

# **NORTH KILWORTH NEIGHBOURHOOD PLAN**

North Kilworth Neighbourhood Plan Examination,  
A Report to Harborough District Council

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## Introduction

### The Neighbourhood Plan

- 1 Where modifications are recommended, they are presented as bullet points and highlighted in **bold print**, with any proposed new wording in *italics*.
- 2 This Report provides the findings of the examination into the North Kilworth Neighbourhood Plan (referred to as the Neighbourhood Plan).
- 3 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.

*“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.”*

(Paragraph 183, National Planning Policy Framework)

- 4 The Neighbourhood Plan was prepared by the North Kilworth Neighbourhood Plan Advisory Committee, on behalf of North Kilworth Parish Council.
- 5 As set out in the opening chapter of the Basic Conditions Statement, submitted alongside the Neighbourhood Plan, North Kilworth Parish Council is the *Qualifying Body*, ultimately responsible for the Neighbourhood Plan. This is in line with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012) and Planning Practice Guidance (2014).
- 6 This Examiner's Report provides a recommendation with regards whether the Neighbourhood Plan should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes in favour, then the Plan would be *made* by Harborough District Council. The Neighbourhood Plan would then be used to determine planning applications and guide planning decisions in the North Kilworth Neighbourhood Area.

Role of the Independent Examiner

- 7 I was appointed by Harborough District Council, with the consent of the Qualifying Body, to conduct an examination and provide this Report as an Independent Examiner. I am independent of the qualifying body and the local authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.
- 8 I am a chartered town planner and an experienced Independent Examiner of Neighbourhood Plans. I have extensive land, planning and development experience, gained across the public, private, partnership and community sectors.
- 9 As the Independent Examiner, I must make one of the following recommendations:
  - that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
  - that the Neighbourhood Plan, as modified, should proceed to Referendum;
  - that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 10 If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether the Referendum Area should extend beyond the North Kilworth Neighbourhood Area to which the Plan relates.

Neighbourhood Plan Period

- 11 A neighbourhood plan must specify the period during which it is to have effect. The front cover of the Neighbourhood Plan clearly specifies that the document covers the plan period:

*"2015 to May 2031."*

- 12 In addition, page 10 of the Neighbourhood Plan sets out that the:

*"Neighbourhood Plan covers the time period 2015 to 2031 and therefore mirrors the timescale of Harborough District Council's emerging Local Plan."*

- 13 Taking the above into account, the Neighbourhood Plan satisfies the relevant requirement in respect of specifying the plan period.

### Public Hearing

- 14 According to the legislation, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.
- 15 However, the legislation establishes that it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.
- 16 Further to consideration of the information submitted, I confirmed to Harborough District Council that I was satisfied that the North Kilworth Neighbourhood Plan could be examined without the need for a Public Hearing. In making this decision I was mindful that the Neighbourhood Plan has emerged through robust consultation (see *Public Consultation*, later in this Report) and that people have been provided with significant and appropriate opportunities to have their say.

## **2. Basic Conditions and Development Plan Status**

### **Basic Conditions**

- 17 It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “basic conditions.” These were *set out in law*<sup>1</sup> following the Localism Act 2011. 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 neighbourhood 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, European Union (EU) obligations; and
  - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.<sup>2</sup>
  - An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.<sup>3</sup>
- 18 In examining the Plan, I am also required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:
- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;

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<sup>1</sup> Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.

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

<sup>3</sup> The Convention rights has the same meaning as in the Human Rights Act 1998.

- the Neighbourhood Plan meets the requirements of Section 38B of the 2004 PCPA (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area);
- the Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted for examination by a qualifying body.

19 Subject to the content of this Report, I am satisfied that these three points have been met.

20 In line with legislative requirements, a Basic Conditions Statement was submitted alongside the Neighbourhood Plan. This sets out how, in the qualifying body's opinion, the Neighbourhood Plan meets the basic conditions.



### European Convention on Human Rights (ECHR) Obligations

- 21 I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.
- 22 In the above regard, I note that Information has been submitted to demonstrate that people were provided with a range of opportunities to engage with plan-making in different places and at different times. Representations have been made to the Plan, some of which have resulted in changes and the Consultation Statement submitted alongside the Neighbourhood Plan provides a "*summary of responses and outcome of comments.*"

### European Union (EU) Obligations

- 23 A Habitats Regulations Assessment (HRA) is required if the implementation of the Neighbourhood Plan may lead to likely negative significant effects on protected European sites.
- 24 The Basic Conditions Statement establishes that:  
  
*"The North Kilworth NP area does not include or is not close to a European site that would require a Habitat(s) Regulation(s) Assessment."*
- 25 In addition to the above, I note that the statutory consultee, Natural England has commented:  
  
*"Natural England does not consider that the plan will have any likely significant effects on any internationally or nationally designated nature conservation sites."*
- 26 There is no legal requirement for a neighbourhood plan to have a sustainability appraisal<sup>4</sup>. However, in some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment.

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<sup>4</sup> Paragraph 026, Ref: 11-027-20150209, Planning Practice Guidance

27 In this regard, national advice states:

*"Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects."*  
(Planning Practice Guidance<sup>5</sup>).

28 This process is often referred to as a screening report, opinion, statement or assessment. If the screening report identifies likely significant effects, then an environmental report must be prepared.

