

Dunton Bassett Neighbourhood Plan 2020 - 2031

Initial Comments of the Independent Examiner

Prepared by

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15th June 2022

Introductory Remarks

1. As you will be aware, I have been appointed to carry out the examination of the Dunton Bassett Neighbourhood Plan. I have carried out my initial review of the Plan and the accompanying documents which I have been sent. I visited the plan area on Monday 13th June 2022. I spent nearly two hours within the plan area, mostly walking through the village as well as driving around the parish.
2. I have not yet concluded whether I will be able to deal with the examination solely based on the written material or whether it will be necessary for me to call for a public hearing. In many ways this will be dependent upon the responses I receive to the questions that I have to raise. Most of the points seek clarification based on what I have read in the plan or saw on my site visit and this is quite common in the examination process but some matters are of more fundamental importance which do go to the heart of the whether the legal tests have been satisfied. Most of the questions will require a response from the Parish Council except where I specifically refer to the District Council although I would not object if the other party were to also provide a view.
3. Once I receive the responses to these matters, I will let all parties know whether a public hearing will be required. If one is required, I will at that stage set out the matters that I would wish to hear further submission but at this moment it is too early to make that decision.

Regulation 16 Comments

4. I would firstly like to offer the Parish Council an opportunity to comment on the representations that were submitted to the plan as part of the Regulation 16 consultation. I have requested Matthew Bills at Harborough Planning Depot to forward these. I would also ask they be placed on the Council's website.
5. I am not expecting a response in respect of every single point raised at Regulation 16 or indeed every representation, just those comments that the Parish Council feels it wishes to respond to.

Compliance with European Legislation

6. One of the basic conditions I need to examine is whether the plan does or does not breach, or is an otherwise compatible with EU obligations. In particular, I am focussing on those set out in Directive 2001/42/EZ – the Strategic Environmental Assessment (SEA) Directive. This was incorporated into the U.K.'s legislation by the Environmental Assessment of Plans and Programmes Regulations 2004, known as the SEA Regs.
7. It appears that the question of whether an environmental report would be needed, only became apparent late in the production of the neighbourhood plan.

8. My understanding is that the District Council's SEA Screening Report was initially prepared in January 2021 just before the Plan was submitted under Regulation 15 and this concluded that it was unlikely that there would be any significant environmental effects arising from what was the Regulation 14 draft version of the plan, which were not already covered by the Local Plan's Sustainability Appraisal. There is no indication in the document that this was a draft or preliminary determination, except in paragraph 6.2 of the report which noted that the three consultation bodies had not been consulted but they would be prior to the Council's determination. An un-informed reader may have concluded that this was the actual determination.
9. Can Harborough District Council confirm whether it was intended that this January 2021 Screening Determination was to be treated as a Proposed Screening Determination, having regard to the provisions of Regulation 9 of the SEA Regulations 2004, as it would not have been in a position to issue that formal determination without consulting the three consultation bodies.
10. Clearly the Parish Council was under the impression that an SEA Assessment would not be required, as set out in paragraph 3.11 of the Basic Conditions Statement, although this was dated June 2021. It did however note that an environmental report was to be undertaken and noted that this was included in the submission documentation.
11. This was notwithstanding the fact, that following receipt of the comments from Historic England when it was consulted, the District Council had issued a further Strategic Environmental Assessment Determination, dated March 2021, which now concluded that the housing allocation in Policy H1 would have significant environmental risks. It stated in paragraphs 6.1 and 6.2 of that Determination, that "the Council agrees with the view of Historic England and a further appropriate assessment of the reasonable alternatives should be undertaken to assess the effects on the historic environment especially in relation to the scheduled monument". That appears to be treated by the Parish Council as a screening opinion which was calling just for a Strategic Heritage Assessment, as referred to in the final paragraph of Section 8.1.2 of the plan.
12. The District Council's position appears somewhat ambiguous in terms of providing a clear determination as to whether a SEA was being required, as it accepts that the plan would have the possibility of causing significant environmental effects, based on potential harm to heritage assets. This is normally the threshold for determining that an SEA needs to be prepared.
13. I would therefore like the District Council to explicitly confirm whether the Screening Determination dated March 2021 "screened in" the need for a

SEA or whether it concluded that an SEA was still not being required, but it required a separate report considering the heritage impacts of alternative sites to be prepared and this would be intended to be beyond the terms of the SEA Regulations 2004.

