

AUDLEM NEIGHBOURHOOD PLAN 2015 - 2030

(Submission Version 27th July 2015)

Report of the Examination into the Audlem Neighbourhood Plan
2015 - 2030

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<u>Contents</u>	Page(s)
1. Introduction	1
- Neighbourhood planning	1
- Appointment and role	1
2. Preliminary Matters	2
- Public consultation	2
- Other statutory requirements	2
3. The Extent and Limits of an Examiner's Role	2 - 4
4. Consideration of Objections	4
5. Public Hearing	4 - 5
6. The Basic Conditions and Human Rights	5 - 6
- Regard to national policies and advice	5
- Contributing to the achievement of sustainable development	5
- General conformity with the development plan	5 - 6
- EU obligations	6 - 7
- European sites	7
- Human rights	7 - 8
7. The Draft NDP	8
8. The first four chapters	8 - 10
9. Chapter 5 Audlem Neighbourhood Plan Vision	10 - 11
10. Chapter 6(1) Housing Policies	11 - 15
11. Chapter 6(2) Design Policies	15 - 20
12. Chapter 6(3) Business, Tourism and Employment Policies	20
13. Chapter 6(4) Community Well-Being Policies	20 - 21
14. Chapter 6(5) Traffic and Parking Policies	21 - 22
15. Chapter 6 (6) Mitigating the Impact of Development	22
16. The Glossary of terms	22
17. Review	23
18. The Referendum Area	23
19. Summary of Main Findings	23 - 24
Appendix A: Recommended Modifications	
Appendix B: Abbreviations	

Report of the Examination into the Audlem Neighbourhood Plan 2015 - 2030

1. Introduction

Neighbourhood planning

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

2. This report concerns the Submission Version of the Audlem Neighbourhood Development Plan 2015-2030 (“the Draft NDP”).

Appointment and role

3. Cheshire East Council (“CEC”), with the agreement of Audlem Parish Council (“APC”), has appointed me, to examine the Draft NDP. I am a member of the planning bar and am independent of CEC, APC, and of those who have made representations in respect of the Draft NDP. I do not have any interest in any land that may be affected by it. I have been greatly assisted by Ms Liz Beth, who like me is an NPIERS trained and approved neighbourhood planning examiner.

4. My examination has involved considering written submissions and two unaccompanied site visits. These have included the main village of Audlem itself, Copthorne, Cox Bank, Little Heath, Salford, Swanbach, the immediate vicinities of the plot being promoted by Barton Willmore on behalf of Plotbuild and of the sites of the two recent housing planning permissions mentioned in the Draft NDP, and the Canal from Moss Hall to the boundary with Shropshire.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 13 below applies and, if appropriate, to consider the referendum area.

2. Preliminary Matters

Public consultation

6. The consultation met the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”). I am satisfied that APC took public consultation seriously and that proper, genuine and sufficient consultation resulted from this approach. I also bear in mind that parish councillors are democratically accountable, subject to a code of conduct and likely to be in close contact with the community they represent.

Other statutory requirements

7. I am satisfied of the following matters:

- (1) The Draft NDP area is the parish of Audlem. APC is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
- (2) The Draft NDP specifies the period for which it is to have effect, namely 2015 to 2030, does not include provision about development that is excluded development (as defined in TCPA s61K),¹ and does not relate to more than one neighbourhood area (PCPA s38B (1));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2)); and
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)).

8. To date all relevant statutory requirements have been met.

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

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

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
- (d)² The making of the Plan contributes to the achievement of sustainable development;

¹ Excluded development includes: (a) development that consists of a county matter; (b) certain waste development; (c) development within Annex 1 to the EIA Directive and (d) a nationally significant infrastructure project.

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

- (e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- (f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and
- (g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.

10. There is one prescribed basic condition:³ *“The making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (either alone or in combination with other plans or projects)”*.

11. The combined effect of TCPA Sch 4B para 8(6) and para 10(3)(b) and the Human Rights Act 1998 means that I must consider whether the Draft NDP is compatible with Convention rights. ‘Convention rights’ are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights (“the Convention”), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention’s Article 6(1), 8 and 14 and under its First Protocol Article 1.

12. In my examination of the substantial merits of the Draft NDP, I may not consider matters other than those specified in the last three paragraphs. In particular I may not consider whether any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met. Rather it is clear that Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is not my role to write or to rewrite a neighbourhood development plan for Audlem.

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

³ Sch 2 of the General Regulations prescribes this.

- (a) That I consider need to be made to secure that the Draft NDP meets the basic conditions mentioned in para 8(2) of Sch 4B as modified;
- (b) That I consider need to be made to secure that the Draft NDP is compatible with the Convention rights;
- (c) That I consider need to be made to secure that the Draft NDP complies with the provision made by or under s61E (2), s61J and s61L;
- (d) That specify a period under s61L (2)(b) or (5); and
- (e) For the purpose of correcting errors.

4 Consideration of Objections

14. The representations received in respect of the consultation under the General Regulations reg 16 consisted of 204 pages. I have given that and indeed all objections careful consideration, but have not felt it necessary to comment on each of them. Rather in accordance with the statutory requirement I have concentrated on giving reasons for my recommendations.⁴ Where I am required to consider the effect of the whole Draft NDP, I have, of course, borne it all in mind, including, where appropriate, recommended modifications.

15 Of those 204 pages, 164 consisted of representations from Gladman Developments Ltd. These have added substantially to the cost of this examination and the time it has taken to complete it through prolixity and repetitiveness, including repeatedly raising an argument that the High Court has previously rejected without drawing attention to the court decisions involved. The last point is regrettable since many examiners are not legally qualified and most parish councils lack legal support. The repetitiveness is also of concern, particularly where it is coupled with a lack of particulars. I shall give two examples. There are 18 references to basic condition (f), an excessive number even if its submissions in respect of it were correct. There are 51 references to basic condition (e), none of which identify a policy in the development plan with which there is said to be a lack of general conformity. There are some references to emerging policy, but the objector ought to be aware that this is not relevant to basic condition (e). This adds substantially and unnecessarily to the cost of a process that is intended to be relatively straightforward for bodies whose members are volunteers seeking to work for the benefit of their communities.