29 The Basic Conditions Statement states that:

*"Harborough District Council will screen the NP to determine whether an SEA is required."*

30 Planning Practice Guidance<sup>6</sup> establishes that:

*"Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects."*

and goes on to state<sup>7</sup> that the draft plan:

31 *"...must be assessed (screened) at an early stage of the plan's preparation..."*

32 Whilst early screening did not occur in the case of the North Kilworth Neighbourhood Plan, I am mindful that Harborough District Council published a post-submission screening assessment in February 2017. This concluded that:

*"The LPA has determined that a full SEA is not required for the North Kilworth Neighbourhood Plan."*

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<sup>5</sup> Paragraph 027, *ibid*

<sup>6</sup> Planning Practice Guidance Reference ID: 11-027-20150209.

<sup>7</sup> Planning Practice Guidance Reference ID: 11-028-20150209.

- 33 In addition to all of the above, I am mindful that national guidance establishes that the ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations lies with the local planning authority:

*“It is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a neighbourhood plan proposal submitted to it have been met in order for the proposal to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations” (Planning Practice Guidance<sup>8</sup>).*

- 34 In undertaking the work that it has, Harborough District Council has considered the Neighbourhood Plan's compatibility with EU obligations and has raised no objections or concerns in this regard. Neither have any objections or concerns in respect of meeting European obligations been received from the statutory bodies, Natural England, Historic England or the Environment Agency. Taking this and the above into account, I conclude that the Neighbourhood Plan meets the basic conditions in respect of meeting European obligations.

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<sup>8</sup> Planning Practice Guidance Reference ID: 11-031-20150209,

### **3. Background Documents and the North Kilworth Neighbourhood Area**

#### **Background Documents**

35 In undertaking this examination, I have considered various information in addition to the North Kilworth Neighbourhood Plan. This has included the following main documents:

- National Planning Policy Framework (the Framework) (2012)
- Planning Practice Guidance (2014)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- Harborough District Local Development Framework Core Strategy 2006-2028 (2011)
- Basic Conditions Statement
- Consultation Statement
- Strategic Environmental Assessment Screening and Determination Report

Also:

- Representations received

36 In addition, I spent an unaccompanied day visiting the North Kilworth Neighbourhood Area.

North Kilworth Neighbourhood Area

- 37 A plan showing the boundary of the North Kilworth Neighbourhood Area is provided on page 11 of the Neighbourhood Plan.
- 38 The Neighbourhood Area covers all land within the boundary of North Kilworth Parish.
- 39 Harborough District Council approved the designation of North Kilworth as a Neighbourhood Area on 29 January 2014. This satisfied a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

## **4. Public Consultation**

### Introduction

- 40 As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.
- 41 Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

### North Kilworth Neighbourhood Plan Consultation

- 42 A Consultation Statement was submitted to Harborough District Council alongside the Neighbourhood Plan. The information within it sets out who was consulted and how, together with the outcome of the consultation, as required by the neighbourhood planning *regulations*<sup>9</sup>.
- 43 Taking the information provided into account, there is evidence to demonstrate that the Neighbourhood Plan comprises a "*shared vision*" for the North Kilworth Neighbourhood Area, having regard to Paragraph 183 of the Framework.
- 44 In January 2014, a community questionnaire was distributed. This was publicised by posters and leaflets and resulted in 80 responses, equating to around one third of households in the Neighbourhood Area. This was followed by a walk-about, with the aim of establishing "*priority areas*" for the Neighbourhood Plan.
- 45 Consultation with primary school children took place in June 2014, followed by three Open Events in September and November 2014 and March 2015. These were attended by 36, 52 and 36 residents, respectively, and provided people with the opportunity to influence and comment on emerging policies.

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<sup>9</sup>Neighbourhood Planning (General) Regulations 2012.

- 46 Following further consultation with statutory and local stakeholders, the draft plan was produced and underwent a six week public consultation period between January and March 2016.
- 47 The Neighbourhood Plan refers to positive support received from Harborough District Council during plan production, a factor that has regard to national guidance, which calls for constructive engagement with the local planning authority.<sup>10</sup>
- 48 Evidence has been provided to demonstrate that the plan-making process was widely publicised via posters, leaflets, letters and newsletters. Updates on progress were provided at each North Kilworth Parish Council meeting.
- 49 The Consultation Report provides evidence to show that the Neighbourhood Plan was supported by public consultation. Community engagement was encouraged throughout the plan-making process. Matters raised were considered and the reporting process was transparent.
- 50 Taking all of the above into account, I am satisfied that the consultation process was robust.

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<sup>10</sup> Planning Practice Guidance Reference ID: 41-022-2015020.

