

Portfolio Holder Decision Report

Report Title: Newhall Neighbourhood Development Plan: Decision to Proceed to Referendum

Portfolio Holder: Councillor Toni Fox, Portfolio Holder for Planning

Senior Officer: Frank Jordan, Executive Director of Place

1. Report Summary

- 1.1. The Newhall Neighbourhood Development Plan (NNDP) was submitted to the Council in August 2019 and, following a statutory publicity period, proceeded to independent examination. The examiners report has now been received and recommends that, subject to modifications, the Plan should proceed to referendum. The Plan contributes to delivery of sustainable development in Newhall, setting out detailed local planning policy on matters important to the community and through its alignment with the Local Plan Strategy the NNDP also supports the Councils own strategic aims to promote economic prosperity, create sustainable communities, protect and enhance environmental quality and promote sustainable travel.

2. Recommendation

- 2.1. That the Portfolio Holder:
 - 2.1.1. Accepts the examiner's recommendations to make modifications to the Newhall Neighbourhood Plan as set out in the examiner's report (at Appendix 1); and
 - 2.1.2. Confirms that a referendum will now be held on the NNDP, within the Newhall Neighbourhood Plan area.

3. Reasons for Recommendation/s

- 3.1. The Council is committed to supporting neighbourhood planning in Cheshire East. It has a legal duty to provide advice and assistance on neighbourhood plans, to hold an independent examination on neighbourhood plans submitted to the Council, and to make arrangements for a referendum following a favourable examiner's report.
- 3.2. Subject to the modifications set out in the examiner's report, the NNDP is considered to meet the statutory tests, the Basic Conditions and procedural requirements set out in paragraph 8 of Schedule 10 to the Localism Act 2011 and as such it can now proceed to referendum.
- 3.3. Holding a referendum on the NNDP will enable the local community to vote on whether the plan should be used to determine planning applications in the neighbourhood area and bring the plan into statutory effect. The Neighbourhood Plan, as modified, will contribute to the strategic aims set out in the Cheshire East Local Plan Strategy and upon the outcome of a successful referendum result will form part of the Development Plan for Cheshire East. Following the referendum the Council is required to 'make' the neighbourhood plan, confirming its status within the development plan for the area.
- 3.4. It should be noted that local planning authorities are normally required to hold a referendum within 8 weeks of deciding to progress a neighbourhood plan to referendum. The exception to this is where an alternative date can be agreed between both parties. In this instance, due to the scheduling of a general election in December and the updating of the electoral role in January, it has been agreed to exceed the usual time limits in this instance, holding a referendum on the 27th February 2020.

4. Other Options Considered

- 4.1. Not to proceed to referendum. The examiner has found that subject to modification, the plan meets the relevant legal, procedural and planning tests and therefore there is no reason a referendum should not be held.

5. Background

- 5.1. The preparation of the NNDP began in late 2016 with the Neighbourhood Area Designation approved in February 2017.
- 5.2. The final Neighbourhood Plan and its supporting documents were submitted to Cheshire East Council on 2nd August 2019.
- 5.3. The supporting documents included:

