

DESFORD NEIGHBOURHOOD PLAN 2018 - 2036

(Submission Version)

Report of the Examination into the
Desford Neighbourhood Plan 2018 - 2036

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To Hinckley & Bosworth Borough Council
And to Desford Parish Council

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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 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, 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 the Submission (Regulation 16) Version of the Desford Neighbourhood Plan 2018 - 2036 (“the Draft DNP”).

Appointment and role

3. Hinckley and Bosworth Borough Council (“HBBC”), with the agreement of Desford Parish Council (“DPC”), has appointed me to examine the Draft DNP. I am a member of the planning bar and am independent of HBBC, DPC, and of those who have made representations in respect of the Draft DNP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service. I do not have an interest in any land that may be affected by it.

4. My examination has involved considering written submissions and an unaccompanied detailed site visit on Tuesday 7th April 2020. 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 DNP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 12 below applies and, if appropriate, to consider the referendum area. I must act proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive with costs being proportionate. The statutory scheme means that the document that I am examining is the Draft DNP as subject to the Regulation 16 consultation.

2. Preliminary Matters

Public consultation

6. Consultation and community involvement are important parts of the process of producing a neighbourhood plan. I deal with a specific concern in paragraph 29 below. In all other respects, I have no hesitation in being satisfied that DPC took public consultation seriously. I do not consider there has been any failure in consultation, let alone one that would have caused substantial prejudice. The consultation was sufficient and met the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”).

Other statutory requirements

7. I am also satisfied of the following matters:

- (1) The Draft DNP area is the parish of Desford. DPC, a parish council, is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
- (2) The Draft DNP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
- (5) The Draft DNP specifies the period for which it is to have effect, namely 2018 - 2031, as required by PCPA s38B(1)(a).

3. The Extent and Limits of an Examiner’s Role

8. I am required to consider whether the Draft DNP meets the basic conditions specified in TCPA Sch 4B para 8(2) as varied for neighbourhood development plans, namely:

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
- (d)¹ The making of the Plan contributes to the achievement of sustainable development;
- (e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);

¹ The omission of (b) and (c) results from these clauses of para 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

(f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and

(g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.

9. There is one prescribed basic condition:² *“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.

10. The combined effect of TCPA Sch 4B para 8(6) and para 10(3)(b) and of the Human Rights Act 1998 means that I must consider whether the Draft DNP is compatible with 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 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.

11. In my examination of the substantial merits of the Draft DNP, I may not consider matters other than those specified in the last three paragraphs. In particular I may not consider whether any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met.³ Rather, it is clear that 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, particularly for communities like Desford with small populations. It is not my role to rewrite a neighbourhood development plan to create the plan that I would have written for the area. In particular it is not my role to impose a different vision on the community.⁴

12. Having considered the basic conditions and human rights, I have three options, which I must exercise in the light of my findings. These are: (1) that the Draft DNP proceeds to a referendum as submitted; (2) that the Draft DNP is modified to meet basic conditions and then the modified version proceeds to a referendum; or (3) that the Draft DNP does not proceed to referendum. If I determine that either of the first two options is appropriate, I must also consider whether the referendum area should be extended. My power to recommend modifications is limited by statute in the following terms:

The only modifications that may be recommended are—

² Sch 2 of the General Regulations prescribes this.

³ Woodcock Holdings Ltd v Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin), Holgate J. paragraph 57; PPG Reference ID: 41-055-2018022.

⁴ R. v Lochailort Investments Ltd v Mendip DC, Lang J, 11th May 2020.