## **5. The Neighbourhood Plan – Introductory Section**

- 51 The Basic Conditions require consideration of whether or not the Neighbourhood Plan as a whole has had regard to national policies and advice contained in guidance issued by the Secretary of State and whether or not it is in general conformity with the strategic local policies of the Local Plan.
- 52 The policies of the Neighbourhood Plan are considered against the basic conditions in Chapter 6 of this Examiner's Report. This Chapter considers the Introductory Section of the Neighbourhood Plan.
- 53 The legislation behind Neighbourhood Planning underpins the power of communities to plan for themselves and it is important that it is referenced precisely. I recommend:
- **Page 10, fourth Para, change to “...in a certain way. *It must be compatible with relevant European legislation; have regard to national policy and advice; and be in general conformity with strategic planning policies in the development plan.*”**
  - **Page 10, last Para, delete “...draft...”**
- 54 The text on page 13 has been overtaken by events and is likely to become further out of date early in the plan period. I recommend:
- **Delete text on page 13**
- 55 The plan preparation Chapter is long and repeats much of the information in the Consultation Statement. Much of the text is unnecessary and some has been overtaken by events. I recommend:
- **Pages 16 and 17, delete all text after the sentence “The various consultation initiatives are documented in the accompanying Statement of Community Consultation.”**



## **6. The Neighbourhood Plan – Neighbourhood Plan Policies**

### Strategy

#### Policy NK1: General Policy Principle

- 56 Policy NK1 seeks to cover any matter not covered by the Neighbourhood Plan by reference to other policies, over which it has no control. Furthermore in this regard, there is no substantive evidence to indicate which “*National and District wide planning policies*” cover every matter not covered by the Neighbourhood Plan, or whether such policies exist.
- 57 Proposed Policy NK1 does not provide a strategy and comprises a general reference, rather than a land use planning policy.
- 58 I recommend:
- **Delete Policy NK1 and supporting text**

## Housing Development

### Policy NK2: Housing Provision

- 59 The supporting text to Policy NK2 provides relevant information associated with the emerging Harborough Local Plan and recognises that North Kilworth may, in the future, be designated as a “*Selected Rural Village*” where small scale development would be supported. It is established that indicative minimum housing targets of between 17 and 31 new homes have been identified for North Kilworth.
- 60 Whilst there is no adopted planning policy apportioning housing to North Kilworth, I note earlier that the plan-making process was supported by Harborough District Council. The minimum housing target for the Neighbourhood Area of 24 dwellings is considered appropriate by Harborough District Council and I am mindful that this figure takes relevant available information into account.
- 61 Planning Guidance<sup>11</sup> establishes that a Neighbourhood Plan can come forward before an up-to-date Local Plan is in place. In such circumstances, the qualifying body and local planning authority should agree the relationship between policies in the emerging plans and where relevant, the adopted development plan. Planning Guidance states that:
- “The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans.”*
- 62 Taking the above into account, there is evidence to demonstrate that Policy NK2 is, to some degree, the result of positive, collaborative working between North Kilworth Parish Council and Harborough District Council. However, the phrase “*the remaining housing provision*” appears confusing, as it would seem to conflict with the proposed approach of providing for a “*minimum*” number of dwellings.
- 63 Further to the above, Policy NK2 provides little in the way of clarity, or certainty, in respect of how “*windfall development*” will contribute to the stated “*housing provision*.”

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<sup>11</sup> Planning Policy Guidance Reference ID: 41-009-20160211.

64 Planning Practice Guidance<sup>12</sup> 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.”*

65 Taking all of the above into account, for clarity, I recommend:

- **Policy NK2, change to “*The Neighbourhood Plan supports the development of a minimum of 24 dwellings during the plan period.*”**

66 Subject to the above, Policy NK2 provides for sustainable growth and meets the basic conditions.

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<sup>12</sup> Paragraph: 042 Reference ID: 41-042-20140306

**Policy NK3: Housing Provision**

- 67 The supporting text to Policy NK3 establishes that the allocation of land for housing at the corner of Pincet Lane and Lutterworth Road reflects a local community preference, following the consideration of housing land allocations during the plan-making process.
- 68 However, the first sentence of Policy NK3 is unclear and unnecessary. The Policy goes on to allocate a site for development and the addition of an introduction to this allocation appears cumbersome. Furthermore, there are unnecessary references to "*Limits to Development*" and windfall development, both of which are matters that are considered in other policies in the Neighbourhood Plan.
- 69 It is also unclear what the phrase "*up to around*" actually means. A development might be for "*up to 20 dwellings,*" or "*around 20 dwellings.*" The phrase "*up to around*" makes little sense and fails to provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.
- 70 There is no need for Policy NK3 to refer to other Policies in the Neighbourhood Plan. The Neighbourhood Plan should be read as a whole, thus negating the need for unwieldy and confusing cross-references.
- 71 As set out, Policy NK3 requires the provision of a pedestrian crossing as part of any development of the land at Pincet Lane/Lutterworth Road. However, there is no substantive evidence to demonstrate that such a requirement would be viable and consequently, I am unable to conclude with any certainty that the Policy would be deliverable. This part of the Policy does not have regard to Paragraph 173 of the National Planning Policy Framework (the Framework), which states that:

