

Ashover Parish Neighbourhood Plan

The Report by the Independent Examiner

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Summary

The Ashover Neighbourhood Plan has been a major undertaking for the Parish Council. The size of the parish and the number of separate settlements within it make it a more complex task than for many villages of a similar size. The preparation of the Plan in the absence of an up to date Local Plan and the changes in the direction of the emerging Local Plan during the process and planning permissions that have overtaken emerging APNP policies have added to the difficulties and required revisions to the draft plan. This resulted in the need to repeat the regulation 14 consultation.

It is regrettable that the map submitted with the application for the designation of the neighbourhood area cut off two small areas of the Parish and that there were other small anomalies between this map and the actual boundary of the Parish. However, there is no doubt in my mind that the application for the designation and the map should be read together, and it is absolutely clear from this that the application was for the whole of the parish. The map makes it clear that it is incomplete by the gaps in the line defining the parish boundary on the eastern and western edges of the parish and the other anomalies are too small to be in any way significant.

I am satisfied that consultation on the draft plan has met the legal requirements and that that it does not breach European Union obligations.

I found the Basic Conditions Statement disappointingly superficial and it could usefully have been much more explicit in explaining the relationship between the Plan and national and Local Plan Policies. It is a document that is intended to serve a very specific purpose to assist the examination and it should be prepared thoughtfully rather than as a mechanical listing exercise.

The absence of a clear strategic context has meant that it has not been possible to define the amount of new housing that the Plan needs to accommodate. The emerging Local Plan does not specify an amount of housing for the Parish but it is acknowledged that this may change. In this context the Plan has had to provide for sustainable development by striking an appropriate balance between the need to accommodate some new development and the environmental constraints which are evident in this attractive location.

I have found it necessary to recommend some modifications for a variety of reasons. In relation to housing development I have recommended modifications to provide some additional flexibility. In some cases, notably in relation to the definition of the Limits to Development for Ashover and Kelstedge, the submitted Plan is ambiguous and it has been necessary to clarify this. Some elements of policies do not relate to the development and use of land and thus would not provide guidance in the determination of planning applications. In other cases, policies do not have a significant local dimension and thus do

not add to the NPPF. Some policies will have limited effect because the matters they seek to influence are often not subject to planning control. In light of the local planning authority's comments it is important to emphasise that, while I accept that some policies may eventually be superseded by the emerging Local Plan, that does not render them unnecessary at this stage as the Local Plan is some way from adoption.

I am grateful to the officers of NEDDC and APC and to the consultants of the Parish Council for the support and assistance they have provided in responding to my queries during the examination.

I have concluded that, if the modifications that I have recommended are made:

The Ashover Neighbourhood Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012;

Having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;

The making of the Plan would contribute to the achievement of sustainable development;

The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;

The Plan would not breach and would be otherwise compatible with European Union obligations and the European Convention on Human Rights.

I am therefore pleased to recommend that the Ashover Parish Neighbourhood Plan should proceed to a referendum subject to the modifications that I have recommended.

I am also required to consider whether or not the referendum area should extend beyond the Neighbourhood Plan Area. The Plan includes the whole Parish of Ashover and I have seen nothing to suggest that the policies of the Plan will have "a substantial, direct and demonstrable impact beyond the neighbourhood area".¹ **I therefore conclude that there is no need to extend the referendum area.**

¹ PPG Reference ID: 41-059-20140306

Introduction

1. The Localism Act 2011 has provided local communities with the opportunity to have a stronger say in their future by preparing neighbourhood plans which contain policies relating to the development and use of land.
2. Ashover Parish Council is the qualifying body for the Ashover Parish Neighbourhood Plan 2016-2033, which I shall refer to as the APNP or the Plan. The Plan area covers the whole of the parish of Ashover.²
3. Ashover is a very large rural parish which lies between Chesterfield and Matlock close to the edge of the Peak District National Park. It extends over five miles from north to south and almost 5 miles from east to west at its widest point. The village of Ashover is the main settlement but Kelstedge, about a mile west of Ashover, is a separate significant settlement and there are several other hamlets and small clusters of development within the parish. The parish had a population of 1905 in 2011 and has a good range of services and facilities including a primary school, a shop, a doctor's surgery, several public houses, a village hall and a range of sporting and recreational facilities.
4. If, following a recommendation from this examination, the Plan proceeds to a local referendum and receives the support of over 50% of those voting, it can be made and will then form part of the statutory development plan. As such it will be an important consideration in the determination of planning applications, as these must be determined in accordance with development plan policies unless material considerations indicate otherwise.

Appointment of the Independent Examiner

5. I have been appointed by North-East Derbyshire District Council (NEDDC) with the agreement of Ashover Parish Council (APC) to carry out the independent examination of the APNP.
6. I confirm that I am independent of both NEDDC and APC and have no interest in any land which is affected by the APNP. I have never had any other professional involvement in the village, but I recently carried out the examination of the Neighbourhood Plan for the Holymoorside and Walton, which abuts part of the northern boundary of the Parish of Ashover.
7. I am a Chartered Town Planner with over 30 years' experience in local government, working in a wide range of planning related roles, including 15 years as a chief officer.

² The issue of the designated area is considered further in paragraphs 15-21

Since 2006 I have been an independent planning and regeneration consultant. I have completed over 20 neighbourhood plan examinations and three health checks. I therefore have the appropriate qualifications and experience to carry out this examination.

The Scope of the Examination

8. The nature of the independent examination is set out in Sections 8-10 of Schedule 4B of the Town and Country Planning Act 1990.
9. I must:
 - a) decide whether the Plan complies with the provisions of Sections 38A and 38B of the Planning and Compulsory Purchase Act 2004. These requirements relate primarily, but not exclusively, to the process of preparing the Plan and I shall deal with these first.
 - b) decide whether the Neighbourhood Development Plan meets the basic conditions contained in Schedule 4B paragraph 8(2) of the Town and Country Planning Act 1990. This element of the examination relates mainly to the contents of the Plan.
 - c) make a recommendation as to whether the Plan should be submitted to a referendum, with or without modifications, and whether the area for the referendum should extend beyond the Plan area.
10. The 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;
 - b) the making of the Plan contributes to sustainable development;
 - c) 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);
 - d) the making of the Plan does not breach, and is otherwise compatible with, EU obligations.
11. Paragraph 9 of Schedule 4B indicates that as a general rule the examination should be carried out on the basis of written representations unless a hearing is necessary to allow adequate consideration of an issue or to allow a person a fair chance to put a case. In carrying out the examination I concluded that the examination could be completed without a hearing.

12. The main documents to which I have referred in the examination are listed below:
- Ashover Parish Neighbourhood Plan 2016-2033 Submission Version July 2017. Including Appendices A-E providing supporting evidence.
 - Ashover Parish Neighbourhood Plan 2016-2033 Consultation Statement May 2017.
 - Ashover Parish Neighbourhood Plan 2016-2033 Statement of Basic Conditions May 2017.
 - Ashover Neighbourhood Plan 2015-2031 Strategic Environmental Assessment Screening and Habitat Regulation Assessment Screening Report. February 2017.³
 - Responses to Regulation 16 Consultation on the submission draft of the Ashover Parish Neighbourhood Plan.
 - North-East Derbyshire Local Plan 2001-2011 adopted in 2005.
 - North-East Derbyshire Local Plan 2011-2033 Consultation Draft February 2017.
 - The Neighbourhood Planning (General) Regulations 2012 as amended in 2015 which are referred to as the NPR
 - The Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR).
 - The National Planning Policy Framework which is referred to as the NPPF
 - National Planning Practice Guidance referred to as PPG.
13. The documents submitted include all of those that are required to be submitted under regulation 15 of the NPR.
14. I made an unaccompanied visit to the Parish of Ashover on 25 September 2017 to familiarise myself with the parish and help me to understand the implications of the Plan policies. I spent most of the day walking and driving around the parish to view all the key locations referred to in the Plan and greatly appreciated the benches provided in appropriate places on many of the steep ascents.

The Preparation of the Plan

15. An application for the designation of the whole of the parish of Ashover as a neighbourhood area was submitted by APC to NEDDC on 3 December 2014. The District Council undertook consultation as was then required by regulation 6 of the NPR for a six-week period extending from 18 December 2014 and 6 February 2015 and the neighbourhood area was designated 16 February 2015. The designation was subsequently published on the Council's website in accordance with regulation 7(1) of the NPR.

³ The timescale for the Plan was subsequently changed to 2016-2033 to reflect the amended timescale for the emerging Local Plan.

16. Representations from Pegasus Planning on behalf of Marsh Green Estates Ltd suggest that the Plan cannot proceed to referendum because the Plan submitted with the application for the designation of the neighbourhood area does not accurately show the whole of the Parish and does not correspond to the area covered by the submitted plan as shown in Fig 1. The representation suggests that “the landowners of these areas may not have engaged in the Neighbourhood Plan as they may not have considered that it related to their landholdings. Furthermore, it is unclear what area the policies of the Neighbourhood Plan apply to.”
17. The map submitted with the application for the designation of the neighbourhood area is incomplete as it does not show two small areas on the eastern and western extremities of the parish. The area in the west is approximately 230m in length but only about 25m wide at the widest point and includes a small strip on the western edge of two fields. The area to the east is similar in nature but a little larger at approximately 400m in length and about 50m at its widest point. It includes parts of fields and, as far as I could see, three residential properties fronting Press Lane.
18. The boundary of the neighbourhood area on the map submitted with the application for designation is shown as an orange line following the parish boundary. However, this line is not complete. There are gaps on each side where the boundary of the parish extends beyond the edge of the map. The description given with the application states unambiguously that the area for which the application is made is the whole of the Parish.
19. Regulation 5 of the NPR requires that an application for the designation of a neighbourhood area must include:
 - a) a map which identifies the area to which the area application relates;
 - b) a statement explaining why this area is considered appropriate to be designated as a neighbourhood area; and
 - c) a statement that the organisation or body making the area application is a relevant body for the purposes of Section G of the 1990 Act.There is nothing to state indicate that, where there is any ambiguity the map should take precedence and it is quite clear to me that the map should be read in association with the supporting statement.
20. In my view, the only possible interpretation of the map, when read with the supporting statement, is that, although two very small slivers of land which lie within the parish are not shown on it, the neighbourhood area includes the whole parish. If the orange line showing the boundary had fully enclosed an area less than the Parish there would have been a clear conflict between the wording of the application and the map. However, given the gaps in the orange line, any reading of the proposal for

designation could not reasonably conclude that the areas of the parish which are not shown on the map are excluded from the designation.

21. The representation from Pegasus Planning also refers to other discrepancies between the boundary shown on the application for designation and the actual parish boundary as shown on a map submitted with the submitted Plan including in the vicinity of Walton Lees Farm on the northern boundary and Woodhead Grange Farm, east of Littlemoor. These are not defined, but from my examination of the two maps they are very small, and arise from the difficulty of transcribing a line manually on to a map on which the detail is not clear. I am satisfied that these minor anomalies could not realistically have prejudiced any interests.
22. No representations were made about the definition of the neighbourhood area until the regulation 14 consultation when representations on the same lines as those received from Pegasus Planning on behalf of Marsh Green Estates at the regulation 16 stage were submitted. Although this refers to the theoretical potential for the interests of the owners of land to be prejudiced by the alleged ambiguities in the boundary there is no evidence that this is the case and the interests of Marsh Green Estates appear to relate to land in the village of Ashover rather than the eastern boundary of the parish.
23. The Consultation Statement refers to a legal opinion obtained from NEDDC in response to the concerns raised in the Regulation 14 consultation. I have not seen this legal opinion but it is evident from the response of the Parish Council that it concludes that it is clear from both the application for the designation and the notice of it posted by NEDDC that the intention was to designate the whole of the parish as the neighbourhood area. I have seen the Legal opinion of DLA Piper LLP, submitted with the representations of Pegasus Planning. This concludes that “our view is that the designation took effect so as to designate only part of the Parish area as a neighbourhood area as shown on the Map.” And “...we are further of the view that the Draft NP cannot lawfully purport to cover an area that is wider than the neighbourhood area that has been designated.”
24. I do not have a qualification in law, but my professional view is that it is evident that the application for the designation of a neighbourhood area and the map accompanying it must be read together. The map that has been submitted is undoubtedly a rather careless piece of draughtsmanship and it would have been desirable for NEDDC to have requested a map which clearly showed the whole of the Parish at the time the application was made. However, as I have already explained, there is no doubt in my mind that the only reasonable interpretation of the application, the designation statement and the map is that the designation relates to the whole of the parish.