- 5.3.1. The draft Newhall Neighbourhood Development Plan
- 5.3.2. A map of the neighbourhood area
- 5.3.3. A Consultation Statement
- 5.3.4. A Basic Conditions Statement
- 5.3.5. A copy of the Screening Opinion on the need to undertake Strategic Environmental Assessment
- 5.4. Cheshire East Council undertook the required publicity between 02.08.19 – 13.09.19. Relevant consultees, residents and other interested parties were provided with information about the submitted plan and were given the opportunity to submit comments to the examiner.
- 5.5. The Borough Council appointed Andrew Mead BSc (Hons) MRTPI MIQ, as the independent examiner of the plan. The Examiner is a chartered town planner and former government Planning Inspector, with wide experience of examining development plans and undertaking large and small scale casework. On reviewing the content of the plan and the representations received as part of the publication process, she decided not to hold a public hearing.
- 5.6. A copy of the Examiner's Report is provided at Appendix 1. A copy of the Neighbourhood Plan can be accessed via the Council's [web pages](#) or requested from the Report's author.
- 5.7. The examiner's report contains the Examiner's findings on legal and procedural matters and his assessment of the plan against the Basic Conditions. It recommends that a number of modifications be made to the plan. These are contained within the body of the report and summarised in a table at the end.
- 5.8. The examiner has recommended multiple modifications to the plan but overall it is concluded that the NNDP does comply with the Basic Conditions and other statutory requirements and that, subject to recommended modifications, it can proceed to a referendum.
- 5.9. The Examiner comments that:
- 5.10. *In conducting the examination, I enjoyed visiting the Parish and reading the Plan. The Plan is concise and very well illustrated. The Consultation Statement and especially the Basic Conditions Statement were extremely helpful. The Parish Council, the supporting Steering Group and the volunteers are to be commended for their efforts in producing a succinct document which, incorporating the modifications I have recommended, will*

make a positive contribution to the Development Plan for Newhall Parish and will assist in creating sustainable development.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. The Neighbourhood Plan is considered to meet the basic conditions and all relevant legal and procedural requirements and this is supported in the Examiner's Report. Proceeding to referendum will enable the NNDP to be 'made', and legally form part of the Development Plan for Cheshire East.

6.1.2. The Neighbourhood Planning Act 2017 requires a local planning authority ("LPA") or other planning decision-maker to have regard to a "post examination draft NDP" when dealing with a planning application so far as the plan is material to the application.

6.1.3. The NNDP will become part of the development plan for that area after it is approved in the referendum. Following the referendum, if Cheshire East Council decides not to make the Neighbourhood Development Plan, it will cease to become part of the development plan.

6.1.4. Cheshire East Council has considered the Human Rights Act 1998 and has not found that the Plan breaches the Act. The Examiner did not disagree with that position.

6.2. Finance Implications

6.2.1. The referendum is estimated to cost circa £5,000. This will be paid for through government grant specific to neighbourhood planning, and the service's revenue budget.

6.3. Policy Implications

6.3.1. Once 'made' neighbourhood plans are afforded the full legal status and policy weight as other Development Plan policies. The policies of the neighbourhood plan will therefore be used to determine decisions on planning applications within the defined neighbourhood area.

6.4. Equality Implications

6.4.1. The Neighbourhood Plan has been prepared in a manner which has been inclusive and open to all to participate in policy making and establish a shared vision for future development in Newhall. The policies proposed are not considered to disadvantage those with protected characteristics.

6.5. Human Resources Implications

6.5.1. The administration of the referendum procedure requires staff resource from the Elections Team to organise, promote and carry out the referendum. Following the declaration of the referendum result further activity is undertaken by the Neighbourhood Planning Team to manage publication of the plan, monitor and advise on its use.

6.6. Risk Management Implications

6.6.1. The decision to proceed to referendum and subsequently to 'make' the Newhall Neighbourhood Development Plan is, like all decisions of a public authority, open to challenge by Judicial Review. The risk of any legal challenge to the Plan being successful has been minimised by the thorough and robust way in which it has been prepared and tested.

6.7. Rural Communities Implications

6.7.1. Newhall falls into the category of 'Other Settlements and Rural Areas' for the purposes of the Cheshire East Local Plan Strategy. Newhall provides services to a rural community. The policies in the plan have been developed by the community, with opportunities for the local rural community to participate in the plan making process.

6.8. Implications for Children & Young People

6.8.1. Neighbourhood plans are an opportunity to promote the safety, interests and well being of children in the statutory planning framework and the Newhall Neighbourhood Plan introduces policies to protect access to recreation and amenity facilities which support the wellbeing of children.