*"Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened."*

- 72 In addition, it is unclear why any planning application must meet the recommendations of a study that was published in 2004 and which is not under the control of the Neighbourhood Plan. No clarity is provided in this regard. Also, security lights do not require planning permission and consequently, this is not something that the Neighbourhood Plan can control. Further, street-lighting is generally controlled by the highway authority and in any case, no indication of how the appropriate-ness and consistency of lighting will be measured, or who by, is provided.
- 73 Policy NK3 goes on to propose two reserve sites. Together with Policy NK2, this helps to provide for sustainable growth, should envisaged development not take place.
- 74 In addition to those comments above that also apply to the reserve sites, I note that no indication of what “important views” might comprise is provided. Views can change on a seasonal, or even hourly basis and the inclusion of this reference does not provide a decision maker with a clear indication of how to react to a development proposal.
- 75 No substantive evidence is provided to demonstrate that the provision of a dual use car park will be viable and deliverable, or that it will be possible, viable and deliverable to provide traffic free access to the core of the village and school; and extend the Bogs Nature Reserve.
- 76 The Policy text relating to Reserve Site 2 includes the phrase “will be permitted.” This runs the risk of pre-determining the planning application process without taking relevant matters into account. It may prevent a balanced consideration and result in support for unsustainable forms of development.
- 77 Taking all of the above into account, I recommend:
- **Policy NK3, delete first sentence and begin Policy “The development of around 20 dwellings at the corner of Pincet Lane and Lutterworth Road (opposite the White Lion) will be supported, subject to: - at least...affordable; - and provision of a green buffer between new development and the existing dwellings on the eastern edge of the site.” (delete other criteria)**
  - **Change penultimate Para on page 26 to “The following two sites are Reserve Sites to be brought...the Plan.”**
  - **Last Para on page 26, change to “...Development of around 20 units will be supported subject to at least 40% of the dwellings comprising affordable housing.” (delete other criteria)**

- **Page 27, Reserve Site 2, change to “...Development *will be supported subject to at least 40% of the dwellings comprising affordable housing- and provision of a green buffer between new development and the existing dwellings on Elmcroft Road.*”**
- **Delete the last two Paras of supporting text on page 25**

#### **Policy NK4: Windfall Sites**

- 78 Generally, Policy NK4 is a positive land use planning Policy that supports the development of infill and redevelopment sites. However, it is not clear why a windfall development must help to meet the “*identified housing requirement.*” This would appear to suggest that windfall development over and above 24 dwellings may not be supported. Such an approach would conflict with the 24 dwelling figure comprising a “*minimum*” target and could prevent sustainable development from coming forward, rather than promote its achievement in accordance with the basic conditions.
- 79 Further to the above, “*small scale*” is undefined by either the Policy or its supporting text. Notwithstanding this, the Policy limits development to the “*Limits of Development*” within which there are no large sites, other than those identified in Policy NK3.
- 80 The “*shape and form*” of North Kilworth are not clearly identified or defined and consequently, it is not clear how development can respect these somewhat subjective characteristics. Further, no justification is provided in respect of why windfall development must enhance local character where possible. Such a requirement is more onerous than that for Conservation Areas and in the absence of any justification, it is not clear why windfall development must meet such a requirement – or whether it would be viable to do so, having regard to Paragraph 173 of the Framework.
- 81 Notwithstanding the above, Paragraph 58 of the Framework requires development to:
- “...respond to local character...and reflect the identity of local surroundings...”*
- and to some degree, the Policy has regard to this.
- 82 However, no indication of how (or why) windfall development should reflect “*level of service provision*” is provided and consequently, this part of the Policy is unclear. Also, no indication of what appropriate renewable and low carbon technology might comprise is provided, nor whether the provision of such would be viable or deliverable.

- 83 The penultimate criterion of Policy NK4 is confusing in its use of present and future tenses and notwithstanding this, the criterion, in any case, simply repeats the requirements of other criteria in respect of local character and residential amenity.
- 84 No indication of what an unacceptable impact on congestion might be is provided and the final criterion of the Policy is therefore unclear. In addition, the phrase "*parking impact created*" is ambiguous. In respect of this and the recommendations below, I note that Policy CS1 (Spatial Strategy) of the Harborough Local Development Framework Core Strategy (Core Strategy) seeks to ensure that new development is safe.
- 85 Taking all of the above into account, I recommend:
- **Change first sentence of Policy NK4 to "*Development proposals for...supported where:*"**
  - **Delete second criterion ("It helps...")**
  - **Change third criterion to "*It respects local character.*"**
  - **Delete fourth criterion ("It is of an appropriate...")**
  - **Delete the last three criteria ("It incorporates...pedestrian safety.")**
  - **Delete last sentence of supporting text on page 28**



The built environment (BE)

**Policy NK5: Housing and Other Development Outside the Village of North Kilworth**

86 It is unclear how the Neighbourhood Plan can impose a “*presumption against*” housing development that would itself be entirely reliant upon unidentified “*national and district wide*” policies not within the control of the Neighbourhood Plan. In this regard, Policy NK5 fails to provide a decision maker with a clear indication of how to react to a development proposal.

87 In addition, rather than set out a presumption against residential development, national planning policy is explicit in establishing a presumption in favour of sustainable development:

*“Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision.”* (Ministerial Foreword, Framework)

88 I recommend:

- **Delete Policy NK5 and supporting text**

**Policy NK6: Housing Mix**

- 89 National planning policy supports the delivery of a wide choice of high quality homes, as set out in Chapter 6 of the Framework. Whilst, to some small degree, Policy NK6 has regard to this, no indication of how “*priority*” will be given to smaller properties is provided. Consequently, there is no clarity in respect of how the Policy might be implemented.
- 90 Further to the above, the Policy requires all housing proposals to demonstrate how they will meet current and future housing needs. There is no evidence to demonstrate that such a policy requirement has regard to Paragraph 193 of the Framework, which states that information requirements should be:
- “...proportionate to the nature and scale of development proposals...relevant, necessary and material to the application in question.”*
- 91 The supporting text to Policy NK4 of the Neighbourhood Plan indicates that residential applications for windfall development will be for single or small schemes. It is not clear why a proposal for a single dwelling must demonstrate how it will meet current and future housing needs in North Kilworth.
- 92 Taking the above into account and in recognition of the national policy requirement to provide for a mix of housing, I recommend:
- **Policy NK6, change to “*The provision of smaller dwellings to meet the needs of young families and older people will be supported.*”**