25. As required under Section 38B (1) (a) of the Planning and Compulsory Purchase Act 2004 the Plan clearly states the period to which it relates, which is 2016-2033.
26. The Plan must not include any provision about development that is excluded development as defined in Section 61K, which is inserted into the 1990 Town and Country Planning Act. Excluded development includes “county matters”, such as mineral extraction and waste disposal, and major infrastructure projects. I am satisfied that the submitted Plan contains no policies which relate directly to these matters.
27. I am also satisfied that the Plan does not relate to more than one neighbourhood area.

Public Consultation

28. The Consultation Statement describes the consultation that took place during the preparation of the Plan and sets out in the appendices attached to it more details of the process and the responses received.
29. In December 2014, prior to the formal designation of the Neighbourhood Area, an initial meeting of a steering group was held and a constitution was agreed. In February 2015, a questionnaire was circulated to all households in the Parish and responses were received from 27.2% of households, which in my experience demonstrates an encouraging level of involvement.
30. In July 2015, a drop-in event was held with the aim of identifying key issues which the policies of the Plan should address. It was publicised with posters around the parish, on the Parish Council website and through social media. This was attended by over 100 people which again is a positive level of engagement.
31. In December 2015 a meeting was held with the potential developers of the sites which had been identified for housing development and they were invited to display their sites at a further drop-in event held in December 2015 to obtain feedback on the emerging draft policies of the Plan. This event was attended by over 140 people.
32. Formal pre-submission consultation on the draft plan in accordance with regulation 14 of the NPR first took place between 22 January and 8 March 2016. The draft plan was made available on the Parish website, hard copies were made available at the parish offices, the Post Office, the medical centre and the tuck shop. Notices were placed on social media, the Parish Council notice board and Parish Council website and there was written consultation with all relevant statutory bodies and a wide range of local organisations. 14 comments were received and amendments were made to the draft plan prior to the submission of the Plan to NEDDC on 23 March 2016.
33. Following the submission of the Plan further consultation took place on the Strategic Environmental Assessment and comments were received from Historic England

suggesting that one of the allocations proposed in the Draft Plan would have adverse effects on the setting of a listed building. The SEA is considered further in paragraphs 49-56, but as a result of this representation the Plan was withdrawn on 19 January 2017.

34. The Draft Plan was revised and updated and a second round of Regulation 14 consultation on the revised plan took place between 30 January 2017 and 13 March 2017. The Plan was publicised in the same way as the original submission version. 44 responses were received; these are summarised in Appendix 7 to the Consultation Statement which also indicates what changes were made to the Plan in response to them. During the consultation process NEDDC published the consultation draft of the NEDLP. Modifications were also made to the Plan to take account of the strategic context provided by the emerging and the Plan was resubmitted to NEDDC in May 2017.
35. Pegasus Planning have suggested that the extent of the changes to the pre-submission draft means that many of the policies of the plan have not been subject to consultation. Their representation lists the policies that have been changed significantly. I have looked at each of these and it is clear that for the most part the changes that have been made have been the direct result of consultation. In other cases they have been made to reflect more closely the Consultative Draft of the emerging Local Plan. I am not persuaded that the extent of the changes was sufficient to necessitate a further round of regulation 14 Consultation. It is not the intention of the legislation to require repeated consultation on all amendments to draft plans and the purpose of the Regulation 16 consultation is to allow a further opportunity to comment on the submitted plan.
36. The submitted Plan was publicised in accordance with Regulation 16 of the NPR between 20 July and 31 August 2017. A notice on the NEDDC states that the link on the neighbourhood planning page of their website under the heading of Ashover mistakenly led to a notice about the submission of the Holymoorside and Walton Neighbourhood Plan. I have been told that this was only corrected on 22 September after the consultation finished. I have had some concerns that this incorrect link could have had the effect of making people unaware of the opportunity to comment and asked for clarification of exactly what appeared on both the NEDDC and APC websites. The e mail exchange relating to this and a screenshot of the NEDDC website as it appeared during the consultation period are attached at Appendix 1.
37. It clear from the screen shot that the website did make clear the period of consultation. It also made the submitted documents available via weblinks that were correct. The only incorrect weblink was that to the public notice. The only information about the

consultation that was in the public notice that was not immediately apparent on the Ashover page of the website was the locations at which the Plan could be inspected and the contact details for making representations. However, information on where hard copies could be viewed and on the addresses for comments was available through two other weblinks. The link saying “Consultation” in the paragraph preceding the link to the public notice took visitors to the “Askderbyshire” website and contained full details of the places at which the Plan could be viewed and how to submit comments. A screenshot of this is also attached at Appendix 2. The website also referred to more information being available on the Ashover Parish Council Website and this contained a link to the correct Public Notice. Details of the consultation were also available from NEDDC Facebook and Twitter sites and were clearly extensively used. Also in the locations where the hard copies of the Plan were available the public notice with details on how to comment was available.

38. NEDDC was only made aware of the error on its website on 20 September 2017 through comments made in one of the representations and received no complaints about inability to find the information during the consultation period. On careful consideration I am satisfied that the process of publicising the submitted Plan was not seriously flawed by the error on the NEDDC website. A total of 52 comments were received in response to the Regulation 16 consultation, a relatively large number for a parish of this size in my experience, and while some people may have been inconvenienced by the faulty public notice, there were several ways in which the information could be reached to enable people to comment.
39. I am satisfied that the draft plan was publicised in a way likely to bring it to the attention of people who live, work or carry on business in the area and that the Consultation Statement together with the attached tables contain the information required by Regulation 15 of the NPR.

The Development Plan

40. The statutory development plan is made up of:
- The saved policies of the North-East Derbyshire Local Plan 2001-2011 adopted in 2005. (NEDLP)
 - The saved policies contained within the Derby and Derbyshire Minerals Plan adopted in 2000 and amended in 2002
 - The saved policies contained within the Derby and Derbyshire Waste Local Plan adopted in 2005.

41. The planning horizon for all three of these plans has now passed and new plans are in the process of production. The draft North-East Derbyshire Local Plan was subject to consultation in February 2017 and has a horizon of 2033. While the basic conditions (see below) only require “general conformity with the strategic policies of the adopted Local Plan”, the evidence base of the emerging plan is an important consideration.

The Basic Conditions Test

42. The consideration of whether the Plan meets the basic conditions is the focus of the independent examination process. It is therefore essential to be absolutely clear on the meaning of each of the basic conditions and their application in relation to the APNP.

“having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan”.

43. There are two important points to emphasise in relation to this. The first is that I must consider this requirement in relation to the making of the Plan; it thus applies to the Plan as a whole. The second point is the use of the phrase “*having regard to*”. This means that I must consider the national policy and advice but it does not mean that each policy should be in absolute conformity with it. It provides for an element of flexibility. PPG explains that “*having regard to national policy*” means that “*a neighbourhood plan must not constrain the delivery of important national policy objectives*”.⁴ The Plan as a whole is clearly the sum of its policies and it is therefore necessary to consider the extent to which each policy complies with national policy and guidance. However, in reaching my conclusion on this basic condition it is the relationship of the Plan as a whole with national policies and guidance rather than individual policies which is the key consideration.
44. The Basic Conditions Statement indicates the relevance of the policies in the APNP to each of the main sections of the NPPF. This is helpful in demonstrating alignment with the broad intentions of the NPPF, but it is good practice and helpful to the examination to relate the policies of the neighbourhood plan more specifically to the relevant paragraphs of the NPPF which set out how the general aims are to be applied. This something I will need to do.
45. Also, relevant to the basic conditions test is “guidance issued by the Secretary of State” as set out in PPG. This guidance provides some quite detailed advice on the preparation of neighbourhood plans⁵ and on a whole range of planning issues that may be covered in a neighbourhood plan. The Basic Conditions Statement does not

⁴ PPG What does having regard to national policy mean? Reference ID: 41-069-20140306

⁵ PPG Neighbourhood Planning Reference ID 41-001-20140306 to 41-085-20160519

consider the relationship of the Plan to PPG but I have had frequent need to relate aspects of the Plan to it.

“The making of the plan contributes to sustainable development”

46. Sustainable development is the fundamental principle guiding the planning process and the assessment of this basic condition is therefore of prime importance.⁶ The NPPF spells out the three dimensions of sustainable development: economic, social and environmental, and emphasises the interdependent nature of these. Adherence to one strand of sustainability without regard to the others is unlikely to secure sustainable development and in many circumstances a balance needs to be struck between the elements. As the NPPF points out local circumstances vary greatly and that influences the way in which contributions to sustainable development can be made.⁷ In Ashover, that is very apparent as the need to accommodate some development to contribute to the need for new houses and support local services is balanced against the sensitivity of the environment. Again, it is important to note that the assessment to be undertaken relates to the Plan as a whole, but clearly the contribution of each policy needs to be considered to enable a conclusion to be reached and policies which fail to contribute to sustainable development are likely to require modification or deletion.
47. Section 5 of the Plan summarises ways in which it contributes to sustainable development and the Basic Conditions Statement contains a set of bullet points which do this in a different way. This falls short of a clear statement of the relationship of the policies in the Plan to sustainable development. However, there is inevitably a substantial overlap between the first and second basic conditions as both are concerned with the relationship of neighbourhood plans to the NPPF.

“The making of the plan is in general conformity with the strategic policies contained in the development plan for the area”.

48. As with the previous two conditions the test applies to the Plan as a whole, but also requires consideration of individual policies against relevant strategic policies in order to reach an overall conclusion. The test of “*general conformity*” is fundamentally that the neighbourhood plan policies should not undermine the strategic policies of the Local Plan. The test is spelt out more fully in PPG⁸. It does not preclude some variation from a strategic policy where it is justified by local circumstances providing the proposal upholds the general principle that underlies the strategic policy. The Basic Conditions Statement contains a table that lists by chapter the saved policies of the

⁶ NPPF Paragraph 6

⁷ NPPF Paragraph 10

⁸ PPG What is meant by ‘general conformity’? Reference ID: 41-074-20140306

Local Plan in one column and briefly summarises the content of the neighbourhood plan policies that relate to that chapter. This is a very cursory consideration and does not properly explore the extent to which the neighbourhood plan policies are “in general conformity” with those in the Local Plan, which is in my view what is intended by the use of the word “explaining” in regulation 15 (1)(d) of the NPR. It is this relationship that I need to consider.

“The making of the order does not breach and is otherwise compatible with EU Obligations”

Strategic Environmental Assessment and Appropriate Assessment under the Habitats Regulations

49. PPG indicates that *“where a neighbourhood plan is likely to have significant environmental effects it may require a strategic environmental assessment”*⁹, subsequently referred to as SEA. A SEA requires the preparation of an environmental report. In order to determine whether the plan is likely to have a significant environmental effect, a screening assessment is necessary.
50. Regulation 15 of the NPR requires that the submission of a neighbourhood plan must include:
“(i) an environmental report prepared in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans Regulations (EAPPR) or (ii) where it has been determined under regulation 9(i) of these Regulations that the proposal is unlikely to have significant environmental effects (and accordingly does not require an environmental assessment), a statement of reasons for the determination”.
51. Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (CHSR) puts into effect the requirements of Article 6.3 of the EU Habitats Directive and requires that:
“(1) Where a land use plan - is 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), and is not directly connected with or necessary to the management of the site, the plan-making authority must before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.” Amendments to these regulations were made in Schedule 2 to the NPR which inserted Regulation 102A to the CHSR:
“A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for

⁹ PPG Does a neighbourhood plan require a strategic environmental assessment? Reference ID: 11-027-20150209

the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required.”