6.9. Public Health Implications

6.9.1. Neighbourhood plans are an opportunity to promote public health in the statutory planning framework and the Newhall Neighbourhood Plan contains policies which support physical wellbeing.

6.10. Climate Change Implications

6.10.1. The NNDP includes a number of policies that seek to ensure the sustainable development of land and the retention of land in sustainable uses and supporting additional protection of the environment.

6.10.2. In combination with other elements of the Development Plan these measures will help the Council to reduce its carbon footprint and

achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

7. Ward Members Affected

- 7.1. Wrenbury Ward: Councillor Stan Davies
- 7.2. Ward members will be informed of the decision to proceed to referendum when this report is published for consideration.

8. Consultation & Engagement

- 8.1. Consultation is a legal requirement of the neighbourhood planning process and has taken place throughout the preparation of the NNDP with multiple opportunities for the community and interested parties to participate in the development of the plan.

9. Access to Information

- 9.1. The Examiner's Report is appended to this report and all relevant background documents can be found via the neighbourhood planning pages of the Council's website:
- 9.2. <https://www.cheshireeast.gov.uk/planning/neighbourhood-plans/neighbourhood-planning.aspx>
- 9.3. The background papers relating to this report can also be inspected by contacting the report writer.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

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| Name: | Tom Evans |
| Job Title: | Neighbourhood Planning Manager |
| Email: | Tom.Evans@Cheshireeast.gov.uk |

11. Appendix 1: Examiners Report



Intelligent Plans
and examinations

Report on Newhall Parish Neighbourhood Plan 2010 - 2030

An Examination undertaken for Cheshire East Council with the support of the Newhall Parish Council on the Regulation 15 submission version of the Plan.

Independent Examiner: Andrew Mead BSc (Hons) MRTPI MIQ

Date of Report: 27 November 2019

OFFICIAL

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Main Findings - Executive Summary

From my examination of the Newhall Parish Neighbourhood Plan (the Plan/NPNP) and its supporting documentation, including the representations made, I have concluded that, subject to the policy modifications set out in this report, the Plan meets the Basic Conditions.

I have also concluded that:

- The Plan has been prepared and submitted for examination by a qualifying body – the Newhall Parish Council;
- The Plan has been prepared for an area properly designated – the whole of the Newhall Parish Council area shown on page 3 of the submitted Plan;
- The Plan specifies the period in which it is to take effect: 2010-2030; and
- The policies relate to the development and use of land for a designated neighbourhood area.

I recommend that the Plan, once modified, proceeds to Referendum on the basis that it has met all the relevant legal requirements.

I have considered whether the referendum area should extend beyond the designated area to which the Plan relates and have concluded that it should not.

1. Introduction and Background

Newhall Parish Neighbourhood Plan 2010-2030

- 1.1 Newhall, with a parish population of 776¹, is a small village near the southern edge of Cheshire about 10 km south west of Nantwich and 10 km north east of Whitchurch (Shropshire). Set in pleasant, relatively flat open countryside, the village lies on the A530 which links the Whitchurch area to Nantwich. The Parish includes two small population centres, Newhall and Aston. Aston is a village in open countryside where limited infilling may be permitted.
- 1.2 The Neighbourhood Plan Area was designated by Cheshire East Council (CEC) in February 2017. A short introductory leaflet about the Plan was circulated to every household in May 2017, with a public meeting in Newhall to launch consultation on the Plan. A NPNP steering group was formed. A residents' survey was conducted in August 2017 and a public meeting held in December 2017.

¹ 2011 Census.

The Independent Examiner

- 1.3 As the Plan has now reached the examination stage, I have been appointed as the examiner of the NPNP by CEC, with the agreement of the Newhall Parish Council (NPC).
- 1.4 I am a chartered town planner and former government Planning Inspector with previous experience of examining neighbourhood plans. I am an independent examiner and do not have an interest in any of the land that may be affected by the draft Plan.

