

Witherley Neighbourhood Development Plan

A report to Hinckley and Bosworth Borough Council of the
Independent Examination of the Witherley Neighbourhood
Development Plan

Copy to Witherley Parish Council

Independent Examiner Christopher Collison

Christopher Collison

BA (Hons) MBA MRTPI MIED IHBC

Planning and Management Ltd

collisonchris@aol.com

25 January 2023

Contents

Summary of Main Findings	3
Neighbourhood Planning	4
Independent Examination.....	4
Basic Conditions and other Statutory Requirements	6
Documents	8
Consultation.....	9
The Neighbourhood Plan taken as a whole	13
The Neighbourhood Plan Policies	22
Policy H1: Residential Site Allocations	25
Policy H2: Settlement Boundary	25
Policy H3: Housing Mix.....	39
Policy H4: Windfall Sites	39
Policy H5: Design.....	41
Policy ENV1: Protection of Local Green Space.....	43
Policy ENV2: Important Open Spaces	45
Policy ENV3: Protection of Sites and Features of Natural Environmental Significance.....	46
Policy ENV4: Biodiversity and Habitat Connectivity	48
Policy ENV5: Trees and Woodland.....	50
Policy ENV6: Sites of Historical Environment Significance	51
Policy ENV7: Local Heritage Assets	52
Policy ENV8: Ridge and Furrow.....	55
Policy ENV9: Lane Settings Lots	57
Policy ENV10: Protection of Important Views	59
Policy ENV11: Footpaths and Bridleways	61
Policy ENV12: Renewable Energy Infrastructure.....	61
Policy ENV13: Flood Risk Resilience.....	63
Policy ENV14: Area of Separation	63
Policy CA1: The Retention of Community Facilities and Amenities.....	65
Policy CA2: New or Improved Community Facilities.....	66
Policy CA3: Broadband and Mobile Phone Infrastructure	67
Policy TR1: Traffic Management	68

Policy TR2: Electric Vehicles.....	69
Policy BE1: Support for Existing Businesses and Employment Opportunities.....	69
Policy BE2: Support for New Businesses and Employment	70
Policy BE3: Home Working.....	71
Policy BE4: Farm Diversification.....	72
Policy BE5: Tourism.....	72
Conclusion and Referendum.....	73
Annex: Minor Corrections to the Neighbourhood Plan.....	74

Summary of Main Findings

This is the report of the Independent Examination of the Witherley Neighbourhood Development Plan. The plan has been prepared by Witherley Parish Council. The plan relates to Witherley Parish which was designated as a Neighbourhood Area on 3 April 2017. The plan area lies within the Hinckley and Bosworth Borough Council area. The plan period runs until 2039. The Neighbourhood Plan includes policies relating to the development and use of land.

This report finds that subject to specified modifications the Neighbourhood Plan meets the Basic Conditions and other requirements. It is recommended the Neighbourhood Plan should proceed to a local referendum based on the plan area.

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. Paragraph 29 of the National Planning Policy Framework (the Framework) states that “neighbourhood planning gives communities the power to develop a shared vision for their area”.
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Witherley Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Witherley Parish Council (the Parish Council). Witherley Parish was designated by Hinckley and Bosworth Borough Council (the Borough Council) as a Neighbourhood Area on 3 April 2017. The draft plan has been submitted by the Parish Council, a qualifying body able to prepare a neighbourhood plan, in respect of the Witherley Neighbourhood Area (the Neighbourhood Area). The Neighbourhood Plan preparation process was led, between September 2017 and April 2020, by a Neighbourhood Plan Steering Group (the Steering Group) made up of Parish Councillors and other volunteers from the local community. From May 2020 onwards an NDP Committee of Parish Councillors has overseen the later stages of preparing the Neighbourhood Plan.
4. The submission draft of the Neighbourhood Plan and accompanying documents were approved by the Parish Council on 11 November 2021 for submission to the Borough Council. The Borough Council arranged a period of publication between 16 September 2022 and 4 November 2022 and subsequently submitted the Neighbourhood Plan to me for independent examination which commenced on 12 December 2022.

Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan. The report makes recommendations to the Borough Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. The Borough Council will decide what action to take in response to the recommendations in this report.
6. The Borough Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission

version plan. Once a neighbourhood plan has been independently examined, and a decision statement is issued by the local planning authority outlining their intention to hold a neighbourhood plan referendum, it must be taken into account and can be given significant weight when determining a planning application, in so far as the plan is material to the application.

7. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will form part of the Development Plan and be given full weight in the determination of planning applications and decisions on planning appeals in the plan area unless the Borough Council subsequently decide the Neighbourhood Plan should not be 'made'. The Housing and Planning Act 2016 requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan. Paragraph 12 of the Framework is very clear that where a planning application conflicts with an up-to-date neighbourhood plan that forms part of the Development Plan, permission should not usually be granted.
8. I have been appointed by the Borough Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and the Borough Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan.
9. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; and a Member of the Institute of Historic Building Conservation. As a Chartered Town Planner, I have held national positions and have 35 years' experience at Director or Head of Service level in several local planning authorities. I have been a panel member of the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) since its inception, and have undertaken the independent examination of neighbourhood plans in every region of England, and in the full range of types of urban and rural areas.
10. As independent examiner, I am required to produce this report and must recommend either:
 - that the Neighbourhood Plan is submitted to a referendum, or
 - that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
 - that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.
11. I make my recommendation in this respect and in respect to any extension to the referendum area, in the concluding section of this report. It is a requirement that

my report must give reasons for each of its recommendations and contain a summary of its main findings.

12. The Planning Practice Guidance (the Guidance) states “it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.” The examiner has the ability to call a hearing 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 adequate examination of the issue, or a person has a fair chance to put a case. This requires an exercise of judgement on my part. All parties have had the opportunity to state their case and no party has indicated that they have been disadvantaged by a written procedure. Regulation 16 responses clearly set out any representations relevant to my consideration whether or not the Neighbourhood Plan meets the Basic Conditions and other requirements. Those representations; the level of detail contained within the submitted Neighbourhood Plan and supporting documents; and the responses to my request for clarification of matters have provided me with the necessary information required for me to conclude the Independent Examination. As I did not consider a hearing necessary, I proceeded on the basis of examination of the submission and supporting documents; consideration of the written representations; and an unaccompanied visit to the neighbourhood area undertaken on 31 December 2022.
13. This report should be read as a whole, and has been produced in an accessible format.

Basic Conditions and other Statutory Requirements

14. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”. A neighbourhood plan meets the Basic Conditions if:
- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
 - the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

15. With respect to the penultimate Basic Condition the European Withdrawal Act 2018 (EUWA) incorporates EU environmental law (directives and regulations) into UK law and provides for a continuation of primary and subordinate legislation, and other enactments in domestic law. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention Rights, which has the same meaning as in the Human Rights Act 1998. All of these matters are considered in the later sections of this report titled 'The Neighbourhood Plan taken as a whole' and 'The Neighbourhood Plan Policies'. Where I am required to consider the whole Neighbourhood Plan, I have borne it all in mind.
16. In addition to the Basic Conditions and Convention Rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 (in sections 38A and 38B themselves; in Schedule 4B to the 1990 Act introduced by section 38A (3); and in the 2012 Regulations made under sections 38A (7) and 38B (4)). I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 as amended (the Regulations) which are made pursuant to the powers given in those sections.
17. The Neighbourhood Plan relates to the area that was designated by the Borough Council on 3 April 2017. A map of the Neighbourhood Area is included as Figure 1 of the Submission Version Plan. The Neighbourhood Plan does not relate to more than one neighbourhood area, and no other neighbourhood development plan has been made for the neighbourhood area. All requirements relating to the plan area have been met.
18. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area; and the Neighbourhood Plan does not include provision about excluded development (principally minerals, waste disposal, development automatically requiring Environmental Impact Assessment, and nationally significant infrastructure projects). I am able to confirm that I am satisfied that each of these requirements has been met.
19. A neighbourhood plan must also meet the requirement to specify the period to which it has effect. The front cover of the Neighbourhood Plan states the plan period runs until 2039. The plan period is confirmed in Section 2 of the Neighbourhood Plan.
20. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the tests of soundness provided for in respect of examination of Local Plans. It is not within my role to examine or produce an alternative plan, or

a potentially more sustainable plan, except where this arises as a result of my recommended modifications so that the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention Rights, and the other statutory requirements.

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

Documents

24. I have considered each of the following documents in so far as they have assisted me in determining whether the Neighbourhood Plan meets the Basic Conditions and other requirements:
 - Witherley Parish Neighbourhood Development Plan 2020 - 2039 Regulation 16 Submission Version July 2022
 - Witherley Parish Neighbourhood Plan 2020 - 2039 Statement of Basic Conditions November 2021 [In this report referred to as the Basic Conditions Statement]
 - Witherley Parish Neighbourhood Development Plan Consultation Statement [In this report referred to as the Consultation Statement]
 - Witherley Neighbourhood Strategic Environmental Assessment (SEA) Screening Statement and Decision Notice
 - Information available on the Witherley Parish Council website including the Neighbourhood Plan Appendices and evidence base documents
 - Information available on the Hinckley and Bosworth Borough Council website
 - Representations received during the Regulation 16 publicity period

- Correspondence between the Independent Examiner and Hinckley and Bosworth Borough Council and the Parish Council including: the initial letter of the Independent Examiner dated 12 December 2022; the letter of the Independent Examiner seeking clarification of various matters dated 2 January 2023; and the responses of the Parish Council (including attachments) and the Borough Council which I received on 19 January 2023
- National Planning Policy Framework (2021) [In this report referred to as the Framework]
- Hinckley and Bosworth Core Strategy (2009) and Site Allocations and Development Management Development Plan Document (2016)
- Permitted development rights for householders' technical guidance MHCLG (10 September 2019) [In this report referred to as the Permitted Development Guidance]
- Planning Practice Guidance web-based resource MHCLG (first fully launched 6 March 2014 and subsequently updated) [In this report referred to as the Guidance]
- Town and Country Planning (Use Classes) Order 1987 (as amended)
- Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004 (as amended)
- Equality Act 2010
- Localism Act 2011
- Housing and Planning Act 2016
- European Union (Withdrawal) Act 2018
- Neighbourhood Planning Act 2017 and Commencement Regulations 19 July 2017, 22 September 2017, and 15 January 2019
- Neighbourhood Planning (General) Regulations 2012 (as amended) [In this report referred to as the Regulations. References to Regulation 14, Regulation 16 etc in this report refer to these Regulations]
- Neighbourhood Planning (General) (Amendment) Regulations 2015
- Neighbourhood Planning (General) incorporating Development Control Procedure (Amendment) Regulations 2016
- Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

Consultation

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

approach adopted.

26. Following designation of Witherley Parish as a Neighbourhood Area in April 2017 a Steering Group was established in September 2017 comprising Parish Councillors and other volunteer parishioners. Public consultation as part of the plan preparation process can be traced back to November 2017 when three drop-in events were attended by a total of 114 people. In February 2018 a stakeholder consultation workshop was held with landowners, business representatives and local groups. In late 2018 a questionnaire delivered to all households and a separate young person's questionnaire resulted in a combined 339 responses. An independent analysis of the responses was published on the Parish Council website. In March 2019 theme groups were established to consider housing; environment; community facilities, transport and employment. These groups were instrumental in producing draft policies and supporting evidence. In February 2020 three drop-in events were held to present the draft policies to parishioners and for members of the Steering Group to receive feedback and to answer queries. A dedicated formal Parish Council Committee was formed in May 2020 to oversee the final stages of plan preparation. Publicity has been achieved throughout the entire plan preparation process through a dedicated page on the Parish Council website and through social media. Posters were used to further advertise events.
27. In accordance with Regulation 14 the Parish Council consulted on the pre-submission version of the draft Neighbourhood Plan between 20 November 2020 and 22 January 2021. The consultation on the pre-submission draft Plan and supporting documents was publicised on the Parish Council website and noticeboards and through an email sent to other stakeholders, including statutory consultees. The Consultation Statement includes in Appendix (vi) a Table that details the 2,560 comments received from all parties and sets out a response and any action taken, including modification and correction of the emerging Neighbourhood Plan. Suggestions have, where considered appropriate, been reflected in a number of changes to the Plan that was submitted by the Parish Council to the Borough Council.
28. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 period of publication between 16 September 2022 and 4 November 2022. Publicity was achieved through the Borough Council website and by making hard copies of the submission documents available at the Hinckley Hub and at Atherstone Library. The Borough Council has asked me to consider the fact that high resolution maps were not available for inspection online until the last week of the Regulation 16 publicity period and there were issues in accessing those properly. I am satisfied all maps were available online

throughout the period of publication and that these were judged by the Borough Council to have passed accessibility standards for publication. I am not aware that any party has reported any difficulty in respect of their consideration of maps within, and supporting, the Neighbourhood Plan. Representations were submitted during the Regulation 16 period of publication from a total of 69 different parties.