- (a) modifications that the examiner considers need to be made to secure that the draft [NDP] meets the basic conditions mentioned in paragraph 8(2),*
- (b) modifications that the examiner considers need to be made to secure that the draft [NDP] is compatible with the Convention rights,*
- (c) modifications that the examiner considers need to be made to secure that the draft [NDP] complies with the provision made by or under sections 61E(2), 61J and 61L,*
- (d) modifications specifying a period under section 61L(2)(b) or (5), and*
- (e) modifications for the purpose of correcting errors.⁵*

13. The word “only” prevents me recommending any other modifications. The fact that a modification would be of benefit is not a sufficient ground in itself to recommend it. So, for example, a suggested modification which gives additional information cannot be justified simply because some would find that information helpful. The same applies to a representation that a statement might be better included in some other document or some other part of the draft NDP. It is not within my powers to recommend avoidance of repetition or other matters that some may consider unnecessary, unless it happens to come with one of the categories specified in the preceding paragraph. I cannot recommend the addition of non-planning matters. A representation that the draft DNP has not taken an opportunity would only be relevant if it related to my statutory role. I must not take an excessively restrictive view of the power to recommend modifications, but must bear in mind Lindblom LJ’s explanation of its extent in his judgment in Kebbell Developments Ltd v. Leeds City Council.⁶ I may not recommend a modification that would put the draft NDP in breach of a basic condition or of human rights. When I conclude that a modification is necessary, I must, in deciding its wording, bear in mind material considerations including government advice. This includes the importance of localism. Where I properly can, my suggested modifications seek to limit the extent to which the substance of the draft NDP is changed.

14. It is not my role to consider matters that are solely for the determination of other bodies such as HBBC or Leicestershire County Council (“LCC”). Nor is it my role to consider matters that an NDP could consider, but which are not considered in the Draft DNP, unless this is necessary for my role as explained above. It is not my role to consider aspirations that are clearly identified as such and do not purport to be policies.

⁵ TCPA Sch 4B, para 10(3). The provisions in (a), (c) and (d) are in the TCPA.

⁶ [2018] EWCA Civ 450, 14th March 2018, paras 34 and 35.

4. Consideration of Representations

15. I have given all representations careful consideration, but have not felt it necessary to comment on most of them. Rather in accordance with the statutory requirement and bearing in mind the judgment of Lang J in *R (Bewley Homes Plc) v. Waverley District Council*,⁷ I have mainly concentrated on giving reasons for my recommendations.⁸ Where I am required to consider the effect of the whole Draft DNP, I have borne it all in mind.

5. Public Hearing and Site Visit

16. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However an examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. Since neither applied in this case, I did not hold a public hearing. On 8th April 2020, I issued guidance and directions, the appendix to which asked specific questions.

17. After particularly careful consideration in the light of current circumstances, I concluded that an unaccompanied site visit was necessary and held an extensive one on Tuesday 7th April 2020. The site visit helped me to gain a sufficient impression of the nature of the area for the purpose of my role. Among other things, I was able to gain particularly clear views of the Ashfield Farm and Hunts Lane sites. In view of the exceptional circumstances of the Covid-19 pandemic, I have not relied on my impression of road traffic or public footpath usage.

6. Basic conditions and human rights

Regard to national policies and advice

18. The first basic condition requires that I consider whether it is appropriate that the DNP 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 it is intended to have and does have a significant effect. Reasons should be given for a departure from policy.

19. The principal document in which national planning policy is contained is the National Planning Policy Framework (February 2019) (“the NPPF”) and I have borne that in mind.

⁷ [2017] EWHC 1776 (Admin), Lang J, 18th July 2017.

⁸ TCPA Sch 4B, para 10(6).

Other policy and advice that I have borne in mind includes national Planning Practice Guidance (“PPG”).

20. The NPPF provides that neighbourhood plans should support the delivery of strategic policies contained in local plans and should shape and direct development that is outside of these strategic policies.⁹ Its paragraphs 28 and 29 state:

28. Non-strategic policies should be used by... communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.

Contributing to the achievement of sustainable development

21. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft DNP, or the Draft DNP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the making of the Plan as a whole. It does not require that each policy in it must contribute to sustainable development. It does require me to consider whether constraints might prevent sustainable development and, if they might, whether the evidence justifies them. That involves consideration of site-specific constraints, both existing and those proposed in the Draft DNP. The total effect of the constraints introduced by the Draft DNP when read with existing constraints should not prevent the achievement of sustainable development.

22. I welcome the draft DNP’s support for pedestrians, cyclists, young families, young people and disabled people. These contribute to the social element of sustainable development.