The Scope of the Examination

- 1.5 As the independent examiner, I am required to produce this report and recommend either:
- (a) that the neighbourhood plan is submitted to a referendum without changes; or
 - (b) that modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
 - (c) that the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.
- 1.6 The scope of the examination is set out in Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) ('the 1990 Act'). The examiner must consider:
- Whether the Plan meets the Basic Conditions;
 - Whether the Plan complies with provisions under s.38A and s.38B of the Planning and Compulsory Purchase Act 2004 (as amended) ('the 2004 Act'). These are:
 - it has been prepared and submitted for examination by a qualifying body, for an area that has been properly designated by the local planning authority;
 - it sets out policies in relation to the development and use of land;
 - it specifies the period during which it has effect;
 - it does not include provisions and policies for 'excluded development';
 - it is the only neighbourhood plan for the area and does not relate to land outside the designated neighbourhood area;
 - whether the referendum boundary should be extended beyond the designated area, should the Plan proceed to referendum; and

- Such matters as prescribed in the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the 2012 Regulations').

1.7 I have considered only matters that fall within Paragraph 8(1) of Schedule 4B to the 1990 Act, with one exception. That is the requirement that the Plan is compatible with the Human Rights Convention.

The Basic Conditions

1.8 The 'Basic Conditions' are set out in Paragraph 8(2) of Schedule 4B to the 1990 Act. In order to meet the Basic Conditions, the NPNP must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
- contribute to the achievement of sustainable development;
- be in general conformity with the strategic policies of the development plan for the area;
- be compatible with and not breach European Union (EU) obligations; and
- meet prescribed conditions and comply with prescribed matters.

1.9 Regulation 32 and Schedule 2 to the 2012 Regulations prescribes a further Basic Condition for a neighbourhood plan. This requires that the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 ('the 2017 Regulations').²

2. Approach to the Examination

Planning Policy Context

2.1 The Development Plan for this part of CEC, not including documents relating to excluded minerals and waste development, is the Cheshire East Local Plan Strategy (CELPs) adopted in

² This revised Basic Condition came into force on 28 December 2018 through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

July 2017 and the saved policies of the Crewe and Nantwich Replacement Local Plan adopted in 2005. The Proposals Maps from the Local Plans in East Cheshire are saved for the purposes of determining planning applications.

- 2.2 The emerging Site Allocations and Development Policies Document (SADPD) will include detailed development management policies and an adopted Policies Map, which will replace the saved Local Plan policies. The submission draft of the SADPD was published for consultation from 19 August 2019 until 30 September 2019.
- 2.3 I shall make reference to the emerging policies of the SADPD in this report, having regard to Planning Practice Guidance (PPG), which states that it is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging local plan, including housing supply policies. The PPG advises that the reasoning and evidence informing emerging local plans can be relevant to neighbourhood plans. Where a neighbourhood plan is brought forward before an up-to-date local plan is in place, the local planning authority and qualifying body should discuss and aim to agree the relationship between their emerging policies and the adopted development plan.³
- 2.4 The planning policy for England is set out principally in the National Planning Policy Framework (NPPF). The PPG offers guidance on how this policy should be implemented. A revised NPPF was published on 19 February 2019 and all references in this report are to the February 2019 NPPF and its accompanying PPG.⁴

Submitted Documents

- 2.5 I have considered all policy, guidance and other reference documents I consider relevant to the examination, including those submitted which comprise:
- the Newhall Parish Neighbourhood Plan 2010 – 2030;
 - the map on page 3 of the Plan, which identifies the area to which the proposed NPNP relates;
 - the Consultation Statement: July 2019;
 - the Basic Conditions Statement: July 2019;
 - all the representations that have been made in accordance with the Regulation 16 consultation;
 - the Strategic Environmental Assessment (SEA) Screening Report prepared by CEC, March 2019; and

³ PPG Reference ID: 41-009-20190509.

⁴ NPPF: paragraph 214. The Plan was submitted under Regulation 15 to CEC after 24 January 2019.