52. The consideration of the obligations under the EAPPR has been somewhat complicated. Following the submission of the APNP in March 2016, it was determined that the Plan was likely to have significant environmental effects and that a SEA was therefore necessary. This conclusion was reached because the Plan contained allocations for housing development. Pegasus Planning correctly point out that the timing of the preparation of the SEA was not in accordance with PPG¹⁰, partly because it was carried out at a stage which was much too late to inform the preparation of the Plan and because it meant that the Environmental Report was only the subject of restricted consultation as it was not included in the documents that were publicised in accordance with regulation 16 of the NPR. However, these deficiencies are not a matter for this examination as that version of the Plan was withdrawn.
53. In March 2017 a Screening Assessment of the revised Draft Plan was carried out and concluded that the Plan is unlikely to have significant environmental effects. The screening report was subject to consultation with the statutory consultation bodies and their responses, attached to the Screening Assessment confirm this view. It is my understanding, that the main reason for the conclusion that SEA was not necessary on the revised draft plan was that it no longer made residential allocations. Several of the sites which were to be allocated for residential development in the original plan had been granted planning permission and another site was withdrawn on the basis of the representations of Historic England.
54. Pegasus Planning argue that a SEA is necessary because the Plan proposes changes to the Settlement Development Limits. It argues that, by making development within the areas to be included in new Settlement Development Limits acceptable in principle, the Plan is likely to have significant environmental effects. The question of settlement development limits is considered in some detail in relation to Policy AP1¹¹, but I have clarified that it is not the intention to change the existing Settlement Development Limits and I have recommended modifications to rectify the undoubted ambiguity in the submitted Plan. I am therefore satisfied, in the light of the responses of the statutory consultation bodies that the Plan is unlikely to have significant environmental effects and therefore that SEA is not necessary. This view is confirmed in the letter posted by NEDDC on its website on 15 August 2017. I am satisfied that the reasoning contained

¹⁰ PPG When should a plan maker start producing a strategic environmental assessment? Reference ID: 11-029-20150209

¹¹ Paragraphs of this report.

in the SEA Screening Assessment is a satisfactory Statement of Reasons for a determination that SEA is not required.

55. A Habitats Regulation Screening Assessment was carried out alongside the SEA Screening Assessment. The nearest European site is the South Pennine Moors Special Area of Conservation and Special Protection Area, which borders the north-west boundary of the Plan area. The Assessment identifies the reasons for these designations and their potential vulnerability against the nature of the Plan proposals. It concludes that because the Plan does not make significant allocations for new development it is unlikely to have significant effects on these areas. Natural England has confirmed this view in its response to the Screening Assessment and I am therefore satisfied that an Appropriate Assessment under the Habitats Regulations is not required.
56. I conclude that the making of the Plan would not breach and would be otherwise compatible with EU obligations.

Human Rights

57. I have not found any reason, or received any representations to suggest that the Plan in any way contravenes the European Convention on Human Rights.

The Plan, its Purpose and What it Aims to Achieve

58. Sections 4 and 5 of the submitted Plan provide the context for the policies which follow. They relate the Plan to the existing policy context in terms of local and national planning policy and of the main purpose of the planning system, to contribute to sustainable development. Section 4 sets out 8 purposes which clearly state what the Plan policies are intended to achieve. Apart from the last one these are entirely appropriate aims for neighbourhood plan policies. The last one is to “seek ways of addressing the problems of traffic congestion”. While there may be some potential to prevent serious worsening of problems associated with traffic congestion, the resolution of existing problems is more likely to be related to traffic management measures or transport investment which is not directly related to new development. These aims are not policies in their own right and it is therefore not necessary to modify them to meet the basic conditions, but my reservations on this point will be relevant in my consideration of the policies designed to achieve this aim.
59. Section 5 helpfully sets out examples of the ways in which the policies of the Plan will contribute to sustainable development.

The Policies of the Plan

60. I have considered all the policies of the Plan against the basic conditions, having regard to the evidence provided to justify the policies. Where necessary I have recommended modifications. I am only empowered to make modifications to meet the basic conditions or to correct errors.¹² I may however suggest modifications to improve the clarity of the wording of policies as one of the important elements of PPG is that *“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 or the specific neighbourhood plan for which it has been prepared”*¹³.
61. PPG also indicates that *“Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn on to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan...”*¹⁴ Several of my recommended modifications have had regard to these aspects of PPG.
62. In considering the policies I have taken account of all the comments made during the preparation of the Plan with a particular focus on comments made in response to the regulation 16 consultation on the submitted plan. While I have not referred directly to all the comments made I have given attention to all of them.

Spatial Strategy

63. This section of the Plan relates Ashover to its strategic context. It highlights the importance expressed in both the NPPF and the emerging NEDLP of locating development in the most sustainable locations. The emerging NEDLP contains a settlement hierarchy which classifies settlements based on: population, services, facilities and public transport. Within the parish, Ashover itself and Kelstedge are identified as Level 3 settlements and Alton, Fallgate and Littlemoor are Level 4 settlements. In Level 3 settlements, which are regarded as having limited sustainability, no housing allocations are envisaged but sustainable development within settlement limits is supported. Level 4 settlements are described as “very small

¹² Paragraph 10 of Schedule 4B inserted into the Town and Country Planning Act 1990 by the Localism Act 2011.

¹³ PPG Neighbourhood Planning How should the policies in a neighbourhood plan be drafted? Reference ID: 41-041-20140306

¹⁴ PPG Neighbourhood Planning What evidence is needed to support a neighbourhood plan? Reference ID 41-040-20160211

villages and hamlets with very limited sustainability” where only limited infill development to meet local needs is envisaged.

64. It is important to acknowledge the representations of Pegasus Planning, Gladman Developments and Planning Design which point out that the emerging Local Plan has some way to go before it is adopted. In an earlier version Ashover was classified as a “Growth Village” and it was envisaged that over 100 dwellings would be required in the Plan period. The change to regarding Ashover as a Level 3 village resulted from a re-evaluation of the Local Plan strategy to align the location of housing more closely with employment related development through changes to the boundaries of the Green Belt. It is clear that there are important strategic issues, as yet unresolved, which will affect the final form of the NEDLP and it is therefore possible that the strategic context for Ashover will change again. That is why the basic conditions do not require neighbourhood plans to be compliant with an emerging plan. However, it is good practice for the qualifying body and the local planning authority to work together to minimise conflicts between the neighbourhood plan and the emerging Local Plan, including housing supply policies.¹⁵
65. It is also important to have regard to the policies of the saved policies of the North-East Derbyshire Local Plan 2001-2011. Although the timescale for this that Plan has been exceeded by several years, its policies are still applicable where they do not conflict with the more recent NPPF. The adopted Local Plan did not have a settlement hierarchy but set out policies aimed at providing strategic development within defined Settlement Development Limits. Within the parish of Ashover, there were defined Settlement Development Limits for Ashover, Kelstedge and Littlemoor. Neither the Adopted Local Plan or the emerging Local Plan define a required amount of development for the Parish of Ashover or any of the individual settlements within it.
66. The emerging NEDLP retains the concept of Settlement Development Limits and it is intended to revise the existing ones to take account of development that has taken place since 2005 and to allow for future development needs. It is envisaged that the new settlement boundaries will be identified in the Publication version of the Local Plan.

Policy AP1: Development Within Limits to Development

67. Policy AP1 provides for small scale sustainable development with the defined Limits to Development where it meets defined criteria. However, the intentions of the Policy

¹⁵ PPG Can a neighbourhood plan come forward before an up-to-date Local Plan is in place? Reference ID 41-009-20160211.

with regard to the definition of the Limits to Development are not clear as there is an ambiguity between the intentions of the Policy as described in the supporting text and the wording of the Policy. The Proposal Map on page 84 shows with a solid red line the 'Proposed "Settlement Development Limit"'. It also shows with a dotted red line 'Previous "Settlement Development Limit" where different'. The differences shown in this way are small extensions to the Settlement Development Limit in several locations around Ashover and some in Kelstedge. To a large extent these reflect recent planning permissions.

68. The policy says, "Within the defined Limits to Development for Ashover and Kelstedge as defined in the proposals map...". Initial reading of this suggests that the Policy is referring to the 'Proposed "Settlement Development Limit" shown by the solid red line on the Proposal Map. However, the supporting text indicates that, although it had been the intention "to update the existing Limits to Development for Ashover, Kelstedge and Littlemoor introduced by North-East Derbyshire in 2005...", "...it is proposed that the Settlement Development Limits are not revised through the Plan. Instead it is considered more effective and efficient if this was undertaken as part of the district-wide review of Settlement Development Limits to be published alongside the next iteration of the Draft Local Plan". This suggests that for policy purposes the original definition of the Settlement Development Limit as defined in the NEDP 2001-2011 is to be used. However, the supporting text goes on to say that "The Plan does, however, include *proposed* Settlement Development Limits for Ashover and Kelstedge.... It is hoped that these *proposed* Settlement Development Limits will be a key input in determining the final boundaries in the North-East Derbyshire Local Plan." It is thus unclear whether the "defined Settlement Development Limit" shown on the Proposal map is this "*proposed* Settlement Development Limit" or the original Local Plan Settlement Development Limit.
69. I have sought clarification of the intentions of the Plan and my e mail and the responses to it are shown at Appendix 2. It is evident from these that the intention is to use the existing Settlement Development Limits for policy purposes. If this is the case the existing Settlement Development Limit for Littlemoor has been omitted and should be shown on the Proposal Map
70. It would be quite possible for the Neighbourhood Plan to propose Settlement Development Limits that differ from those in the original Local Plan if they were clearly justified. Indeed, it can be argued that it would be desirable to do this as the original Settlement Development Limits were adopted in 1998 and have not been reviewed since 2005. However, although the proposed limits have been developed "through consultation with the local community and other stakeholders and are based on best

practice and guidance provided by North-East Derbyshire”, there is no explanation of the principles that have been applied or any justification for the specific changes that are suggested. It is therefore quite clear to me that the “proposed Settlement Development Limit” cannot be applied through Policy AP1 as there is insufficient justification to explain why this boundary, as opposed to any other, has been chosen. This applies to the various suggestions to changes to the Limits to Development made in representations.

71. This being the case, there is no purpose in showing the suggested changes to the Limits to Development on the Proposal Map as it serves only to confuse. I have therefore recommended modifications to the policy, the supporting text and the Proposal Map to clarify the policy to be applied in terms of Settlement Development Limits and the map showing the suggested changes could be attached as an Appendix with a clarification that it carries no weight. Using the existing Settlement Development Limits, it is true that The Neighbourhood Plan could quickly become out of date if, as seems likely, the Settlement Development Limits are changed through the Local Plan. This can be addressed by relating to the policy for the Limits to Development to those of the up to date Local Plan.
72. The Proposal Map is to be found as Appendix E to the document. Appendices A to D are background information providing evidence and justification for the policies of the Plan. The Proposal Map is different in nature, it is part of the Plan and the policies that relate to it do not make sense without it. It should therefore fall within the main body of the Plan before the appendices.
73. Pegasus Planning, Gladman Developments and Planning Design suggest that the current Limits to Development no longer provide an appropriate framework to facilitate the necessary growth and that reduced weight should therefore be attached to them. It is true that in some circumstances the weight to be attached to the Limits to Development in the determination of planning applications may be reduced. This has been the case in relation to some recent planning decisions that were taken in the context of the absence of a 5 year supply of developable land, notably the permission granted on appeal for the development of 25 dwellings on land to the west of the junction between Narrowleys Lane and Moor Road.¹⁶ The availability of a 5 year supply of housing land relates to the district as a whole and it can be subject to rapid change whereas the adopted Local Plan Policy based on the application of Limits to Development is a longstanding strategic policy which is complemented by the policy relating to the defined Special Landscape Area.¹⁷ In circumstances in which there is a

¹⁶ Application Ref 14/00766/OL

¹⁷ NEDLP 2001-2011 Policy NE2

5 year supply of housing land the weight that could be attached to these policies would be greater. It is therefore not realistic or appropriate for the policies of a neighbourhood plan relating to a very small part of the District to be dictated by the 5 year supply situation at a specific point in time. I shall return to the significance of the Limits to Development in relation to Policy AP2.