29. The Borough Council has submitted Officer comments which contained much useful information that has assisted this Independent Examination, and suggestions to update and improve the clarity of the Neighbourhood Plan. Where those suggestions are necessary for the Neighbourhood Plan to meet the Basic Conditions, I have recommended modifications either in respect of individual policies or in the Annex to my report. The Coal Authority; Natural England; Historic England; National Highways; the Environment Agency; Severn Trent; Sport England; the Canal and River Trust; NHS Leicester, Leicestershire and Rutland Integrated Care Board; Warwickshire County Council; and Leicestershire County Council have submitted representations. A petition containing approximately 100 signatures has been submitted. Representations have been submitted by 54 members of the public. A representation by Emery Planning on behalf of Hollins Strategic Land, and a representation by Pegasus Group on behalf of two clients, have been submitted.
30. I have read each of the Regulation 16 representations. In preparing this report I have taken into consideration all of the representations submitted, in so far as they are relevant to my role, even though they may not be referred to in whole in my report. Having regard to *Bewley Homes Plc v Waverley Borough Council* [2017] EWHC 1776 (Admin) Lang J, 18 July 2017 and Town and Country Planning Act Schedule 4B paragraph 10(6) where representations raise concerns or state comments or objections in relation to specific policies, I refer to these later in my report when considering the policy in question where they are relevant to the reasons for my recommendations. Some representations, or parts of representations, are not relevant to my role which is to decide whether or not the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. Where representations suggest alternative policy approaches, for example because they are preferred or considered to be more sustainable than the policy approaches adopted in the submitted Neighbourhood Plan, that is not a matter for my consideration unless they are necessary for the Neighbourhood Plan to meet the Basic Conditions or other requirements I have identified. Where the representations suggest additional policy content that could be included in the Neighbourhood Plan that is only a matter for my consideration where such additions are necessary for the Neighbourhood Plan to meet the Basic Conditions or other requirements that I have identified. Alternative policy approaches and additional policy content were relevant considerations in earlier stages of the Neighbourhood Plan preparation process. These matters are only relevant to my

role if they are necessary for the Neighbourhood Plan to meet the Basic Conditions or other requirements that I have identified. I realise this may be a disappointment to some parties submitting Regulation 16 representations but I am only able to operate within the statutory framework.

31. I provided the Parish Council with an opportunity to comment on the Regulation 16 representations of other parties. Whilst I placed no obligation on the Parish Council to offer any comments, such an opportunity can prove helpful where representations of other parties include matters that have not been raised earlier in the plan preparation process. The Parish Council did not submit any comments to me in this respect however the Parish Council and the Borough Council have submitted comments in response to my request for clarification of certain matters. My requests and the responses have been published on the Borough Council website. I have taken the responses of the Parish and Borough Councils into consideration in the preparation of my report.
32. I have noted some Regulation 16 representations question aspects of the plan preparation process followed. A representation suggests information has been deliberately withheld from persons with an interest; another representation suggests data has been manipulated; a further representation suggests there has been inappropriate/unprofessional/intimidatory Parish Council Member behaviour towards members of the public at scheduled meetings and that secret meetings may have been held with no minutes; a further representation suggests the NDP Committee has not operated in accordance with Parish Council standing orders; two representations refer to an apparent conflict of interest as some Parish Councillors are also landowners with a vested interest in local planning applications; and several representations suggest there has been bias, in particular towards Witherley Village to the detriment of the hamlets in the Neighbourhood Area. I have explained earlier in my report my role is to determine whether the Neighbourhood Plan meets the Basic Conditions and other requirements I have identified. Consideration of probity related matters and Freedom of Information issues as raised in representations is beyond my role. The Neighbourhood Planning Independent Examiner Referral Service guidance to service users and examiners states "There may be instances where an independent examiner is alerted to allegations of misconduct arising during the production of a plan. For example, someone may make an allegation about a conflict of interest within the qualifying body. An independent examiner has no authority to consider such allegations of misconduct. Such matters should be dealt with through internal complaints handling procedures of the qualifying body or local planning authority." I have followed this guidance.
33. A number of representations, including a petition containing approximately 100 signatures, suggest there has been inadequate consultation and others suggest

views expressed, including through the Regulation 14 consultation, have been ignored. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which:

- a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- b) explains how they were consulted;
- c) summarises the main issues and concerns raised by the persons consulted; and
- d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.

34. The Consultation Statement includes information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. In addition, sufficient regard has been paid to the advice regarding engagement in plan preparation contained within the Guidance. It is evident the Neighbourhood Plan Steering Group, and later the NDP Committee of Councillors, have ensured stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.

The Neighbourhood Plan taken as a whole

35. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and Human Rights requirements; has regard to national policies and advice contained in guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the Development Plan for the area. Two of the plan policies are considered together and each of the other plan policies is considered in turn in the section of my report that follows this. In considering all of these matters I have referred to the submission, background, and supporting documents, and copies of the representations and other material provided to me.

Consideration of Convention Rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017

36. Paragraph 3.13 of the Basic Conditions Statement, states the Neighbourhood Plan has regard to and is compatible with the fundamental rights and freedoms guaranteed under the European Convention on Human Rights. I have considered the European Convention on Human Rights and in particular Article 6 (fair hearing); Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property). The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law. Development Plans by their nature will include policies that relate differently to areas of land. Where the Neighbourhood Plan policies relate differently to areas of land this has been explained in terms of land use and development related issues. I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. I am satisfied the Neighbourhood Plan has been prepared in accordance with the obligations for Parish Councils under the Public Sector Equality Duty (PSED) in the Equality Act 2010. Whilst an Equality Screening Assessment has not been prepared, from my own examination, the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics as identified in the Equality Act 2010.
37. The objective of EU Directive 2001/42 (transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004) is “to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.” The Neighbourhood Plan falls within the definition of ‘plans and programmes’ (Defined in Article 2(a) of Directive 2001/42) as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result (Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012).
38. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council, as the Qualifying Body, to submit to Hinckley and Bosworth Borough Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.
39. Paragraph 3.10 of the Basic Conditions Statement states “A Screening opinion was issued by Hinckley and Bosworth Borough Council which determined that a full SEA would not be required. The statutory consultees concurred with this conclusion. I have examined the Strategic Environmental Assessment Screening Statement commissioned by the Borough Council in November 2020 and have

no reason to disagree with its conclusion which led to the Borough Council issuing a Screening Determination on 5 November 2020. I am satisfied the requirements regarding Strategic Environmental Assessment have been met.

40. It is reported at paragraph 3.12 of the Basic Conditions Statement that Hinckley and Bosworth Borough Council undertook a Habitat Regulation Assessment (HRA) screening of the Neighbourhood Plan and concluded that an HRA was not required. The statutory consultees concurred with this conclusion. The Strategic Environmental Assessment Screening Statement commissioned by the Borough Council in November 2020 considered the two nearest Special Areas of Conservation (SACs) known as Ensors Pool located approximately 5.3km south of the Neighbourhood Area and the river Mease Catchment located approximately 6 km north of the Neighbourhood Area. It was concluded on the basis of the nature and location of the SACs and the scope of the proposals within the Neighbourhood Plan that further stages in the HRA process are not required (including further screening, or Appropriate Assessment) and that the Witherley Neighbourhood Plan is not considered to have any impact on the Natura 2000 network of protected sites. The Borough Council has issued a Habitat Regulations Assessment Determination to that effect. I am satisfied that the Neighbourhood Plan meets the requirements of the Basic Condition relating to Habitats Regulations.
41. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.
42. I conclude that the Neighbourhood Plan is compatible with the Convention Rights, and does not breach, and is otherwise compatible with, EU obligations. I also conclude the making of the Neighbourhood Plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.
43. The Guidance states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The Borough Council as Local Planning Authority must decide whether the draft neighbourhood plan is compatible with EU environmental law obligations (directives and regulations) incorporated into UK domestic law by the European Withdrawal Act 2018 (EUWA):
- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and

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

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

44. I refer initially to the basic condition “having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan”. The requirement to determine whether it is appropriate that the plan is made includes the words “having regard to”. This is not the same as compliance, nor is it the same as part of the tests of soundness provided for in respect of examinations of Local Plans which requires plans to be “consistent with national policy”.
45. Lord Goldsmith has provided guidance (Column GC272 of Lords Hansard, 6 February 2006) that ‘have regard to’ means “such matters should be considered.” The Guidance assists in understanding “appropriate”. In answer to the question “What does having regard to national policy mean?” the Guidance states a neighbourhood plan “must not constrain the delivery of important national policy objectives.”
46. The most recent National Planning Policy Framework published on 20 July 2021 sets out the Government’s planning policies for England and how these are expected to be applied. The Planning Practice Guidance was most recently updated, in part, on 25 August 2022. As a point of clarification, I confirm I have undertaken the Independent Examination in the context of the most recent National Planning Policy Framework and Planning Practice Guidance. The Government consultation on possible changes to the Framework published in December 2022 has not formed part of my consideration.
47. The Table presented on pages 6 to 10 of the Basic Conditions Statement sets out an explanation how each of the policies of the Neighbourhood Plan has regard to the Framework. I am satisfied the Basic Conditions Statement demonstrates how the Neighbourhood Plan has regard to relevant identified components of the Framework.
48. The Neighbourhood Plan includes in section 2 a positive vision for Witherley Parish with economic, social and environmental dimensions. Eight aims are also set out that help support delivery of the vision.

49. The Neighbourhood Plan includes, in Section 9, the identification of 8 community aspirations relating to a range of matters relating to traffic; active travel; flood management; drainage; habitat surveys; a community orchard; reclassification of a highway; and additions to the rights of way network. It is explained these matters have been raised by local people through consultation, however they cannot be addressed by planning policies. The plan preparation process is a convenient mechanism to surface and test local opinion on ways to improve a neighbourhood other than through the development and use of land. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The acknowledgement in the Neighbourhood Plan of issues raised in consultation processes that do not have a direct relevance to land use planning policy represents good practice. The Guidance states, "Wider community aspirations than those relating to the development and use of land, if set out as part of the plan, would need to be clearly identifiable (for example, set out in a companion document or annex), and it should be made clear in the document that they will not form part of the statutory development plan". As the community aspirations are presented in a final and separate section of the Neighbourhood Plan, I am satisfied they are adequately distinguished from the policies of the Neighbourhood Plan. I can confirm the community actions have not been subject to Independent Examination.
50. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that the need to 'have regard to' national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition "having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan."
51. At the heart of the Framework is a presumption in favour of sustainable development which should be applied in both plan-making and decision-taking. The Guidance states, "This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred

to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions”.

52. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.

53. The Framework states there are three dimensions to sustainable development: economic, social and environmental. Section 5 of the Neighbourhood Plan sets out a statement how the Neighbourhood Plan meets the requirement for sustainable development. Paragraph 3.9 of the Basic Conditions Statement demonstrates ways in which the policies of the Neighbourhood Plan support the economic, social and environmental aspects of sustainable development. The statement does not highlight any negative impacts of the Neighbourhood Plan policies.

54. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes are of an appropriate nature and quality to contribute to economic and social well-being; whilst also protecting important environmental features of the Neighbourhood Area. In particular, I consider the Neighbourhood Plan as recommended to be modified seeks to:

- Ensure housing development is of a mix of types that meets local needs;
- Support appropriate windfall development on infill and redevelopment sites;
- Require development to be of appropriate design;
- Designate Local Green Spaces and establish criteria for loss of important open space;
- Protect sites and features of natural environment significance;
- Ensure development safeguards biodiversity and connectivity;
- Avoid loss of important trees and woodland;
- Avoid harm to sites of historical environment significance and local heritage assets, including ridge and furrow and lane settings lots;
- Protect important views;
- Protect and enhance footpaths, bridleways and walking routes;

- Establish criteria for support of renewable energy infrastructure;
- Ensure flood risk resilience;
- Maintain an identified area of separation between settlements;
- Establish criteria for loss of community facilities and amenities and for new provision;
- Establish conditional support for broadband and mobile phone infrastructure;
- Establish traffic management principles and require electric vehicle charging infrastructure;
- Establish criteria for support of loss of business and employment opportunities and support for existing and new business and employment development; and
- Establish criteria for support of home working; farm diversification; and appropriate tourism development.

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

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

56. The Framework states neighbourhood plans should “support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies”. Plans should make explicit which policies are strategic policies. “Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine its strategic policies”.

57. In this independent examination, I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). The Borough Council has confirmed the Development Plan applying in the Witherley Neighbourhood Area and relevant to the Neighbourhood Plan comprises the Hinckley and Bosworth Core Strategy adopted in 2009, and the Site Allocations and Development Management Policies DPD adopted July 2016. The Guidance states, “A local planning authority should set out clearly its

strategic policies in accordance with paragraph 21 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.” The Borough Council has advised me that Appendix 3 of the Site Allocations and Development Management DPD identifies what are regarded by the Local Planning Authority as the strategic policies of the Local Plan (2006 - 2026). I have proceeded with my independent examination of the Neighbourhood Plan on the basis that the relevant Development Plan strategic policies are:

- Core Strategy Policies – CS Policy 1 to CS Policy 24 inclusive;
- Site Allocations Policies – SA Policy 1 to SA Policy 5 inclusive; and
- Development Management Policies – DM Policy 1 to DM Policy 25 inclusive.

58. The Borough Council has commenced the preparation of the Local Plan review 2020 to 2039. The Borough Council website states “It is necessary to create a new plan to take into account the changes in the borough, both now and in the future, in addition to changes across Leicestershire as a whole, new priorities and the latest evidence on key issues. Previous consultations include the Draft Local Plan (Regulation 18) in Summer 2021, and we have now progressed the Local Plan to the next formal stage known as Regulation 19 (Publication).” The Borough Council invited representations on the draft Local Plan, Regulation 19, between 9 February 2022 and 23 March 2022. I describe the intended further Local Plan review steps and timeline later in my report.

