



**North East
Derbyshire**
District Council

Ashover Neighbourhood Plan Modification

– Decision Statement

Neighbourhood Planning (General) Regulations 2012 – Regulation 18

13 April 2023

Decision

Following an independent examination, North East Derbyshire District Council hereby confirms that the modifications to the Ashover Neighbourhood Development Plan (2016-2033) were 'made' on 13 April 2023 by resolution of the Council's Cabinet. The modified Ashover Neighbourhood Plan now forms part of the Development Plan for the area.

Context

Ashover Parish Council submitted their proposed modifications to the Ashover Neighbourhood Plan to the district council on 4 October 2022. The proposed modification involves the amendment to the boundary of one of the approved Local Green Spaces within the Plan. Namely site number 9. 'two small areas of Land off Alton Hill, Alton'.

The Council accepted that the proposed modifications were legally compliant and held a 6 week consultation period which ended on the 21st December 2022, following which an independent examiner was appointed to conduct the Examination

The examination took place on the basis of written representations and the Examiner's final report was issued to the District Council on 10th February 2023. The Examiner in his report concluded that the draft plan meets the basic conditions and human rights obligations; and goes on to recommend that the District Council 'make' the draft plan, noting that the proposed modification, whilst being 'material' does not change the nature of the plan, and so would not require a referendum.

On 13 April 2023, the Council's Managing Director & Head of Paid Service, under delegated authority, accepted with the Examiners findings and recommendations in full and resolved to formally bring the modified Ashover Neighbourhood Plan into effect.

Planning applications in the Parish will now be considered against the modified Ashover Neighbourhood Development Plan as part of the District's Development Plan for the area.

This Decision Statement, along with the independent Examiner's report and the neighbourhood plan documents can be inspected:

- At North East Derbyshire District Council's Offices at Mill Lane, Wingerworth between 9am – 4.30pm
- Online via the Council's website:-
[Link to NEDDC website for local plans](#)
- Online via the Parish Council's website:-
[Link to Ashover Parish Council website](#)

**Report of the Examination into the Proposed Modification to the
made Ashover Parish Neighbourhood Plan – Submission Version
Statement (September 2022)**

Timothy Jones, Barrister, FCI Arb,

Independent Examiner



No 5 Chambers,

Birmingham - London - Bristol

To North East Derbyshire District Council,

And to Ashover Parish Council

10th February 2023.

Contents Page(s)**1. Introduction 1**

- Neighbourhood planning 1
- Appointment 1 -2

2. Preliminary Matters 2**3. My Preliminary Determination 2 - 3****4. What I must consider 3 - 4****5. Basic Conditions and Human Rights 4 - 8**

- Regard to national policies and advice 4 - 5
- Contributing to the achievement of sustainable development 5
- General conformity with the development plan 5 - 6
- EU obligations 6
- Conservation of Habitats and Species Regulations 6
- Human rights 6

6. The nature of the area 6 - 7**7. The proposed modification 7 - 8****9. Summary and conclusion 8****Appendix: Abbreviations 9**

Report of the Examination into the Proposed Modification to the made Ashover Parish Neighbourhood Plan – Submission Version Statement (September 2022)

1. Introduction

Neighbourhood planning

1. The Localism Act 2011 Part 6 Chapter 3 introduced neighbourhood planning, including provision for neighbourhood development plans. A neighbourhood development plan (“NDP”) should reflect the needs and priorities of the community concerned and should set out a positive vision for the future, setting planning policies to determine decisions on planning applications. If approved by a referendum and made by the local planning authority (as has happened here), such plans form part of the Development Plan for the neighbourhood concerned. Applications for planning permission should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

2. This report concerns a proposed modification to the made Ashover Parish Neighbourhood Plan – Submission Version Statement (September 2022). The Planning and Compulsory Purchase Act 2004 (“PCPA”) Schedule A2 provides the statutory framework for such modifications.