74. The first part of the policy refers to “small scale sustainable development”. However, it does not define small scale or justify the need to restrict development to small scale. The criteria which follow provide much clearer and less arbitrary guidance on what should be regarded as “small scale” and my recommended modification therefore deletes the words “small scale”.
75. The criteria which are to be applied to development with Settlement Development Limits are more detailed than those in Policy GS5 of the NEDLP 2001-2011. They are consistent with the basic conditions for the most part, but in some cases there is limited capacity to enforce them and in others they are not sufficiently justified.
76. In criterion d) there is no indication of what are important views. In the case of the village of Ashover itself, the setting in the Amber Valley means that there are very many views which could be regarded as important, particularly to and from elevated positions around the village and I therefore recognise the difficulty of defining them. However, as worded it is not clear how the distinction between an important view and other views can be drawn. Criterion g) provides a framework for addressing this issue.
77. Criterion j) requires development to contribute to reducing crime and anti-social behaviour. Although this is qualified by “where relevant”, it may well not be reasonable to expect new development to resolve existing issues. The focus should be on development not creating conditions which may cause crime or anti-social behaviour.
78. I am satisfied that the other criteria are consistent with the basic conditions.

Recommendations

Reword the first part of Policy AP1 to read “Within the existing Limits to Development for Ashover, Kelstedge and Littlemoor shown on the Proposals Map, or, if these are superseded, those in the up to date Local Plan, sustainable development proposals will be supported where it can be demonstrated that it:”

Delete criterion d)

Reword criterion j) to read “will not increase the likelihood of crime or anti-social behaviour.”

Move the Proposal Map from its position as Appendix E and insert it after page 53 before the Appendices and not labelled as an Appendix.

On the Proposal Map, delete the sections of solid red line that show the

suggested extensions to the Settlement Development Limits and make the areas of dotted red line solid. Extend the map to include Littlemoor and show the existing Settlement Development Limit. In the key show the solid red line as “Existing Settlement Development Limit” and delete the red dotted line and its definition.

In the supporting text modify the fourth paragraph to read “Work on the Neighbourhood Plan has included consideration of possible changes to the existing Settlement Development Limits for Ashover and Kelstedge, based on consultation with the local community and other stakeholders and using best practice and guidance provided by North-East Derbyshire. These possible changes are shown on the map at Appendix E. It is hoped that these proposals will be considered as a key input in determining the final boundaries of the North-East Derbyshire Local Plan, but until then they carry no weight.”

Insert a map showing the suggested amendments to the Settlement Development Limits as Appendix E. This Map should not show the Local Green Space allocation to avoid confusion with the Proposal Map.

In the first line of the fifth paragraph of the supporting text delete “small scale”.

Policy AP2: Development Proposals Outside the Limits to Development

79. Policy AP2 aims to limit development outside the defined Limits to Development for Ashover and Kelstedge to development which requires a rural location or supports thriving communities within it. The first part of the policy is generally compliant with the policies for the protection of the countryside in the NPPF¹⁸ and Saved Policy GS6 of the NEDLP 2001-2011. However, the intentions of the second part of the policy are not sufficiently explicit to be clearly interpreted or consistently applied.¹⁹ It's overall approach could be seen as more restrictive than the NPPF or quite permissive depending on what is encompassed within the rather vague phrase “or supports thriving communities within it”.
80. The Basic Conditions Statement does not refer to the relationship between this policy and paragraphs 54 and 55 of the NPPF which relate to housing development in the countryside. These paragraphs provide for affordable housing on rural exception sites and for the re-use of redundant buildings among other things. Similarly, the Policy is generally aligned with, but does not adequately reflect Saved Policy H3 a) and d) which refer to changes of use to residential development and rural exception sites. The comments of Pegasus planning rightly refer to the limited potential for affordable housing to come forward through planning obligations because of the limited scale of

¹⁸ NPPF paragraphs 109-125

¹⁹ PPG How should policies in a neighbourhood plan be drafted? Reference ID 41-041-20140306

the developments envisaged by the Plan and the limitations that this would place on the ability to achieve sustainable development. I have recommended modifications to provide more flexibility on this but it is in my view important in terms of achieving sustainable development to make explicit provision for rural exception sites to provide affordable housing. Also, the supporting text refers to development which supports the rural economy but the policy makes no direct reference to the economy.

81. In order to meet the basic conditions modifications to the policy are necessary to define more clearly the type of development which may be appropriate and to reflect the intentions of the NPPF.

Recommendations

In the first sentence of Policy AP2 after "...Ashover" replace "and" with a comma and after "Kelstedge" add "and Littlemoor".

Reword the second sentence to read:

"In the countryside, development proposals will be carefully controlled and limited to those which:

- a) support the rural economy and need to be in the countryside**
- b) provide affordable housing to meet a demonstrable need on a rural exception site that is adjacent to the most up to date Settlement Development Limits. These developments may include an element of market housing where it can be demonstrated that it is necessary to make the affordable housing viable.**
- c) re-use redundant or underused buildings.**

In all cases development will not be seriously intrusive in the countryside and will respect the character of existing settlements and their setting."

Policy AP3: Windfall Housing Sites

82. Policy AP3 provides for small scale windfall development within the settlement boundaries of Ashover and Kelstedge. It defines small scale as normally 5 dwellings or less and refers to the criteria in Policy AP1. While the development that it envisages would fall within the scope of Policy AP1, the policy is not superfluous as it relates specifically to the scale and form of housing development. It does not refer to the settlement boundary of Littlemoor, and as the existing settlement boundaries are to be retained until a full review of settlement boundaries in the emerging Local Plan, this omission should be rectified.
83. In my consideration of Policy AP1 I recommended the deletion of the limitation to small scale development and there is no justification for the limitation to "normally 5 or less" in this policy. Saved Policy GS5 has no limitation on the scale of development within settlement boundaries and the supporting text rightly refers to the varied nature of windfall sites and the potential for some larger sites to come forward. While the

number of these is likely to be limited, where they do, they also have the potential to deliver some affordable housing. The criteria in Policy AP1 provide a good framework for assessing the sustainability of proposals without the need to impose an arbitrary limit on the scale of development. I have therefore recommended a modification to reflect this.

Recommendation

In Policy AP3 delete “(normally 5 or less)”.

In the second line of the policy replace “and” with a comma and after “Kelstedge” add “and Littlemoor”.

The Amount of Housing Development

84. One of the key considerations for a neighbourhood plan is that it should not provide for “less development than set out in the Local Plan or undermine its strategic policies”²⁰. In the absence of an up to date Local Plan this assessment is not straightforward. The policies of the 2001-2011 NEDLP did not identify any specific scale of development for Ashover, it simply identified a number of dwellings to be provided on windfall (non-allocated) sites within the parishes of each of the sub-regions of the District. As this only identified need up to 2011 the provisions of the Neighbourhood Plan cannot be related to this policy.
85. The Plan refers to planning permissions which have been granted for 50 dwellings in the parish and the emerging Local Plan identifies Ashover and Kelstedge as Level 3 Settlements which it states are “Settlements with limited sustainability” where “windfall developments of appropriate scale may be acceptable in line with criteria based policy SS12 or an adopted neighbourhood plan.” It is evident that the underlying strategy of the emerging Local Plan is to concentrate development in the larger more sustainable settlements and the APNP does not undermine this. It is of course possible that this strategy will be revised but there is at present no other basis on which to consider the strategic direction of policy.
86. Pegasus planning suggest that there is a conflict between the policies of the Plan for a limited scale of housing development and its aim of maintaining community facilities. It is true that there is a very definite tension between the environmental and social strands of sustainable development in this instance and I accept that there is no evidence that school places are under pressure as a result of recent or permitted development. The environmental characteristics of Ashover are undoubtedly significant and the Plan has to strike a balance that reflects both strategic and national

²⁰ NPPF Paragraph 185

policy. There is provision for significant development to take place in the parish and, subject to the amendments I have recommended to make Policies AP1, AP2 and AP3 more flexible I am satisfied that the plan is consistent with the adopted development plan policies and those of the emerging development plan with regard to the level of growth required. It therefore satisfies the NPPF guidance on the scale of development to be provided.

Policy AP4: New Housing Mix

87. Policy AP4 aims to ensure that new housing reflects identified local housing needs, taking account of site and marketing considerations. It also encourages the provision of smaller dwellings of three bedrooms or less. This general approach is consistent with paragraph 51 of the NPPF which encourages planning for a mix of housing which reflects local need. In this regard, I do not accept the comment of the District Council that specifying house sizes is unusual in policies for open market housing. However, I do agree that such policies should be supported by clear evidence and applied with some flexibility.
88. Appendix B provides some very clear evidence that the proportion of larger dwellings, 4 bedrooms or more, is substantially higher than in North-East Derbyshire as a whole, The East Midlands or England.²¹ It also shows that under-occupation of dwellings, as evidenced by the number of spare bedrooms, is higher than in all these areas. It also demonstrates that larger dwellings of 4 bedrooms or more are substantially more under-occupied than in the District, the region and particularly the country. This provides clear evidence in support of a policy to encourage smaller dwellings, but there is no up to date evidence on specific housing needs in Ashover. This Appendix is not referred to in either the supporting text or the policy, and the reader could thus be unaware of its existence. The available evidence may change over the Plan period and I have recommended modifications that will provide clearer guidance for the decision maker and thus meet the basic conditions.

Recommendations

At the end of the second sentence of the supporting text insert (see Appendix B).

Change the title Page of Appendix B to read “Supporting Evidence: Household size, dwelling size and occupancy.

Reword the first sentence of Policy AP4 to read “Development proposals for housing will be required to demonstrate that they take account of the most up to date published evidence of housing needs in Ashover and North-East Derbyshire, having regard to other site and market considerations.”

²¹ The title page of the Appendix is incorrect as it refers to “Supporting Evidence: Local Green Space Report

Policy AP5: Affordable Housing

89. The first part of Policy AP5 aims to ensure that priority is given to people with a local connection to Ashover in the allocation of affordable housing. The allocation of affordable housing is the responsibility of the housing authority. Thus, the intention to give priority to residents of the Parish in allocations is not an enforceable planning policy except in relation to rural exception sites where evidence of local need is required to justify the permission.
90. The second part of the policy proposes that where it is not possible to provide affordable housing on site with any housing development there should be a contribution to affordable housing in the Parish through a planning obligation. However, the policy does not indicate the circumstances in which on site affordable housing would be required and therefore does not provide clear guidance on its own. The relevant Local Plan policy is Policy H7 of the NEDLP 2001-2011 which requires the provision of affordable housing in Rural areas on developments of more than 0.1ha. However, this has been superseded by a recent change in Planning Practice Guidance which precludes requirements for the provision of affordable housing in rural areas on developments of 10 dwellings or less except in designated rural areas.²² Thus Policy H7 could only apply on developments of more than 10 dwellings. The circumstances in which developments of more than 10 dwellings could be approved under the plan policies are likely to be very limited, but that does not invalidate the policy as changes in the emerging Local Plan to the extent of the Settlement Development Boundaries may permit such developments and permissions where material considerations justify departures from policy cannot be ruled out.
91. Policy H8 of the NEDLP 2001-2011 makes provision for contributions to off site provision of affordable housing elsewhere in the district and the second part of Policy AP5 would require the application of this contribution in the Parish. I do not think that this undermines the general intention of Policy H8.
92. The requirement for any conclusion that it would not be possible or appropriate to provide affordable housing on site to be reached in consultation with the Parish Council is both unnecessary and inappropriate. It is unnecessary because local planning authorities have a statutory duty to consult parish councils on planning applications in their area. Thus, the Parish Council will have the opportunity to comment on this issue, as on any other. However, it is inappropriate to make specific reference to the role of the Parish Council in relation to a particular issue as it sets the Parish Council apart from other statutory consultees and it is not within the power of a

²² PPG Planning Obligations Reference ID 23b-031-20161116

neighbourhood plan to impose new procedural requirements on local planning authorities.