59. The Guidance states: “Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan. A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- the emerging neighbourhood plan;
- the emerging Local Plan;
- the adopted development plan;

with appropriate regard to national policy and guidance. The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan. Neighbourhood plans should consider providing indicative delivery timetables and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new Local Plan.”

60. The Guidance states “It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging local plan, including housing supply policies.” The approach of the Borough Council and the Parish Council has been consistent with that guidance. I am mindful of the fact that should there ultimately be any conflict between the Neighbourhood Plan, and the Local Plan review when it is adopted; the matter will be resolved in favour of the plan most recently becoming part of the Development Plan; however, the Guidance is clear in that potential conflicts should be minimised. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. The emerging Local Plan review is not part of the Development Plan and this requirement does not apply in respect of that. Emerging planning policy is subject to change as plan preparation work proceeds. The Guidance states “Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood areas. They can be developed before or at the same time as the local planning authority is producing its Local Plan”.

61. In considering a now-repealed provision that “a local plan shall be in general conformity with the structure plan” the Court of Appeal stated “the adjective ‘general’ is there to introduce a degree of flexibility” (Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P &CR 31). The use of ‘general’ allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

62. The Guidance states, “When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:
- whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;
 - the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;
 - whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy;
 - the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.”

My approach to the examination of the Neighbourhood Plan Policies has been in accordance with this guidance.

63. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole and each of the plan policies below. I have taken into consideration the Table presented on pages 6 to 10 of the Basic Conditions Statement that demonstrates how each of the policies of the Neighbourhood Plan is in general conformity with relevant strategic policies. Subject to the modifications I have recommended, I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

The Neighbourhood Plan Policies

64. The Neighbourhood Plan includes 29 policies as follows:

Policy H1: Residential Site Allocations

Policy H2: Settlement Boundary

Policy H3: Housing Mix

Policy H4: Windfall Sites

Policy H5: Design

Policy ENV1: Protection of Local Green Space

Policy ENV2: Important Open Spaces

Policy ENV3: Protection of Sites and Features of Natural Environmental Significance

Policy ENV4: Biodiversity and Habitat Connectivity

Policy ENV5: Trees and Woodland

Policy ENV6: Sites of Historical Environment Significance
 Policy ENV7: Local Heritage Assets
 Policy ENV8: Ridge and Furrow
 Policy ENV9: Lane Settings Lots
 Policy ENV10: Protection of Important Views
 Policy ENV11: Footpaths and Bridleways
 Policy ENV12: Renewable Energy Infrastructure
 Policy ENV13: Flood Risk Resilience
 Policy ENV14: Area of Separation
 Policy CA1: The Retention of Community Facilities and Amenities
 Policy CA2: New or Improved Community Facilities
 Policy CA3: Broadband and Mobile Phone Infrastructure
 Policy TR1: Traffic Management
 Policy TR2: Electric Vehicles
 Policy BE1: Support for Existing Businesses and Employment Opportunities
 Policy BE2: Support for New Businesses and Employment
 Policy BE3: Home Working
 Policy BE4: Farm Diversification
 Policy BE5: Tourism

65. Paragraph 29 of the Framework states “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”. Footnote 16 of the Framework states “Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area.”
66. Paragraph 15 of the Framework states “The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.”
67. Paragraph 16 of the Framework states “Plans should: a) be prepared with the objective of contributing to the achievement of sustainable development; b) be prepared positively, in a way that is aspirational but deliverable; c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees; d) contain policies that are clearly written and

unambiguous, so it is evident how a decision maker should react to development proposals; e) be accessible through the use of digital tools to assist public involvement and policy presentation; and f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant)."

68. The Guidance states "A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared."
69. "While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no 'tick box' list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan".
70. A neighbourhood plan should contain policies for the development and use of land. "This is because, if successful at examination and referendum (or where the neighbourhood plan is updated by way of making a material modification to the plan and completes the relevant process), the neighbourhood plan becomes part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004)."
71. "Neighbourhood plans are not obliged to contain policies addressing all types of development. However, where they do contain policies relevant to housing supply, these policies should take account of latest and up-to-date evidence of housing need". "A neighbourhood plan can allocate sites for development, including housing. A qualifying body should carry out an appraisal of options and an assessment of individual sites against clearly identified criteria. Guidance on assessing sites and on viability is available."
72. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is 'made' they will be utilised in the determination of planning applications and appeals, I have examined each policy in turn. I have considered Policies H1 and

H2 together as they are inter-related in terms of their relevance to the issue of housing supply. I have considered any other inter-relationships between policies where these are relevant to my remit.

Policy H1: Residential Site Allocations

Policy H2: Settlement Boundary

73. Policy H1 seeks to establish that land is allocated, subject to conditions, for the development of around 15 dwellings at, and south of, the site of the former Atherstone Hunt Kennels, Kennel Lane, Witherley identified on Figure 2 of the Neighbourhood Plan.
74. Policy H2 seeks to establish support for development proposals on sites within “the settlement boundary”. The policy also states land outside the settlement boundary will be treated as open countryside where development will be carefully controlled in line with local and national strategic planning policies.
75. National Highways refer to identified capacity issues with the A5/Kennel Lane junction and state “this Neighbourhood Plan has taken our concern into consideration, and has allocated a single site on Kennel Lane for around 15 dwellings, we do not anticipate any significant impacts on the operation of the SRN in the area.”
76. The Borough Council request the reference to a Design Guide in part b) of Policy H1 should be made more specific. The Conservation Officer of the Borough Council has referred to a recent planning permission for conversion of the Hunt Buildings, within the allocation site, to form 8 dwellings and a current application to form 7 dwellings, and has suggested that constraints of setting and loss of ridge and furrow will limit the total number of dwellings that will be achieved to less than that envisaged in Policy H1. I agree there are uncertainties regarding precise numbers of dwellings that may ultimately be delivered on the site however I am content inclusion of the word “around” in the policy wording provides the necessary flexibility.
77. I agree with the Borough Council that the reference to the “adjacent and more prominent ridge and furrow field” is imprecise, however, I do not agree with the Borough Council representation that “if a field is being protected it should be excluded from the allocated area and settlement boundary.” When I consider Policy ENV8 later in my report I have recommended the areas of ridge and furrow earthworks shown on Figure 13 are identified as non-designated locally valued heritage assets and that in weighing applications that affect, directly or indirectly,

the ridge and furrow earthworks, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. The significance of the ridge and furrow earthworks will not be consistent across all of the fields identified in Figure 13, and within fields the significance will vary. In the context of a development proposal affecting the part of the ridge and furrow field within the allocation site it would be necessary to make the balanced judgement on the basis of the significance of any ridge and furrow earthworks affected and in the light of the scale any harm or loss that will arise from the development proposal.

78. The Borough Council representation also questions the achievement of affordable housing provision in accordance with part e) of the policy. Local Planning Authorities have been known to seek to prevent the avoidance of obligations by means of applications being submitted on parts of development sites however in the current case a planning permission is in place before the Neighbourhood Plan can be made. National policy is such that affordable housing will only be able to be required in the future on the allocation site if an application for 10 or more dwellings is submitted.
79. A representation on behalf of Historic England advises the policy should require retention of the kennels and cottages being non-designated heritage assets worthy of preservation. I am satisfied the requirement of Policy H1 that proposals “will need to avoid harm to the heritage assets and their setting” and Policy ENV7, would establish an appropriate policy context for assessment and determination of proposals affecting the locally valued heritage assets on the site. Historic England also advise the archaeological team at Leicestershire County Council should be consulted to advise on likely archaeological remains.
80. Severn Trent recommend reference to the use of drainage hierarchy principles and water efficiency. Warwickshire County Council suggest additional policy content relating to a requirement for site-specific flood risk assessment and surface water drainage strategy; sustainable drainage systems; and re-configuration of culverts. Paragraph 16 of the Framework states plans should avoid unnecessary duplication of policies that apply to a particular area, including policies in the Framework. I am satisfied part c) of the policy has sufficient regard for national policy and that no further reference to drainage matters is necessary to meet the Basic Conditions.
81. The identification of potential sites based on the then current Strategic Housing and Economic Land Availability Assessment (SHELAA 2018) supplemented by a targeted ‘call for sites’ was appropriate. The site selected is developable and deliverable subject to the requirements included in the policy, that are reported to

have been agreed with the landowner. Whilst I agree with the Borough Council that availability of maps of all sites assessed and ranking of sites in score order is helpful in tracing the selection process, the latter is not necessary to meet the Basic Conditions. I refer to availability of maps of sites assessed in the Annex to my report.

82. Paragraph 70 of the Framework states neighbourhood planning groups should give particular consideration to the opportunities for allocating small and medium sized sites suitable for housing in their area. Whilst the 24 criteria for site assessment, as detailed in Appendix 5 of the Neighbourhood Plan, consider site area and capacity, sites that have a capacity for more than 5 dwellings are assigned a red rating. The assessment criteria do not give particular consideration to the opportunities for medium sized sites suitable for housing in their area. I am not satisfied the approach to housing development site selection in the Neighbourhood Plan preparation process has been appropriate.
83. I have noted the representation of Pegasus Group on behalf of two clients promotes the development of land at Chapel Lane, Witherley. The representation states the justification of the scoring of their client's site at Chapel Lane in the Strategic Sustainability Assessment includes information that is factually incorrect and fails to take account of the current evidenced position. It is stated the site in question, which offers the opportunity to deliver 5 dwellings, should have received a very high green score and that the site is the most sustainable development option for the village. I have noted planning application reference 21/01305/FUL validated on 22 October 2021 proposing the construction of five detached dwellings on land at Chapel Fields, Livery Stables, Chapel Lane Witherley submitted by two individuals was refused planning permission during the course of this Independent Examination on 22 December 2022.
84. The representation of Emery Planning for Hollins Strategic Land LLP promotes the development of land east of Kennel Lane Witherley for residential development. The representation focuses on the promotion of the development of the northern parcel (capable of accommodating approximately 50 dwellings) of two parcels of land previously promoted off Kennel Lane, Witherley. The representation includes a submission that a more detailed assessment would change the scoring within the Sustainable Site Assessments presented in Appendix 5 of the Neighbourhood Plan and result in a green score positive 16. It is contended sites, including the site referred to, have not been properly assessed, and without a proper assessment a conclusion the plan will contribute to the achievement of sustainable development cannot be reached. During the course of this Independent Examination the Borough Council has notified me that a planning application reference 22/01190/OUT validated on 15 December 2022

proposing 50 dwellings with access on land east of Kennel Lane, Witherley has been submitted by Hollins Strategic Land LLP.

85. It is not within my role to consider the relative merits of alternative sites and development proposals, nor is it within my role to balance those merits against any inherent detriments or shortcomings that any proposals may have. I have earlier in my report explained I am not examining the tests of soundness provided for in respect of examination of Local Plans. My role is to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified.
86. Paragraph 29 of the Framework states “Neighbourhood Plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.” The Guidance states “A neighbourhood plan can allocate additional sites to those identified in an adopted plan so long as the neighbourhood plan meets the basic conditions.” “A neighbourhood plan can allocate additional sites to those in a local plan (or spatial development strategy) where this is supported by evidence to demonstrate need above that identified in the local plan or spatial development strategy. The resulting draft neighbourhood plan must meet the basic conditions if it is to proceed. National planning policy states that it should support the strategic development needs set out in strategic policies for the area, plan positively to support local development and should not promote less development than set out in the strategic policies (see paragraph 13 and paragraph 29 of the National Planning Policy Framework). Should there be a conflict between a policy in a neighbourhood plan and a policy in a local plan or spatial development strategy, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.” Whilst it is not within my role to test the soundness of the Neighbourhood Plan it is necessary to consider whether the Plan meets the Basic Conditions in so far as it will not promote less development than set out in the strategic policies for the area, or undermine those strategic policies, as required by paragraph 29 of the Framework; and has regard for the Guidance.
87. The representation of Emery Planning for Hollins Strategic Land LLP (HSL) states the Neighbourhood Plan cannot meet the Basic Condition (e) given that there is no strategic policy post 2026 and the Neighbourhood Plan period is to 2039. I do not consider the absence of strategic policies post 2026, the end date of the Core Strategy, to be an impediment to the Neighbourhood Plan meeting the Basic Conditions as the Guidance is clear that a Neighbourhood Plan can be prepared before or at the same time as the local planning authority is producing its Local Plan. I consider the issue of meeting housing needs later in my report.