- the request for additional clarification sought in my letter of 3 October and the response of 22 October 2019 provided by the Parish Council, which is available on the CEC website.⁵

Site Visit

- 2.6 I made an unaccompanied site visit to the Neighbourhood Plan Area on 2 October 2019 to familiarise myself with it, and visit relevant sites and areas referenced in the Plan and evidential documents.

Written Representations with or without Public Hearing

- 2.7 This examination has been dealt with by written representations. I considered a hearing session to be unnecessary as the consultation responses clearly articulated the objections to the Plan and presented arguments for and against the Plan's suitability to proceed to a referendum. As noted in paragraph 2.5 above, NPC helpfully answered in writing the questions which I put to them in my letter of 3 October.

Modifications

- 2.8 Where necessary, I have recommended modifications to the Plan (**PMs**) in this report in order that it meets the Basic Conditions and other legal requirements. For ease of reference, I have listed these modifications separately in the Appendix.

3. Procedural Compliance and Human Rights

Qualifying Body and Neighbourhood Plan Area

⁵ View at: [Response letter needs adding]

<https://www.cheshireeast.gov.uk/planning/neighbourhood-plans/neighbourhood-plans-n-z/newhall-neighbourhood-plan.aspx>

- 3.1 The NPNP has been prepared and submitted for examination by NPC, which is a qualifying body. The Plan extends over the whole of Newhall Parish which constitutes the area which was designated by CEC on 21 February 2017.
- 3.2 It is the only Neighbourhood Plan for Newhall Parish and does not relate to land outside the designated Neighbourhood Plan Area.

Plan Period

- 3.3 The period of the Plan, prominently displayed on the front cover of the document, is between 2010 and 2030. The period aligns with that of the CELPS, the period for which is also 2010 – 2030.

Neighbourhood Plan Preparation and Consultation

- 3.4 The Consultation Statement of the NPNP provides an extremely comprehensive summary of the preparation process of the Plan. The Neighbourhood Plan area was designated by CEC on 21 February 2017. A short introductory leaflet was prepared and circulated to every household in the Parish in May 2017. A residents' survey was conducted in August 2017. 247 responses were received, representing an excellent response rate of 67%. A drop-in meeting for the public was held on 6 December 2017 at which over 90 people attended.
- 3.5 The consultation process led to the drafting of a vision statement for the Plan: *"Newhall will be a thriving Parish with a strong sense of community, providing sustainable and proportionate housing and business opportunities with adequate and accessible leisure and infrastructure development. All future development will support and enhance Newhall's rural character in the open countryside, and there will be sufficient appropriate pedestrian and transport routes to enable safe movement both within the Parish and to local service centres."* The vision resulted in a series of eight objectives which were used to frame the subsequent sixteen policies.

- 3.6 Consultation on the NPNP under Regulation 14 of the 2012 Regulations took place for seven weeks between 26 April and 16 June 2019. A total of 131 comments were received from 61 consultees. The NPNP was then submitted to CEC on 11 June and was subject to consultation under Regulation 16 between 2 August and 13 September 2019. Nine representations were received. I am satisfied that a transparent, fair and inclusive consultation process has been followed for the NPNP, that has had regard to advice in the PPG on plan preparation and is procedurally compliant in accordance with the legal requirements.

Development and Use of Land

- 3.7 The Plan sets out policies in relation to the development and use of land in accordance with s.38A of the 2004 Act.

Excluded Development

- 3.8 The Plan does not include provisions and policies for 'excluded development'.

Human Rights

- 3.9 The Basic Conditions Statement comments that the NPNP has regard to the fundamental rights and freedoms guaranteed under the European Convention of Human Rights and complies with the Human Rights Act 1998. CEC states in its Regulation 16 consultation response that it is satisfied that the NPNP does not breach, and is compatible with, EU Obligations and Convention rights (within the meaning of the Human Rights Act 1998). I have considered the matter independently and I have found no reason to disagree with that position.