93. The Modifications I have recommended to reflect these points are necessary to enable the policy to meet the basic conditions.

Recommendations

In Policy AP5 delete the first Paragraph

Reword the first part of the second paragraph to read: “On developments of over ten dwellings, where it can be demonstrated to the North-east Derbyshire District Council that it is not possible or appropriate to build affordable homes on the site in accordance with Policy H7 of the Local Plan or a relevant replacement policy, the development should provide a financial contribution towards...provided on site”

Jobs and the Economy

Policy AP6: Existing Employment Uses

94. The policy resists the loss of existing employment uses unless it can be demonstrated that the site is unsuitable for, or there is no market demand for, employment uses. This policy has regard to paragraph 22 of the NPPF which discourages the long-term protection of sites where there is no reasonable prospect of them being used for employment purposes. Although phrased differently it is consistent with the general purpose of Policy E7 of the NEDLP which resists the change of use of employment land unless the local planning authority is satisfied that there is an adequate supply of land. It thus meets the test of general conformity with Policy E7.
95. The District Council has commented that the policy goes beyond the protection proposed in policies WC2 and WC3 of the emerging plan which refer to named primary and secondary employment sites. These policies are liable to change and the test of general conformity is with the adopted development plan. Also, Policy WC2 does not specify how the sites referred to will be protected. It is the nature of employment sites in a rural setting that they tend to be small scale and dispersed, but that does not make them unimportant at a local level. While policies at a district level are appropriately focussed on strategically important sites, the protection of smaller local sites does not undermine this policy and it is appropriate for a neighbourhood plan to contain non-strategic policies to be applied locally.
96. I note the concerns of NEDDC that the policy as phrased may be unreasonably restrictive in relation to business uses linked to domestic properties and I have

recommended an amendment to reflect this. It is also the case that some changes of use from employment related uses may be permitted development, but the policy could not be applied in these cases. I accept that the wording to define “actively marketed” needs to be clarified. Also, the minimum period of 6 months for marketing is not sufficiently long to demonstrate an absence of demand and 12 months is the period normally applied in policies of this sort.

Recommendation

In Policy E1 after “...supported unless” reword the policy to read “the use is ancillary to a residential use, or it has been demonstrated that the current use is not viable and that all reasonable steps have been taken to let or sell the site or building for employment purposes for a period of at least 12 months.”

Policy AP7: New Small-Scale Employment

97. Policy AP7 generally supports the establishment of new small-scale employment uses and the expansion of existing ones, subject to requirements relating to the effect of the development on neighbouring uses and the transport network. It is in general conformity with the NPPF, paragraph 28. It is though quite open ended in terms of potential development in the countryside and therefore potentially in conflict with the paragraph 109 of the NPPF and saved policy GS6 of the NEDLP with regard to impact on the landscape value of the countryside. Such development, which does not have a need to be located in a rural may also be unsustainable in terms of its accessibility to employees and suppliers. Many of the rural roads in Ashover are very narrow with steep hills and a significant increase in use, particularly by heavy vehicles may well be unsustainable. A cross reference to Policies AP1 and AP2 of the Plan would address this.
98. The reference in the last sentence to possible adverse effects on residential and environmental amenity and the transport network is vague and does not define the nature of any harm. I have therefore recommended a modification to address this.
99. As a more minor point I believe “fumes or smells” would more clearly express what is intended. Also, to grammatically agree with “uses”, “it” on the second line of the policy should be replaced by “they”.

Recommendation

In Policy AP7:

In the second line after “...will be supported where” delete “it” and insert “they” and change “fumes and smells” to “fumes or smells”;

after “...required to comply with” in the penultimate line, reword to read “the provisions of Policy AP1 or AP2, as appropriate”.

After “local character and uses” reword the last two lines to read:

“and would not be harmful to the living conditions of neighbouring residents, or cause serious harm in terms of road safety or the free flow of traffic.”

Community Facilities and Shops

Policy AP8: Protection and Enhancement of Shopping Provision

100. This policy aims to protect the existing shops in the parish from changes of use unless it can be demonstrated that continued retail use is not viable. This is consistent with the fourth bullet point in paragraph 28 of the NPPF and with saved policy SH8 of the 2001-2011 Local Plan. Ashover has a small number of shops which make an important contribution to its character and vitality. In some instances, changes of use from retail to other uses are permitted development²³ and this should be recognised in the policy. I also agree that the wording on the lines of that suggested by the local planning authority would provide clearer guidance, but a period of two years is unnecessarily long to demonstrate a lack of demand for retail premises..

Recommendation

Reword Policy AP8 to read:

“Development proposals that result in the loss of an existing shopping use and require planning permission will not be permitted unless it can be demonstrated that there is no demand for a shop use as evidenced through unsuccessful marketing of the premises for a period of 12 months.”

Policy AP9: Protection and Enhancement of Community Facilities

101. This policy aims to resist the loss of important community facilities unless they are replaced by similar or improved facilities, or it can be demonstrated that they are no longer required or viable. This policy is consistent with the same NPPF and Local Plan policies as the previous one and a full range of community facilities is important to the sustainability of the community.
102. The policy lists 7 public houses which is an exceptionally good provision for a parish of this size and no doubt reflects the popularity of Ashover to visitors. However, Ashover is a very large parish and these facilities are spread around the parish where they can also serve the dispersed population. Three of the pubs are in the village of Ashover and I note the suggestion of NEDDC that it may therefore be unnecessary to apply the policy to these. However, for a village which acts as a focal point for a large area, more than one public house may be expected, and it is legitimate to seek to retain

²³ Town and Country Planning (General Permitted Development) (England) Order 2015 Part 3 Classes C,D,G,J and M.

them if possible.²⁴ At the same time the existence of others may mean that it would not be consistent with the presumption in favour of sustainable development to resist other sustainable uses. I have therefore recommended a modification to reflect this on the lines of the saved Local Plan policy.

103. The final section of the paragraph supports the provision of new community buildings where it meets an identified local need. I have already pointed out that policies cannot single out the Parish Council for consultation on a particular issue. The list of facilities contained in the policy includes both commercial premises and public or community buildings. The requirement to demonstrate an identified local need is likely to be an unreasonable restraint of legitimate competition for commercial premises and I believe that this part of the policy can only be applied to the community buildings. It is therefore necessary to divide the list into two and make it clear that this part of the policy only applies to the list of community buildings.

Recommendation

In the first part of Policy AP9 after “...no longer required by the community” insert “ and there is adequate alternative provision within the same settlement...”

Divide the list into two:

a) Commercial Facilities

- **Peak Edge Hotel**
- **The Famous Red Lion**
- **Old Poets Corner**
- **The Crispin Inn**
- **The Miners Arms**
- **The Black Swan**
- **The Kelstedge Inn**
- **The Post Office**
- **Ashover Medical Centre/Pharmacy**

b) Community Buildings

- **Ashover Toilets**
- **Bassett Rooms**
- **Ashover Parish Hall**
- **Uppertown Social Centre**
- **Ashover Parish Church**

²⁴ The test for a planning policy of this sort is not the same as that which would be applied to the designation of an asset of community value where more than one public house is likely to preclude designation.

- **Spitewinter Chapel**

Make it clear that the final section of the policy only applies to part b) and in this section of the policy delete “in consultation with Ashover Parish Council”.

Policy AP10 Assets of Community Value

104. Policy AP10 supports the listing and retention of Assets of Community Value and aims to ensure that the continued existence of Assets of Community Value is a material consideration in the determination of development proposals that may affect them. The first part of the policy is not related to the development and use of land as designation of an Asset of Community Value simply establishes the right of the Parish Council to seek to purchase the facility if its continued existence is in doubt; it does not in itself limit the use that the owner can make of the building. No buildings or facilities have yet been designated as Assets of Community Value and so the policy is to an extent hypothetical. However, it is quite possible that such designations will be made during the Plan period and the second part of the policy would then be applicable. The retention of key services and facilities is consistent with the NPPF and a neighbourhood plan policy of this sort would have the effect of making this a material consideration in such circumstances. I can see no reason why this part of the policy fails to meet the basic conditions.

Recommendation

In Policy AP10 delete the first sentence.

Design and Built Heritage

Policy AP11: Design

105. Policy AP11 sets out criteria for the design of new buildings and extensions. For the most part, the policy is consistent with the guidance in the NPPF (paragraphs 56-60) and in particular with the aim of reinforcing local distinctiveness.
106. However, the policy is somewhat repetitious in that it says the same thing in several ways. This does not accord with the PPG guidance that policies should be concise²⁵. For example, “the characteristics of the site and its surroundings” include “the grain of the surrounding area” and thus points a) and b) can be merged. I have therefore recommended some modifications to address this.

²⁵ PPG Neighbourhood Planning How should the policies in a neighbourhood plan be drafted? Reference ID: 41-041-20140306

107. Point c) suggests that “designs specific to a generic ‘scheme’ should be avoided.” While I understand the sentiment behind this policy it is not consistent with the presumption in favour of sustainable development to preclude such designs in principle. Moreover, the strategic context means that large scale estate development, where such designs are most prevalent, is not envisaged. Specific proposals should be treated on their merits and the other criteria of the policy, which indicate what good design should do, will be applied to such proposals.
108. Sections d) and e) which require applications to take account of the Ashover Conservation Area Character Appraisal and NEDC’s “Successful Places; A guide to Sustainable Housing Layout and Design” are consistent with the basic conditions.

Recommendation

In Policy AP11a) insert “scale” after “...character,” and replace “fit in with the ‘grain’” with “respond positively to the characteristics of the site and its surroundings” and delete “of the surrounding area”.

Delete AP11 b) and c) and re-number remaining sub-paragraphs.

Policy AP12: Listed Buildings

109. Policy AP12 offers support to development proposals that enhance the conservation, longevity and appreciation of listed buildings. The policy does not duplicate the guidance given in the NPPF regarding development that would be harmful to a heritage asset, it simply offers support to development proposals that would be beneficial to them. It is difficult to see how this policy will make any difference to decision making but it does not conflict with the basic conditions.
110. The supporting text refers to the existence of 83 listed buildings in the parish but only a few are identified and there is a cross reference to the Historic England website. PPG indicates that it is good practice to clearly identify designated heritage assets at the start of the plan making process. It would be helpful to identify these assets within the Plan to assist decision makers.²⁶

Recommendation

Insert a new Appendix F which lists the Listed Buildings and identifies them on a map.

In the second line of the policy delete “a Listed Building” and insert “The listed Buildings shown in Appendix F.