5. Public Hearing

16. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However an examiner must cause a

⁴ TCPA Sch 4B para 10(6).

hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. Neither applied in this case. I therefore did not hold a public hearing.

6. The Basic Conditions and Human Rights

Regard to national policies and advice

17. The first basic condition requires that I consider whether it is appropriate that the plan should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but it is intended to have and does have a significant effect.

18. The principal document in which national planning policy is contained is the National Planning Policy Framework (March 2012) (“the Framework”) and I have borne that in mind. I have also borne in mind national Planning Practice Guidance (“NPPG”), particularly its section on neighbourhood planning, and the Written Ministerial Statement of 25th March 2015 (“the WAS”).

Contributing to the achievement of sustainable development

19. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft NDP, or the Draft NDP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the making of the Plan as a whole. It does not require that each policy in it contribute to sustainable development.

20. The bulk of the Framework constitutes guidance on sustainable development. As its para 6 says, “*The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development... means in practice for the planning system.*”

General conformity with the development plan’s strategic policies

21. The third basic condition means that I must consider whether the Draft NDP is in general conformity with the strategic policies contained in the development plan for the area of the authority. The development plan means the adopted development plan, not any emerging plan. This accords with normal usage in planning statutes and has been confirmed

by Supperstone J in BDW Trading (t/a Barratt Homes) v Cheshire West and Chester Borough Council,⁵ where he said:

... the only statutory requirement imposed by Condition (e) is that the neighbourhood plan as a whole should be in conformity with the plan as a whole. Whether or not there was any tension between one policy in the Neighbourhood Plan and one element of the emerging Local Plan was not a matter for the Examiner to determine.

22. Lewis J quoted this without criticism in R. (Gladman Developments Ltd) v Aylesbury Vale DC.⁶ Even if I had any doubts about this (and on the contrary I am of the respectful opinion that it is correct), I would be obliged to follow it. The same applies to CEC and APC. I also note that the argument, which Gladman is advancing in this examination, against an NDP in advance of a Local Plan was expressly rejected in the examiner's report that preceded the BDW case and implicitly rejected by Supperstone J in that judgment. I do not accept the positions of Barton Willmore and of Gladman in respect of the emerging Local Plan.

23. The adjective 'general' allows a degree of (but not unlimited) flexibility and requires the exercise of planning judgement. This condition only applies to strategic policies. In assessing whether a policy is strategic, one must bear in mind the advice in National Planning Practice Guidance para 074:⁷

24. The development plan for the area consists of the saved policies of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (adopted 2005), the Cheshire Replacement Waste Local Plan (adopted 2007), and the Cheshire Replacement Minerals Local Plan (adopted 1999). No objector has identified any policy (strategic or otherwise) in any of these with which there is a lack of conformity. The extensive references to basic condition (e) in Gladman's objection are clearly based on an erroneous argument, which is contrary to BDW, that "*the development plan for the area of the authority*" includes an emerging plan.

25. I am satisfied that there is no breach of basic condition (e) and that it is not necessary to consider it further.

EU obligations

26. The fourth basic condition requires me to consider whether the Draft NDP breaches or is otherwise incompatible with, EU obligations. I have in particular considered the following Directives: the Strategic Environmental Assessment Directive (2001/42/EC); the

⁵ [2014] EWHC 1470, para 82

⁶ [2014] EWHC 4323 (Admin), [2015] JPL 656.

⁷ Neighbourhood Planning para 074, Reference ID: 41-074-20140306.

Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); and the Water Framework Directive (2000/60/EC). I note the Environment Agency's desire for a mention of the Water Framework Directive, but there is no obligation for NDPs to do this. I am also satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality Directive. I am satisfied that nothing in the Draft NDP breaches or is otherwise incompatible with EU law. I have been particularly impressed both in respect of this basic condition and in respect of human rights by the care that the Draft NDP takes in respect of people who are disadvantaged as a result of age.

27. Gladman has raised an objection in respect of this basic condition arguing that the sustainability appraisal ("SA") undertaken by APC was *"overly simplistic and does not meet the requirements of the PPG"*. As the PPG makes clear the SEA Directive *"may be of relevance to neighbourhood plans"*. It is not necessarily so and the objector's submissions do not make it clear why it would be relevant in the case of this small parish. Neither the Environment Agency, nor Natural England, consider that an SEA is required so far as their responsibilities are concerned. I accept the SEA screening report. (This was publicly accessible via a link in the Basic Conditions Statement.) Further nothing that I have read or seen indicates that this is the type of NDP for which an SEA would be needed. There is no legal requirement for an NDP to have an SA as set out in PCPA s19. The assertion in an objection that *"The requirement to produce a SEA/SA goes to the core compliance of basic condition (f)"* is wrong. What must be demonstrated is how an NDP will contribute to achieving sustainable development. That comes under basic condition (d), which needs fuller consideration. I am satisfied that there is no breach of basic condition (f) and that it is not necessary to consider it further.

European site and European offshore marine site

28. The Habitat Regulations Screening Opinion from CEC concluded that there were no European sites that would be affected by the proposals within the Plan. No objection indicates that any European site or a European offshore marine site would be or might be affected by the Draft NDP and no such site has been identified in or in the vicinity of the parish. This matter can be dealt with briefly in advance of detailed consideration of the contents of the Draft NDP. I am satisfied that it is not likely to have a significant effect on any such site.