23. The draft DNP’s support for the natural and the historic environment is amply merited, is consistent with the duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990 and contributes to the environmental element of sustainable development. The natural and heritage assets that I was able to view impressed me.

⁹ Paragraph 13.

General conformity with the development plan's strategic policies

24. The third basic condition means that I must consider whether the Draft DNP is in general conformity with the strategic policies contained in the development plan for the area of the authority.

25. The adjective '*general*' allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement, but "it need not slavishly adopt every detail".¹⁰ 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, such as Leicestershire Highway Design Guide, although such documents may be relevant to other matters. In assessing general conformity and whether a policy is strategic, I have borne in mind helpful PPG advice.¹¹ I have also borne in mind the relevant part of the judgment in R (Swan Quay LLP) v Swale District Council.¹²

26. The development plan includes the Hinckley and Bosworth Core Strategy 2009 (the Core Strategy) and the Site Allocations and Development Management Policies Development Plan Document 2016. A replacement Local Plan is in preparation. This is not part of the development plan and hence not relevant to this basic condition.

EU obligations

27. The fourth basic condition requires me to consider whether the Draft DNP breaches or is otherwise incompatible with, EU obligations. I have in particular considered the following, together with the UK statutory instruments implementing them: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); the Water Framework Directive (2000/60/EC); and the General Data Protection Regulation (2016/679/EU). I have also considered the judgment of the European Court of Justice in People Over Wind v Coillte Teoranta.¹³ I have borne in mind that proportionality is a concept of and underlies EU law and must avoid requirements that are disproportionate for a plan as relatively small of the Draft DNP.

28. I have spent some time considering compliance with the Strategic Environmental Assessment Directive. The initial stage is screening in which the responsible authority

¹⁰ Wiltshire Council v Cooper Estates Strategic Land Ltd [2019] EWCA Civ 840 at paragraph 3.

¹¹ Paragraphs 074 to 077 of the section on neighbourhood planning.

¹² [2017] EWHC 420 (Admin), para 29, Dove J, 27th January 2017.

¹³ Case C-323/17, 12th April 2018.

(normally the local planning authority) determines whether the NP is likely to have significant environmental effects. In this case HBBC determined that an SEA was necessary because the Plan “is likely to have significant environmental effects with particular regard to the Botcheston Bog”.¹⁴ Plan preparation must be sufficiently advanced for this to be meaningful. Often a draft plan is screened, but there must at least be sufficient information available to be able to anticipate the plan’s likely content. In January 2019 DPC undertook the Regulation 14 consultation. HBBC completed the Strategic Environmental Assessment Screening in March 2019. In May 2019 there was a consultation in respect of supplementary strategic sites relating to seven further sites. Reputable consultants, AECOM Ltd., prepared a Strategic Environmental Assessment (SEA), the full Environmental Report being received on 17th October 2019. This assessed the proposals against environmental objectives. Among other things it considered whether the proposed allocation, or draft policies, would have a positive or negative effect on the key objectives when considered in the context of the existing environmental characteristics of the designated area. An SEA inevitably involves matters of judgment, but nobody has suggested that it contained any error of law and I do not consider that it did. The purpose of an SEA is to understand the effect of plan proposals on the environment. A plan-making body must understand these, but is not obliged to follow the recommendations in an SEA report. I am satisfied that nothing in the draft NDP is likely to have significant environmental effects on the Botcheston Bog or elsewhere.

29. The relevant statutory provision, Environmental Assessment of Plans and Programmes Regulations 2004 reg 5(4) requires the responsible authority to “*carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.*” This was satisfied in this case.

30. In November 2019 the NDP group consulted on the SEA report for 20 days. The relevant statutory provision¹⁵ requires the period to be “*of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents*”. I was concerned about the shortness of the period; but note that it was neither a holiday period, nor a period of bad weather, that the draft concerned was a relatively modest document and that nobody has said that they were unable to respond in this period. In particular I am satisfied that Pegasus Group were able to respond within this period. Although I have concluded that, on the facts of this matter, an effective opportunity was given and that no unfairness resulted, this conclusion should not be taken as an encouragement to others to have the same period. In different circumstances (particularly a more substantial plan or more extensive documentation), unfairness might well result from it.

