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

90. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 6:**

**In Policy E9**

- delete “permitted” and insert “supported”
- in b before “constraints” insert “flood risk”
- delete criterion e and criterion i

**Policy E10 Ensuring an Appropriate Range of Tenures, Types and Sizes of Houses**

91. This policy seeks to require proposals for new housing development to demonstrate how they contribute to an appropriate mix of tenures, types and size of homes.

92. The policy seeks to shape sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. This policy meets the basic conditions.

**Policy E11 Protection of Local Green Spaces**

93. This policy seeks to designate eight Local Green Spaces where proposals for development which impacts adversely on the openness of these sites will not be permitted, except in very special circumstances which outweigh the harm caused by development.

94. The Framework states *“Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new*

*development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.”*

95. I find the Local Green Space designations are being made when a neighbourhood plan is being prepared, and I have seen nothing to suggest the designations are not capable of enduring beyond the end of the plan period. The Guidance states *“Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making.”* The intended designations are consistent with the local planning of sustainable development contributing to the promotion of healthy communities, and conserving and enhancing the natural environment, as set out in the Framework. I consider the submission draft Neighbourhood Plan makes provision for sufficient land to meet development needs particularly in the context of flood risk considerations.

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

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

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

97. The submission draft Neighbourhood Plan includes a statement of special qualities/local significance in respect of each of the sites proposed for designation as Local Green Space. Although the

statements are very brief they offer sufficient evidence for me to conclude the areas proposed for designation as Local Green Space are demonstrably special to a local community and hold a particular local significance. This policy meets the Basic Conditions.

### **Policy E12 Public Rights of Way/Connectivity**

98. This policy seeks to establish support for proposals that enhance and improve existing rights of way and for improved linkages and accessibility within and beyond Eardisland. The policy requires new proposals to maximise accessibility to residents and support local biodiversity.

99. It is unnecessary for a policy to specify the geography of application “*within the parish*” when the default is that all policies apply throughout the Plan area. I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

100. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with promoting sustainable transport; promoting healthy communities; and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the basic conditions.

### **Recommended modification 7: In Policy E12 delete “within the parish”**

### **Policy E13 Managing Agricultural Land and Businesses**

101. This policy seeks to establish conditional support for the change of use of former agricultural buildings to other uses. The policy is presented under the heading of Objective 5 that relates to business, and the local and technical evidence also relates to business. In this context it is appropriate the policy should relate to business uses. I have recommended a modification to clarify this point.

102. The ownership of land is not a material planning consideration. It is not conducive to the achievement of a practical framework for decision making to refer to one set of Regulations. All relevant

Regulations apply. I have recommended a modification to delete the criterion relating to land holdings, and the criterion relating to general permitted development regulations.

103. In accordance with the aims within the Framework to build a strong, competitive economy and support a prosperous rural economy working hours should only be restricted where there is a proven need to do so. I have recommended a modification in this respect. The Policy refers to the imprecise term “etc” which should be modified so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
104. A representation by the Economic Development service of Herefordshire Council confirms the Policy adequately addresses future employment provision but suggests the Policy is very prescriptive given that all the criteria have to be met, which might hinder development. Subject to deletion of criteria f and g the policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community.
105. The requirement to “*demonstrate that consideration has been given*” does not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. I recommend a modification is made in this respect.
106. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with building a strong competitive economy and supporting a prosperous rural economy. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 8:  
In Policy E13**

- **replace the opening text with “Where planning permission is required, to be supported changes of use of former agricultural buildings to other employment uses must satisfy all the following criteria:”**
- **delete “etc” and insert “and any external storage areas,”**
- **before “working hours” insert “where there is a proven need”**
- **delete criterion f and criterion g**

### **Policy E14 New Agricultural Development**

107. This policy seeks to establish conditional support for new development for agriculture. I have earlier in my report referred to the need to state “will be supported” rather than “will be permitted” and recommend a modification in this respect.
108. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with supporting a prosperous rural economy. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 9:  
In Policy E14 delete “permitted” and insert “supported”**

### **Policy E15 Supporting Existing Local Employment**

109. This policy seeks to establish existing sources of local employment will be supported, limiting change of use of existing employment premises to specified circumstances. The policy also seeks to establish conditional support for the expansion or improvement of existing business premises. I have earlier in my report referred to the need to state, “will be supported”, rather than, “will be permitted”, and recommend a modification in this respect.
110. Requirements e and f do not have sufficient regard for the provisions of the Framework seeking to build a strong, competitive economy and supporting a prosperous rural economy. Requirements e and f are also imprecise. I recommend their deletion so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. For this same reason it is also necessary to establish that requirements g and h are discrete.
111. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. Subject to the modification the policy has regard to the components of the Framework concerned with building a strong competitive economy and

supporting a prosperous rural economy. Subject to the recommended modification this policy meets the basic conditions.

#### **Recommended modification 10:**

##### **In Policy E15**

- **delete “will be permitted” and insert “will be supported”**
- **delete “will only be permitted” and insert “will only be supported”**
- **delete requirement e**
- **delete requirement f**
- **insert “or” as the final word of g**

#### **Policy E16 New Local Employment Opportunities**

112. This policy seeks to establish conditional support for new employment opportunities of a scale commensurate with the proposed location and setting. The policy seeks to establish support for a range of economic activities.

113. The policy includes the term “will be considered where the development...”. All development proposals must be considered. I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. I have earlier in my report referred to the need to state “supported” rather than “permitted”.