Human Rights

29. It is also necessary to consider whether the Draft NDP would cause any Convention right to be breached. English Planning law in general complies with the Convention. This matter can also be dealt with briefly in advance of detailed consideration of the contents of

the Draft NDP. I have considered whether anything in the Draft NDP would cause a breach of any Convention right. In particular I have considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. Nothing in my examination of the Draft NDP indicates any breach of a Convention right.

30. It will be apparent from the above that, having been satisfied in respect of three basic conditions and human rights, I have needed to concentrate of the first two basic conditions. My recommended modifications are those that I consider need to be made to secure that the Draft NDP meets these basic conditions and to correct errors.

7. The Draft NDP

31. The Draft NDP has a clear structure, being divided into nine chapters. Of these chapter 6, which details policies, has six sections relating respectively to: housing; design; business, tourism and employment policies; community and well-being policies; traffic and parking policies; and mitigating the impact of development: S106 and the Community Infrastructure Levy. It is this chapter that has the greatest level of objection and requires most consideration

32. I commend the Draft NDP for being well written, logical, clear, appropriately concise and intelligible to a reasonably intelligent lay reader with no expertise in town and country planning.

33. The following sections of the report consider whether modifications are needed to make the Draft NDP comply with the first two basic conditions. I have concluded that some modification is necessary, but that with this, the Draft NDP can proceed to a referendum. My recommended modifications are in Appendix A. I have not in this report given detailed written consideration to every part of the Draft NDP. I have, before writing it, considered the whole of the Draft NDP.

8. The first four chapters

34. The first chapter's second paragraph begins incorrectly. I have no other concerns in respect of the first chapter.

Recommended modification

The first chapter's second paragraph should begin, "*The National Planning Policy Framework states...*"

35. The second chapter makes undisputed points that provide a helpful element of the Draft NDP. Among these undisputed facts is the population of Audlem parish, 1,900. I have no substantial concerns with the chapter. Rather I commend it.

36. In general I take the same view of chapter 3. However there are some minor matters that should be corrected:

Recommended modifications:

- (1) The words at the top of page 10 “, which is likely to be enhanced as its location within the Weaver Valley Regional Park becomes established” should be deleted for the reason given in footnote 7.
- (2) The words in footnote 7 “Plans for the development of the Park now no longer exist.” Should be deleted since they relate to deleted text.
- (3) The words “Working age adults” in the table at the bottom of page 10 should be replaced by **“People aged 16 to 64”** since 16 and 17 year olds are minors.
- (4) Add a footnote at the end of paragraph 3.5.6 on page 13: **“Other than a single, non-peak-period service to Hanley of one bus in each direction on Fridays only”** since otherwise the text is wrong.

37. I have given careful consideration to paragraph 4.1.1. The sites are concerned are greenfield in a prosperous part of England. They have recent planning permissions. Nothing in the papers that I have seen, or that I saw on my site visits, gives me reason to doubt that they will be developed. Much the larger of these two developments was promoted by an objector, which has not given any reason why it should not go ahead. I also note that Inspector Frances Mahoney in the Appeal Decision of 7th January 2015 in respect of this larger site found that it would the appeal proposal “*would contribute to the unmet housing need within the Borough*”. I am satisfied that the two sites are likely to be developed. This is not a case where there is a need to allocate land in case the development that has been permitted does not materialise.

38. The matter is being considered in the examination of the emerging Local Plan, which will have the advantage of considering the relative situations of different settlements. In the context of the Draft NDP, I am satisfied that significant weight should be given to the nature of the parish Audlem, which with a population of 1,900, limited employment in its own area and almost no public-transport to main centres of employment would, if excessive development were allowed, be likely to become a dormitory settlement in which most of its residents travelled to and from work by private motor cars. Of course, in the event of the currently emerging Local Plan being adopted and requiring more development in Audlem, PCPA s 38(5)⁸ could apply. Having borne these factors in mind I have concluded that paragraph 4.1.1 does not require modification.

⁸ This provides “*If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.*”

39. The penultimate paragraph on page 18 is wrong in respect of its comment on s106 agreements.⁹ It is also no longer appropriate given my recommended modifications in respect of Community Infrastructure Levy (“CIL”).

Recommended modification

Delete the penultimate paragraph on page 18 and do not replace it.

40. The current map’s settlement boundary is out of date, no longer corresponding with the text of the Draft NDP. There should be a map that clearly defines the settlement boundary to which the plan and its policies refer.

Recommended modification

The map at the top of page 19 should be altered to show clearly at the full settlement boundary. If it is necessary to make this clear to readers, the map should be larger than the present map.

41. I note the consideration given to the more elderly residents in this chapter and elsewhere in terms of access to hospitals (page 14) and other health needs (page 42), need for smaller homes (pages 24 and 29) and priority for affordable housing (page 30). This contributes to social sustainability and also complies with APC’s public-sector equality duty under s149 of the Equality Act 2010.

9. Chapter 5 Audlem Neighbourhood Plan Vision

42. Barton Willmore is generally supportive of the Vision for Audlem, but considers that it should provide for modest growth. The vision refers to “*gradual, managed, well planned development*”, which is not far from Barton Willmore’s position. Gladman have stated that the vision provides “*an anti-growth strategy that is contrary to the entire ethos of the Framework, PPG and the Neighbourhood Plan Basic Conditions*” and is “*concerned with the use of ‘gradual’ as this will effectively delay the delivery of sustainable development coming forward counter to the requirements of national policy*”. I disagree. Without restraint on development, Audlem would be likely increasingly to become a dormitory settlement for almost entirely private-motor-vehicle based commuting and such development would not be sustainable. The Draft NDP (as modified by my recommended modifications) is part of a positive vision for the future. In such circumstances there is no obligation for it to avoid restrictions on growth. The use of the word “*gradual*” is justified. The use by objectors of the phrase “*sustainable settlement*” to describe Audlem may have the potential to mislead. At present under the emerging Local Plan, it is in the third tier of the settlement hierarchy as a Local Service Centre, below “Principal Towns” and “Key Service Centres”. Whether that remains the case will be a matter for the inspector examining the Local Plan. He has

⁹ Inspector Frances Mahoney’s Appeal Decision of 7th January 2015 paragraph 8.

expressed a view that the settlement hierarchy is “*justified, effective and soundly based*”. There is nothing that surprises me about the description “*Local Service Centre*” being applied to Audlem and nothing that I have seen or read that would justify policies that facilitated major expansion of Audlem.