88. Core Strategy Policy 12 relating to rural villages applies to Witherley, and Core Strategy Policy 13 relating to rural hamlets applies to Fenny Drayton and Ratcliffe Culey. These policies support housing development within settlement boundaries that provides a mix of housing types and tenures as detailed in Core Strategy Policies 15 and 16. Core Strategy Policies 12 and 13 also support development that complies with Core Strategy Policy 17 relating to local needs. Policy 12 of the Core Strategy states with respect to the rural village of Witherley “Work with the Highways Agency to address identified problems with the A5/Kennel Lane junction. If these problems can be overcome, the council will allocate land for limited housing development.” Table 2 of the Site Allocations and Development Management DPD lists the minimum housing requirement for each settlement set out in the Core Strategy. Table 2 does not include any housing requirement for Witherley. Paragraph 8.45 of the Site Allocations and Development Management DPD states that following discussions with Highways England no residential development will be allocated in Witherley. Neither the Core Strategy nor the Site Allocations and Development Management DPD allocate housing sites in Fenny Drayton and Ratcliffe Culey. The Local Plan 2006 to 2026 Core Strategy DPD and the Site Allocations and Development Management Policies DPD strategic policies do not require housing allocations in the Neighbourhood Area. Subject to the modifications I recommend in this report the policies of the Neighbourhood Plan are in general conformity with the strategic policies. The Neighbourhood Plan also meets the Basic Conditions in so far as it will not promote less development than set out in the strategic policies for the area, or undermine those strategic policies, as required by paragraph 29 of the Framework.
89. I have considered the issue of determination of a housing requirement figure for the Neighbourhood Area. The Neighbourhood Plan states on page 14 “the emerging Local Plan is not sufficiently advanced to establish a new housing requirement for Witherley Parish and in the absence of a figure the Borough Council has recommended an alternative approach based on apportioning the overall Borough housing need (based on the latest standard method) against existing population distribution of the parishes in the Borough. This approach would give a housing requirement figure for Witherley Parish of 107 dwellings between 2020-2039. In addition, it is recommended flexibility is built into this figure to allow for future changes to this figure once the Local Plan is adopted. A minimum of 10% is recommended which would provide an overall figure of 118 dwellings”.
90. In a Regulation 16 representation the Borough Council has referred to information and advice given to the Steering Group during plan preparation and has provided a number of updates including the Borough Council’s up to date

position on apportionment of housing need across the Borough in line with the Local Plan review.

91. The Regulation 16 representation by Pegasus Group on behalf of two clients notes the emerging Local Plan is not sufficiently advanced to establish a new housing requirement for Witherley Parish and considers the alternative approach recommended by the Borough Council based on apportioning Borough housing need on parish populations is reasonable. The representation states this results in a need for 118 homes with flexibility uplift in Witherley Parish over the Neighbourhood Plan period. The representation identifies unmet need from Leicester, an unresolved matter, could result in an increased total need of 131-150 homes for Witherley over the plan period which would rise to 144-165 homes with 10% flexibility. The representation states there is insufficient provision for new housing in the Neighbourhood Plan with a single 15 dwelling allocation, and that the approach adopted based on constraints, in particular highway issues, is not sufficiently evidenced.
92. The Regulation 16 representation of Emery Planning for Hollins Strategic Land LLP (HSL) states the Neighbourhood Plan fails to meet the housing need that its own evidence base, and the requirement that the LPA, has identified. With respect to the Witherley Housing Needs Report of July 2018 it is stated “This demonstrates that the lack of any meaningful development over a prolonged period is resulting in a declining and increasing older population, a predominantly owner-occupied market and a lack of opportunities for access to affordable housing.” Attention is drawn to the text included in the Regulation 14 draft Neighbourhood Plan, but absent from the Submission Draft, relating to the March 2020 housing need of a total of 54 dwellings derived from the Housing Register. Attention is also drawn to Table 6 of the Rural Housing Methodology Statement 2021 which identifies a minimum requirement of 50 dwellings for Witherley (which I note refers to highway constraints and confusingly states “this is less than the minimum”). The representation states the Neighbourhood Plan should be withdrawn until the emerging Local Plan is adopted. It is asserted there are no adopted strategic policies post 2026, the end date of the Core Strategy (an issue I have referred to earlier in my report), and the highway constraint has not been evidenced and nor does the Neighbourhood Plan engage with how it can be overcome. The representation refers to no objection by the Highway Authority in respect of proposals for Atherstone Hunt Kennels, albeit for a smaller development of 8 dwellings, adjacent to the HSL site promoted in the representation for development. The representation includes advice received from highway consultants that an appropriate access for the HSL site can be achieved and presents a case that the site is suitable, available, and achievable, and why the site should be developed. It is contended sites including the HSL site

have not been properly assessed, and without a proper assessment a conclusion the plan will contribute to the achievement of sustainable development cannot be reached. The representation includes a Local Plan preparation update report considered by the Borough Council in November 2021 that included the HSL site (site AS586 Land east of Kennel Lane (North)) as an allocation for 81 dwellings.

93. The Borough Council is currently working on a new Local Plan which will set out land allocations and planning policies for the period 2020 to 2039. The Local Plan Regulation 19 consultation concluded in March 2022. Policy SS02 of the emerging plan directs new housing development to the most sustainable locations based on the Settlement Hierarchy. The majority of new homes will be located in the urban areas of the Borough, followed by the identified Key Rural Centres and Rural Villages to maintain the vitality and viability of those centres settlements and the role they play in the rural areas of the Borough. New housing growth will be limited in other locations. Table 4 of the emerging plan sets out the Settlement Hierarchy. Witherley is included as a Rural Village. It is stated Rural Villages will have limited growth to support key services and facilities in those settlements and to provide primarily for local needs. Around 600 homes are planned for in Rural Villages. Table 4 includes Fenny Drayton and Ratcliffe Culey as Rural Hamlets in respect of which it is stated the Local Plan does not specifically allocate land for housing in Rural Hamlets as these are generally not considered as sustainable locations for further planned growth during the plan period. Notwithstanding this limited growth may be appropriate in the plan period to meet specific identified needs which will be managed through policies of the Local Plan rather than specific allocations. Around 109 homes are currently proposed on sites with planning permission within Rural Hamlets but none in the Neighbourhood Area. Table 5 which is stated should be used as a starting point for establishing housing growth for emerging neighbourhood plans includes no commitments as at April 2021 and no allocations for Witherley. Table 5 which sets out a breakdown of planned development in each settlement does not include any allocations for Rural Hamlets either. Table 6 which sets out housing allocations does not include any site in the Neighbourhood Area. Policy SS09 which will replace Core Strategy Policy 12, that I referred to above, provides for limited growth opportunities of Rural Villages to support key services within rural areas. Policy SS10 which will replace Core Strategy Policy 13, that I referred to above, supports the Rural Hamlets in promoting limited growth only where appropriate within settlement boundaries/infill development to meet specific identified needs. Policy H008 limits new housing development in the countryside to limited specified circumstances including rural exception sites adjacent to the settlement boundaries of Rural Villages and Rural Hamlets where stated criteria are met. Paragraphs 7.38 to 7.40 of the emerging plan state “The Local Plan seeks to direct most growth to urban areas and allocated sites within rural

settlements. However, people living in rural areas can face particular challenges in terms of housing supply and affordability and there are occasions where there is a specific local need for housing in rural areas which cannot be addressed or accommodated within the existing rural settlements. In rural areas, local plans should be responsive to local housing needs. The Plan supports opportunities to bring forward rural needs housing to provide for affordable housing needs in rural areas where there is an identified local need. By supporting rural exception sites adjacent to existing settlements as set out in the Policy, the housing will help address identified need whilst supporting the vitality of rural communities and local services in those settlements.”

94. The Guidance states “The scope of neighbourhood plans is up to the neighbourhood planning body. Where strategic policies set out a housing requirement figure for a designated neighbourhood area, the neighbourhood planning body does not have to make specific provision for housing, or seek to allocate sites to accommodate the requirement (which may have already been done through the strategic policies or through non-strategic policies produced by the local planning authority). The strategic policies will, however, have established the scale of housing expected to take place in the neighbourhood area. Housing requirement figures for neighbourhood plan areas are not binding as neighbourhood planning groups are not required to plan for housing.”
95. “Neighbourhood plans are not obliged to contain policies addressing all types of development. However, where they do contain policies relevant to housing supply, these policies should take account of latest and up-to-date evidence of housing need. In particular, where a qualifying body is attempting to identify and meet housing need, a local planning authority should share relevant evidence on housing need gathered to support its own plan-making.”
96. “Where neighbourhood planning bodies have decided to make provision for housing in their plan, the housing requirement figure and its origin are expected to be set out in the neighbourhood plan as a basis for their housing policies and any allocations that they wish to make. Neighbourhood planning bodies are encouraged to plan to meet their housing requirement, and where possible to exceed it”.
97. “The National Planning Policy Framework expects most strategic policy-making authorities to set housing requirement figures for designated neighbourhood areas as part of their strategic policies”. The Guidance states “Where strategic policies do not already set out a requirement figure, the National Planning Policy Framework expects an indicative figure to be provided to neighbourhood planning bodies on request. However, if a local planning authority is unable to do this, then

the neighbourhood planning body may exceptionally need to determine a housing requirement figure themselves, taking account of relevant policies, the existing and emerging spatial strategy, and characteristics of the neighbourhood area. The neighbourhood planning toolkit on housing needs assessment may be used for this purpose. Neighbourhood planning bodies will need to work proactively with the local planning authority through this process, and the figure will need to be tested at examination of the neighbourhood plan, as neighbourhood plans must be in general conformity with strategic policies of the development plan to meet the basic conditions.”

98. The Guidance states “If a local planning authority is also intending to allocate sites in the same neighbourhood area the local planning authority should avoid duplicating planning processes that will apply to the neighbourhood area. It should work constructively with a qualifying body to enable a neighbourhood plan to make timely progress. A local planning authority should share evidence with those preparing the neighbourhood plan, in order for example, that every effort can be made to meet identified local need through the neighbourhood planning process.”
99. “Although a draft neighbourhood plan or Order is not tested against the policies in an emerging local plan the reasoning and evidence informing the local plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing need evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date local plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in: the emerging neighbourhood plan; the emerging local plan; the adopted development plan; with appropriate regard to national policy and guidance.”
100. “The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. The local planning authority should work with the qualifying body so that complementary neighbourhood and local plan policies are produced. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging local plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan. Strategic policies should set

out a housing requirement figure for designated neighbourhood areas from their overall housing requirement (paragraph 65 of the revised National Planning Policy Framework). Where this is not possible the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body, which will need to be tested at the neighbourhood plan examination. Neighbourhood plans should consider providing indicative delivery timetables, and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new local plan.”

101. Pages 14 to 16 of the Neighbourhood Plan set out an explanation of the adopted approach to meeting housing need. The Neighbourhood Plan preparation process has included work to analyse the local housing market and an assessment of local housing needs has been undertaken in the Witherley Housing Needs Report dated July 2018. The identification of a housing allocation in Policy H1 provides for housing supply of around 15 dwellings at any time in the plan period. The market signals from planning applications and conservation officer advice suggest likely actual delivery of less than 15 dwellings. Policy H4 establishes support for windfall development. The Borough Council has provided information regarding housing completions that demonstrates historic windfall rates are low and states “therefore it is unreasonable to assume that windfall could form part of the supply in Witherley Parish (considering Para 71 of the NPPF).” On the basis of a crude calculation the Borough Council envisage 28 dwellings via windfall between April 2022 and March 2036. Evidence of past delivery and consideration of the existing built form of settlements in the Neighbourhood Area leads me to conclude infill housing development will be limited to less than the Borough Council estimate. Policy H2, places no cap on the number on the number of dwellings that can be provided outside “the defined settlement boundary” but as these are subject to being of types that are consistent with local and national strategic planning policies, I consider supply will be extremely limited. Policy H4 places no cap on the number of dwellings that can be provided adjacent to the settlement boundary but as these must be on previously developed land again supply will be extremely limited. It is reasonable to assume there will only be a limited total supply of dwellings during the Plan period.

102. As a matter for clarification, I asked the Borough and Parish Councils to respond to the following “Pages 14/15 of the Neighbourhood Plan identify a housing requirement of 118 dwellings including flexibility uplift. Constraints on housing delivery are identified in general terms, but not in terms of housing numbers. Please direct me to the evidence that supports the selection of the

upper limit for allocations to be around 15 dwellings and not a greater number, for example 30 dwellings.”

103. The Borough Council responded “The Borough Council assume that the constraints presented throughout the plan as barriers for development (flooding, highways, historic environment etc.) are the contributing factors to a larger housing site not being chosen, as detailed on page 16 of the plan: ‘The same constraints to development exist now as they did in 2016 ... For this reason, the Neighbourhood Plan allocates a single site for around 15 dwellings, to help meet a local need for smaller dwellings and Affordable Housing, and sees this, alongside a reasonable allowance for windfall, as meeting the housing requirement for the Parish up to 2039.’ However, the Examiner is asking why a ‘cap’ of 15 dwellings seems to have been placed on the numbers, rather than, for example 20 dwellings, 30 dwellings, 40 dwellings etc. The plan doesn’t clearly demonstrate how the ‘cap’ of 15 dwellings was determined, either as a result of the constraints detailed above, or any other factors such as site availability, impact on services/infrastructure etc. The quote above from page 16 of the plan also mentions a local need for smaller dwellings and affordable housing provision, but these could also be provided on larger sites than 15 dwellings. Therefore, the Parish Council are best to answer this question.”

104. The Parish Council response to my request for clarification was “Evidence to support selection of the upper limit of 15 dwellings in Witherley settlement, is the same evidence of constraints which precluded a housing allocation of 10 dwellings in 2016, prevail today. In particular problems identified with the A5/Kennel Lane junction. The working group identified a requirement of 10 homes for Witherley based on the Core Strategy, and local experiential knowledge of the junction. Ongoing evidence of traffic flows is available if required. The only sustainable identified site – the Atherstone Kennels & Stables – does not have potential to increase traffic above the volume generated by usage of the former site while having the benefit of: • Being developable and deliverable to meet the identified local housing need (evidence for which a range of information was scrutinised: Census data 2011, Housing Need Surveys 2016, Land Registry Data and neighbourhood planning consultation). • Avoiding harm to valued local heritage-built assets and their setting, at this historically important site, by optimising the number of units provided within the redundant buildings and a limited new build development. The Parish Council has also drawn my attention to consultee responses from North Warwickshire Borough Council (objection relating to take up of capacity on the A5) and National Highways (recommending planning permission not be granted for a further period of three months - expiring 9 April 2023 - to allow the applicant time to submit additional supporting information. relating to the current planning application proposing 50

dwellings at Kennel Lane Witherley that I have referred to earlier in my report. The Parish Council state that these consultation responses “although not available during the development of the plan is evidence of the local experiential knowledge the A5/Kennel Lane junction cannot cope with increased traffic.”