¹⁴ Botcheston Bog is a 2.9-hectare SSSI to the southeast of Botcheston and west of Newton Unthank.

¹⁵ Environmental Assessment of Plans and Programmes Regulations 2004 reg 13(3).

31. I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive. I am satisfied that the making of the NDP would not breach, and be otherwise incompatible with, EU obligations and that it is not necessary to consider the matter further in this report.

Conservation of Habitats and Species Regulations

32. I am satisfied that the making of the 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

33. English planning law in general complies with the Convention. This matter can also be dealt with briefly in advance of detailed consideration of the contents of the Draft DNP. I have considered whether anything in the Draft DNP 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. Nothing in my examination of the Draft DNP indicates any breach of a Convention right, so that no modifications need to be made to secure that the Draft DNP is compatible with these rights. It is therefore not necessary to consider human rights in the parts of this report that deal with specific parts of the Draft DNP.

7. The nature of the area

34. In considering the contents of the Draft DNP I must consider the nature of the village of Desford and of the parish as a whole. In the 2011 census the parish had a population of 3,930 residents living in 1,673 households. There are 19 Listed Buildings and one Scheduled Monument, 6 further extant sites and 15 mapped areas of Priority Habitat (defined by Natural England). Desford village is relatively sustainable, being a key rural centre in the Hinckley and Bosworth Core Strategy 2009. The parish is mainly attractive, but not designated, farmland.

8. Housing

35. The biggest issue is housing provision. In his Peckleton Lane, appeal decision of 18th December 2019, Inspector David Wallis stated, "*The Council can only demonstrate a deliverable housing land supply of 4.15 years although I recognise that there has been no significant underdelivery of housing in recent years when measured against relevant requirements.*"¹⁶ HBBC now considers that it can demonstrate a five year supply of 5.15 years.

¹⁶ APP/K2420/W/19/3235401, paragraph 42.

I could not rely on this without further consultation. Since my conclusions would be the same if there were still at 4.15-year supply, I have not relied upon the new figure and further consultation is unnecessary.

36. HBBC originally provided a figure of 163 units for the plan period, but has distanced itself from this figure. As the only figure I have it could be said to be the best evidence, but for the reasons given in HBBC's regulation 16 representations it is unsatisfactory evidence. I am unable to substitute any other figure and have concluded that the best approach is to leave the matter to the Local Plan process while recognising that on the evidence I have seen the final figure is not likely to be below 163.

37. I do not consider it appropriate to recommend allocation of a further site or sites at this stage. With the two recent substantial planning permissions, the matter is not urgent and there is a risk that an allocation now could impose excessively on Desford. Rather it would be better for the level of provision in the parish to be considered in the Local Plan process where the relative share of housing supply between Desford and other communities will be considered with the advantage of evidence in respect of both Desford and those other communities and a consideration of the duty to co-operate with Leicester City and other authorities. The Local Plan process should also be able to consider the impact of the Covid-19 pandemic on planning with less speculation than is the case now.

38. Given the considerable uncertainties arising from the lack of a figure that satisfies NPPF paragraphs 65 or 66, the impact of Covid-19 on both permitted and proposed alternative sites, I have considered whether it would be appropriate to recommend reserving land. To do this, I would have to be satisfied that there had been an adequate assessment of the sites concerned through the SEA and to apply my planning judgment. I have concluded that I can recommend the allocation of reserve sites. With the anticipated adoption of emerging Local Plan in autumn 2022, two substantial outline planning permissions and a modification of the draft NDP to provide for reserve sites, this will not prevent the achievement of sustainable development.

39. I have therefore considered possible reserve sites. There are no predominantly brownfield sites of any significant size and no possible sites within the settlement boundary of Desford. My consideration has included considering the site selection assessment, its scoring, the revised scoring and criticisms of these. In considering these I am not conducting a review of past actions, but rather what modification I should recommend. It is therefore not my role to consider matters that have now become academic. The site at Barns Way has both outline planning permission and reserved matters approval. The site at Peckleton Lane outline planning permission and a reserved matters application is pending consideration. They are greenfield sites in a relatively prosperous part of England. I have no doubt that they will be developed. Hence I do not need to consider whether they were correctly placed in the site assessment

scoring. I have also considered the other sites referred to in the SEA Environmental Report. Botcheston has a lower ranking in the settlement strategy and is clearly much less sustainable than Desford and would not be suitable for a reserve site.