43. Each of the three dimensions of sustainable development is reflected in the chapter. I do not recommend any modification to it.

10. Chapter 6 (1) Housing policies

The Objective

44. Barton Willmore supports the housing objective’s first indent, but objects to its second and third indent to give greater flexibility and to reflect policy H6. The second indent is in the context of Audlem justifiable. The third indent is too demanding. A development may be a single house or a pair of houses. To avoid an excessive requirement on such developments and to ensure consistency with policies H5 and H6, I recommend that the third indent be modified.

Recommended modification

The third indent of the housing objective is modified to read:

- **requiring that all new developments of 3 or more dwellings include a substantial proportion of smaller and affordable properties**

Policy H1

45. This Policy has attracted objections from developers, who describe the settlement boundary as restrictive of development and not based on adequate evidence. The revised settlement boundary has been expanded from the previously limit, to include the land for the 146 new dwellings that have recently been permitted. It is also supported by evidence and CEC’s guidance on reviewing settlement boundaries and I am satisfied that this evidence is proportionate and sufficiently robust for the Draft NDP.

46. The new settlement boundary as set out in the Draft NDP will not restrict any future decisions in the emerging Local Plan as to the location of the settlement boundary. To avoid the risk being rendered out of date by PCPA s38 (5), possibly quickly, H1 should cover any extension to the settlement boundary brought about by a new Local Plan.

47. Parts of the text under paragraph 6.1.2.3 are more appropriate for a policy than for supporting text. I recommend the conversion of the text to policy.

48. The constraints map under paragraph 6.1.2.3 is out of date and unnecessarily complex. It should be modified: to show the new settlement boundary; and by removing immaterial information – there seems to be no part of a Conservation Area that is subject to

an article 4 direction - and to simplify it – there is no need to distinguish between Flood Zones 2 and 3 for the purpose of development in a parish that is not highly constrained by these zones.

49. With the other modifications to the Draft NDP I am satisfied that policy H1 will not be excessively restrictive. However it needs rewording.

Recommended modification

Footnote 31 should be deleted and not replaced.

The policy should be modified to read:

Policy H1: Settlement Boundary and Number of New Homes

A settlement boundary is defined and shown on map... on page... of the ANP

Any additional new housing in excess of those permissions granted at 27 April 2015 will be supported within this settlement boundary and within any extended settlement boundary established by a Local Plan where it accords with other policies outlined in this Plan. Outside the settlement boundary residential permission will not be permitted except in circumstances specified in this Plan.

Development of isolated dwelling houses in rural areas will be resisted except where these accords with national policy. Development of dwelling houses in flood zones 2 and 3 will be resisted.

The second and third grammatical paragraphs of paragraph 6.1.2.3 should be deleted.

The Audlem Constraints map should be altered by defining the new settlement boundary, deleting the reference to Conservation Areas subject to an article 4 direction and by amalgamating its notation for flood zones 2 and 3.

Policy H2

50. The phrase “*within the confines of existing housing land*” is imprecise in the first two indents. It should be replaced by “***within the curtilage of an existing dwelling***”.

51. Matter that should be within the policy is contained in a footnote and in supporting text. To the extent that this is necessary it should be in the policy.

52. The fourth indent requires developers to provide a positive environmental assessment for any brownfield and infill development. It is not the role of a plan to extend statutory requirements for the documents that must be provided. Subject to this point, I consider that the policy is acceptable and that read with other policies in the Draft NDP would not cause a breach of any basic condition.

53. I note the Draft NDP by adding infill land to brownfield is more favourable to development in this respect than the Framework. There is no reason why it should not be.

Recommended modification

The policy should be modified to read

Policy H2: Redevelopment of infill land and brownfield land

Permission will be granted for residential developments of 10 or fewer dwellings that are well designed and meet all other relevant policies within this Plan and:

(1) are within the settlement boundary as defined in policy H1 (including any extended settlement boundary established by a Local Plan) and do not harm residential amenity of neighbours as defined in Policy D3 of this plan; or

(2) are outside the settlement boundary and:

(a) fill a small, restricted gap in the continuity of existing frontage buildings where the site is closely surrounded by buildings normally within an existing dwelling's curtilage; or

(b) are located on brownfield land.

For the purpose of this policy:

“brownfield land” has the same meaning as “previously developed land” in the National Planning Policy Framework: and

“infill land” refers to land normally within the curtilage of existing properties that adjoins the existing Audlem settlement boundary (ignoring for this purpose its expansion to include the land on which planning permission was granted for a further 146 dwellings).

Policy H3

54. The second sentence of policy and its footnote relates to legal obligations not to planning policy. It is therefore not appropriate in a planning policy. Footnote 42 should be in the policy.

Recommended modification

The policy should be replaced with the following

Policy H3: Scale of New Development

Any development within the settlement boundary will normally be limited to 10 properties in order that it is on a scale commensurate with the character of the village. Development of more than 6 houses shall include a provision for communal green space that is grassland, landscaped in keeping with the immediate surroundings.

Exceptions to this policy will include developments offering significant benefit to the community such as a specific development of social housing or village-centre car parking.