²⁶ PPG How should heritage issues be addressed in neighbourhood plans? Reference ID 18A-007-20140306

Policy AP13: Non-Designated Heritage Assets

111. This policy requires that development proposals that affect a non-designated heritage asset should preserve or enhance its character or setting. North-East Derbyshire does not currently have a list of non-designated heritage assets, so they cannot be identified at this stage. Moreover, the proposed policy is too strong a test having regard to the balanced approach in the NPPF for both designated and non-designated heritage assets. The general approach is that any harm should be considered having regard to the significance of the asset and any public benefits that would flow from the proposal. Clearly the significance of non-designated heritage assets is less than that of listed buildings and thus a policy which does not include the element of balance does not have sufficient regard to national guidance. While it is possible that a list of non-designated heritage assets will be compiled, the policy to be applied to them will have to be consistent with the approach in the NPPF and any modification which I recommend could not add to this. At this stage the policy serves no purpose.

Recommendation

Delete Policy AP13.

Landscape, Green Spaces and the Natural Environment

Policy AP14: Landscape Character

112. This policy aims to protect the quality of the landscape in the parish. It requires development proposals to demonstrate the distinctive character of the landscape and sets out four criteria against which to assess proposals.
113. The quality of the landscape of the parish as a whole is very high and is one its defining characteristics of Ashover. My subjective view is endorsed by the Special Landscape Area designation in the 2001-2011 Local Plan and the inclusion of most of the parish within the areas of "Primary Sensitivity" identified by Derbyshire County Council²⁷. I have already referred to the support in the NPPF for "protecting and enhancing valued landscapes and the policy is consistent with Saved Local Plan policies NE1 and NE2. I am satisfied that the policy meets the basic conditions.

Policy AP15: Local Green Spaces

114. This policy identifies 11 spaces as Local Green Spaces and Appendix C provides justification in the form of an evaluation grid which assesses each site against a range

²⁷ Areas of Multiple Environmental Sensitivity 2013, Technical Support Document 2 Derbyshire County Council

of criteria. These criteria effectively cover those in paragraph 77 of the NPPF. I visited each of the Local Green Spaces on my visit and have considered them against the criteria myself. Representations from both NEDDC and others suggest that some of the spaces proposed do not meet these criteria but have not indicated which spaces they are referring to. I acknowledge that there is inevitably an element of subjective judgement in applying these criteria, particularly in terms of defining what makes a space “demonstrably special” and what defines an “extensive tract of land”, but I have applied the criteria as consistently as I can, having regard to my experience elsewhere. Except where I have stated otherwise I am satisfied that they meet the criteria for Local Green Space designation.

115. 1. All Saints Church Cemetery

This is the large Cemetery to the rear of All Saints Church and close to the centre of the village of Ashover. It is an attractive and tranquil area offering views of the surrounding country.

2.Ashover Sports Ground and Playing Field

The Sports Ground and Playing Field is clearly a focal point for the village of Ashover, containing tennis courts, a cricket field, children’s play area. It is also evidently well used for informal recreation and can be accessed in from several points on the periphery. I am quite satisfied that it meets the criteria for allocation as a Local Green Space. However, the area identified on the proposals map is much more extensive than the Sports Ground and Playing Field. On the south-western boundary of the playing field there is a footpath which runs between two hedges and on the other side of this there is a field with a footpath running diagonally through it. Two fields to the south-east of this were in grazing use at the time of my visit and beyond the south-eastern boundary of the playing field there are several other fields also included on the proposals map as Local Green Space, the nearest of which has an entrance gate indicating that it is the Ashover Showground. I have been informed (see Appendix 2) that the intention was for the whole area to be designated as a Local Green Space. However, the only justification for the designation relates to the Sports Ground and Playing Field and there is no demonstrable reason for the designation of the areas beyond it which are shown on the map.

3. Land at the junction of Church Street, Moor Road and Milken Road

This is a roughly triangular semi-formal area of open space separating a group of bungalows from the road at this prominent location in the village. It is partly screened from the road by planting creating a sense of separateness and place.

4.Land off Malthouse Lane

This area of grass with several mature trees separates a group of semi-detached

houses from Malthouse Lane. It makes an important contribution to their setting and to the character of the village.

5. Tennis Court off Malthouse Lane

This single hard tennis court appears to be a private facility in extensive grounds. In my judgement it cannot be described as demonstrably special as a green space and no persuasive justification has been provided for its designation as a Local Green Space.

6. Fabric Wood

Fabric Wood is an extensive area of woodland and moorland with the craggy outcrop of Fabric Rock at its highest point offering outstanding views in all directions. I noted on my visit that it is a Derbyshire Local Nature Reserve. While it is close to the hamlet of Fairhill, and I accept that it is quite centrally situated within the parish, it is separate from the village of Ashover and it appears to be a viewpoint and open space of more than local significance. There is no definition of what defines an “extensive tract of land” and each area needs to be considered in its context. However, this is clearly quite a large area. Its frontage along Alton Lane is about 600m and it is between 150 and 200m wide. I estimate its total area to be around 10 hectares, which is substantially more than many areas which have been considered too large to be Local Green Spaces in other neighbourhood plan examinations. Taking account of all these factors, I am not satisfied that it is appropriate for designation as a Local Green Space.

7. Former Ashover Parish Quarry

This is a small steep and rocky wooded area that has the feel of a secret hideaway. It is evidently well used from the many pathways that cross it and the evidence of camp fires. It immediately borders the edge of the built-up area of Ashover and has a clearly special identity.

8. Ashover Allotments

This is a small area of allotments close to the junction of Marsh Green Lane with Cripton Lane. It is an attractive walled site offering views of the countryside beyond and entirely appropriate for Local Green Space designation.

9. Ashover Primary School Playing Field

This large grassed area adjoins the Cemetery considered at No1. As shown on the proposals map it is not possible to see where the dividing line with the Cemetery is and, as they are designated separately as Local Green Spaces for different reasons the map should clearly identify them separately. This site is also omitted from the list of sites proposed in the Policy and it has been confirmed to me that is an error. The area is clearly larger than is required for the primary school. However, it clearly serves a wider purpose as a community asset as it is accessible by a stile from the footpath on

its southern side and is used for walking and informal recreation. This makes it appropriate for designation as a Local Green Space.

10. Land off West Edge Close, Kelstedge

This is a small area of amenity grassland containing some mature trees within a residential area. It is evidently important to the community it serves and is the only publicly accessible amenity area in Kelstedge.

11. Two small areas of land off Alton Hill, Alton

One of these areas is a delightful well-maintained area of grass enclosed by dry stone wall which has been dedicated to the community of Alton. Adjoining it is another open area of grass. Again, it is evident that these spaces are special to the community of Alton.

12. Land at Littlemoor

This is a small area of amenity space which creates a focal point at the junction of Alton Lane and Ashover Road and offers attractive views of the countryside to the south.

116. The policy refers to “the accompanying plans” but it does not say where they are to be found. They are in Appendix B and on the Proposal Map at Appendix E which I have already recommended should be relocated, and the policy needs to clearly refer to the Proposal Map. Also, the policy to be applied to any development proposals relating to the designated Local Green Spaces requires slight modification. Paragraph 78 of the NPPF indicates that *“local policy for managing development within a Local Green Space should be consistent with policy for Green Belts.”* Green Belt policy defines certain categories of development that would not be inappropriate in Green Belts. It would not be appropriate to directly apply these uses to Local Green Spaces because the scale and function of Local Green Spaces is totally different. However, there may be some types of development that are entirely appropriate on Local Green Spaces, depending on their use. It is development that does not fall within these categories that should only be permitted *“in very special circumstances”*.²⁸

Recommendations

In Policy AP15 reword the first paragraph of the Policy to read “The sites listed below and shown on the Proposal Map are designated as Local Green Spaces, where development will only be supported in very special circumstances, unless it is consistent with the function of the Local Green Space.”

From the list of Local Green Spaces delete: “Tennis Ground off Malthouse Lane, Ashover, Fabrick Wood” and insert “Ashover Primary School Playing Field” between “Allotment site off Marsh Green Lane and Cripton Lane, Ashover” and

²⁸ NPPF paragraphs 87-89

“Land off West Edge Close, Ashover”.

On the map on Page 78 and the Proposal Map delete areas 5 and 6 and reduce the area shown on area 2 to the area covered by the playing field and recreation ground. Also show the boundary between areas 1 and 9 clearly.

Delete the sections relating to areas 5 and 6 from the Appendix and renumber the references in the Appendix and on the maps accordingly.

Policy AP16: Biodiversity

117. The policy aims to maintain or enhance biodiversity and to prevent development that would lead to the loss of important sites and species.
118. The supporting text and the appendices provide useful background information on biodiversity in the parish that will be of importance to a decision maker.
119. The Policy itself effectively summarises but does not add anything to the more detailed policies set out in the NPPF for biodiversity. It therefore does not meet the requirement to be locally distinct.

Recommendations

Delete Policy AP16 and replace it with an additional paragraph in the supporting text to read “Planning applications with implications for biodiversity and geodiversity will be determined in accordance with policies in the NPPF, which supersedes the NEDLP, and, when it is adopted the emerging Local Plan.”

Policy AP17: Important Trees and Hedgerows

120. The policy aims to protect trees and hedgerows that are of good quality and visually significant. It is evident that trees make an important contribution to the character of the parish and development that is not softened by trees is likely to be intrusive. The policy is in general conformity with saved policies NE7 and NE8, except in one respect. Most planning decisions involve a balance of considerations and for that reason policies which make absolute statements about one dimension of decision making may well fail to provide for sustainable development. The policy rightly stresses the importance of retaining significant trees and hedges. However, there may be circumstances where the benefits associated with a development cannot be realised if the trees are saved. In these circumstances the replacement of any trees lost either on or off-site may a satisfactory substitute. I have recommended a modification to this effect to meet the basic conditions.

Recommendation

At the beginning of Policy AP17 insert “Wherever it is practical,”.

After “...of historic importance, insert “Where it is not practical to retain significant trees, and the benefits of the development justify their loss,

replacement planting, preferably on site should be provided.

Policy AP18: Dry Stone Walls

121. Policy AP18 aims to ensure that new development retains existing stone walls and to encourage the provision of new ones. Dry stone walls are clearly an essential part of the character of much of Derbyshire and it is consistent with the encouragement of local distinctiveness to seek to retain them where possible. In some cases, their removal is outside the scope of planning control, but it is appropriate to encourage schemes which retain existing walls. I am satisfied that the policy meets the basic conditions.

Policy AP19: Renewable Energy and Low Carbon Technologies

122. The policy sets out criteria to be met by proposals for the development of renewable and low carbon energy resources. The NPPF encourages a positive strategy to develop renewable energy but also recognises that the environmental impacts of such developments need to be carefully assessed.²⁹ NEDDC suggests that the policy largely duplicates Policy SDC10 the emerging Local Plan and is therefore unnecessary. As I have pointed out before, the emerging plan still has some way to go until it is adopted and may be subject to change. It is therefore appropriate for the neighbourhood plan, which may well come into effect more rapidly to contain policies on this matter, even though they may in due course be superseded.
123. The first paragraph of the policy requires full consultation with local residents, the Parish Council and NEDDC and demonstration that all individual and cumulative impacts have been fully addressed. While local consultation is good practice, it is not normally possible to require pre-application consultation.³⁰ It is true that a June 2015 Ministerial Statement on windfarms introduced a particular requirement for there to be consultation with the local community and for all potential impacts to be fully addressed³¹. However, this requirement does not apply to other forms of renewable energy and the consultation necessary for wind farms will be required anyway.
124. I note the District Council's comment to the effect that any loss of the best quality agricultural land need not be permanent with ground mounted solar panels, but this part of the policy is consistent with PPG.³²

²⁹ NPPF paragraph 97

³⁰ NPPF paragraph 189

³¹ House of Commons: Written Statement (HCWS42) by Secretary of State for Communities and Local Government 18 June 2015.