40. I am satisfied that the two alternative sites that require fuller consideration are those being promoted by Davidsons Development Limited and by Jelson Limited, and that I have sufficient evidence to do this. Each is a relatively flat site in single ownership on the edge of Desford within a reasonable distance of facilities. Neither would have access problems and neither is the sort of site that has features that would rule it out of consideration or make it an absolute last resort. Each would be deliverable and neither would be subject to constraints that prevented delivery of affordable housing. Neither would have a significant environmental effect on the Botcheston Bog SSSI. There would be some limited localised landscape harm in each case.

41. The Pegasus Group on behalf of Davidsons Development Limited is promoting a 5.43-hectare, mainly greenfield site immediately north of Kirkby Road. The extent of this land (“the Ashfield Farm Site”) is shown on Appendix 1 to their Regulation 16 representations of February 2020. With the exception of one existing dwelling the site is greenfield grade 2 arable land. I was able to view it clearly from Kirkby Road to its southeast and the Bellway Homes development to its northwest and to a limited extent from gaps between houses in Cambridge Drive. There is a difference as to its capacity between 105 and 120 dwellings, which it is not necessary for me to determine. An extension of the village to include it would leave a defensible boundary.

42. Avison Young on behalf of Jelson Limited is promoting a 4.19-hectare, relatively flat, wholly greenfield site, immediately south of Hunts Lane. The extent of this land (“the Hunts Lane Site”) is shown on Appendix 1 to their Regulation 16 representations of 4th March 2020. Avison Young did not dispute DPC’s assessment that it has capacity for approximately 62 three-bedroom houses. It is grade 2 arable land. Its western boundary is a public footpath to Newbold Verdon.

43. There aren’t major differences between these two sites, although the Hunts Lane site would have greater impact on views and detract from the experience of those using the public footpath. This impact on views does not relate to one of the important views identified on figure 12 and could be mitigated by planting.

44. I consider that both the Ashfield Farm Site and the Hunts Lane Site should be allocated as reserve sites. If only one is needed that should be determined in accordance with the policies and other material considerations that apply at the time.

45. A reserved sites policy should be just that. It should neither be a policy that in reality automatically leads to a planning permission on the facts as they are now, nor one with criteria that are so demanding that development if shown to be needed is unlikely to take place.

9. The contents of the Draft DNP

Page 3

46. The first two complete paragraphs require updating.

Recommended modification 1

Page 3

Update from “*Before being adopted*” to “*local community referendum*” to reflect the situation prior to the referendum.

Page 17

47. An indication of the limitations of the figure of 163 should be given.

48. The final paragraph is out of date and needs updating to reflect the grant of outline planning permission for the site at Peckleton Lane for up to 80 dwellings.¹⁷

Recommended modification 2

Page 17

Replace the fourth sentence of the first complete paragraph with: “*A draft indicative and heavily caveated figure of 163 dwellings over the period 2016-2036 was provided by the borough.*”

Replace the final paragraph with: “*Planning permission has been granted on appeal for development of up to 80 dwellings at land east of Peckleton Lane in Desford. This will increase housing provision within the parish and impact on services and traffic.*”

Pages 18 and 19

49. The settlement boundary should also be extended to reflect the planning permission development of up to 80 dwellings at land east of Peckleton Lane. I do not consider that the settlement boundary should be altered to incorporate land held in reserve. That would in effect make a reserved site an allocated site.

¹⁷ Appeal Ref: APP/K2420/W/19/3235401.

Recommended modification 3

Page 18, 3rd paragraph

At the end of the first sentence add: “*and the planning permission of development of up to 80 dwellings at land east of Peckleton Lane.*”

Page 19, figure 2

Amend the settlement boundary to include the land subject to the planning permission of development of up to 80 dwellings at land east of Peckleton Lane and the immediately adjoining section of Peckleton Lane.