**Policy NK7: Affordable Housing**

- 93 Policy NK7 relies on another Policy in another document, outside the control of the Neighbourhood Plan.
- 94 Furthermore, Policy NK7 conflicts with national policy, in that it fails to have regard to the 1000 square metre upper limit for residential development not required to provide affordable housing. No justification is provided for such a departure.
- 95 No indication of how Policy NK6 might “*encourage*” shared ownership is provided and consequently, this part of the Policy is unclear.
- 96 In making the recommendations below, I note that Policy NK3 requires the provision of at least 40% affordable housing whilst that the supporting text to Policy NK4 does not envisage other developments of more than ten dwellings coming forward during the plan period.
- 97 I recommend:
- **Delete Policy NK7 and supporting text.**

**Policy NK8: Affordable Housing and Local People**

- 98 Policy NK6 is unclear. It requires priority for affordable housing to be given to people who work in the Parish, but seeks to limit affordable housing to people who have lived in the Parish for 10 continuous years. It is not clear how this relates to people who work in the Parish.
- 99 Also, there is further ambiguity resulting from the reference to an “*essential need*” to live close to someone who has lived in the Parish for ten continuous years. No indication is provided of what such an essential need might be, or who would determine this and on what basis.
- 100 In addition, neither the Policy nor the supporting text indicate how priority might be given to local people - for example, there is no information in respect of how houses would be prioritised, for how long, or who by. It is unclear how the requirements of Policy NK8 might form part of a Section 106 Agreement, or what is “*similar*” to a Section 106 Agreement.
- 101 Policy NK8 does not have regard to national advice and does not provide a decision maker with a clear indication of how to react to a development proposal. I recommend:
- **Delete Policy NK8 and supporting text**

## Design and the Built Environment

### Policy NK9: Design Quality

102 Good design is recognised by the Framework as comprising:

*"a key aspect of sustainable development...indivisible from good planning."*  
(Paragraph 56)

103 In addition, national policy requires good design to contribute positively to making places better for people (Chapter 7, The Framework). Paragraph 58 of the Framework goes on to require development to:

*"...respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;"*

104 Further to the above, Core Strategy Policies CS1 (Spatial Strategy) and CS11 (Promoting Design and Built Heritage), promote good design.

105 Policy NK9 requires high quality design, having regard to national policy and in general conformity with the Core Strategy.

106 As worded, Policy NK9 provides little flexibility in respect of the North Kilworth Village Design Statement. However, this document simply provides guidance rather than strict design criteria that cannot be departed from and the Neighbourhood Plan is not, itself, a mechanism to turn other documents into statutory land use planning policy.

107 Further to the above, no indication is provided of what *"design principles"* apply to the Conservation Area. Also in this regard, I note that land that is not within a Conservation Area is not generally subject to Conservation Area policy.

108 Part of the supporting text does not reflect the content of the Policy and this is addressed below.

109 I recommend:

- **Policy NK9, change first Para to *"...the Parish. Proposals should respect the development principles set out in the North Kilworth Village Design Statement. The..."***

- **Delete second Para (“Design principles...Conservation Area.)”**
- **Supporting text, page 34, delete “It is essential that any...beautiful character.”**

### **Policy NK10: Sustainable Development**

- 110 Whilst national and local policy promote a reduction in greenhouse gas emissions, the incorporation of sustainable drainage and construction techniques may not be relevant, deliverable or viable for all forms of development.
- 111 In this regard, Policy NK10 appears unduly onerous and fails to have regard to Paragraph 173 of the Framework, as well as Paragraph 193, which, as set out above, requires information in support of an application to be relevant, necessary and material to the development proposed.
- 112 The second part of Policy NK10 imposes a requirement on the local planning authority and seeks to elevate North Kilworth Parish Council to the position of a statutory decision maker without justification.
- 113 I recommend:
- **Policy NK10, change first Para to “Where appropriate and viable, development should incorporate...technology.” Delete rest of Policy**

**Policy NK11: Design Quality – Buildings and Structures of Local Historical and Architectural Interest**

- 114 National policy recognises that heritage assets are irreplaceable. Chapter 12 of the Framework, "*Conserving and Enhancing the Historic Environment*," requires heritage assets to be conserved in a manner appropriate to their significance.
- 115 Whilst national policy recognises that it is desirable to enhance heritage assets and put them to uses consistent with their conservation, Policy NK11 goes significantly further than this, by imposing a requirement for all development proposals to conserve and enhance the character, integrity and setting of any heritage asset wherever it would affect such. There is no substantive evidence for such a significant departure from national policy.
- 116 As set out, Policy NK11 simply imposes an onerous requirement on development without allowing for the balanced consideration of any harm and benefits that might arise. This fails to have regard to national policy, which for example, provides the opportunity for overriding public benefits of development to outweigh harm arising. Consequently, Policy NK11 may prevent the Neighbourhood Plan from contributing to the achievement of sustainable development and there is no evidence to the contrary.
- 117 I recommend:
- **Delete Policy NK11**
  - **The supporting text provides useful information relevant to the Neighbourhood Area. The final sentence of the supporting text is clear in pointing out that national and local planning policy exists to protect heritage assets. The non-Policy text on pages 38 and 39 should be retained**