Policy H4

55. This accords with social sustainability in seeking to meet the needs of the young and the old. (It also accords with APC's public-sector equality duty.) I note that Barton Willmore is generally supportive of it. It should include its justification as supporting text not within the policy.

Recommended modification

The policy should be modified to read

Policy H4: Size of Homes

New development should favour smaller dwellings, so meeting the needs of Audlem, unless an independent viability study, or other material considerations, show a robust justification for a different mix.

Policy H5

56. The evidence for this is a recent housing needs study by CEC. It shows demand for affordable housing and smaller housing. There is a preference for bungalow accommodation. The evidence is robust and proportionate for the needs of an NDP. There is no need to modify the policy to ensure compliance by the Draft NDP (as modified elsewhere) with the basic conditions.

Policy H6

57. I am satisfied that this policy both meets the basic conditions in itself and, through its positive assistance to the social dimension of sustainable development, helps the making of the Plan as a whole to contribute to the achievement of sustainable development.

Policy H7

58. I am satisfied that this policy both meets the basic conditions in itself and, through its positive assistance to the social dimension of sustainable development, helps the making of the Plan as a whole to contribute to the achievement of sustainable development. The footnote is not policy and should be removed.

Recommended modification

Footnote 49 should be removed and not replaced.

The supporting text for the policy should be modified by the addition of:

“This policy reflects the findings of the 2013 Housing Needs Survey 2013, mentioned in Appendix 8.3.”

11. Chapter 6 (2) Design

Objective

59. The design objective accords with the Framework and with sustainable development.
60. From my site visits I am satisfied that the first three lines of paragraph 6.2.2.2 are fully justified.
61. Paragraph 6.2.2.2 should include the evidence on which the policies that follow are based. They should not be included as footnotes to policies. Policies should avoid footnotes.

Recommended modification

The following should be added as supporting text between the existing paragraph 6.2.2.2 and Policy D1:

“The policies that follow have been drafted bearing in mind the following (each of which is mentioned in appendix 8.3) Village Design Statement, the 2015 Housing Questionnaire, the Case for Space (RIBA), the adopted Local Plan, Conservation documentation and Design Quality Standards (Housing Corporation)”

All footnotes in policies D1 to D6 should be removed and not replaced.

Policy D1

62. I am satisfied that this policy both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development. Other than removal of the footnote mentioned above, I do not recommend any modification.

Policy D2

63. Bearing in mind the WMS and the NPPG, the appropriate course of is to follow NPPG ID: 56-018-20150327, which provides:

Where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan to the Nationally Described Space Standard.¹⁰

Recommended modification

Policy D2 Size and Space

¹⁰ As to which see:

<https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>

New housing will provide space standards as set out in the Nationally Described Space Standard to promote the best living environment.

Policy D3

64. From my site visits I am satisfied that the general maximum of two storeys is justified. The final sentence should be modified.

Recommended modification

Policy D3's final sentence should read:

Important views identified in the Village Design Statement 2011 shall be protected by ensuring that the visual impact of any development on these views is carefully controlled.

Policy D4

65. I am satisfied that this policy both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development.

Policy D5

66. While the first sentence of policy D5 is limited to "*existing sound buildings that contribute to the character of the village environment*", the second sentence extends to "*existing sound buildings*" whether they contribute to the character or not. I can see no justification for preventing the demolition of buildings that do not contribute to the character where this could facilitate otherwise acceptable housing. Rather, by reducing the possibility of housing where the Draft NDP permits it, this would increase pressure for development on greenfield sites. I am satisfied that the first sentence both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development.

Recommended modification

Policy D5's second sentence be deleted and not replaced.

Policy D6

67. The first three sentences and the fifth sentence both meets the basic conditions in themselves and help the making of the Plan as a whole to contribute to the achievement of sustainable development. The fourth and sixth sentences of this policy attempt to control matters that are highways, not planning, matters.

Recommended modification

Delete the fourth and sixth sentences of policy D6 including the footnote.

Policy D7

68. The WMS provides, “...*qualifying bodies preparing neighbourhood plans should not set in their emerging ... neighbourhood plans... any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. This includes any policy requiring any level of the Code for Sustainable Homes to be achieved by new development; the government has now withdrawn the code, aside from the management of legacy cases.*”

69. Basic condition (a) requires me to have regard to such guidance, not to follow it, if having had regard to it, I do not consider it appropriate. Nonetheless in the absence of detailed reasoning and evidence going beyond that in the Draft NDP para 6.2.2.3, I consider that I ought to follow it. In addition matters covered by Building Regulations are normally left to that regime and require particular justification for inclusion in a planning policy.

Recommended modification

Policy D7's second sentence should be deleted and not replaced.

Policy D8

70. The policy refers to open green spaces and recreational facilities identified in Section 3.1, but this section does not name the areas and the plans are at a scale where the exact boundaries of the green spaces referred to are unclear. Natural England's comment on the policy not reflecting its supporting text is correct; the policy does not currently do what the justification at 6.2.3 says it will. For clarity therefore the policy needs to be modified so that the areas intended for protection are properly identified in the policy and the plans used for illustration. Footnote 61's reference to the Village Design Statement should be replaced by named reference to any Green Spaces listed in that document and shown on plans in section 3.1. I note that it is not intended to designate these spaces as local green spaces as detailed in the Framework.

Recommended modification

Footnote 61 should be removed and not replaced.

The green spaces should be included on plans that are sufficiently detailed for their boundaries to be clear.

Policy D8 should be detailed, including express reference in its text to each open space and should follow the following form

Policy D8: Retaining Green Space and encouraging Nature Conservation

New buildings and development shall have no detrimental impact on any existing open green space or recreational facilities as identified on plans in Section 3.1 and listed below:

- ...
- ...

These spaces shall be maintained as green spaces.