105. In the context of a housing requirement in the order of 118 dwellings the scale of allocation of land for housing development in the Neighbourhood Plan has not been sufficiently justified. Whilst the highway constraints relating to the junction of the A5 and Kennel Lane, and the fact there is currently no committed improvement work to the junction, are confirmed in the Regulation 16 representation of National Highways, they have not been explored to the extent that it is apparent why a ceiling of around 15 dwellings for allocations is applied. The Guidance is that proportionate, robust evidence should support the choices made and the approach taken in Neighbourhood Plan preparation. Whilst there are undoubtedly constraints including not only highways, but also heritage assets and flooding concerns, the scale of housing development accepted in the Neighbourhood Plan has not been sufficiently justified.

106. I consider the approach adopted to address the quantity of housing need in the Neighbourhood Area is not appropriate for the purpose of neighbourhood plan preparation for Witherley Parish, and that those policies that are relevant to housing supply will not result in local housing needs being met. Policies H1 and H2, being the policies of the Neighbourhood Plan most relevant to housing supply, will result in a level of provision that will not significantly boost the supply of housing in the Neighbourhood Area. The Neighbourhood Plan does not have sufficient regard for the Guidance that “Neighbourhood planning bodies are encouraged to plan to meet their housing requirement, and where possible to exceed it”. I have also earlier in my report stated I am not satisfied that in preparation of the Neighbourhood Plan sufficient consideration has been given to opportunities for allocating medium-sized sites suitable for housing in the Neighbourhood Area in accordance with paragraph 69 of the Framework. As a matter of planning judgement, on the basis of the scale of allocation and other provision for new housing made in the Neighbourhood Plan, I am not content any necessity to allocate further housing sites or reserve housing sites additional to the provision made in the Neighbourhood Plan, to meet emerging evidence of housing requirements, has been sufficiently explored. I am not satisfied the approach adopted in Neighbourhood Plan preparation in these respects, has sufficient regard for national policy.

107. Policies H1 and H2 prevent the Neighbourhood Plan meeting the Basic Conditions. I recommend those policies are deleted which will leave the Neighbourhood Plan with its remaining 27 policies capable of proceeding to

'made' status and becoming part of the Development Plan applying in the Neighbourhood Area. This approach involves the removal of the housing allocation but planning permission already exists on the site in question. When visiting the Neighbourhood Area, I noted what appeared to be refurbishment of the pair of semi-detached houses on the site is underway. The Neighbourhood Plan has been overtaken by events as planning permission was granted on the allocation site on 26 January 2022, after the Parish Council had approved the Neighbourhood Plan for submission to the Borough Council on 11 November 2021. Whilst negotiations relating to a current further planning application on the site could result in a scheme that delivers a greater number of dwellings than already approved, I have referred to heritage conservation constraints that indicate the potential for a significant increase in delivery is uncertain. Indeed, the current application is for 7 dwellings rather than the 8 dwellings approved previously.

108. In the absence of Policy H2 the settlement boundary for Witherley will remain as defined in the Site Allocations and Development Management Policies DPD. The only difference from the settlement boundary proposed in the Neighbourhood Plan being the housing site allocated in Policy H1. Extant planning permissions can be included within a settlement boundary but the fact that a planning permission has been granted on the allocation site does not necessitate the revision of the settlement boundary. The settlement boundary is identified in Policy H2 principally to indicate a physical limit outside which the area will be protected as open countryside and within which limit development proposals will be supported in stated circumstances. The representations of some individuals refer to the settlement boundaries of Ratcliffe Culey and Fenny Drayton. In this respect Policy H2 is imprecise in that it does not refer to any particular settlement boundary although it is evident from supporting text that the intention is that the policy should revise the settlement boundary of Witherley from that currently established by the Site Allocations and Development Management Policies DPD. The second part of Policy H2 is not in general conformity with the strategic policies of the Development Plan which establish settlement boundaries for Fenny Drayton and Ratcliffe Culey. In response to my request for clarification the Borough Council has stated "If the settlement boundaries for Ratcliffe Culey and Fenny Drayton aren't re-drawn in the Neighbourhood Plan, the Borough Council will continue to use the settlement boundaries in the 2016 Site Allocations and Development Management Policies DPD (SADMP DPD)." The Parish Council has stated the intention was that the settlement boundaries of Ratcliffe Culey and Fenny Drayton should remain in place as defined by the SADMP DPD. Deletion of Policy H2 will have the implication that the alignment of each of the settlement boundaries in Neighbourhood Area identified in the Site Allocations and Development Management Policies DPD will remain unaltered. This does not

need to be tested further as that plan has been subject to examination and forms part of the Development Plan.

109. On 13 December 2022 the Borough Council having been advised of a number of issues causing uncertainty, and of advice from the Department of Housing, Levelling Up and Communities (DHLUC), agreed a revised Local Development Scheme (LDS) which anticipates adoption of the emerging Local Plan in late summer 2025 with an extended plan end date of 2041. A further Regulation 19 submission version of the Local Plan will be subject to public consultation during summer 2024. The issues leading to revision of the LDS included impact of updated affordability ratios on the Standard Methodology housing calculations; finalisation of the quantum of unmet need from Leicester City; effect of nutrient neutrality requirements; and Infrastructure Delivery Plan and viability modelling. Highways matters are identified as critical pieces of evidence that need to be worked on with County and National Highways. This complexity of matters which are further compounded by uncertainties arising from national consultation on proposed changes to the Framework issued in late December 2022. Witherley Parish Council is not resourced to participate effectively in the determination of a housing need figure for the Neighbourhood Area nor has it the capacity to contribute to the technical expertise required to resolve the longstanding highway constraints affecting the area.
110. The report to the Borough Council on 13 December 2022 states “The revised timetable will have an effect on the determination of planning applications, in that the Council will have an increasingly out of date local plan against which decisions will be made. This will mean that there is an increased risk of a longer period during which the Council will be susceptible to NPPF paragraph 11d decisions, especially in the absence of a 5-year land supply.” Whilst the prospect of appeal determination led, rather than plan led, decision making is unlikely to be welcomed in the local community the protection of paragraph 14 of the Framework is not attainable in the circumstances where the Neighbourhood Plan cannot be shown to contain policies and allocations to meet its identified housing requirement. That would be the situation whether or not Policies H1 and H2 are included in the Neighbourhood Plan.
111. It is evident to me that Parish Councillors and those other people involved in production of the Neighbourhood Plan have expended great effort in seeking to address the issue of housing provision, but have been faced with challenges that are not currently surmountable when addressed solely at the Neighbourhood Area level. It has to be hoped the complexities of Local Plan preparation will be unpicked and that a strategic steer regarding future housing provision in the Neighbourhood Area is determined, based on a clearer picture as to the extent

that existing constraints on development, in particular relating to capacity of highway junctions on the strategic highway network, can be resolved. A possible future Neighbourhood Plan review may offer the vehicle to revisit the issue of housing provision in the Neighbourhood Area in the context of an up-to-date adopted Local Plan.

**Recommended modification 1:
Delete Policies H1 and H2**

Policy H3: Housing Mix

112. This policy seeks to establish that new housing development should provide a housing mix to meet identified local needs.
113. Core Strategy Policy 12 relating to rural villages applies to Witherley, and Core Strategy Policy 13 applies to Fenny Drayton and Ratcliffe Culey. Those policies refer to Core Strategy Policies 15, 16 and 17. Policy H3 is in general conformity with those strategic policies. Paragraph 62 of the Framework (which should be read in the context of paragraph 61) states the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. I am satisfied the approach adopted in Policy H3 has sufficient regard for national policy in this respect. The reference to updated reports ensures the policy remains relevant throughout the plan period if local housing needs change.
114. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan and does not seek to influence the quantity of supply of housing differently from strategic policies. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
115. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. This policy meets the Basic Conditions.

Policy H4: Windfall Sites

116. This policy seeks to establish conditional support for windfall development of five or fewer dwellings on infill and redevelopment sites within the settlement boundary or adjacent to the settlement boundary if the proposed development is on previously developed land.

117. In a representation the Borough Council refer to the Framework which states small and medium sized sites can make an important contribution to meeting the housing needs of an area. The Borough Council question whether the limit of five or fewer dwellings would restrict suitable windfall sites from coming forward. In response to my request for clarification regarding this matter the Parish Council stated “Further development exceeding 5 dwellings is considered unsustainable for any of the settlements. There is no hard evidence, however, the number was agreed as a result of consultation.” The Guidance is that proportionate, robust evidence should support the choices made and the approach taken in Neighbourhood Plan preparation. The limit on size of proposal has not been sufficiently justified. I have recommended a modification in this respect so that the policy has sufficient regard for national policy.
118. Paragraph 69 of the Framework states Local Planning Authorities should support the development of windfall sites through their policies and decisions – giving greater weight to the benefits of using suitable sites within existing settlements for homes.
119. Given the scale and nature of the form of the settlements in the Neighbourhood Area and limited past delivery of windfall development, as a matter of planning judgement, there is a likelihood of only a further limited supply of future windfall development during the plan period. Core Strategy Policy 13 relating to rural hamlets applies to Fenny Drayton and Ratcliffe Culey. These policies support housing development within settlement boundaries that provides a mix of housing types and tenures as detailed in Core Strategy Policies 15 and 16. Core Strategy Policies 12 and 13 also support development that complies with Core Strategy Policy 17 relating to local needs. In response to my request for clarification the Borough Council state “Policy H4 should be considered with national and local policy in mind. If the settlement boundaries for Ratcliffe Culey and Fenny Drayton aren’t re-drawn in the Neighbourhood Plan, the Borough Council will continue to use the settlement boundaries in the 2016 Site Allocations and Development Management Policies DPD (SADMP DPD)” and “SADMP DPD Policy DM4 also gives situations/criteria as to when development outside of settlement boundaries (i.e. in designated countryside) is acceptable, therefore if the Parish Council agree to an amendment to this policy, perhaps it could read: ‘unless it is a proposal that complies with other local plan policies that state where and what type of development is acceptable in the countryside’.”
120. The restriction in part b) of Policy H4 relating to previously developed land is in conflict with strategic policies with respect to the policy approach relating to development outside settlement boundaries and has not been sufficiently

justified. The policy also fails to recognise the existence of settlement boundaries for Fenny Drayton and Ratcliffe Culey. It is confusing and unnecessary for this policy to refer to “other policies in this Plan” as all of the policies of the Neighbourhood Plan apply throughout the Neighbourhood Area unless a lesser area is specified. The terms “the settlement boundary” and “relevant requirements of ... Borough-wide planning policies” are imprecise. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework. In response to my request for clarification, the Parish Council has confirmed agreement to my recommended modification of part b) of the policy.

121. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan and does not seek to influence the quantity of supply of housing differently from strategic policies. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

122. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 2:

In Policy H4

- **delete “of 5 dwellings or fewer”**
- **delete “and meeting all relevant requirements set out in other policies of this Plan and Borough-wide planning policies”**
- **replace part b) with “is within the settlement boundaries of Witherley or Fenny Drayton or Ratcliffe Culey, unless it is a proposal that complies with other local plan policies that state where and what type of development is acceptable in the countryside.”**

Policy H5: Design

123. This policy seeks to establish design principles for new developments including having regard to the Design Guide presented in Appendix 6 of the Neighbourhood Plan.

124. In a representation the Borough Council states support for locally specific design guides for neighbourhood plans. The Borough Council also state

requirements for car parking should be in general conformity with the County Council Highways Design Guide. The car parking requirements set out in Appendix 6 of the Neighbourhood Plan have not been demonstrated to have sufficient regard for the considerations set out in Paragraph 107 of the Framework. I have recommended a modification in this respect so that the policy has sufficient regard for national policy.

125. Severn Trent Water recommend reference to the use of drainage hierarchy principles in the Witherley Design guide. This is not necessary to meet the Basic Conditions.

126. Paragraph 127 of the Framework states “Neighbourhood planning groups can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development.” That paragraph states design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area’s defining characteristics. Policies should be clear about design expectations and how these will be tested.

127. Paragraph 130 of the Framework states “Planning policies and decisions should ensure that developments: a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.” Paragraph 106 of the Framework states planning policies should provide for attractive and well-designed walking and cycling networks. Paragraph 92 of the Framework states planning policies should aim to achieve healthy, inclusive and safe places which promote social interaction, are safe and accessible, and enable and support healthy lifestyles. I am satisfied the approach adopted in Policy H5 has sufficient regard for national policy.

128. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan and does not seek to influence the quantity of supply of housing differently from strategic policies. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
129. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 3:

In the Design Guide presented at Appendix 6 of the Neighbourhood Plan replace "be a minimum of two for properties of 3 bedrooms or less, three for 4-bedroom properties and four for 5 bedrooms or more" with "meet the requirements of the Leicestershire County Council Highways Design Guide".