**Policy NK12: Signage**

- 118 As established above, national policy is explicit in presenting an assumption in favour of sustainable development. The start of Policy NK12 seeks to establish a presumption against new signage proposals without any substantive evidence to demonstrate that all such proposals would necessarily fail to comprise sustainable development. This approach fails to have regard to national policy.
- 119 The Policy is vague in respect of what comprises a small, sympathetic sign; what number of signs is "*limited*;" or what constitutes a "*distraction to motorists*." This part of Policy NK12 does not provide a decision maker with a clear indication of how to react to a development proposal.
- 120 No substantive evidence is provided to demonstrate that internally illuminated signs would be inappropriate in all circumstances, including within the Conservation Area. The Neighbourhood Plan fails to provide any substantive basis on which to seek to prevent development from coming forward. This could prevent sustainable development from going ahead and there is no evidence to the contrary.
- 121 In making the recommendation below, I am mindful that many road signs do not require planning permission and that development within Conservation Areas must comply with national and local planning policy.
- 122 I recommend:
- **Delete Policy NK12 and supporting text**

Employment and the Economy

**Policy NK13: Employment**

123 Paragraph 28 of the Framework aims to promote a strong rural economy. It requires neighbourhood plans to:

*“promote the development and diversification of agricultural and other land-based rural businesses.”*

124 Policy E2 has regard to this and is in general conformity with that part of Core Strategy Policy CS7 (Enabling Employment and Business Development) which supports economic and employment development.

125 No changes are recommended.

**Policy NK14: Broadband Infrastructure**

126 National planning policy supports the provision of high quality communications infrastructure. In doing so, it recognises that:

*“Advanced, high quality communications infrastructure is essential for sustainable economic growth.”*

127 Policy NK14 supports improvements to telecommunications and has regard to national policy. No changes are recommended.

Community Services

**Policy NK15: Key Community Services, Facilities and Shops**

128 Paragraph 58 of the Framework promotes:

*“...the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.”*

129 Policy NK15 seeks to protect local services and facilities. However, North Kilworth Parish Council is not the statutory decision maker in respect of planning applications within the Neighbourhood Area. Given this, the Neighbourhood Plan should not seek to impose a requirement on prospective applicants to demonstrate viability, or otherwise, to North Kilworth Parish Council.

130 The phrase “*marketed unsuccessfully*” is ambiguous. It could, for example, simply mean “*poor marketing*” and I make a recommendation below in this regard.

131 I recommend:

- **Policy NK15, change to “...or it can be *demonstrated* further to at least twelve months proactive marketing *that* the service or facility is...the community.”**

**Policy NK16: New or Improved Community Facilities**

132 Whilst Policy NK16 is, to some degree, a positive community policy, having regard to Paragraph 58 of the Framework, as worded it provides general support for any form of development so long as it also improves community facilities. Such an approach could result in unforeseen circumstances, such as support for inappropriate forms of development and I address this in the recommendations below.

133 As set out earlier in the Report, the Neighbourhood Plan should be considered as a whole - there is no need for cross-referencing Policies.

134 No indications of what “*unacceptable traffic movements*” or “*disturbances*” might comprise is provided, resulting in an unclear Policy. Similarly, no clarity is provided in respect of what “*adequately catered for*” actually means.

135 I recommend:

- ***Policy NK16, change to “Improvements to the quality and/or range of community facilities in the Neighbourhood Area will be supported subject to such development respecting local character and being easily accessible by sustainable modes of transport including walking and cycling.”***

**Policy NK17: Assets of Community Value**

136 Assets of Community Value are protected by legislation. The White Lion Pub in the Neighbourhood Area is a designated Asset of Community Value and is afforded suitable protection by Policy NK17.

137 No changes are recommended.

The Natural and Historic Environment

**Policy NK18: Protection of Local Green Spaces**

138 Local communities can identify areas of green space of particular importance to them for special protection. Paragraph 76 of the Framework states that:

*“By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.”*

139 Consequently, Local Green Space is a restrictive and significant policy designation. The Framework requires the managing of development within Local Green Space to be consistent with policy for Green Belts. A Local Green Space designation therefore provides protection that is comparable to that for Green Belt land.

140 National policy establishes that:

*“The Local Green Space designation will not be appropriate for most green areas or open space.”* (Paragraph 77)

141 Thus, when identifying Local Green Space, plan-makers should demonstrate that the requirements for its designation are met in full. These requirements are that the green space is in reasonably close proximity to the community it serves; it is demonstrably special to a local community and holds a particular local significance; and it is local in character and is not an extensive tract of land. Furthermore, identifying Local Green Space must be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

142 Whilst the Policy text is somewhat unclear, Policy NK18 designates 15 areas of Local Green Space. These have emerged through the plan-making process further to testing against the requirements of the Framework and consequently, their designation has regard to national policy.

143 National policy is explicit in respect of how Local Green Space should be protected. Policy NK18 fails to have regard to this and seeks to introduce its own approach to the protection of Local Green Space, entirely different to that set out in the Framework, without justification. I address this in the recommendations below.

144 Whilst each Local Green Space is identified on Figure 4, scale of that plan is such that it is not clear where the boundaries of each Local Green Space are. Given the importance of the designation, this is inappropriate.