114. The policy includes the imprecise term “*small scale*”. This can be deleted as the introductory sentence clarifies scale must be commensurate with location and setting. The Policy also includes the requirement proposals “*promote the sustainable use of the natural and historic environment as an asset which is valued, conserved and enhanced*”. This term is imprecise. It is unnecessary to state “*that comply with the other policies of this plan*” with respect to one aspect of this policy as all policies of the Neighbourhood Plan are to be considered in respect of development proposals. I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

115. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local

Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with building a strong competitive economy; supporting a prosperous rural economy; and promoting healthy communities. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 11:**

**In Policy E16**

- delete “considered” and insert “supported”
- delete “small scale”
- delete “promote the sustainable use of the natural and historic environment as an asset which is valued, conserved and enhanced”
- delete “permitted” and insert “supported”
- delete “that comply with the other policies of this plan”

**Policy E17 Supporting Tourism and Local Business Development**

116. This policy seeks to establish support for new tourist related and other local business development. The policy includes the imprecise term “*small scale local enterprise*” however when this is interpreted in the context of the stated criteria the Policy does provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. A representation by the Economic Development service of Herefordshire Council confirms the Policy adequately addresses future employment provision.

117. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Herefordshire Local Plan (Council Strategy) adopted on 16 October 2015. The policy has regard to the components of the Framework concerned with building a strong competitive economy and supporting a prosperous rural economy. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 12:**

**In Policy E17 delete “permitted” and insert “supported”**

## **Policy E18 Community Facilities and Public Funds**

118. This policy relates to developer contributions and reads as a procedural point of information. The policy is imprecise and does not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. I recommend the policy is re-titled as a Parish Action and transferred to a non-statutory annex to the Neighbourhood Plan.

### **Recommended modification 13:**

**Policy E18 should be re-titled as a Parish Action and transferred to a non-statutory annex to the Neighbourhood Plan**

## **Summary and Referendum**

119. I have recommended the following modifications to the Submission Version Plan:

### **Recommended modification 1:**

**The Parish Actions should be transferred to a non-statutory annex to the Neighbourhood Plan and paragraph 1.6 should be adjusted accordingly**

### **Recommended modification 2:**

#### **In Policy E1**

- delete “should meet” and insert “must demonstrate how it meets”
- delete “the optimum size of any development is 4-5 dwellings” and insert “developments comprising more than 5 dwellings will not be supported”
- delete “permitted” and insert “supported”
- delete criterion v

### **Recommended modification 3:**

#### **In Policy E2**

- delete “Development will only be permitted where it does not have a detrimental impact on any heritage asset.”
- delete requirement d
- after “Respect views” insert “that are visible from locations that are freely accessible to the general public”

- delete requirement j

**Recommended modification 4:**

**In Policy E4 delete criterion c**

**Recommended modification 5:**

**In Policy E8 delete “permitted” twice and insert “supported”**

**Recommended modification 6:**

**In Policy E9**

- delete “permitted” and insert “supported”
- in b before “constraints” insert “flood risk”
- delete criterion e and criterion i

**Recommended modification 7:**

**In Policy E12 delete “within the parish”**

**Recommended modification 8:**

**In Policy E13**

- replace the opening text with “Where planning permission is required, to be supported changes of use of former agricultural buildings to other employment uses must satisfy all the following criteria:”
- delete “etc” and insert “and any external storage areas,”
- before “working hours” insert “where there is a proven need”
- delete criterion f and criterion g

**Recommended modification 9:**

**In Policy E14 delete “permitted” and insert “supported”**

**Recommended modification 10:**

**In Policy E15**

- delete “will be permitted” and insert “will be supported”
- delete “will only be permitted” and insert “will only be supported”
- delete requirement e
- delete requirement f
- insert “or” as the final word of g

**Recommended modification 11:**

**In Policy E16**

- delete “considered” and insert “supported”

- delete “small scale”
- delete “promote the sustainable use of the natural and historic environment as an asset which is valued, conserved and enhanced”
- delete “permitted” and insert “supported”
- delete “that comply with the other policies of this plan”

**Recommended modification 12:**

**In Policy E17 delete “permitted” and insert “supported”**

**Recommended modification 13:**

**Policy E18 should be re-titled as a Parish Action and transferred to a non-statutory annex to the Neighbourhood Plan**

120. I have also made a recommendation for modification of the Neighbourhood Plan in the Annex below.

121. I am satisfied that the Neighbourhood Plan<sup>35</sup>:

- is compatible with the Convention rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the statutory requirements set out in paragraph 8(1) of schedule 4B of the Town and Country Planning Act 1990 and meets the basic conditions:
  - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
  - the making of the neighbourhood plan contributes to the achievement of sustainable development;
  - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
  - does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and

<sup>35</sup> The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.<sup>36</sup>

**I recommend to Herefordshire Council that the Eardisland Parish Neighbourhood Development Plan for the plan period up to 2031 should, subject to the modifications I have put forward, be submitted to referendum.**

122. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.<sup>37</sup> I have seen nothing to suggest the referendum area should be extended beyond the designated Neighbourhood Area.

**I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Herefordshire Council as a Neighbourhood Area on 24 February 2014.**

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

I am able to recommend modification of the Neighbourhood Plan in order to correct errors.<sup>38</sup> A number of consequential modifications to the general text of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies.

Appendices 8 and 9 although helpful to understand the evolution of the Plan should not be included in the referendum and made versions of the Neighbourhood Plan as they are inconsistent with the provision of a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

**Recommended modification 14:  
Modification of general text will be necessary to achieve consistency with the modified policies and Appendices 8 and 9 should be deleted from the Plan document**

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12 July 2016 REPORT ENDS

<sup>36</sup> Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

<sup>37</sup> Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

<sup>38</sup> Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990