4. Compliance with the Basic Conditions

EU Obligations

- 4.1 The NPNP was screened for SEA by CEC, the report of which was submitted with the Plan in accordance with the legal requirement under Regulation 15(e)(i) of the 2012 Regulations. The Council found that it was unnecessary to undertake SEA. Neither Historic England (HE), Natural England (NE) nor the Environment Agency (EA), when consulted, disagreed with that assessment. Having read the SEA Screening Opinion, and considered the matter independently, I agree with that conclusion.
- 4.2 The NPNP was further screened by CEC for Habitats Regulations Assessment (HRA). The screening report concluded that the NPNP would be unlikely to have a significantly adverse effect on designated sites and therefore HRA was not required. NE had no further comments in its Regulation 16 consultation response.⁶ Based on my independent consideration on the information provided, I support the above conclusions.

Main Issues

- 4.3 Following the consideration of whether the Plan complies with the various procedural and legal requirements, it is now necessary to deal with whether it complies with the remaining Basic Conditions; particularly the regard it pays to national policy and guidance, the contribution it makes to the achievement of sustainable development and whether it is in general conformity with the strategic development plan policies. I test the Plan against the Basic Conditions by considering specific issues of compliance with all the Plan's policies.
- 4.4 As part of that assessment, I consider whether the policies are sufficiently clear and unambiguous, having regard to advice in the PPG. The policies of the NPNP should be drafted with sufficient clarity that a decision maker can apply them consistently and with confidence when determining planning applications. They should be concise, precise and supported by appropriate evidence.⁷
- 4.5 Accordingly, having regard to the NPNP, the consultation responses, written evidence⁸ and the site visit, I consider that the main issues for this examination are whether the NPNP policies (i) have regard to national policy and guidance, (ii) are in general conformity with the adopted strategic planning policies and (iii) would contribute to the achievement of

⁶ Response dated 5 August 2019.

⁷ PPG Reference ID: 41-041-20140306.

⁸ The other evidence includes my letter to the Newhall Parish and Cheshire East Councils seeking clarification and the reply referred to in paragraph 2.5 above.

sustainable development? I shall assess these issues on the basis of considering the policies in the sequence in which they appear in the Plan.

Housing (Policy HOU1)

- 4.6 The Parish of Newhall is in open countryside as defined by Policy PG 6 of the CELPS where new housing might be permitted in certain specific circumstances, one of which is infilling in certain villages. Policy PG 10 of the SADPD lists Aston as one of the villages where limited infilling will be supported within an infill development boundary. Figure F of the NPNP delineates an Aston Infill Village Boundary which coincides with that which is shown on the Proposals Map of the SADPD. The justification for Policy HOU1 accurately describes the context for the policy on new housing which generally conforms with Policy PG 6 of the CELPS, does not conflict with the SADPD and has regard to national guidance.⁹

Landscape Character and Design (Policies LC1 and LC2)

- 4.7 Policy LC1 aims to ensure that buildings, characteristic features and materials are representative of the settlement character of the Parish and demonstrate consideration of the Cheshire East Design Guide (2016) or any updated version. Fifteen key elements of design are listed in the policy which I consider generally conform with Policy SE 1 of the CELPS. The policy would also have regard to national guidance.¹⁰
- 4.8 According to Policy LC2, new development must, where appropriate, respect the landscape character of the area. With one reservation, the policy generally conforms with Policy SE 4 of the CELPS and has regard to national guidance.¹¹ My reservation is that the policy refers to not supporting development if it “materially interrupts ... the effect on public viewpoints, including from public rights of way...”. This test, if interpreted literally, is far too severe because most new buildings would materially interrupt a view from a public right of way and therefore may prevent development which would otherwise be sustainable and acceptable. Furthermore, the policy in that form would not be sufficiently clear to enable development to be managed effectively. I shall recommend an appropriate modification to the policy, which will not reduce its effectiveness. **(PM1)**

Natural Environment and Green Space (Policies NEGS1, NEGS2 and NGS3)

⁹ NPPF: paragraph 78.