Policy ENV1: Protection of Local Green Space

130. This policy seeks to designate specified sites as Local Green Space and establish a basis for determination of development proposals affecting them.
131. Designation of Local Green Space can only follow identification of the land concerned. For a designation with important implications relating to development potential it is essential that precise definition is achieved. The proposed Local Green Spaces are presented on Figures 5.2 to 5.4 of the Neighbourhood Plan. When viewed electronically the maps can be expanded to better reveal the line of boundaries of the green spaces in question. The scale and discrete nature of the areas of land in question assist in understanding the alignment of boundaries. I am satisfied the areas of land proposed for designation as Local Green Spaces have been adequately identified.
132. The term "that would result in the loss of, or have an adverse effect on" does not have sufficient regard for national policy. Decision makers must rely on paragraph 103 of the Framework that states "Policies for managing development within a Local Green Space should be consistent with those for Green Belts" and the part of the Framework that relates to 'Protecting Green Belt land', in particular paragraphs 147 to 151. That part of the Framework sets out statements regarding the types of development that are not inappropriate in Green Belt areas. The policy seeks to introduce a more restrictive approach to development

proposals than apply in Green Belt without sufficient justification, which it may not (R on the Application of Lochailort Investments Limited v Mendip District Council. Case Number: C1/2020/0812). I have recommended a modification in this respect. I have not adopted the Severn Trent recommendation for the same reason that would result in a more restrictive approach than that of national policy.

133. Paragraph 101 of the Framework states “The designation of land as Local Green Space through local and 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.”
134. In respect of each of the areas proposed for designation as Local Green Space I find the Local Green Space designations are being made when a neighbourhood plan is being prepared, and I have seen nothing to suggest the designations are not capable of enduring beyond the end of the plan period. The intended Local Green Space designations have regard to the local planning of sustainable development contributing to the promotion of healthy communities, and conserving and enhancing the natural environment, as set out in the Framework. I have noted Cottagers Piece Witherley proposed for designation as Local Green Space is part of the area proposed as an area of separation in Policy ENV14. I am satisfied the two Policies are compatible.
135. Paragraph 102 of the Framework states “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.” I find that in respect of each of the intended Local Green Spaces the designation relates to green space that is in reasonably close proximity to the community it serves, is local in character, and is not an extensive tract of land.
136. The submission Neighbourhood Plan includes in Appendix 8 information which seeks to justify the proposed designations as Local Green Space. Relevant reasons for designation are indicated as applying in respect of both sites including matters referred to in the Framework. I have visited each of the areas of land concerned and as a matter of planning judgement consider the attributes

identified to be relevant and reasonable. Appendix 8 of the Neighbourhood Plan provides sufficient evidence for me to conclude that each of the areas proposed for designation as Local Green Space is demonstrably special to a local community and holds a particular local significance.

137. I find that the areas proposed as Local Green Space are suitable for designation and have regard for paragraphs 101 to 103 of the Framework concerned with the identification and designation of Local Green Space.
138. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
139. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 4:

- **replace the first sentence of Policy ENV1 with “The following sites (identified on Figures 5.2 – 5.4) are designated as Local Green Space:”**
- **after the list of sites insert “The determination of development proposals within a Local Green Space will be consistent with national policies for Green Belt.”**

Policy ENV2: Important Open Spaces

140. This policy seeks to establish criteria for loss or significant adverse effect on identified important open spaces.
141. The suggested additional text recommended by Severn Trent is not necessary to meet the Basic Conditions. Paragraph 99 of the Framework states existing open space, sports and recreation buildings and land, including playing fields should not be built on unless specified circumstances exist.
142. Some areas of land are included in both Policy ENV1 and ENV2 which are not entirely compatible. An example is that Policy ENV2 would support loss if the open space is no longer required by the community whereas Local Green Space should only be designated, amongst other requirements, where land is demonstrably special to a local community and holds a particular significance,

and is capable of enduring beyond the end of the plan period. In response to my request for clarification the Parish Council have agreed to the deletion from Policy ENV2 of the four sites that are included within land to be designated as Local Green Space under Policy ENV1. I have recommended site references FEN04; RATC02; RATC03; and WIT04 are deleted from Policy ENV2. The term “suitable location” is imprecise and does not provide a basis for the determination of development proposals. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

143. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

144. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance, the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 5:
In Policy ENV2**

- **replace “Fenny Drayton and Ratcliffe Culey (figures 6.1-6.3)” with “and Fenny Drayton (Figures 6.1 and 6.2)**
- **delete reference to sites FEN04; RATC02; RATC03; and WIT04**
- **replace “suitable location” with “accessible location for users”**

Delete Figure 6.3

Policy ENV3: Protection of Sites and Features of Natural Environmental Significance

145. This policy seeks to establish that development proposals will be required to contribute to the protection and enhancement of identified sites and features of natural environment significance. Development proposals that would have a detrimental impact on such sites will not be supported unless the need for, and benefits arising from, development in that location clearly outweigh the environmental loss. The Policy is supported by an Environmental Inventory at Appendix 7 of the Neighbourhood Plan and the location of sites is identified on Figure 7 of the Neighbourhood Plan.

146. The Regulation 16 representation of Emery Planning for Hollins Strategic Land LLP (HSL) states Policy ENV3 does not meet the Basic Conditions and refers to the site promoted in the representation for development at Kennel Lane Witherley as an example. In support of the assertion the site is not ecologically important the findings of an ecological survey undertaken by HSL are presented. It is stated there is no evidence the site contributes to carbon sequestration, and that the test in paragraph 174 of the Framework relating to locally valued sites is not met on the basis there has been no landscape assessment of the plan area and there is no robust evidence on the matter. It is stated Policy ENV3 should be deleted.

147. Policy ENV3 does not relate to valued landscapes referred to in Paragraph 174 of the Framework but it does relate to sites of biological or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan) which are also referred to in that paragraph. Paragraph 174 of the Framework also states planning policies should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. Paragraph 131 of the Framework states existing trees should be retained wherever possible. Paragraph 180 of the Framework states development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons (for example infrastructure projects including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills, where the public benefit would clearly outweigh the loss or deterioration of habitat) and a suitable compensation strategy exists. Strategic Policy DM6 seeks to ensure development proposals demonstrate how they enhance features of nature conservation and geological value.

148. I am not satisfied Policy ENV3 is appropriate in these policy contexts. The requirements of the second paragraph of the policy have the effect of restricting development proposals to levels that are not adequately justified and which do not have sufficient regard for national policy. The Environmental Inventory presented in Appendix 7 does however provide information that will inform the preparation of sustainable development proposals. I have recommended a modification so that the policy can perform that role. This includes reference to Appendix 7. I have also recommended the deletion of the second sentence of the first paragraph of Policy ENV3 as that is purely descriptive without policy content, and has not been sufficiently justified. In formulating these recommendations, I have taken into consideration the response of the Borough Council to my request

for clarification of matters which suggested “a slight amendment to the proposed modification, in that the policy should aim to protect, maintain and enhance the features identified, where possible, to comply with national policy, for example more generally NPPF Para 174: Planning policies and decisions should contribute to and enhance the natural and local environment”. I have also taken into consideration the response of the Parish Council to my request for clarification. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

149. As recommended to be modified the policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
150. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance as recommended to be modified the policy is appropriate to be included in a ‘made’ neighbourhood plan. As recommended to be modified this policy meets the Basic Conditions.

Recommended modification 6:

Replace Policy ENV3 with “The sites and features identified on Figure 7, and referred to in Appendix 7, are of at least local natural environment significance. To be supported development proposals affecting those sites and features must demonstrate consideration of the natural environment significance, and contribute to and enhance the natural and local environment.”

Policy ENV4: Biodiversity and Habitat Connectivity

151. This policy seeks to safeguard habitats and species including those of local significance. The policy includes the sequence - avoid, mitigate or compensate. The policy seeks to protect bats, great crested newts, and old and species rich hedgerows. The policy also identifies wildlife corridors presented on Figure 9 where development proposals should not damage or adversely affect habitat connectivity.
152. Whilst the second sentence of the policy precisely reflects paragraph 180 a) of the Framework I am satisfied this limited duplication serves a useful purpose in establishing the principles of the policy approach to be adopted. the second

sentence of the policy would allow flexibility where habitat loss is unavoidable, for example to facilitate construction of a safe access.

153. Paragraph 179 of the Framework states plans should promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity. Paragraph 174 of the Framework states planning policies should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. Paragraph 180 of the Framework states development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons (for example infrastructure projects including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills, where the public benefit would clearly outweigh the loss or deterioration of habitat) and a suitable compensation strategy exists. I am satisfied the approach of Policy ENV4 is appropriate in this policy context and that the identification of the wildlife corridors without precisely defined borders is appropriate to allow properly considered response to details of development proposals.
154. I am satisfied the information requirements regarding bats and great crested newts established in the policy are reasonable in the light of records presented in Figures 7.1 and 8. I have however recommended a modification of the term “industrial/commercial/strategic” so that the policy is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
155. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
156. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 7:

In Policy ENV4 replace “industrial/commercial/strategic” with “new development”

Policy ENV5: Trees and Woodland

157. This policy seeks to guard against unnecessary loss of trees and woodland. The policy also seeks to ensure adequate replacement of trees and woodland that may be lost.
158. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include ‘information to accompany the application as specified by the local planning authority on their local list of information requirements’. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain ‘relevant, necessary and material’. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The policy is seeking to establish information requirements that are outside the statutory framework relating to local lists of information to be submitted in support of planning applications without sufficient justification. I have recommended a modification in this respect so that the policy “is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
159. Policy ENV5 seeks to relate, in part, to trees outside development sites and seeks to apply, without sufficient justification, principles of protection that exceed those set out in the Framework. Paragraph 131 of the Framework states development schemes should retain existing trees wherever possible. Paragraph 174 of the Framework states planning policies should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and

most versatile agricultural land, and of trees and woodland. Paragraph 180 of the Framework states development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons (for example infrastructure projects including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills, where the public benefit would clearly outweigh the loss or deterioration of habitat) and a suitable compensation strategy exists. Paragraph 16 of the Framework states plans should serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area including policies in the Framework where relevant. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and “is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

160. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
161. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 8:

In Policy ENV5 replace the first two paragraphs with “To be supported development proposals must demonstrate that wherever possible they avoid loss of trees and woodland.”

Policy ENV6: Sites of Historical Environment Significance

162. This policy seeks to identify sites of historical environment significance and establish that the significance of the features should be balanced against the benefit of any development that will affect or damage them.
163. Paragraph 194 of the Framework states, where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation. Paragraph 16 of the Framework states plans should not duplicate policies in the Framework.

164. The term non-designated heritage asset as referred to in paragraph 203 of the Framework is reserved for assets within a local list maintained by the Local Authority. Although the policy refers to “non-designated local heritage assets” I consider there is potential for confusion and as the assets identified include archaeological sites, I have recommended a modification. Paragraph 203 of the Framework states the effect of an application on the significance of non-designated heritage assets should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm and the significance of the heritage asset. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and “is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

165. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

166. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 9:

In Policy ENV6

- **delete “non-designated”**
- **replace the final sentence with “Development proposals affecting these sites will be assessed having regard to the scale of any harm or loss and the significance of the heritage asset.”**

Policy ENV7: Local Heritage Assets

167. This policy seeks to identify local heritage assets, and establish an approach to the determination of development proposals that would affect them.

168. I have recommended a modification proposed by the Borough Council so that the policy refers to Figure 12 rather than the “map above”. I have recommended a modification in this respect so that the policy has sufficient regard for national

policy and “is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

169. The Guidance refers to advice on local lists published on Historic England’s website (Planning Practice Guidance Paragraph: 040 Reference ID: 18a-040-20190723 Revision date: 23 07 2019). Historic England Advice Note 11 Neighbourhood Planning and the Historic Environment (Published 16 October 2018) states “Preparing a list of locally-valued heritage assets. Independent (at least initially) of any local list endorsed or developed by a local planning authority, neighbourhood planning groups may wish to consider if any buildings and spaces of heritage interest are worthy of protection through preparing a list of locally-valued heritage assets that is referenced in neighbourhood plan policy. The use of selection criteria helps to provide the processes and procedures against which assets can be nominated and their suitability for addition to the local planning authority’s heritage list assessed. A list of locally-valued heritage assets can inform or be integrated within a local list maintained by the local authority, subject to discussion with them.” It is appropriate for a local community to use the Neighbourhood Plan preparation process to identify heritage assets that are locally valued. In response to my request for clarification the Parish Council has agreed that the policy text should be amended to reflect the actual status as Locally Valued Heritage Assets, preferring the term non-designated locally valued heritage assets. I have recommended a modification so that the policy text is amended to reflect the actual status of the heritage assets referred to in the policy so that the policy has sufficient regard for national policy and “is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
170. Paragraphs 14.43 to 14.45 of the Site Allocations and Development Management Policies DPD state *“Locally Important Heritage Assets are buildings, monuments, sites, places, areas or landscapes which are valued, distinct elements of the local historic environment. These assets hold meaning to the local community and contribute to their sense of history, place and quality of life. Locally Important Heritage Assets do not benefit from statutory designation however their importance and significance is recognised by the Borough Council through their listing on the Locally Important Heritage Assets List. The List of Locally Important Heritage Assets will highlight the significance of the asset and identify the key features which should be retained through any development proposal. Development proposals should make every effort to retain the significance of locally listed heritage assets.”* Policy DM 12 states *“Locally Important Heritage Assets - Assets identified on the Locally Important Heritage Asset List should be retained and enhanced wherever possible. The significance of the assets*

illustrated in the List and the impact on this significance should be demonstrated and justified in line with Policy DM11.” It is possible that as an administrative process separate from the Neighbourhood Plan preparation process the Parish Council may wish to nominate buildings and features of the built environment for assessment by the Borough Council as potential Non-Designated Heritage Assets to be included in a Locally Important Heritage Asset List. Any assets judged by the Borough Council to meet its published criteria may be added to that local list of Non-Designated Heritage Assets compiled and curated by the Borough Council. A clear statement of reasons for nomination of each heritage asset will be a critical success factor.