145 Taking the above into account, I recommend:

- **Delete first paragraph of Policy NK18 and replace with *“The sites listed below and shown on the accompanying plans are protected as Local Green Space, where new development is ruled out other than in very special circumstances.”***
- **Provide a new set of plans clearly showing the boundaries of each Local Green Space, such that they can be identified against field boundaries and other relevant features (ie, at an easily legible scale on an OS Base or equivalent)**



**Policy NK19: Biodiversity**

146 Paragraph 109 of the Framework requires the planning system to minimise impacts on biodiversity and provide net gains in biodiversity where possible.

147 Generally, Policy NK19 affords protection to sites of ecological value, whilst providing a flexible approach such that development that is sustainable may still go ahead. The provision for a compensatory approach allows for circumstances where conservation and enhancement may simply not be possible or viable.

148 No changes are recommended.

**Policy NK20: Important Trees and Hedges**

149 Policy NK20 provides protection for important trees and hedges. The Policy has regard to Chapter 11 of the Framework, "*Conserving and enhancing the natural environment,*" which strongly promotes biodiversity.

150 The phrase "*not normally be permitted*" runs the risk of pre-determining the planning process and I address this below. The latter part of the Policy is repetitive and unclear, in that it requires proposals that retain trees to be accompanied by a survey in respect of the retained trees. Such an approach makes little sense and fails to have regard to Paragraph 193 of the Framework, as highlighted earlier in this Report.

151 I recommend:

- **Policy NK20, change to "...amenity value will not be supported. Proposals should...amenity value." (Delete rest of Policy)**

**Policy NK21: Landscape**

152 As established earlier, national policy requires development to:

*"...respond to local character and history, and reflect the identity of local surroundings..."* (Paragraph 58, the Framework)

153 Policy NK21 requires development to respect the landscape and has regard to national policy. However, no indication of what a *"significant effect"* might be is provided and it is unclear, given the importance of the landscape to the local community, why some forms of development should not be required to respect the landscape.

154 Requiring development to enhance the landscape and its various qualities goes well beyond national or local planning policy requirements. No substantive evidence is provided to demonstrate that it would be viable, or possible, for development to enhance the landscape and consequently, this part of the Policy fails to have regard to Paragraph 173 of the Framework.

155 Taking the above into account, I recommend:

- **Policy NK21, change to *"Development proposals should respect the quality, character, distinctiveness and amenity value of the Neighbourhood Area's landscape."***

**Policy NK22: Important Open Views and Vistas**

- 156 Policy NK22, together with Figure 4 of the Neighbourhood Plan, provides an indication of important views in the Neighbourhood Area. Little in the way of substantive information in respect of these “views” is provided and I am mindful that they are subject to change with the seasons, the weather and even the time of day. Furthermore, different people may have different opinions of what is important about any one particular view.
- 157 Given the above, it is not clear how it is possible or viable for all development to enhance the named “views.” Similarly, it is not clear how the “visual impact” of development on these views can be “carefully controlled.”
- 158 As set out, Policy NK22 does not have regard to Paragraphs 173 and 193 of the Framework, and does not provide a decision maker with a clear indication of how to react to a development proposal.
- 159 However, as above, national policy seeks to protect local character. This in mind, I recommend:
- **Policy NK22, change to “Development proposals should respect the open views and vistas identified below and in Figure 4: (List a) to d) here)”**

**Policy NK23: Archaeology and Geology**

160 Neither national nor local policy requires development to conserve and enhance archaeological and geological features and there is no substantive evidence to demonstrate that such an approach would be viable, or even relevant and appropriate, in all circumstances. Policy NK23 does not meet the basic conditions in this regard.

161 Further to the above, the second part of the Policy is unclear. For example, no example of what a “*compensatory measure*” is provided and consequently, the Policy fails to provide a decision maker with a clear indication of how to react to a development proposal in this regard. Further, the use of the phrase “*will not be permitted*” runs the risk of pre-determining the planning application process and preventing sustainable development from coming forward.

162 National policy establishes, via Chapter 12 of the Framework, noted earlier, a carefully designed approach to the protection of the nation's heritage assets. By way of contrast, Policy NK23 comprises an inappropriately blunt tool that could serve to prevent sustainable development, that might safeguard the assets the Policy seeks to protect, from coming forward. Policy NK23 does not meet the basic conditions.

163 I recommend:

- **Delete Policy NK23 but retain the supporting text, which provides a useful list**

Traffic, Parking and Transport

**Policy NK24: Traffic Management**

164 Paragraph 32 of the Framework states that:

*“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”*

165 As worded, Policy NK24 fails to have regard to this, but rather sets out a confusing negative policy, whereby development *“will not be permitted”* if it has a *“cumulative impact”* or a *“severe direct impact”* on *“congestion”* or highway safety. None of these terms are defined and consequently, the Policy provides little in the way of clarity for a decision maker.

166 However, the supporting text to Policy NK24 highlights local concerns with highway safety. Taking this and the above into account, I recommend:

- **Policy NK24, change to *“Development must not result in severe residual cumulative impacts on highway safety.”***

**Policy NK25: Parking**

167 Generally, Policy NK25 appears to reflect local concerns in respect of parking. However, as worded, the Policy is confusing. Criteria a) and b) conflict with the opening requirement of the Policy resulting in an approach that makes no sense. For example, it is not clear how a proposal that has a severe adverse impact on car parking provision would not have an adverse impact on parking issues.