³² PPG What are the particular planning considerations that relate to large scale ground mounted solar photovoltaic farms. Reference ID: 5-013-20150327

125. There are several instances where there is not a grammatical read through from the introductory paragraph (either in its original or amended form) to the criteria and I have recommended minor modifications to correct this.

Recommendation

In Policy AP19 in the third line after "...permitted where" insert "they" and delete "following consultation with local residents, the Parish council and North East Derbyshire District Council, it can be demonstrated that the individual and cumulative impacts have been fully addressed.

Proposals will be supported that".

Re-order Criterion d) to read "would not, in the case of wind turbines, result in an unacceptably adverse effect on...biodiversity value;"

Reword criterion e) to read "provide a

reorder criterion f) to read "do not, in the case of ground mounted solar panels, result in the loss of good quality agricultural land;"

In criterion g) replace "measures are included" with "include measures".

Policy AP20: Noisy Sports

126. This policy provides for proposals for the use of land for noisy sports subject to five criteria. It responds to the popularity of the area for these uses due to the nature of the countryside and the proximity to large urban areas. The NPPF supports the provision of recreational activities³³ but for these uses to be sustainable their environmental effects need to be taken into account. I am satisfied that these criteria meet the basic conditions. The wording of the policy does not flow entirely grammatically as the plural nature of proposals does not agree with the singular introduction to the criteria.

Recommendation

In Policy AP20 a) replace "its" with "their". In b) replace "it" with "they", in c) insert "they" at the beginning and remove the "s" from "incorporates" and "commits" and in d) and e) insert "they" at the beginning and replace "does" with "do".

Policy AP21: Dark Skies

127. The policy aims to prevent light pollution in areas which are not already lit at night. An extract from the map produced by the Council for the Preservation of Rural England shows that Ashover is a relatively dark area, with only the centre of the village of

³³ NPPF paragraph 73

Ashover brighter. There are limits to the extent to which lighting can be controlled as many forms of lighting are permitted development. However, good design can minimise the impact of this and the NPPF³⁴ supports the limitation of light pollution to protect local amenity, intrinsically dark landscapes and nature conservation. The policy meets the basic conditions.

Getting Around

Policy AP22: Traffic

128. The policy aims to prevent proposals that have a severe impact on congestion, road or pedestrian safety. The supporting text provides helpful background on the traffic issues affecting the parish.
129. The policy adds little to the NPPF³⁵ but it does specify the nature of the harm that it is seeking to prevent having regard to the nature of the Parish. I am therefore satisfied that it meets the basic conditions.

Policies AP23 and AP24: Traffic Management

130. Both these policies set out action which the Parish Council intends to take in conjunction with the County and District Councils and local schools to bring forward traffic management measures that will improve pedestrian and vehicular safety. In particular Policy AP23 aims to create “safe routes to school” schemes and Policy AP24 aims to exclude heavy vehicles from routes through the village of Ashover.
131. These measures are entirely legitimate aspirations but they are not policies for the development and use of land and therefore cannot become statutory development plan policies. Aspirational policies are often included in neighbourhood plans in an Appendix and numbered in a different format from the policies of the Plan. Alternatively, they can simply be changed to form additional paragraphs of supporting text.

Recommendation

Delete Policies AP23 and 24 and include their content either in the supporting text or in an Appendix.

Policy AP25: Footpaths, Cycleways and Bridleways

132. This policy aims to prevent development proposals that would have a harmful effect on the footpaths, cycleways and bridleways in the Parish. There is no doubt that Ashover

³⁴ NPPF Paragraph 125

³⁵ NPPF Paragraph 32

has a remarkably extensive network of footpaths and the importance of footpaths and cycleways is emphasised in the NPPF³⁶ (paragraphs 35 and 69). However, it is one of many considerations that must be taken into account in the determination of any planning application. It depends how harm is defined, but it may include the need to divert a footpath and there may be circumstances where the public benefits of a development proposal would outweigh the harm to footpaths or bridleways. I have therefore recommended a modification which recognises the balance that needs to be struck.

133. The second part of the policy refers to joint work with the County and District Councils to improve the network of footpaths, cycleways and bridleways. This policy is largely aspirational in the same way as the previous two policies and only action that is related to the development and use of land can be included in a planning policy. The policy refers to development contributions as one appropriate way of achieving this, but it is unclear from the wording of the first part of the policy what other considerations would influence the way in which planning applications are determined. Moreover, developer contributions through S106 agreements may only be imposed where they meet the legal requirements set out in paragraph 204 of the NPPF. I have therefore recommended a modification which relates the policy more clearly to land use planning.

Recommendations

In the first sentence of Policy AP25 after "...and bridleways will" delete "not be supported" and insert "only be supported where it can be demonstrated that the public benefit of the development clearly outweighs the harm."

Modify the second part of Policy AP25 to read:

"Where appropriate having regard to the scale and location of the proposal, new developments will be required take advantage of opportunities to incorporate improvements to the network of footpaths and cycleways into their proposals or may be required to contribute to such improvements through a planning obligation, where the legal requirements are met."

Monitoring and Review

134. The final section of the Plan refers to plans to monitor the Plan on an annual basis and to formally review it on a 5-year cycle or to coincide with reviews of the NEDLP.

³⁶ NPPF paragraphs 35 and 39

Summary and Referendum

135. The Ashover Neighbourhood Plan has been a major undertaking for the Parish Council. The size of the parish and the number of separate settlements within it make it a more complex task than for many villages of a similar size. The preparation of the Plan in the absence of an up to date Local Plan and the changes in the direction of the emerging Local Plan during the process and planning permissions that have overtaken emerging APNP policies have added to the difficulties and required revisions to the draft plan. This resulted in the need to repeat the regulation 14 consultation.
136. It is regrettable that the Plan submitted with the application for the designation of the neighbourhood area cut off two small areas of the Parish and that there were other small anomalies between this map and the actual boundary of the Parish. However, there is no doubt in my mind that the application for the designation and the map should be read together, and it is absolutely clear from this that the application was for the whole of the parish. The map makes it clear that it is incomplete by the gaps in the line defining the parish boundary on the eastern and western edges of the parish. The map makes it clear that it is incomplete by the gaps in the line defining the parish boundary on the eastern and western edges of the parish and the other anomalies are too small to be in any way significant.
137. I am satisfied that consultation on the draft plan has met the legal requirements and that that it does not breach European Union obligations.
138. I found the Basic Conditions Statement disappointingly superficial and it could usefully have been much more explicit in explaining the relationship between the Plan and national and Local Plan Policies. It is a document that is intended to serve a very specific purpose to assist the examination and it should be prepared thoughtfully rather than as a mechanical listing exercise.
139. The absence of a clear strategic context has meant that it has not been possible to define the amount of new housing that the Plan needs to accommodate. The emerging Local Plan does not specify an amount of housing for the Parish but it is acknowledged that this may change. In this context the Plan has had to provide for sustainable development by striking an appropriate balance between the need to accommodate some new development and the environmental constraints which are evident in this attractive location.
140. I have found it necessary to recommend some modifications for a variety of reasons. In relation to housing development I have recommended some modifications to provide some additional flexibility. In some cases, notably in relation to the definition of the Limits to Development for Ashover and Kelstedge, the submitted Plan is

ambiguous and it has been necessary to clarify this. Some elements of policies do not relate to the development and use of land and thus would not provide guidance in the determination of planning applications. In other cases, policies do not have a significant local dimension and thus do not add to the NPPF. Some policies will have limited effect because the matters they seek to influence are often not subject to planning control. In light of the local planning authority's comments it is important to emphasise that, while I accept that some policies may eventually be superseded by the emerging Local Plan, that does not render them unnecessary at this stage as the Local Plan is some way from adoption.

141. I am grateful to the officers of NEDDC and APC and to the consultants of the Parish Council for the support and assistance they have provided in responding to my queries during the examination.

142. I have concluded that, if the modifications that I have recommended are made:

The Ashover Neighbourhood Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012 and that;

Having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;

The making of the Plan would contribute to the achievement of sustainable development;

The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;

The Plan would not breach and would be otherwise compatible with European Union obligations and the European Convention on Human Rights.

143. I am therefore pleased to recommend that the Ashover Parish Neighbourhood Plan should proceed to a referendum subject to the modifications that I have recommended.

144. I am also required to consider whether or not the referendum area should extend beyond the Neighbourhood Plan Area. The Plan includes the whole Parish of Ashover and I have seen nothing to suggest that the policies of the Plan will have “a substantial, direct and demonstrable impact beyond the neighbourhood area”.³⁷ **I therefore conclude that there is no need to extend the referendum area.**

Richard High 5 November 2017

³⁷ PPG Reference ID: 41-059-20140306

Appendix 1 e mail clarification re Designation Area Boundary and Regulation 16 Publicity

From: Richard High [<mailto:richardhigh5@btinternet.com>]
Sent: 30 October 2017 08:47
To: Cooper, Richard (Planning)
Cc: Ashover Parish Clerk; 'Richard Fidler'; 'Andrew Towleron'
Subject: Further queries

Dear Richard

I have some further queries:

- 1. Parish Boundaries** On page 4 of the Submission Plan there is a map of the Neighbourhood Area. However, it is small in scale and it is difficult to clearly identify any differences from the map submitted with the application for the designation of the Neighbourhood Area except for the inclusion of the small areas on the eastern and western boundary that lie beyond the edge of the map submitted with the designation map. Does this map show the correct parish boundary? With the hard copy of the Plan I was sent an unlabelled coloured OS base map which appears to show the parish boundary at a larger scale with a blue dot and dash line. It appears that this map does show some small differences from both the designation map and the map on Page 4. Does this map show the correct parish boundary? Also, what is the status of this map as it is not listed with the submission documents for the latest submission plan?
- 2. Consultation Notice** The North East Derbyshire website contains the following statement on the neighbourhood plans web page under the heading of Ashover. "It has recently been brought to our attention that the original web link to the Public Notice of Submission incorrectly linked to the Notice for Holymoorside and Walton; the correct Notice was available in the printed packs at the deposit points. The link below now correctly provides the Public Notice for Ashover". Can you tell me when this correction was made? Also on the website is a link labelled as "consultation" under the heading "Letter of 14 August 2017" This link <http://www.askderbyshire.gov.uk/index.php/component/consultation/267?view=consultation> goes to the Ask Derbyshire site and gives the correct dates for the consultation. Was this link correctly displayed for the whole consultation period? Finally, the Parish Council website also carries a link to "NEDDC Consultation Notice". This was correct while I was carrying out the examination, but was it correct from the time that the publicity notice was first posted?

Kind Regards

Richard

From: Cooper, Richard (Planning) [<mailto:Richard.Cooper@ne-derbyshire.gov.uk>]
Sent: 30 October 2017 14:13
To: 'Richard High' <richardhigh5@btinternet.com>
Cc: Ashover Parish Clerk <parishclerk@ashover-pc.gov.uk>; 'Richard Fidler'; 'Andrew Towleron'
Subject: RE: Further queries

Dear Richard,

I can answer your questions as follows, keeping to matters of fact.

- 1. Parish Boundaries.**

- a. I appreciate that the differences are small and difficult to identify in the plans made available and the scales at they were provided. I can confirm that the map at page 4 of the Submitted Draft Plan (May 2017) does show the correct Parish boundary. I note that while this is not to scale (it is distorted) the boundary is shown correctly against the base map.
- b. The hard-copy map you were sent was, I understand, a copy of the map available on the Neighbourhood Plan section of the Parish Council web site, showing what purports to be the Parish: - <http://www.ashover-pc.gov.uk/uploads/ashover-parish.pdf> . This corresponds to your description, and does show differences from the correct Parish boundary. I have attempted to identify the source of this, as it appears to have been obtained from a company (Promap) with electronic boundaries, but I have been unable to do so. I apologise for sending this map, which was provided to indicate the parish against a coloured OS base map.
- c. The plan in question has no status as far as the Submitted Neighbourhood Plan is concerned, it has not appeared on the Neighbourhood plan pages of the District Council web site. I understand that it was posted on the Parish web site on 28th January 2016.