Nature conservation will be encouraged to ensure that biodiversity is protected

Policy D9

71. This policy is excessively demanding in requiring an arboricultural assessment to be submitted in respect of all new development in the proximity of trees and new developments in general to include planting, irrespective of the nature and scale of the developments concerned. Policy H3 requires communal green space to be provided on developments of more than 6 houses, and this policy needs to be consistent with that. The CEC Open Space study 2012, which indicates that Audlem has a shortage of amenity open space, is evidence to support the policy. The justification at para 6.2.3 should refer to the evidence.

Recommended Modification

The policy should read:

Policy D9: Planting

Historic hedgerows and trees will be protected, and tree preservation orders will be respected. Where a development may threaten protected trees an arboricultural assessment will be submitted with development proposals.

New Developments will, where appropriate, be required to include suitable plantings of trees and hedgerows. Where available, this must be in compliance with the most up-to-date local planning authority guidelines.

New developments of 6 houses or more shall include communal green space within the development in addition to any individual garden areas. Proper arrangements (*e.g.* management company) for the ongoing maintenance of any new communal green or open spaces shall be provided.

Policy D10

72. This policy both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development. The footnote should be removed.

Recommended Modification

Remove footnote 62 and do not replace it.

Policy D11

73. This policy both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development. The footnote should be removed.

Recommended Modification

Remove footnote 63 and do not replace it.

Policy D12

74. CEC has criticised the second sentence of policy D12 for prescribing road widths as this is a highway matter and potentially stifles good design. I share that concern and am also concerned that such a policy could in some places unnecessarily reduce the number of houses that can be provided in accordance with the Draft NDP and hence increase the pressure for development on greenfield sites.

Recommended Modification

Remove the second sentence of policy D12 and do not replace it

Policy D13

75. The second sentence of this policy deals with highway, not land-use planning, matters.

Recommended Modification

76. Remove the second sentence of policy D13 and do not replace it.

Policy D14 and D15

77. These policies both meet the basic conditions in themselves and help the making of the Plan as a whole to contribute to the achievement of sustainable development. Footnote 66 should be removed.

Recommended Modification

Remove footnote 66 and do not replace it.

Policy D16

78. The second sentence sets technical standards for affordable housing, which is against the WMS. It should be deleted. I also share Barton Willmore's concerns that a combination of requirements for dwellings can affect viability. This can render brownfield sites unviable and hence increase pressure for development on greenfield sites.

Recommended Modification

Remove the second sentence of policy D16 and do not replace it.

Policy D17

79. This policy both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development.

12. Chapter 6 (3) Business, 55 and Employment Policies

Policy B1

80. As mentioned, it is not the role of a plan to extend statutory requirements for the documents that must be submitted with a planning application and this includes environmental assessments. Also, I am concerned that restrictions on employment land should not be onerous given the risk (clearly contrary to sustainable development) of Audlem becoming a dormitory settlement for private-motor-vehicle commuting to other locations.

Recommended modification

Delete the words “*a positive environmental assessment, provided by the developer*” and replace these with “***environmental impacts being acceptable***”.

Policy B2

81. This policy both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development.

Policy B3

82. The substance of this policy both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development. However use-class A4 is limited to “*Use as a public house, wine-bar or other drinking establishment*”. Halls are likely to be D1 or D2. From my site visits and the documentation that I have read I do not believe that there are any D2 halls. The error should be corrected.

Recommended modification

Rewrite the relevant part of policy B3 to read: “*including D1 (churches and halls) and A4 (pubs) planning uses*”

Policies B4, B5 and B6

83. These policies both meet the basic conditions in themselves and help the making of the Plan as a whole to contribute to the achievement of sustainable development. Footnote 66 should be removed.

13. Chapter 6 (4) Community Well-Being Policies

Policy CW1

84. The policy should not contain the footnote.

Recommended Modification

Remove footnote 75 and do not replace it.

Policy CW2

85. This policy both meets the basic conditions in itself and helps the making of the Plan as a whole to contribute to the achievement of sustainable development.

Policy CW3

86. As mentioned it is not the role of a plan to extend statutory requirements for the documents required with a planning application. Design and access statements are only required in the circumstances specified in the Town and Country Planning (Development Management Procedure) (England) Order 2015 which in the context of housing in Audlem means a major development or in a Conservation Area. Payments of CIL are governed by statutory provisions and cannot be altered by policy in an NDP. At present there is no CIL in place in Cheshire East. However there may be circumstances (whether CEC does or does not have a CIL) where a section 196 contribution is appropriate.

Recommended modification

Policy CW3 should read

Infrastructure support

For any proposal of the type specified below the Design and Access Statement shall include an infrastructure evaluation which will quantify the likely impact on the community infrastructure; including, but not limited to, the effect on the medical facilities, schools, sewers, traffic, parking and public transport. To the extent that this evaluation indicates improvements to the existing infrastructure will be necessary to maintain existing quality of services, the proposal shall either incorporate the necessary improvements or include a contribution towards such improvements to the extent permitted by law by means of a deed of planning obligation under the Town and Country Planning Act 1990 section 106.

This policy applies to proposals for 6 houses or more where a Design and Access Statement is required by the Town and Country Planning (Development Management Procedure) (England) Order 2015.

14. Chapter 6 (5) Traffic and Parking Policies

Policies T1 – T5

87. Subject to one point, these policies both meet the basic conditions in themselves and help the making of the Plan as a whole to contribute to the achievement of sustainable development and do not require modification. The second sentence of policy T3 could be

disproportionate in some circumstances and should not depend on a footnote. The distance should be in the policy

Recommended modification

Policy T3's second sentence should not contain a footnote and be modified to read:

Should any brownfield land become available within 250 metres of the Bellyse monument where safe pedestrian and wheelchair access can be assured, then as part of any development proposal on this land the provision of suitably landscaped short-term off-road public parking spaces designed to blend into this historic village centre will be required proportionate to the scale of the development and any viability constraints.