Appointment

3. North East Derbyshire District Council (“NEDDC”), with the consent of the qualifying body, Ashover Parish Council (“APC”), has appointed me to undertake the independent examination of a proposal for the modification of the neighbourhood development plan in accordance with Schedule 4B to the Town and Country Planning Act 1990 (as applied by section 38A of the 2004 Planning and Compulsory Purchase Act). I am a member of the planning bar and am independent of NEDDC, APC, and of those who have made representations in respect of the Draft NDP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service and have extensive experience both as a planning barrister and as a neighbourhood plan examiner. I do not have an interest in any land that is, or may be, affected by the Draft NDP.

4. My examination has involved all documents submitted to me and a site visit on Saturday 21st January 2023. I have considered all the documents with which I have been provided.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions and to consider human rights issues. I must act proportionately, recognising that Parliament has

intended the modification process in cases such as this to be relatively inexpensive with costs being proportionate.

2. Preliminary Matters

6. The proposal is a modification proposal as defined in the PCPA Sch A2, paragraph 1.

7. Before referring the matter to me, PCPA 2004 Sch 2A paragraph 8 required NEDDC to consider whether the draft plan complies with the provision made by or under sections 38A and 38B and to be satisfied:

(a) that APC is authorised for the purposes of a neighbourhood development plan to act in relation to the neighbourhood area concerned as a result of section 61F of the principal Act (as applied by section 38C(2)(a) of this Act),

(b) that the proposed modification complies with provision made by or under that section,

(c) that the proposal and the documents and information accompanying it (including the draft plan) comply with provision made by or under paragraph 1 of the Schedule, and

(d) that APC body has complied with the requirements of regulations made under paragraph 4 of the Schedule imposed on it in relation to the proposal.

8. NEDDC was satisfied with these. It was right to be so satisfied. All formal requirements in respect of modification proposals have been met. I am satisfied with the Strategic Environmental Assessment Screening and Habitats Regulation Assessment Screening Report and with the Consultation Statement.

3. My preliminary determination

9. I must first determine whether the modifications contained in the draft plan are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace.¹

10. Policy AP14 Local Green Spaces designates ten local green spaces (“LGSs”). These are detailed in its Appendix 3 and include the LGS to which the proposed modification relates, namely two small areas of land off Alton Hill, Alton (“the Alton LGS”). APNP does not give the areas of the ten LGSs, but it is clear that the Alton LGS is either the smallest or the second smallest of the ten, some of which are much bigger than it. In addition to the Alton LGS, I viewed five of the other LGSs on the site visit, including the three largest, LGSs 1, 2 and 7,² and have considered the other four LGSs on the papers. The area of the small triangle of land

¹ PCPA, Sch 2A, para 10(1).

² All Saints Church Cemetery, Ashover Sports Ground and Playing Field, and Ashover Primary School Playing Field.

that is proposed to be removed from the designation is tiny proportion of the total area of LGSs in the made NDP and there is nothing special or exceptional about it. I have no hesitation in determining that the proposed modification is neither so significant nor so substantial as to change the nature of the made NDP which the draft plan would replace.

4. My role

11. Having reached that determination, I must consider:

- (a) whether the draft plan meets the basic conditions;
- (b) whether the draft plan complies with the provision made by or under sections 38A and 38B;
- (c) such other matters as may be prescribed.³

12. I am satisfied with (b) and (c).

13. The draft plan will meet 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 the achievement of 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, retained EU obligations, and*
- (e) prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.”⁴*

14. The lettering of the last four of these basic conditions differs from that which applies to the first examinations of NDPs.

15. There is one prescribed basic condition:⁵ *“The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.”* Chapter 8 comprises regulations 105 to 111.

16. I am *“not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft plan is compatible with the Convention rights)”*. ‘Convention rights’ are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights (“the Convention”), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the

³ PCPA, Sch 2A, paragraph 11(1).

⁴ PCPA, Sch 2A, paragraph 11(2).

⁵ The Neighbourhood Planning (General) Regulations 2012 Sch 2 prescribes this.

Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention's Article 6(1), 8 and 14 and under its First Protocol Article 1.

17. The requirement not to consider any other matter means among other things that I may not consider any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met.⁶ Rather, Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is important to avoid unduly onerous demands on qualifying bodies. It is not my role to decide what I would have done if I had been the qualifying body.

18. Having considered PCPA, Sch 2A, paragraph 12, I determined that the examination of the issues by me should take the form of the consideration of written representations. I have given the representations careful consideration.

5. Basic conditions and human rights

19. In the case of this very small modification I do not consider it necessary to give as full a consideration of basic conditions as would be the case if I were examining an NDP.

Regard to national policies and advice

20. The first basic condition requires that I consider whether it is appropriate that the NDP should be made "*having regard to national policies and advice contained in guidance issued by the Secretary of State*". A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but they should only be departed from if there are clear reasons, which should be explained, for doing so.⁷

21. The principal document in which national planning policy is contained is the National Planning Policy Framework 20th July 2021 ("the NPPF") and I have borne that in mind. Other policy and advice that I have borne in mind includes national Planning Practice Guidance ("PPG").

22. The NPPF provides for Local Green Spaces (LGSs) in its chapter 8, which is headed "Promoting healthy and safe communities". Under the sub-heading "Open Spaces and Recreation", paragraphs 101 to 103 state:

⁶ Woodcock Holdings Ltd v Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin), Holgate J. para 57; R (Crownhall Estates Limited) v Chichester District Council [2016] EWHC 73 (Admin), para 29 Holgate J. PPG Reference ID: 41-055-2018022.

⁷ R. (Lochailort Investments Limited) v. Mendip District Council [2020] EWCA Civ 1259, Lewison LJ, paras 6, 31 and 33, 2nd October 2020.

101. The designation of land as Local Green Space through ... neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

102. The Local Green Space designation should only be used where the green space is:

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

103. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.

23. These paragraphs are central to any consideration of whether land should be designated as an LGS. They should be followed unless there is a good reason not to do so and none is apparent to me. In considering the proposed LGS designations, I have born in mind and found helpful the judgment Court of Appeal in R. (Lochailort Investments Ltd) v Mendip District Council.⁸ The phrase in para 101 “*capable of enduring beyond the end of the plan period*” was given specific consideration. It is less demanding policy than applies to Green Belt designation where the stronger word “*permanently*” is used.

Contributing to the achievement of sustainable development

24. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. This condition relates to the draft Plan as a whole (not solely to those parts that have been modified). It does not require that each policy in it must contribute to sustainable development. Although theoretically possible, it is most unlikely that the removal of such a small area and small proportion of LGS would conflict with this basic condition, and I am satisfied that it does not.

General conformity with the development plan’s strategic policies

25. The third basic condition means that I must consider whether the Draft NDP as a whole is in general conformity with the strategic policies contained in the development plan for the area of the authority. The Development Plan for North East Derbyshire District comprises the

⁸ [2020] EWCA Civ 1259, 2nd October 2020.

North East Derbyshire Local Plan 2014 – 2034, made Neighbourhood Plans and the Derby and Derbyshire Minerals and Waste Local Plans. This condition only applies to strategic policies - there is no conformity requirement in respect of non-strategic policies in the development plan or in respect of other local authority documents that do not form part of the development plan, although such documents may be relevant to other matters

EU obligations

26. The fourth basic condition requires me to consider whether the Draft NDP breaches, or is otherwise incompatible with, EU obligations. I am satisfied that it does not and that it is not necessary to consider the matter further in this report

Conservation of Habitats and Species Regulations

27. I am satisfied that the making of the Draft NDP would not be incompatible with the prescribed basic condition and that it is not necessary to consider the matter further in this report.

Human Rights

28. The planning law of England and Wales in general complies with the Convention. This matter can be dealt with briefly in advance of further consideration of the contents of the Draft NDP. I have considered whether anything in the Draft NDP would cause a breach of any Convention right. In particular, I have considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. This last-mentioned article reinforces the common-law principle that private property rights should not be removed or restricted without proper justification, and I have borne that in mind. The proposed modification would not breach any Convention right.