Pages 20 and 21

50. The land subject to policy H2 has been granted outline planning permission and reserved matters have been approved. That does not mean that policy H2 is inevitably irrelevant. There could still be a further planning application. There is no breach of basic conditions in the policy remaining.

51. Criterion (d), while desirable in principle, is too demanding.

52. Criterion (l) not a policy, but a statement. It could also mislead, since other public bodies in addition to the two principal councils might have a proper case for a financial contribution.

53. Criterion (m) is not justified.

Recommended modification 4

Page 20

Insert “*Where possible*” at the start of criterion (d).

Delete criteria (l) and (m), insert “*and*” after criterion (j) and replace the semi-colon after criterion (k) with a full stop.

Page 21

54. For the reasons given in paragraphs 38 to 43 above, there should be a reserved sites policy together with supporting text and figure.

Recommended modification 5

Page 20

Insert after the current end of the page

“Two reserved sites adjacent to the settlement boundary are allocated so that one or both of them will come forward if required during the Plan period should a need for further housing in the parish arise.

Policy H3: RESERVE SITES

Land at the following locations as shown on Figure 4 is allocated as reserved sites:

A 5.43-hectare site immediately north of Kirkby Road;

A 4.19-hectare site south of Hunts Lane.

Planning applications for residential development on one or both of these sites will be supported if (and to the extent) necessary by the replacement Local Plan. In the event of only one site being needed, planning permission will be supported in respect of the site that, having considered applicable development plan policies and other material considerations at the relevant time is more appropriate. In the event of no replacement Local Plan being in place by 31st December 2022, the matter should be determined on the evidence available at the time.

Insert a new figure 4.

Renumber subsequent housing policies and subsequent figures.

Page 22

55. The Core Strategy sets out the tenure split of affordable housing to be for 75% social rented and 25% intermediate tenure. The substantial change from this strategic policy has not been justified by robust evidence.

56. The phrase “high quality” is too imprecise for a planning policy. Allocation of affordable housing is a housing not a land-use planning matter and should not be included in a policy.

Recommended modification 6

Page 22

Delete the second complete sentence.

Delete the words “*high quality*” from policy H3.

Delete the second sentence of the second complete paragraph and the final sentence of policy H3.

Page 24

57. The design policy is not limited to housing. The heading of the section and the policy should reflect this.

58. Parliament has specified when design and access statements are needed in the Town and Country Planning (Development Management Procedure) (England) Order 2015 article 9. This is law, not policy, and cannot be amended by a plan.

Recommended modification 7

Page 24

In the section and the policy heading replace “*housing design*” with “*housing and other design*”.

Policy H6 criterion (a), delete: “, *and proposals should clearly show within a Design and Access Statement where appropriate how the general character, scale, mass, density and layout of the site, of the building or extension fits in with the aspect of the surrounding area*”.

Page 25

59. The final sentence of criterion (c) is too demanding for a policy that covers most development. Criterion (i) conflicts with NPPF paragraph 122 and should be replaced by a less demanding policy.

Recommended modification 8

Page 25

Policy H6 criterion (c), replace the final sentence with: “*Roof and wall construction that follows technical best-practice recommendations for integral bird nest boxes and bat breeding and roosting sites will be supported.*”

Policy H6, criterion (i), replace with: “*Development should be of a density that respects the desirability of maintaining an area’s prevailing character and setting*”.

Page 29

60. Following the listing of the Desford War Memorial, there are now 19 listed buildings.

Recommended modification 9

Page 29

In the first paragraph, replace “18” with “19”.

Pages 31 to 33

61. The three proposed Local Green Spaces (LGSs), St Martin’s churchyard, Pickard Recreation Ground and Barns Charity Field, are shown on figure 6 of the Draft NDP and considered in pages 31 to 33.¹⁸

¹⁸ I also note the mention on page 29 and appendix F.

62. The NPPF provides for LGSs in its chapter 8, which is headed “Promoting healthy and safe communities”. Under the sub-heading “Open Spaces and Recreation”, paragraphs 99, 100 and 101 state:

99. 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.