14. I need to have clarity on this issue as it raises fundamental questions as to whether the document prepared by RPS on behalf of Richborough Estates, which has been submitted by the Parish Council as part of the submission documents, and is described as a Strategic Heritage Assessment, is actually constituting an Environmental Report under the provisions of Regulations 12 and 13 of the SEA Regulations. The report is described as an “Environmental Report” as Appendix 1 of the Parish Council submission as well as appearing also as Appendix 8.
15. Can I also see clarification from either the District Council or the Parish Council as to whether Historic England have been specifically consulted on that RPS document and whether it agrees with the conclusions set out? It appears that RPS report is also unclear of as to status in that the Executive Summary appears to refer to it being an SEA.
16. If it is to be treated as an “environmental report” under the SEA Regulations, I need to be satisfied that the requirements set out in Schedule 2 of the SEA Regulations have been complied with. I would also wish to be informed whether the District Council issued a Scoping Determination in respect of what the report was required to cover and whether there was consultation on that scoping.
17. In addressing these questions, the District Council may wish to seek legal advice as the determination could be open to challenge, and its response could determine whether the statutory requirements of the SEA Regulations have been met.
18. The District Council may wish to consider issuing a revised screening determination which would remove any ambiguity as to whether the neighbourhood plan does or does not require a Strategic Environmental Assessment, as recommended by Historic England.
19. Finally, and on a related issue, can I be provided with a copy of the District Council’s HRA Screening Determination under the Conservation of Habitats and Species Regulations 2017?

Site Selection

20. I have considered the site selection analysis which have led to the identification of the allocation and reserve sites. I have also read the Reg 16 representation on an excluded site and the process raises a number of questions which I would seek further comments on.
21. Can the Parish Council confirm that all the site selection criteria are given the same weight e.g. distance to village centre is weighted the same as agricultural land classification? It appears that agricultural land is required

to be relocated – is that really feasible, surely if developed it will be lost?
Why is a large site capacity said to be a red?

22. It appears that the net score is the difference between the net greens and net reds and the number of amber sites do not count- why do criteria that score as amber are not really considered in the weighting? It seems a somewhat unusual approach, but it may be that I am misunderstanding the methodology adopted.
23. I have identified some apparent anomalies which could affect the scores e.g. the allocation site in Policy H1 scores green in respect of adjoining uses, as it is proposed to change the settlement boundary to include the allocation site, but other competing sites which could be chosen could equally be included in the settlement boundary if allocated and scored accordingly.
24. Can the Parish Council confirm whether there was any public consultation regarding the criteria to be used for site selection and has there been any community input into the site selection. Would the Historic England's concerns regarding the impact on the setting of the scheduled ancient monument change the scoring of Site 9?

Policy H1

25. I note that the Highway Authority has objected to the site access being from the A426, at Regulation 14 stage. Can the Parish Council confirm whether it has had discussions to resolve their concerns as I note Leicestershire CC have not objected specifically at Reg 16? If an alternative access is required as access is not possible from the A426, can the Parish Council offer any suggested access possibilities, as it seems that possibilities are very limited? Does the policy need to refer to where access should (and should not) come from – in the same way that it does for the reserve site
26. I note that only part of the current field is being proposed for residential development – how was the extent of the site allocation decided upon bearing in mind the absence of any defining features on the ground to establish a coherent boundary?
27. I note the intention is to secure footpath improvements which could allow easier pedestrian access from the new housing to the school, village hall and the pub. Is the intention to take the footpath through the village play area?
28. What is the likely size of the car parking for the car park to serve the cricket club and the village? Having regard to the restrictions imposed by Regulation 122 of the Community Infrastructure Levy Regulations 2010, would it be better to actually identify and allocate an area for that car park and could it act as part of the buffer to reduce the impact of wayward cricket balls, an issue identified by Sports England? Equally, how much

land is likely to be required for the expansion of the existing playground?
Can the Parish Council offer a view on the amount of residual land for the 50 proposed houses allowing for the car park, playground extension and the required public open space that would be available?