2. Consultation Notice

- a. The incorrect notice was brought to our attention (through perusal of the responses) on or around the 20th September 2017. The correct Public Notice (as you indicate) was placed on the web site on the 22nd September.
- b. I can confirm that the correct dates were displayed on the Askderbyshire website for the whole period.
- c. The Parish Council has confirmed to me that the NEDDC Consultation Notice was correct from the time that the publicity notice was first posted.

I hope this assists you.

Richard.

From: Richard High [<mailto:richardhigh5@btinternet.com>]
Sent: 31 October 2017 10.53
To: Cooper, Richard (Planning)
Cc: Ashover Parish Clerk; 'Richard Fidler'; 'Andrew Towleron'
Subject: RE: Further queries

Dear Richard

Further to this e mail, I should be grateful if you could provide me with what actually appeared on the East Derbyshire website during the period when the wrong document was shown on the link to "The public notice of submission". It would also help me to have evidence of what actually appeared on the Parish Council website on the link to "NEDDC Consultation Notice", during this period. Can I emphasise that do not want any comments on these.

Kind Regards

Richard

From: Cooper, Richard (Planning) [<mailto:Richard.Cooper@ne-derbyshire.gov.uk>]
Sent: 30 October 2017 14:13
To: 'Richard High' <richardhigh5@btinternet.com>
Cc: Ashover Parish Clerk <parishclerk@ashover-pc.gov.uk>; 'Richard Fidler' 'Andrew Towleron'
Subject: RE: Further queries

From: Cooper, Richard (Planning) [<mailto:Richard.Cooper@ne-derbyshire.gov.uk>]
Sent: 1 November 2017 13.33
To: 'Richard High' <richardhigh5@btinternet.com>
Cc: Ashover Parish Clerk <parishclerk@ashover-pc.gov.uk>; 'Richard Fidler'; 'Andrew Towleron'
Subject: RE: Further queries

Dear Richard,

I have been able to retrieve the web site. Please see the email below. You may get a Windows security dialog box asking for a password; click 'cancel' and you should be able to continue. I have asked the Web manager to keep the page online until midnight. There was a slider image which was on the homepage for the duration, but there is no way to retrieve that.

In any case I have saved the web page and attach it. This should work just the same way, including links to the same locations as they did originally.

Consequently the 'Public Notice' under Ashover incorrectly links to the Holymoorside Notice. The 'Consultation' link in the text links to the Ask Derbyshire web page (indicating consultation now closed). The Parish Council link goes to the Parish Council as it is currently.

I also have diagnostics of the social media 'hits' from David. Twitter engagement total was 9766 for 13 Tweets, Facebook Ashover posts reached 2057 people giving a total reach of just under 12,000 people who actively saw those messages on social media.

I hope this helps.

Richard

The District Council provides support for groups carrying out neighbourhood planning. See our [Neighbourhood Planning Protocol](#) for more information on the direct support we can provide.

The following areas have Neighbourhood Plans in preparation, or have requested to become Neighbourhood areas:

Ashover

The Ashover Neighbourhood Development Plan has been written by the Neighbourhood Plan Steering Group and approved by the Parish Council. It proposes a number of policies on housing provision, employment, the environment and community facilities. The Parish Council consulted on that Draft Plan in for 6 weeks in January 2016 and on a revised Plan in Feb 2017, and views from those consultations helped inform changes to the document. The Draft Plan has now been submitted to the District Council.

The Plan is now subject to a period of consultation for 6 weeks, from Thursday 20th July to Thursday 31st August

Details of where the Plan is deposited, how to comment, contact details, and subsequent stages of the process are on the Public Notice.

- [Public Notice of Submission of the Neighbourhood Plan](#)
- [Ashover Neighbourhood Plan including a map of the Neighbourhood Area](#)
- [Basic Conditions Statement](#)
- [Consultation Statement](#)
- [Strategic Environmental Assessment and Habitats Regulation Assessment Screening Report](#)

Designation of Ashover Neighbourhood Area: Record of Decision, Formal Notice, Neighbourhood Area Application and Ashover Parish Submission Draft Neighbourhood Plan.

Further information: [Ashover neighbourhood Plan website](#).

Brackenfield

Brackenfield Parish Council has applied to designate the area of the Parish of Brackenfield, save for two fields which have previously been included in the Wessington Neighbourhood Area, as a neighbourhood area within the meaning of Section 6 of the Town and Country Planning Act 1990.

[Formal Notice \(1.14MB\)](#)

GO TO TOP

askderbyshire.gov.uk/index.php/component/consultation/267?view=consultation

Neighbourhood

Charmwood Boro

Strategic environ

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Proposals Map

askderbyshire.gov.uk

Neighbourhood

Neighbourhood

Ask Derbyshire

16:23 02/11/2017

Overview

The Ashover Neighbourhood Development Plan has been written by the Neighbourhood Plan Steering Group and approved by the Parish Council. It proposes a number of policies on housing provision, employment, the environment and community facilities. The Parish Council consulted on that Draft Plan for 6 weeks in January 2016 and on a revised Plan in February 2017 and views from those consultations helped inform changes to the document. The Draft Plan has now been submitted to the District Council. The Plan is now subject to a period of consultation for 6 weeks, from Thursday 20th July to Thursday 31st August.

Why are we Consulting

The Plan sets out a vision for the Parish and establishes the type of development needed to help sustain the community. If agreed, it will become part of the development plan for land use and development proposals within the Parish until 2033.

You can view the Plan:

- At North East Derbyshire District Council's offices at Mill Lane, Wingerworth between 9am and 4.30pm.
- At the following locations in the Plan area; at Ashover Parish Hall, Medical Centre and Post Office
- Online at the [Ashover Neighbourhood Plan website](#)
- Online through the [District Council website](#).

Comments on the Neighbourhood Plan can be submitted to the **District Council** up until 5pm on Thursday 31st August 2017. Please title your response 'Ashover Neighbourhood Plan' and where possible refer to specific paragraphs or policies on which you are commenting.

Comments can be submitted to local.plan@ne-derbyshire.gov.uk or by post to Helen Fairfax, Planning Policy Manager, North East Derbyshire District Council, 2013 Mill Lane, Wingerworth, Chesterfield, Derbyshire, S42 6NG.

Contact

Helen Fairfax
 Planning Policy Manager
 Planning
 01246 217170
local.plan@ne-derbyshire.gov.uk

Dates

Consultation is Closed
 Runs from 20/07/2017 to 31/08/2017
 Results expected: 29/09/2017
 Feedback expected: 29/09/2017

Other Information

Areas:
 Ashover

Audience:
 Local residents
 Businesses
 Community and voluntary groups

Interests:
 Planning

Consultation categories:
 Circulation of draft strategy/ policy

Appendix 2 Further e mail exchanges for clarification

From: Richard High [<mailto:richardhigh5@btinternet.com>]

Sent: 04 October 2017 12:27

To: Cooper, Richard (Planning)

Cc: 'Andrew Towleron'; Ashover Parish Clerk; 'Richard Fidler'

Subject: Ashover NP Settlement boundary

Dear Richard

I have the following query in relation to my examination of the Ashover Neighbourhood Plan.

Policy AP1 There is some ambiguity regarding the way it is intended to apply this policy. The supporting text indicates that it is not proposed to revise the settlement limits through the Plan and that this will be done through the emerging Local Plan. However, it goes on to refer to *proposed* Settlement Development Limits for Ashover and Kelstedge and the policy refers to the “defined Limits to Development for Ashover and Kelstedge as defined in the proposals map”. The Proposals Map shows the “proposed Settlement Development Limit” and the “previous Settlement Development Limit”. Which of these is it intended to apply through AP1. Prior to the adoption of the Local Plan? The policy implies that it is the “proposed Settlement Development Limit” but this seems to conflict with the statement that it is not proposed to revise the Settlement Development Limits through the Plan.

I may well have further queries to follow.

Kind Regards

Richard

From: Cooper, Richard (Planning) [<mailto:Richard.Cooper@ne-derbyshire.gov.uk>]

Sent: 04 October 2017 13:54

To: 'Richard High' <richardhigh5@btinternet.com>

Cc: 'Richard Fidler' Ashover Parish Clerk <parishclerk@ashover-pc.gov.uk>; 'Andrew Towleron'

Subject: RE: Ashover NP Settlement boundary

Thank you Richard.

My understanding is as the text states, that the SDLs are not to be altered in this Plan, but through the Local Plan. As a result, those shown as ‘previous’ on the Proposals map (which are the existing Local Plan boundaries) would be the ones that this plan applies in AP1.

As you see I have copied this email to Richard Fidler, Charlotte, and Andrew Towleron as drafter of the Plan.

Finally, for the Parishes information, I understand that the ‘proposed SDLs’ referred to are those proposed to the District Council for consideration in the Local Plan preparation. These proposed SDLs (as in this and the previous draft Neighbourhood Plan) are understood to represent the Parish Council’s view to inform the Local Plan, and my colleagues are considering these at the moment.

Regards,

Richard

From: Richard Fidler

Sent: 05 October 2017 08:29

To: Cooper, Richard (Planning)

Cc: Ashover Parish Clerk; 'Andrew Towlerton'
Subject: RE: Ashover NP Settlement boundary

Richard

The examiner has asked that all communication comes through yourself so would you advise him accordingly.

I can confirm on behalf of the Parish council that it is also our understanding of the intention of the policy.

Thanks

Richard

Richard Cooper
Principal Planning Officer
North East Derbyshire District Council,

From: Richard High [<mailto:richardhigh5@btinternet.com>]
Sent: 20 October 2017 11:05
To: Cooper, Richard (Planning)
Cc: 'Andrew Towlerton'; 'Richard Fidler'; Ashover Parish Clerk
Subject: Ashover examination

Dear Richard

I am close to being able to issue my draft report, but with some final checks to do this will be over the weekend.

I have two further queries:

In Policy AP15: the area shown on the Proposal Map for site 2 is much larger than the Ashover Sports Ground and Playing Field described in Appendix C and in the list of locations in the policy Site 9 in Appendix C is omitted. In both cases is this intentional?

In Policy AP19 e) the wording is a little ambiguous. Does the 25m refer to the total height of the wind turbine?

Kind Regards

Richard

From: Cooper, Richard (Planning) [<mailto:Richard.Cooper@ne-derbyshire.gov.uk>]
Sent: Friday, October 20, 2017 12:33 PM
To: 'Richard High'
Cc: 'Andrew Towlerton'; 'Richard Fidler'; Ashover Parish Clerk
Subject: RE: Ashover examination

Thank you for updating me Richard.

I will leave these queries to Andrew or Richard F to answer. If I need to input then I will. However, I am not available from this afternoon until Tuesday morning.

Richard

From: Richard Fidler
Sent: 20 October 2010 16.10
To: Richard High
Cc: Andrew Towlerton; 'Ashover Parish Clerk' <parishclerk@ashover-pc.gov.uk>; 'Cooper, Richard

(Planning)' <Richard.Cooper@ne-derbyshire.gov.uk>

Subject: RE: Ashover examination

Richard

We have an annual agricultural show in the village which is held on the fields adjoining the sports field. The intention was to determine these fields as green space, but it looks as if we have failed to mention this intention in appendix C site 2 yet have shown it on the map.

I have looked at appendix C site 9 in my copy of the neighbourhood plan and on both the green space and settlement development limit maps the school playing field is shown in green, however if its not clear on your copy I can scan it and send it across to you.

To clarify AP 19 e) the intention is for this to refer to the total height of the turbine from ground level to the top of the tip of the highest blade

Regards

Richard Fidler

Chairman Ashover Neighbourhood plan steering group