171. The policy wording refers to “the benefits of a development proposal”. Whilst public benefit is a matter referred to in paragraph 201 of the Framework in respect of proposals affecting designated heritage assets it is not a matter to be considered with respect to non-designated heritage assets. Paragraph 203 of the Framework states “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.” I have recommended a modification so that assessment of impact on locally valued heritage assets should be as though they were non-designated heritage assets so as to have sufficient regard for national policy and guidance in this respect. I have recommended a modification so the policy has sufficient regard for paragraph 203 of the Framework. I have recommended a modification so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
172. Whilst the Borough Council have queried the relationship of Policy ENV7 to Policies ENV8 and ENV9 I am satisfied that if modified as I have recommended the policies are consistent and complimentary.
173. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
174. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 10:

Replace the opening paragraph of Policy ENV7 with “The following heritage assets (locations identified on Figure 12) are identified as non-designated locally valued heritage assets. In weighing applications that affect, directly or indirectly, any of these heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

Policy ENV8: Ridge and Furrow

175. This policy seeks to identify ridge and furrow earthworks (shown on Figure 2) and establish a policy approach to developments affecting them.
176. The Guidance refers to advice on local lists published on Historic England’s website (Planning Practice Guidance Paragraph: 040 Reference ID: 18a-040-20190723 Revision date: 23 07 2019). Historic England Advice Note 11 Neighbourhood Planning and the Historic Environment (Published 16 October 2018) states “Preparing a list of locally-valued heritage assets. Independent (at least initially) of any local list endorsed or developed by a local planning authority, neighbourhood planning groups may wish to consider if any buildings and spaces of heritage interest are worthy of protection through preparing a list of locally-valued heritage assets that is referenced in neighbourhood plan policy. The use of selection criteria helps to provide the processes and procedures against which assets can be nominated and their suitability for addition to the local planning authority’s heritage list assessed. A list of locally-valued heritage assets can inform or be integrated within a local list maintained by the local authority, subject to discussion with them.” It is appropriate for a local community to use the Neighbourhood Plan preparation process to identify heritage assets that are locally valued. In response to my request for clarification the Parish Council has agreed that the policy text should be amended to reflect the actual status as Locally Valued Heritage Assets, preferring the term non-designated locally valued heritage assets. I have recommended a modification so that the policy text is amended to reflect the actual status of the heritage assets referred to in the policy so that the policy has sufficient regard for national policy and “is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
177. Paragraphs 14.43 to 14.45 of the Site Allocations and Development Management Policies DPD state “*Locally Important Heritage Assets are buildings, monuments, sites, places, areas or landscapes which are valued, distinct elements of the local historic environment. These assets hold meaning to the local community and contribute to their sense of history, place and quality of life. Locally*

Important Heritage Assets do not benefit from statutory designation however their importance and significance is recognised by the Borough Council through their listing on the Locally Important Heritage Assets List. The List of Locally Important Heritage Assets will highlight the significance of the asset and identify the key features which should be retained through any development proposal. Development proposals should make every effort to retain the significance of locally listed heritage assets.” Policy DM 12 states “*Locally Important Heritage Assets - Assets identified on the Locally Important Heritage Asset List should be retained and enhanced wherever possible. The significance of the assets illustrated in the List and the impact on this significance should be demonstrated and justified in line with Policy DM11.*” It is possible that as an administrative process separate from the Neighbourhood Plan preparation process the Parish Council may wish to nominate buildings and features of the built environment for assessment by the Borough Council as potential Non-Designated Heritage Assets to be included in a Locally Important Heritage Asset List. Any assets judged by the Borough Council to meet its published criteria may be added to that local list of Non-Designated Heritage Assets compiled and curated by the Borough Council. A clear statement of reasons for nomination of each heritage asset will be a critical success factor.

178. The policy wording refers to “the public benefits that would arise from the development concerned”. Whilst public benefit is a matter referred to in paragraph 201 of the Framework in respect of proposals affecting designated heritage assets it is not a matter to be considered with respect to non-designated heritage assets. Paragraph 203 of the Framework states “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.” I have recommended a modification so that assessment of impact on locally valued heritage assets should be as though they were non-designated heritage assets so as to have sufficient regard for national policy and guidance in this respect. I have recommended a modification so the policy has sufficient regard for paragraph 203 of the Framework. I have recommended a modification so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

179. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a

clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

180. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 11:

Replace Policy ENV8 with "The areas of ridge and furrow earthworks shown on Figure 13 are identified as non-designated locally valued heritage assets. In weighing applications that affect, directly or indirectly, the ridge and furrow earthworks, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

Policy ENV9: Lane Settings Lots

181. This policy seeks to establish that seven Lane Setting Lots are non-designated heritage assets and establish an approach to development proposals affecting those lots.
182. The Guidance refers to advice on local lists published on Historic England's website (Planning Practice Guidance Paragraph: 040 Reference ID: 18a-040-20190723 Revision date: 23 07 2019). Historic England Advice Note 11 Neighbourhood Planning and the Historic Environment (Published 16 October 2018) states "Preparing a list of locally-valued heritage assets. Independent (at least initially) of any local list endorsed or developed by a local planning authority, neighbourhood planning groups may wish to consider if any buildings and spaces of heritage interest are worthy of protection through preparing a list of locally-valued heritage assets that is referenced in neighbourhood plan policy. The use of selection criteria helps to provide the processes and procedures against which assets can be nominated and their suitability for addition to the local planning authority's heritage list assessed. A list of locally-valued heritage assets can inform or be integrated within a local list maintained by the local authority, subject to discussion with them." It is appropriate for a local community to use the Neighbourhood Plan preparation process to identify heritage assets that are locally valued. In response to my request for clarification the Parish Council has agreed that the policy text should be amended to reflect the actual status as Locally Valued Heritage Assets, preferring the term non-designated locally valued heritage assets. I have recommended a modification so that the policy text is amended to reflect the actual status of the heritage assets referred to in the

policy so that the policy has sufficient regard for national policy and “is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

183. Paragraphs 14.43 to 14.45 of the Site Allocations and Development Management Policies DPD state *“Locally Important Heritage Assets are buildings, monuments, sites, places, areas or landscapes which are valued, distinct elements of the local historic environment. These assets hold meaning to the local community and contribute to their sense of history, place and quality of life. Locally Important Heritage Assets do not benefit from statutory designation however their importance and significance is recognised by the Borough Council through their listing on the Locally Important Heritage Assets List. The List of Locally Important Heritage Assets will highlight the significance of the asset and identify the key features which should be retained through any development proposal. Development proposals should make every effort to retain the significance of locally listed heritage assets.”* Policy DM 12 states *“Locally Important Heritage Assets - Assets identified on the Locally Important Heritage Asset List should be retained and enhanced wherever possible. The significance of the assets illustrated in the List and the impact on this significance should be demonstrated and justified in line with Policy DM11.”* It is possible that as an administrative process separate from the Neighbourhood Plan preparation process the Parish Council may wish to nominate buildings and features of the built environment for assessment by the Borough Council as potential Non-Designated Heritage Assets to be included in a Locally Important Heritage Asset List. Any assets judged by the Borough Council to meet its published criteria may be added to that local list of Non-Designated Heritage Assets compiled and curated by the Borough Council. A clear statement of reasons for nomination of each heritage asset will be a critical success factor.

184. The policy wording refers to “the benefits of such development”. Whilst benefit is a matter referred to in paragraph 201 of the Framework in respect of proposals affecting designated heritage assets it is not a matter to be considered with respect to non-designated heritage assets. Paragraph 203 of the Framework states “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.” I have recommended a modification so that assessment of impact on locally valued heritage assets should be as though they were non-designated heritage assets so as to have sufficient regard for national policy and guidance in this respect. I have recommended a modification so the policy has sufficient regard for paragraph 203 of the Framework. I have recommended a modification so that the policy has

sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

185. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
186. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 12:

Replace Policy ENV9 with “The Lane Setting Lots shown on Figure 14 are identified as non-designated locally valued heritage assets. In weighing applications that affect, directly or indirectly, the Lane Setting Lots, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

Policy ENV10: Protection of Important Views

187. This policy seeks to establish new development proposals should be designed to respect, and where possible enhance, identified views. The policy seeks to establish development that will have an unacceptable impact on the views will not be supported.
188. The Regulation 16 representation of Emery Planning for Hollins Strategic Land LLP refers to the site at Kennels Lane Witherley promoted for development in the representation and states appendix 10 of the Neighbourhood Plan cannot be considered robust in that it is simply a document with photo viewpoints and has not been undertaken under any landscape guidance and best practice and therefore Policy ENV 10 should be deleted.
189. The Borough Council has queried the meaning of “unacceptable” as used in the policy. I agree the term “unacceptable” is imprecise and does not provide a basis for the determination of proposals. I have recommended a modification in this respect so that the policy refers to the loss of an identified view. I have also adopted the recommendation of the Borough Council that the supporting text should refer to the Borough Council Landscape Character Assessment and Landscape Character Study which will assist implementation of the policy. I have

recommended a modification in this respect so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

190. The Borough Council has encouraged improved explanation of why identified views are important. I agree it would have been helpful for more detail to have been included in the supporting evidence in this respect, however, I am satisfied the views identified each have characteristics that justify a policy approach to avoid the loss of an identified view. The arrows on Figure 15 combined with the policy text provide a clear basis for identification of the view concerned, although I have recommended a modification to refer to Appendix 10 where images and some further details of view elements can be found. I have recommended a modification in this respect so that the policy is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
191. Paragraph 174 of the Framework refers to protection of valued landscapes. To be valued, a landscape needs to be more than popular with local residents but must demonstrate physical attributes beyond “ordinary” (Stroud District Council vs. SSCLG [2015] EWHC 488 (Admin) and Forest of Dean DC v. SSCLG [2016] EWHC 2429 (Admin)). Policy ENV10 is not seeking to identify valued landscapes but is seeking to ensure development proposals are sensitive to significant aspects of the environmental, historic and aesthetic character of the area. Policy ENV10 is not seeking to prevent any development within identified views. Such an approach would be more restrictive than Green Belt designation and would not have sufficient regard for national policy. I am satisfied sustainable development, through careful consideration to siting and design, or other mitigation measures, may be shown to not result in the loss of an identified view. In the case of view 12 referred to in the representation of Emery Planning for Hollins Strategic Land LLP I am satisfied the ‘Proposed site layout – Illustrative masterplan’ accompanying planning application reference 22/01190/OUT confirms development design solutions are available that maintain views from Kennel Lane east to the higher ground beyond Fenny Drayton.
192. Planning policy must operate in the public interest. I am satisfied the locations, identified by numbers in circles, from which the views referred to in the policy are seen, are freely accessible to the general public.
193. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

194. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance, subject to the recommended modification, the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 13:

In Policy ENV10

- **replace “have an unacceptable impact on the identified views” with “result in the loss of an identified view”**
- **continue the policy with “Appendix 10 provides further details of view elements to be considered”**

In the supporting text refer to the Borough Council Landscape Character Assessment and Landscape Character Study

Policy ENV11: Footpaths and Bridleways

195. This policy seeks to establish that development proposals that result in the loss of, or have a significant adverse effect on, the identified existing network of footpaths will not be supported, without appropriate mitigation. The policy also seeks to establish that development proposals should consider improvement of existing, and, where possible, creation of new footpaths and cycleways to provide off-road connections to village services including the school.

196. Paragraph 100 of the Framework states planning policies should protect and enhance public rights of way.

197. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

198. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. This policy meets the Basic Conditions.

Policy ENV12: Renewable Energy Infrastructure

199. This policy seeks to establish conditional support for renewable energy infrastructure. The policy specifies a scale and type of turbine developments that will be supported and includes provision that defined large scale turbines will not be supported.