15. Chapter 6 (6) Mitigating the Impact of Development: S106 and the Community Infrastructure Levy

Objective

88. The third indent of the objective suffers from the same problem as the third indent of the housing objective.

Recommended modification

The third indent of the objective is modified to read:

- **requiring that all new developments of 3 or more dwellings include a substantial proportion of smaller and affordable properties.**

Policy C11

89. There is no power to require CEC to spend money that it receives in a particular way and the Draft NDP should not give the impression that there is such a power.

Recommended modification

The second sentence should be removed and not replaced.

Policy C12

16. The Glossary of terms

90. Some of the items within this appear to be taken from another document. Others are not wholly correct.

Recommended modification

I recommend deletion of the whole of each of the following: Jobs (or employment); Local Plan Strategy; Neighbourhood Plan; Section 106 Agreement; and SEA.

17. Review

91. The review will involve the procedure for a new NDP, a substantial process, albeit one that is less demanding than a Local Plan process. There is a danger of slippage in such matters. However I am satisfied that with the modifications recommended above, in particular those to policies H1 and H2 that effectively extend the settlement boundary covered by those policies if the boundary is extended through the Local Plan process, the effects of slippage would be acceptable. There is no objection in principle to the proposed review.

18. The Referendum Area

92. I see no reason for the referendum area to be extended beyond the designated plan area. I therefore recommend that the referendum area be limited to that area.

19. Summary of Main Findings

93. I commend the Draft NDP for being well written, logical, clear, appropriately concise and intelligible to a reasonably intelligent lay reader with no expertise in town and country planning.

94. I recommend that the Draft NDP be modified in the terms specified in Appendix A to this report in order to meet basic conditions. I am satisfied with those parts of the Draft NDP to which I am not recommending modifications.

95. With those modifications the Draft NDP will meet all the basic conditions. Specifically

- I have had regard to national policies and advice contained in guidance issued by the Secretary of State, and, having done so, am of the firm view that that it is appropriate to make the NDP;
- The making of the NDP contains substantial elements that contributes to the achievement of sustainable development and taken as a whole would contribute significantly to the achievement of sustainable development;
- The making of the NDP is in general conformity with the strategic policies contained in the development plan for the area of APC;
- The making of the NDP does not breach, and is not otherwise incompatible with, EU obligations;
- The making of the NDP 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).

96. The modified Draft NDP is in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

97. I recommend that the modified NDP proceed to a referendum, the referendum area being the parish of Audlem.

Timothy Jones, Barrister, FCI Arb,

Independent Examiner,

No 5 Chambers

18th January 2016.

Appendix A: Recommended Modifications

Chapter 1

- 1) The first chapter's second paragraph should begin, ***“The National Planning Policy Framework states...”***.

Chapter 3

- 2) Delete the following words at the top of page 10 “, which is likely to be enhanced as its location within the Weaver Valley Regional Park becomes established”.
- 3) Delete the following words in footnote 7 “Plans for the development of the Park now no longer exist.”
- 4) Replace the words “Working age adults” in the table at the bottom of page 10 with **“People aged 16 to 64”**.
- 5) Add a footnote at the end of paragraph 3.5.6 on page 13: “Other than a single, non-peak-period service to Hanley of one bus in each direction on Fridays only”.

Chapter 4

- 6) Delete the penultimate paragraph on page 18 and do not replace it.
- 7) The map at the top of page 19 should be altered to show clearly at the full settlement boundary. If it is necessary to make this clear to readers, the map should be larger than the present map.

Chapter 6 (1) Housing policies

- 8) The third indent of the housing objective on page 23 should read:
 - **requiring that all new developments of 3 or more dwellings include a substantial proportion of smaller and affordable properties**
- 9) Footnote 31 should be deleted and not replaced.
- 10) Policy H1 should be modified to read:

Policy H1: Settlement Boundary and Number of New Homes

A settlement boundary is defined and shown on map... on page... of the ANP

Any additional new housing in excess of those permissions granted at 27 April 2015 will be supported within this settlement boundary where it accords with other policies

outlined in this plan. Outside the settlement boundary residential permission will not be permitted except in circumstances specified in this Plan.

Development of isolated dwelling houses in rural areas will be resisted except where these accords with national policy. Development of dwelling houses in flood zones 2 and 3 will be resisted.

11) The second and third grammatical paragraphs of paragraph 6.1.2.3 should be deleted.

12) The Audlem Constraints map should be altered by showing the new settlement boundary, deleting the reference to Conservation Areas subject to an article 4 direction and by amalgamating flood zones 2 and 3.

13) Policy H2 should read:

Policy H2: Redevelopment of infill land and brownfield land

Permission will be granted for residential developments of 10 or fewer dwellings that are well designed and meet all other relevant policies within this Plan and:

(1) are within the settlement boundary as defined in policy H1 (including any extended settlement boundary established by a Local Plan) and do not harm residential amenity of neighbours as defined in Policy D3 of this plan; or

(2) are outside the settlement boundary and:

(a) fill a small, restricted gap in the continuity of existing frontage buildings where the site is closely surrounded by buildings normally within an existing dwelling's curtilage; or

(b) are located on brownfield land.

For the purpose of this policy

“brownfield land” has the same meaning as “previously developed land” in the National Planning Policy Framework

“infill land” refers to land normally within the curtilage of existing properties that adjoins the existing Audlem settlement boundary (ignoring for this purpose its expansion to include the land on which planning permission was granted for a further 146 dwellings).

14) Policy H3 should read:

Policy H3: Scale of New Development

Any development within the settlement boundary will normally be limited to 10 properties in order that it is on a scale commensurate with the character of the village.