100. 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.*

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

63. In considering the proposed LGS designations, I have born in mind and found helpful the recent judgment in R. (Lochailort Investments Ltd) v Mendip District Council.¹⁹ I am satisfied that the selection of the LGSs and policy ENV1 comply with the basic conditions and human rights and that each of the three sites meets the criteria in the NPPF. In particular I do not consider that the local plan designations of the sites means that an LGS designation would breach a basic condition and I am satisfied that in the context of the parish of Desford Barns Charity Field is not an “*is not an extensive tract of land*”.

64. There is one minor error, namely specifying the wrong NPPF paragraph. This needs correction.

Recommended modification 10

Page 31

Replace: “NPPF, paragraph 77” with “NPPF, paragraph 100”.

Page 45

65. I do not agree that wellbeing in policy ENV7 is insufficiently precise.²⁰ I agree with HBBC that reflection and glare are not present on solar farms, since the panels are matt and

¹⁹ [2020] EWHC 1146 (Admin), Lang J., 11th May 2020.

²⁰ A comparison can be made with the Well-being of Future Generations (Wales) Act 2015.

absorb the light. I also agree that large-scale is imprecise, although it is clear that it is meant to cover larger scale than the previous paragraph.

Recommended modification 11

Page 45, policy ENV 7

In first criterion (a) delete “reflections, glare,”.

Replace the penultimate sentence of the policy with:

“Larger scale solar energy generation development proposals will generally be acceptable if the panel array does not cause significant visual harm from any valued and accessible viewpoint.”

Page 49

66. A policy cannot require an improvement of highway safety.

Recommended modification 12

Page 49, policy F2

Replace criterion (b) with, “Does not harm highway safety”.

Page 54

67. Policy T3 is not a land-use planning policy

Recommended modification 13

Page 54, policy T3

Replace “Policy” with “Community Action” and re-colour.

Page 55

68. Policy T4 could be read as applying to individual buildings (albeit subject to the words “where appropriate”). That would be too demanding. and could affect the viability of needed development. The policy requires modification but not to the extent that would leave it requiring only one charging point in larger developments

Recommended modification 14

Page 55, policy T4

Delete “*in the building*”.

Replace “*point*” in each place where it appears with “*points*”.

Appendix F

69. This refers to a former NPPF. The current version should be used

Recommended modification 15

Appendix F

Replace: “NPPF 2012, paragraph 77” with “NPPF 2019, paragraph 100”.

Replace the whole of the box at the end of the Appendix with:

“100. 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.”

10. Updating

70. It may be that certain passages need updating. Nothing in this report should deter appropriate updating prior to the referendum in respect of incontrovertible issues of primary fact.

11. The Referendum Area

71. I have considered whether the referendum area should be extended beyond the designated plan area. However, I can see no sufficient reason to extend the area and therefore recommend that the referendum area be limited to the parish.

12. Summary of Main Findings

72. I commend the Draft DNP for being clear, intelligible and well written and for the considerable effort that has gone into its creation.

73. I recommend that the Draft DNP be modified in the terms specified in Appendix A to this report in order to meet basic conditions and to correct errors. I am satisfied with all parts of the Draft DNP to which I am not recommending modifications.

74. With those modifications the Draft DNP will meet all the basic conditions 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 Desford (or any part of that area);
- The making of the NDP does not breach, and is not otherwise incompatible with, 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 DNP is in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

75. I recommend that the modified NDP proceed to a referendum, the referendum area being the area of the Draft DNP.

Timothy Jones, Barrister, FCI Arb,

Independent Examiner,

No 5 Chambers

7th August 2020.

Appendix A: Recommended Modifications

Recommended modification 1

Page 3

Update from “Before being adopted” to “local community referendum” to reflect the situation prior to the referendum.

Recommended modification 2

Page 17

Replace the fourth sentence of the first complete paragraph with: “A draft indicative and heavily caveated figure of 163 dwellings over the period 2016-2036 was provided by the borough.”

Replace the final paragraph with: “Planning permission has been granted on appeal for development of up to 80 dwellings at land east of Peckleton Lane in Desford. This will increase housing provision within the parish and impact on services and traffic.”