29. Please can the Parish Council clarify the statement as to how bungalows will be counted on the basis of 2 for 1 affordable unit- is the intention that one affordable bungalow will be counted as 2 affordable units allowing one additional market unit?

Policy H2

30. Is there a contradiction in allocating a housing site, albeit a reserve site in an area that is also proposed as an Area of Separation? Would it be better to exclude that part of the AOS which could possibly be developed, so as not to undermine its purpose as a protected gap?

Policy H3

31. With the new Local Plan moving away from settlement boundaries, does the District Council have a view as to whether their reintroduction is consistent with the strategic policies in the adopted Local Plan.
32. In terms of the residual land left to the north of the Site A allocation site, bearing in mind the site will be surrounded by residential development on all four sides, what is the justification for excluding it from the village envelope, so that any development on that land has to be subject to countryside protection policies? Was any consideration given to swap the allocations over, so that the new houses would be situated closer to the existing development and therefore maintain the open aspect of the proposed allocation site as part of a swathe of land to the south? I note that the site assessment considered the larger combined site. I wonder whether that would give a more logical settlement boundary- rather than leaving an isolated island surrounded by residential properties.

Policy H4

33. I have noted there is a disparity between this housing mix policy, which requires a minimum of 60 % of units to be three bed or smaller whilst the requirements on the two housing allocations (H1 and H2) sets a minimum level of 66% - is there a reason for the difference or should the mix be same?

Policy H5

34. I note that the policy is looking for housing development to be predominantly two storeys in height. Is that consistent with the aspiration for the main allocation site where Policy H1 is seeking to have more bungalows?

35. Is there an inconsistency between the requirements in f) which allows stone/brick walls and the requirements in criterion o) which looks for gaps to be inserted to allow connectivity for hedgehogs and other small mammals?
36. There are numerous areas where the plan has stipulations regarding external lighting. Are the requirements in d) consistent with the requirements with p) and q) and again the issue of external lighting is also dealt with by a separate policy, Policy H8? Would it be better to have a single consistent policy that deals with external lighting, rather than a decision maker seeking compliance with 4 separate policy elements?

Policy H6

37. Can the District Council confirm whether the Council's Housing Allocation Policy allows priority to be given to affordable housing in the parish to those persons with a local connection or are allocations made on the basis of housing need?

Policy H7

38. Can the Parish Council confirm whether windfall development on infill/redevelopment sites would be supported even though they are situated outside the settlement boundary?
39. Can it also confirm whether all the criteria have to be met for a proposal to be supported?

Policy ENV1

40. As the Wells Lane site is already designated as a local green space by the Local Plan, is there any value to having that designation conferred by the neighbourhood plan?
41. When conducting my site visit, I wondered why the extension to the All Saints Churchyard was not included within the proposed local green space, as there appeared no features on the ground to indicate that it should be treated differently from the remainder of the churchyard. It would seem unlikely that the criteria to justify the loss of the proposed important open space would ever be triggered, in any event.
42. Can the Parish Council confirm whether the owners of The Beats was consulted on the possibility of the site being designated as local green space, a practice that is advocated by the Secretary of State and was any response received?
43. I walked the public footpath crossing the site. Can the Parish Council confirm whether users of the remainder of the site, use it with the explicit consent of the landowner and can the Parish Council expand on the types of informal recreational uses that this pasture land is used for, by the local community.