Development of more than 6 houses shall include a provision for communal green space that is grassland, landscaped in keeping with the immediate surroundings.

Exceptions to this policy will include developments offering significant benefit to the community such as a specific development of social housing or village-centre car parking.

15) Policy H4 should read:

Policy H4: Size of Homes

New development should favour smaller dwellings, so meeting the needs of Audlem, unless an independent viability study, or other material considerations, show a robust justification for a different mix.

16) Footnote 49 should be removed and not replaced. The following should be added at the end of the supporting text to policy H7:

This policy reflects the findings of the 2013 Housing Needs Survey 2013, mentioned in Appendix 8.3.

Chapter 6 (2) Design

17) The following should be added as supporting text between the existing paragraph 6.2.2.2 and Policy D1:

The policies that follow have been drafted bearing in mind the following (each of which is mentioned in appendix 8.3) Village Design Statement, the 2015 Housing Questionnaire, the Case for Space (RIBA), the adopted Local Plan, Conservation documentation and Design Quality Standards (Housing Corporation).

18) All footnotes in policies D1 to D6 should be removed and not replaced.

19) Policy D2 should read:

Policy D2 Size and Space

New housing will provide space standards as set out in the Nationally Described Space Standard to promote the best living environment.

20) Policy D3's final sentence should read:

Important views identified in the Village Design Statement 2011 shall be protected by ensuring that the visual impact of any development on these views is carefully controlled.

21) Policy D5's second sentence should be deleted and not replaced.

22) The fourth and sixth sentences of policy D6 (including the footnote) should be deleted and not replaced.

23) Policy D7's second sentence should be deleted and not replaced.

24) Footnote 61 should be deleted and not replaced.

25) The green spaces should be included on plans that are sufficiently detailed for their boundaries to be clear.

26) Policy D8 should identify the green spaces and be in the following form:

Policy D8: Retaining Green Space and encouraging Nature Conservation

New buildings and development shall have no detrimental impact on any existing open green space or recreational facilities as identified on plans in Section 3.1 and listed below:

- ...
- ...

These spaces shall be maintained as green spaces.

Nature conservation will be encouraged to ensure that biodiversity is protected

27) Policy D9 should read:

Policy D9: Planting

Historic hedgerows and trees will be protected, and tree preservation orders shall be respected. Where a development may threaten protected trees an arboricultural assessment will be submitted with development proposals.

New Developments will, where appropriate, be required to include suitable plantings of trees and hedgerows. Where available, this must be in compliance with the most up-to-date local planning authority guidelines.

New developments of 6 houses or more shall include communal green space within the development in addition to any individual garden areas. Proper arrangements (*e.g.* management company) for the ongoing maintenance of any new communal green or open spaces shall be provided.

28) Remove footnotes 62 and 63 do not replace them

29) Remove the second sentence of policy D12 and do not replace it.

30) Remove the second sentence of policy D13 and do not replace it.

31) Remove footnote 66 and do not replace it.

32) Remove the second sentence of policy D16 and do not replace it.

Chapter 6 (3) Business, Tourism and Employment Policies

33) The words “*a positive environmental assessment, provided by the developer*” in policy B1 should be deleted and replaced with “*environmental impacts being acceptable*”.

34) The words in policy B3 “*D1 (churches) and A4 halls, (pubs)*” should be deleted and replaced by “*D1 (churches and halls) and A4 (pubs)*”.

Chapter 6 (4) Community Well-Being Policies

35) Remove footnote 75 and do not replace it.

36) Policy CW3 should read:

Infrastructure support

For any proposal of the type specified below the Design and Access Statement shall include an infrastructure evaluation which will quantify the likely impact on the community infrastructure; including, but not limited to, the effect on the medical facilities, schools, sewers, traffic, parking and public transport. To the extent that this evaluation indicates improvements to the existing infrastructure will be necessary to maintain existing quality of services, the proposal shall either incorporate the necessary improvements or include a contribution towards such improvements to the extent permitted by law by means of a deed of planning obligation under the Town and Country Planning Act 1990 section 106.

Chapter 6 (5) Traffic and Parking Policies

37) Policy T3’s second sentence should not contain a footnote and be modified to read:

Should any brownfield land become available within 250 metres of the Bellyse monument where safe pedestrian and wheelchair access can be assured, then as part of any development proposal on this land the provision of suitably landscaped short-term off-road public parking spaces designed to blend into this historic village centre will be required proportionate to the scale of the development and any viability constraints.

Chapter 6 (6) Mitigating the Impact of Development: S106 and the Community Infrastructure Levy

38) The third indent of the objective should read:

- **requiring that all new developments of 3 or more dwellings include a substantial proportion of smaller and affordable properties**

39) The second sentence of policy CI1 should be removed and not replaced.

The Glossary of terms

40) The entries in respect of the following should be deleted: Jobs (or employment); Local Plan Strategy; Neighbourhood Plan; Section 106 Agreement; and SEA.

Updating

43) Consideration should also be given to updating, including in respect of the emerging Local Plan, at a date as close to the referendum as practicable.

Appendix B: Abbreviations

The following abbreviations are used in this report:

APC	Audlem Parish Council
CEC	Cheshire East Council
CIL	Community Infrastructure Levy
Convention	European Convention on Human Rights
Draft NDP	Submission Version of the Audlem Neighbourhood Development Plan 2015-2030
EU	European Union
Framework	National Planning Policy Framework (DCLG, March 2012)
General Regulations	Neighbourhood Planning (General) Regulations 2012
NDP	Neighbourhood Development Plan
NPIERS	Neighbourhood Planning Independent Examiner Referral Service
NPPG	national Planning Practice Guidance
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
reg	regulation
s	section
Sch	Schedule
TCPA	Town and Country Planning Act 1990 (as amended)
WMS	Written Ministerial Statement of Eric Pickles MP of 25 th March 2015.