168 The final part of the Policy seeks to impose car parking standards. In this regard, national policy is explicit:

*“If setting local parking standards for residential and non-residential development, local planning authorities should take into account: the accessibility of the development; the type, mix and use of development; the availability of and opportunities for public transport; local car ownership levels; and an overall need to reduce the use of high-emission vehicles.”*  
(Paragraph 39, the Framework)

169 There is no substantive evidence to demonstrate that Policy NK25 is based on such information and consequently, the policy fails to have regard to national policy.

170 Taking the above into account, I recommend:

- **Policy NK25, change to “Development proposals should not result in an overall reduction in car parking provision.” (delete rest of Policy)**

**Policy NK26: Footpaths, Footways and Bridleways**

171 Paragraph 75 of the Framework states that:

*“Planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks...”*

172 Generally, Policy NK26 protects and supports improvements to public rights of way and has regard to national policy. However, no indication is provided of what being *“viewed sympathetically”* means in the context of land use planning and this is a matter addressed below.

173 I recommend:

- **Policy NK26, change to *“The improvement or expansion of the Neighbourhood Area’s existing network of cycleways, footways and/or footpaths will be supported. Development proposals...footpaths.”***



Water Management and Aquifer

**Policy NK27: Sustainable Drainage Systems**

- 174 Policy NK27 seeks to impose onerous new requirements on planning applications in the Neighbourhood Area without any evidence to demonstrate that such requirements have regard to national policy or are in general conformity with the Core Strategy.
- 175 Further to the above, no evidence has been provided in respect of the viability for all new dwellings and extensions above 50 square metres to *“demonstrate the adoption of measures to minimise surface and roof water run-off”* or why such measures would, in all circumstances, comprise sustainable development.
- 176 Policy NK27 does not have regard to Paragraph 173 of the Framework and does not meet the basic conditions. I recommend:
- **Delete Policy NK27**

**Policy NK28: Sustainable Drainage Systems**

177 Policy NK28 seeks to impose requirements on other bodies not under the control of the Neighbourhood Plan.

178 I recommend:

- **Delete Policy NK28**

**Policy NK29: Aquifer**

179 Policy NK29 uses the phrase “*significant adverse impact*” without providing any indication of what this means, who will measure it, and on what basis. This results in a vague and imprecise policy that does not provide a decision maker with a clear indication of how to react to a development proposal. Furthermore, no indication of how any impact on aquifers will be measured, on what basis and who by, is provided. This adds to the ambiguous nature of the Policy.

180 Policy NK29 does not meet the basic conditions. I recommend:

- **Delete Policy AK29 and all supporting text on pages 56-58 inclusive, including Figure 3.**

## Developer Contributions

### Policy NK30: Developer Contributions

181 Policy NK30 sets out the general aspirations of North Kilworth Parish Council. It does not specify what contributions, from which development, will be provided for which project. No indication of how unknown contributions might achieve the projects identified is provided; and further, the projects themselves are vague – for example “*affordable housing*” and are not supported by evidence demonstrating deliverability – for example, “*improving parking, congestion and traffic calming.*”

182 Taking the above into account, there is an absence of evidence to demonstrate that Policy NK30 provides for planning obligations to be necessary, directly related to development, or fairly and reasonably related in scale and kind to development, as required by Paragraph 204 of the Framework.

183 However, rather than lose sight of the projects identified, I recommend:

- **Delete Policy NK30**
- **Replace with “*Community Action: The Parish Council will seek, where possible, to use financial contributions obtained through the Community Infrastructure Levy or negotiated planning obligations, for the following: (list here)*”**
- **Retain supporting text**
- **For clarity, Policy NK30 is recommended for deletion and a Community Action is not a land use planning policy**

## **7. The Neighbourhood Plan: Other Matters**

184 The Neighbourhood Plan cannot impose a requirement on Harborough District Council to monitor it on an annual basis.

185 The recommendations made in this Report will have a subsequent impact on Policy, page, figure and paragraph numbering.

186 I recommend:

- **Page 60, delete "...and Harborough District Council..."**
- **Update the Policy, page, figure and paragraph numbering, taking into account the recommendations contained in this Report.**

## **8. Summary**

187 Taking all of the above into account, a number of modifications are recommended in order to enable the Neighbourhood Plan to meet the basic conditions.

188 Subject to these modifications, I confirm that:

- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood 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, European Union (EU) obligations; and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.

189 Taking the above into account, I find that the North Kilworth Neighbourhood Plan meets the basic conditions. I have already noted above that the Plan meets paragraph 8(1) requirements.

## **9. Referendum**

190 I recommend to Harborough District Council that, subject to the modifications proposed, **the North Kilworth Neighbourhood Plan should proceed to a Referendum.**

### **Referendum Area**

191 I am required to consider whether the Referendum Area should be extended beyond the North Kilworth Neighbourhood Area.

192 I consider the Neighbourhood Area to be appropriate and there is no substantive evidence to demonstrate that this is not the case.

193 Consequently, I recommend that the Plan should proceed to a Referendum based on the North Kilworth Neighbourhood Area approved by Harborough District Council on 29 January 2014.

**Nigel McGurk, April 2017**  
**Erimax – Land, Planning and Communities**

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