Recommended modification 3

Page 18, 3rd paragraph

At the end of the first sentence add: “and the planning permission of development of up to 80 dwellings at land east of Peckleton Lane.”

Page 19, figure 2

Amend the settlement boundary to include the land subject to the planning permission of development of up to 80 dwellings at land east of Peckleton Lane and the immediately adjoining section of Peckleton Lane.

Recommended modification 4

Page 20

Insert “Where possible” at the start of criterion (d).

Delete criteria (l) and (m), insert “and” after criterion (j) and replace the semi-colon after criterion (k) with a full stop.

Recommended modification 5

Page 20

Insert after the current end of the page

“Two reserves sites adjacent to the settlement boundary are allocated so that one or both of them will come forward if required during the Plan period should a need for further housing in the parish arise.

Policy H3: RESERVE SITES

Recommended modification 5

Page 20

Insert after the current end of the page

“Two reserved sites adjacent to the settlement boundary are allocated so that one or both of them will come forward if required during the Plan period should a need for further housing in the parish arise.

Policy H3: RESERVE SITES

Land at the following locations as shown on Figure 4 is allocated as reserved sites:

A 5.43-hectare site immediately north of Kirkby Road;

A 4.19-hectare site south of Hunts Lane.

Planning applications for residential development on one or both of these sites will be supported if (and to the extent) necessary by the replacement Local Plan. In the event of only one site being needed, planning permission will be supported in respect of the site that, having considered applicable development plan policies and other material considerations at the relevant time is more appropriate. In the event of no replacement Local Plan being in place by 31st December 2022, the matter should be determined on the evidence available at the time.

Insert a new figure 4.

Renumber subsequent housing policies and subsequent figures.

Recommended modification 6

Page 22

Delete the second complete sentence.

Delete the words “high quality” from policy H3.

Delete the second sentence of the second complete paragraph and the final sentence of policy H3.

Recommended modification 7

Page 24

In the section and the policy heading replace “housing design” with “housing and other design”.

Policy H6 criterion (a), delete: “, and proposals should clearly show within a Design and Access Statement where appropriate how the general character, scale, mass, density and layout of the site, of the building or extension fits in with the aspect of the surrounding area”.

Recommended modification 8

Page 25

Policy H6 criterion (c), replace the final sentence with: “Roof and wall construction that follows technical best-practice recommendations for integral bird nest boxes and bat breeding and roosting sites will be supported.”

Policy H6, criterion (i), replace with: “Development should be of a density that respects the desirability of maintaining an area’s prevailing character and setting”.

Recommended modification 9

Page 29

In the first paragraph, replace “18” with “19”.

Recommended modification 10

Page 31

Replace: “NPPF, paragraph 77” with “NPPF, paragraph 100”.

Recommended modification 11

Page 45, policy ENV 7

In first criterion (a) delete “reflections, glare,”.

Replace the penultimate sentence of the policy with:

“Larger scale solar energy generation development proposals will generally be acceptable if the panel array does not cause significant visual harm from any valued and accessible viewpoint.”

Recommended modification 12

Page 49, policy F2

Replace criterion (b) with, “Does not harm highway safety”.

Recommended modification 13

Page 54, policy T3

Replace “Policy” with “Community Action” and re-colour.

Recommended modification 14

Page 55, policy T4

Delete “in the building”.

Replace “point” in each place where it appears with “points”.

Recommended modification 15

Appendix F

Replace: “NPPF 2012, paragraph 77” with “NPPF 2019, paragraph 100”.

Replace the whole of the box at the end of the Appendix with:

“100. 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.”

Appendix B: Abbreviations

The following abbreviations are used in this report:

Convention	European Convention on Human Rights
DPC	Desford Parish Council
Draft DNP	The Submission version of the Desford Neighbourhood Plan 2018 - 2036
EU	European Union
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
HBBC	Hinckley and Bosworth Borough Council
LCC	Leicestershire County Council
LGS	Local Green Space
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework (2019)
p	page
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PPG	national Planning Practice Guidance
s	section
Sch	Schedule
TCPA	Town and Country Planning Act 1990 (as amended)

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