6. The nature of the area

29. Ashover parish is an attractive rural area that has substantial similarities with the White Peak area of the nearby Peak District National Park. It is well supplied with local green spaces and public footpaths from which good views of nearby attractive countryside can be enjoyed. As I had expected, I saw people walking in several locations on the site visit. Sporting facilities exist, including provision for football, cricket and tennis and there is a well-equipped children's play area.

30. Alton is a smaller settlement. It is Level 4 (the lowest level) in the settlement hierarchy, "very small villages and hamlets with very limited sustainability." As a Level 4 settlement it

has no specific housing requirements. There is no reason to anticipate significant growth during the plan period of the made NDP.

7. The proposed modification

31. The made NDP allocates small areas of Land off Alton Hill, Alton. These are small triangles of land on either side of a track that runs northwards from Alton Hill. The site assessment form for this land⁹ in the made NDP includes the following”

“Amenity green spaces at the end of a housing development, put forward by the community”

“A pleasant place to sit and enjoy the picturesque surroundings”

“It is visual amenity space and place for locals and walkers to sit.”

32. I viewed the areas on foot on my site visit. The western area which would be retained contains two seats and has a plaque in its wall: *“This garden was given to the people of Alton by James Derek Mart of Beehive Cottage 30/08/1933 – 13/11/2013”*. The comments contained in the site assessment form unquestionably apply to it. It was well maintained both when the made NDP examiner saw it and when I saw it.

33. The eastern area which it is proposed to remove does not contain any seats and there is no indication that it ever did. Nor is there any other sign of use by the public. It is private land which members of the public have no right to sit on or indeed to enter. The made NDP examiner did not describe it as well maintained and (while it is not unattractive) I would not so describe it. APC do not now consider it to be “demonstrably special”.

34. Having views this eastern area I have concluded that some qualifying bodies would consider it appropriate to be designated as an LGS, while others would consider that it should not be designated as such. Neither position would be irrational. My role is limited as explained in paragraph 17 above and that I consider that the decision to remove the designation is one to which a reasonable parish council could properly come. I bear in mind the importance of localism. A parish council is particularly well placed to determine whether land is *“demonstrably special to a local community”*. I hasten to add that this statement should not be read as indicating any contrary view on my part.

35. It is an essential element of democracy that elected bodies should be able to change their minds. The fact that APC held a different view when the made NDP was being prepared is not a reason for rejecting the proposed modification.

⁹ Made NDP page 75.

36. I can see no reason why the material modification should not be made in the precise form in the submission statement. There is no breach of the first or any other basic condition and no conflict with human rights.

37. Material modifications which do not change the nature of the plan do not require a referendum.

8. Summary and Conclusion

38. The Draft NDP meets each basic condition and human rights obligations. Specifically:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the NDP;
- The making of the NDP contributes to the achievement of sustainable development;
- The making of the NDP is in general conformity with the strategic policies contained in the development plan for the parish of the Ashover (or any part of that area);
- The making of the NDP does not breach, and is not otherwise incompatible with, retained EU obligations;
- The making of the NDP does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017; and
- The modified Draft NDP is in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

39. I recommend that NEDDC should make the draft plan.

Timothy Jones, Barrister, FCI Arb,
Independent Examiner,
No 5 Chambers
10th Febraury 2023.

Appendix A: Abbreviations

The following abbreviations are used in this report:

Alton LGS	The local green space detailed in the Made NDP page 75.
Convention	European Convention on Human Rights
Draft NDP	Submission draft of the modified Ashover Parish Neighbourhood Plan
EU	European Union
LGS	Local Green Space
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework (2021)
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PPG	national Planning Practice Guidance
s	section
Sch	Schedule
NEDDC	North East Derbyshire District Council

Where I use the verb *'include'*, I am not using it to mean *'comprise'*. The words that follow are not necessarily exclusive.