200. Paragraph 155 of the Framework supports energy from renewable sources whilst ensuring adverse impacts (including cumulative landscape and visual impacts) are addressed satisfactorily. I have taken into consideration the part of the Guidance which states “The written ministerial statement made on 18 June 2015 is quite clear that when considering applications for wind energy development, local planning authorities should (subject to the transitional arrangement) only grant planning permission if: the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing. Whether the proposal has the backing of the affected local community is a planning judgement for the local planning authority.” In this context, and the context of strategic policy and the area’s environmental designation I consider it appropriate for the policy to draw a distinction between small-scale and large-scale wind generation infrastructure. The term “approval of residents” is however not acceptable as determination of development proposals must be undertaken by the Local Planning Authority in the first instance. It is unnecessary for the policy to state “in the Plan Area” as all of the policies of the Neighbourhood Plan apply throughout the plan area unless a lesser area is specified. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

201. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

202. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 14:
In Policy ENV12**

- **replace “approval” with “support”**
- **delete “in the Plan Area”**

Policy ENV13: Flood Risk Resilience

203. This policy seeks to establish an approach to the management of flood risk.
204. The suggested additional text recommended by Severn Trent is not necessary to meet the Basic Conditions. Paragraphs 159 to 169 of the Framework establish a policy approach to the management of flood risk. It is not possible to express strong support in determination of a development proposal. I have recommended deletion of the limitation of the policy to proposals affecting more than 9 square metres of land as this has not been sufficiently justified. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
205. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
206. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 15:

In Policy ENV13

- delete “affecting an area larger than 9m2”
- delete “strongly”

Policy ENV14: Area of Separation

207. This policy seeks to retain spatial and visual separation between Witherley and Atherstone (north).
208. The Borough Council state, Site Allocations and Development Management Policies DPD Policy DM4 which helps prevent the merging of settlements includes criteria ii): “It does not undermine the physical and perceived separation and open character between settlements”. The Borough Council welcomes a more locally specific Area of Separation policy in neighbourhood plans so long as it provides more local context and requirements than in criteria ii) of policy DM4 and is well evidenced as to why that particular area is worthy of extra protection.

209. Policy ENV14 does not seek to establish valued landscapes, as referred to in paragraph 174 of the Framework, which would require a rigorous and objective justification that identifies physical attributes, beyond 'ordinary', that make the landscape valued (Stroud District Council vs. SSCLG [2015] EWHC 488 (Admin) and Forest of Dean DC v. SSCLG [2016] EWHC2429 (Admin). Paragraph 130 of the Framework states planning policies should ensure developments are sympathetic to local character and history, including the surrounding built environment and landscape setting. I am satisfied Policy ENV14 has regard for national policy including the achievement of sustainable development, and is in general conformity with the strategic policies. I have noted part of the area proposed as an area of separation has also been proposed for designation as Local Green Space in Policy ENV1. I am satisfied the two Policies are compatible.

210. Paragraph 130 of the Framework states planning policies should ensure developments "are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)." Maintaining the distinctive and separate identities of Witherley and Atherstone is not the same as preventing any development in the identified Area of Separation. Sustainable development could occur in the area to which the policy applies that does not undermine spatial and visual separation. A policy defining an area where no development is to be permitted would seek to establish a regime that is more restrictive than even that applying in designated Green Belt. Such an approach would not have sufficient regard for national policy for it to be appropriate. Whilst the resistance of all forms of development in a defined area of open countryside would not have sufficient regard for national policy, the maintenance of distinctive and separate identities of settlements can be a legitimate objective of land use policy. The text supporting Policy ENV14 states "the last meaningful separation (physical and identity) between the two settlements would be destroyed if this area were to be built on." I am satisfied the supporting text provides a satisfactory justification for the designation.

211. The policy would not prevent sustainable development and has regard for those elements of the Framework that specifically recognise the importance of economic growth in rural areas; and the special circumstances where isolated homes in the countryside will be acceptable. As recommended to be modified the policy would not prevent the development of essential utility infrastructure that is appropriately sited and designed. The policy has regard for paragraph 130 of the Framework. I am satisfied the policy has regard for national policy and will not

prevent sustainable development. The supporting text confirms the policy relates only to land within the Neighbourhood Area.

212. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan and given the limited scale of the area of separation in relation to the Neighbourhood Area as a whole does not seek to influence the quantity of supply of housing differently from strategic policies. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

213. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. This policy meets the Basic Conditions.

Policy CA1: The Retention of Community Facilities and Amenities

214. This policy seeks to establish criteria for support of the loss of identified community facilities.

215. Paragraph 93 of the Framework states planning policies should guard against the unnecessary loss of valued facilities and services. Strategic Policy DM25 seeks to resist the loss of community facilities including ancillary areas except in specified circumstances. The representation of an individual states alternative provision "within the Parish" may not be satisfactory in terms of serving the needs of users. Paragraph 93 of the Framework refers to reduction of a community's ability to meet its day-to-day needs. I agree with the representation and have recommended an appropriate modification in this respect. In all other respects I am satisfied the approach adopted in Policy CA1 has sufficient regard for national and strategic policy.

216. It is unnecessary and confusing for this policy to refer to the other policies of the Neighbourhood Plan as all the policies of the Neighbourhood Plan apply throughout the Neighbourhood Area unless a lesser area is specified. The term "general policies" is imprecise. I have recommended a modification so that the policy has sufficient regard for national policy and is "clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" as required by paragraph 16d) of the Framework.

217. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a

clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

218. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 16:

In Policy CA1 replace “within the Parish which complies with the other general policies of the Neighbourhood Development Plan” with “for users”

Policy CA2: New or Improved Community Facilities

219. This policy seeks to establish conditional support for proposals that improve the quality and/or range of community facilities.
220. Paragraph 93 of the Framework states planning policies should plan positively for the provision of community facilities including meeting places. Strategic Policy DM25 seeks to support the formation of new community facilities. I am satisfied the approach adopted in Policy CA2 has sufficient regard for national and strategic policy.
221. The terms “can be used as a central facility for all of the community” and “unacceptable traffic movements” and “a need for parking that cannot be adequately catered for” are imprecise and do not provide a basis for the determination of development proposals. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
222. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
223. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 17:

In Policy CA2

- delete part a)
- in part b) delete “unacceptable traffic movements or other” and replace “and incorporates adequate parking” with “including from traffic movements”
- in part c) replace “a need for parking that cannot be adequately catered for” with “additional on-street parking”

Policy CA3: Broadband and Mobile Phone Infrastructure

224. This policy seeks to support proposals to provide improved access to superfast broadband and improvements to the mobile telecommunications network. The policy also requires mast sharing where possible and requires proposals to be sympathetically designed and located in landscape terms.

225. Paragraph 114 of the Framework supports the expansion of electronic communication networks.

226. Paragraph 115 of the Framework encourages mast sharing. Paragraph 16 of the Framework states plans should avoid unnecessary duplication of policies. The term “superfast” is imprecise. Limitation of the policy to businesses and households only has not been sufficiently justified. It is unnecessary to state “in Witherley Parish” as all of the policies of the Neighbourhood Plan apply throughout the Neighbourhood Area unless a lesser area is specified. Proposals may necessarily need to be in or near open landscape for technical reasons. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

227. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

228. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 18:

In Policy CA3

- **replace the first paragraph with “Proposals to provide improved access to faster broadband, including connectivity to future generations of mobile technology, will be supported”**
- **in the second paragraph replace “be in or near to open landscapes” with “significantly adversely affect the landscape setting”**

Policy TR1: Traffic Management

229. This policy seeks to establish traffic management principles for new housing and commercial development.

230. Policy TR1 is not seeking to establish car parking requirements which would require consideration of matters specified in Paragraph 107 of the Framework. The term “with particular regard to the rural highway network of the Parish and the need to minimise any increase in vehicular movement” is not sufficiently justified. Part a) of the policy is not sufficiently justified and is imprecise. The term “sufficient off-road parking” is imprecise. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

231. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

232. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 19:

In Policy TR1

- **delete “With particular regard to the rural highway network of the Parish and the need to minimise any increase in vehicular traffic,”**
- **delete part a)**
- **replace part b) with “Not result in additional on-road parking”**

Policy TR2: Electric Vehicles

233. This policy seeks to require new residential development to include cabling that will facilitate subsequent installation of home electric vehicle charging points. The policy also conditionally supports communal vehicle charging points.

234. I am satisfied the first part of the policy relates to cabling and does not require installation of electric vehicle charging points which would require consideration of viability. In the context of setting parking standards Paragraph 107 of the Framework refers to provision of spaces for charging plug-in and other ultra-low emission vehicles. Paragraph 152 states the planning system should support the transition to a low carbon future.

235. It is confusing and unnecessary for this policy to state “within the parish” as all of the policies of the Neighbourhood Plan apply throughout the Neighbourhood Area unless a lesser area is specified. I have recommended a modification in this respect so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

236. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

237. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 20:

In Policy TR2 delete “within the parish” twice

Policy BE1: Support for Existing Businesses and Employment Opportunities

238. This policy seeks to establish criteria for the loss of employment premises or land.

239. Paragraph 81 of the Framework states planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt.

240. Policy BE1 includes sufficient flexibility to respond to changing economic circumstances. The reference to change of use but not new development is not sufficiently justified. I have recommended a modification in this respect so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
241. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
242. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 21:

In Policy BE1 after “Applications for” insert “development or”

Policy BE2: Support for New Businesses and Employment

243. This policy seeks to establish conditional support for new development providing additional employment opportunities.
244. Paragraph 81 of the Framework states planning policies should help to create the conditions in which businesses can invest, expand and adapt. Paragraph 84 of the Framework states plans should enable the sustainable growth and expansion of all types of business in rural areas both through the conversion of existing buildings and well-designed new buildings. Paragraph 120 of the Framework states planning policies should give substantial weight to the value of using suitable brownfield land within settlements and support the development of underutilised land and buildings. Paragraph 85 of the Framework makes reference to unacceptable impact on local roads and states the use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
245. The restriction of part d) of the policy does not have sufficient regard for national policy and have not been adequately justified. I have recommended a modification in this respect so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision

maker should react to development proposals” as required by paragraph 16d) of the Framework.

246. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

247. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 22:
In Policy BE2 delete part d) of the policy

Policy BE3: Home Working

248. This policy seeks to establish conditional support for proposals that facilitate home working.

249. Paragraph 82 of the Framework states planning policies should allow for new and flexible working practices (such as live-work accommodation).

250. The terms “unacceptable”, “appropriate” “and Policies in this Plan” are imprecise. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

251. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

252. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 23:
In Policy BE3

- **replace part a) with “Such development will not result in traffic movements that cause nuisance to residential amenity and not generate additional on-road parking;”**
- **in part c) replace “having regard to policies in this Plan” with “to reflect local character”**

Policy BE4: Farm Diversification

253. This policy seeks to establish conditional support for development related to the sustainable expansion of farm businesses and farm diversification.

254. Paragraph 84 of the Framework states planning policies should enable the diversification of agricultural businesses. Paragraph 85 of the Framework refers to unacceptable impact on local roads.

255. The reference to the GDPO is unnecessary and confusing. The terms “commercial” and “adequate” are imprecise”. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

256. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.

257. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 24:

In Policy BE4

- **replace the text before a) with “Diversification and the sustainable growth and expansion of farm businesses will be supported subject to:”**
- **replace d) with “the development proposals will not have unacceptable impact on local roads or generate additional on-road parking; and”**

Policy BE5: Tourism

258. This policy seeks to establish conditional support for proposals to enhance tourism.
259. Paragraph 84 of the Framework states planning policies should enable sustainable rural tourism and leisure developments which respect the character of the countryside. Paragraph 85 of the Framework refers to unacceptable impact on local roads.
260. The requirement for benefit to the local community in part e) of the policy does not have sufficient regard for paragraph 84 of the Framework which supports the growth and expansion of all types of businesses in rural areas. The term “adequate parking facilities” is imprecise. I have recommended a modification so that the policy has sufficient regard for national policy and is “clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.
261. The policy is in general conformity with the strategic policies included in the Development Plan and relevant to the Neighbourhood Plan. The policy serves a clear purpose by providing an additional level of detail or distinct local approach to that set out in the strategic policies.
262. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 25:

In Policy BE5

- **replace part d) with “does not result in additional on-road parking”**
- **delete part e)**

Conclusion and Referendum

I have recommended 25 modifications to the Submission Version Plan. I recommend an additional modification in the Annex to my report. The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them. I am satisfied that the Neighbourhood Plan is compatible with the Convention Rights, and would remain compatible if modified in accordance with my recommendations; and subject to the modifications I have recommended, meets all the Statutory Requirements set out in paragraph 8(1) of schedule 4B of the Town and Country Planning Act 1990, and meets the Basic Conditions:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- does not breach, and is otherwise compatible with, EU obligations; and
- 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.

I recommend to Hinckley and Bosworth Borough Council that the Witherley Neighbourhood Development Plan for the plan period up to 2039 should, subject to the modifications I have put forward, be submitted to referendum.

I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension. I have seen nothing to suggest that the policies of the Plan will have “a substantial, direct and demonstrable impact beyond the neighbourhood area”. I have seen nothing to suggest the referendum area should be extended for any other reason. I conclude the referendum area should not be extended beyond the designated Neighbourhood Area.

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Hinckley and Bosworth Borough Council as a Neighbourhood Area on 3 April 2017.

Annex: Minor Corrections to the Neighbourhood Plan

I have only recommended modifications and corrections to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the Basic Conditions and the other requirements I have identified. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Supporting text must be adjusted to achieve consistency with the modified policies.

The Borough Council recommend:

- The clarity of Maps, in particular Figure 5.1 should be improved where possible.
- On Page 6 after “emerging Local Plan” replace 2016 with 2020 and replace the reference to page 12 with page 13.

- In Part 6.2 of the Neighbourhood Plan the Ecological Survey (Appendix 11) should be referenced as an additional part of the evidence base supporting the environmental policies.
- In Appendix 5 Sustainable Site Assessments should include a map of each site considered.

I recommend these modifications are made.

Recommended modification 26:

Modify policy explanation sections, general text, figures and images, and supporting documents to achieve consistency with the modified policies, and to achieve updates and correct identified errors.

Chris Collison
Planning and Management Ltd
collisonchris@aol.com
25 January 2023
REPORT END