Policy ENV2

44. Can the Parish Council explain how the community uses Site H – Parish Council Field? It did not appear to me to be managed in a way that would allow community use.
45. Can the District Council clarify whether the sites identified as the 2016 Open Space, Sports and Recreation sites are protected by local plan policy and are they identified in any development plan document or would their identification be through this policy?
46. Can I ask the Parish Council to comment on whether a future need to expand the primary school, which it supports under Policy CF3, and which includes a criterion that there should be no *significant loss* of outdoor recreation space, would be a better, more site specific policy for protecting the school's open space, rather than the different and more generic criteria, for the same area which is set out in this policy? That would create a problem for a decision maker as to which policy would apply, say if a proposal required a classroom building to be built on the school's open space. Would it be better for the school's field to be protected by Policy CF3?
47. If the Churchyard (and possibly its extension) has a higher level of protection as Local Green Space than provided by this policy, is there any value in providing a lower status of protection through inclusion under this policy?

Policy ENV 3 and 5

48. There appears to be a degree of duplication with the same sites being protected by these two different policies with their own separate criteria. That raises the question for a decision maker as to what policies to apply to any proposals that effect the same site. e.g., Policy ENV 3 requires a balance between the benefits of the development against its significance and Policy ENV5 which requires the consideration of the mitigation hierarchy. In those cases, what policy should apply?
49. I note that Figure 7 has sites shown in green as "Woodland Habitat (a neighbourhood Plan inventory)" – where would I find evidence of their natural environment significance?

Policy ENV6

50. Should the 4 sites shown in yellow in Figure 9 be listed in the policy? There is no need to refer to the scheduled monument in the listing, as that has its own statutory protection.

Policy ENV7

51. Can the District Council advise when it last conducted a review as to whether the centre of Dunton Bassett should be considered as a Conservation Area and what was its conclusion? Does it plan to

reconsider whether the village centre warrants statutory conservation area recognition and if so when? Does the District Council have a view on the merits of having this protective policy in lieu of conservation area designation?

Policy ENV10

52. Can the Parish Council justify the inclusion of the residential enclave, Durston Road, on the outskirts of Broughton Astley within the area of separation, as it is already developed?
53. Can the Parish Council explain why this particular gap between settlements is especially susceptible to coalescence, which cannot otherwise be protected by countryside protection policies?
54. What is the rationale for the exclusion of the area of the land to the north of Old Coach Road- is it meant to coincide with the reserve housing site?

Policy ENV11

55. National guidance is that neighbourhood plan policy should not repeat national and local plan policy, which already applies. Can the Parish Council highlight to me the particular local dimension that this policy brings to the management of flood risk in the parish which is not already covered by existing policy ?

Policy E2

56. Is the reference to “planned limits of development” meant to be the same as the proposed settlement boundary? The restrictions on types of businesses in the countryside, as part of the policy in a), appears to be at odds with the NPPF which seeks to support all types of businesses in rural areas through ...well designed new buildings. Is there specific justification, in Dunton Bassett parish that justifies a more restrictive approach?

Policy E5

57. Is there a contradiction between the requirements in Policy E2a) and E5a in terms of where new tourism developments should take place?

Policy T3

58. Can the District Council inform me what its Local Validation Lists sets as the threshold as to when a Transport Assessment is required to accompany a planning application?

Concluding Remarks

59. Whilst I have raised a lot of questions, I remain open minded as we go forward with the examination and I look forward to the responses. I have to say my greatest concern at the moment is the status of the SEA and

whether an SEA was actually required and if it was whether the Strategic Heritage Assessment meets the SEA Regulation's requirements.

60. I am sending this note direct to both Dunton Bassett Parish Council, and Harborough District Council. I would request that all parties' response to my questions should be sent to me by 5 pm on **15th July 2022** and also be copied to the other party. I have given a longer period than I would normally set at this stage, because of the range of questions that I am seeking responses to.

61. I would also request that copies of this note and the respective responses are placed on the Neighbourhood Plan's and also the Borough Council's website.

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John Slater Planning Ltd

Independent Examiner to the Dunton Bassett Neighbourhood Plan

16th June 2022