¹⁰ NPPF: paragraphs 125, 126 & 127.

¹¹ NPPF: paragraph 170.

- 4.9 Policy NEGS1 aims to support development which preserves, restores re-creates or enhances the natural environment. The policy is in general conformity with the CELPS Policy SE 3 and has regard to national guidance.¹² However, the policy refers to planning permission being refused where it should properly state that applications will not be supported. I shall recommend a modification to the policy. **(PM2)**
- 4.10 Policy NEGS2 designates Aston Cricket Ground as Local Green Space (LGS). The policy is in general conformity with the CELPS Policy SE 6. At 1.34 ha in size, the LGS is not an extensive tract of land. It is demonstrably valuable to, and located within, the community it serves. Therefore, the policy has regard to national guidance in meeting the designation criteria.¹³ Policy NEGS3 requires new development to provide adequate high quality open space and seeks to protect existing open space. The policy is in general conformity with the CELPS Policy SC 1 and has regard to national guidance.¹⁴

Heritage (Policy HER1)

- 4.11 Policy HER1 deals with heritage assets, including the Aston Conservation Area. The second paragraph of the policy distinguishes between designated and non-designated heritage assets. The first two sentences of the policy state the general considerations which would apply to proposals which would affect any heritage asset. The sentences have regard to national guidance, except for the final clause where reference is made to weighing public benefits against any harm or loss of significance. This part of the policy does not reflect the nuance of national guidance which classifies harm into substantial and less than substantial and refers to total loss and not a loss of significance.¹⁵ Rather than recommend a lengthy modification to encapsulate the gist of national guidance, I shall recommend the deletion of the final clause bearing in mind that proposals affecting a designated heritage asset would still be assessed against the CELPS Policy SE 7 and the relevant paragraphs of the NPPF. Therefore, the aim to protect and enhance Newhall's heritage assets would still be met.
- 4.12 Furthermore, the final sentence of the policy seeks the removal of permitted development rights for boundaries using an Article 4 direction. This would then apply to cases where a proposal in the Conservation Area would involve boundary treatment. However, such a proposal could include a condition to control the treatment of the boundary, if the condition met the relevant legal tests.¹⁶ Moreover, the general withdrawal of permitted development rights from property owners is a serious matter more appropriately considered by the local

¹² NPPF: paragraphs 170 & 175.

¹³ NPPF: paragraphs 99 & 100.

¹⁴ NPPF: paragraphs 96 & 97.

¹⁵ NPPF: paragraphs 195 & 196.

¹⁶ PPG: Reference ID: 21a-003-20190723.

planning authority with its wider responsibilities for the whole of the Cheshire East Council area. Therefore, I shall recommend the deletion of the final sentence of the policy. **(PM3)**

- 4.13 Figure L of the Plan lists the 17 Buildings and Features which are statutorily Listed. Other possible heritage assets within the Conservation Area are described in paragraph 9.3 of the Plan. In response to my request for clarification, NPC confirmed that those properties in paragraph 9.3 and also the historical features listed in Figure M should be defined as non-designated heritage assets (NDHA).¹⁷ National guidance for NDHA is that, in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.¹⁸ I am concerned that if the properties and features are formally defined as NDHA in the Plan, without the formal steps and consultation as envisaged by HE, the interests of individual property owners may be prejudiced.¹⁹
- 4.14 I realise that the publicity of the Plan under Regulations 14 and 16 may have offered an opportunity for landowners to comment. Nevertheless, I am not persuaded that the degree of consultation has been sufficient for the list of features in Figure M or the properties in paragraph 9.3 of the Plan to be defined as NDHA and so to be subject to Policy HER1 and the CELPS Policy SE 7. I am also conscious of the advice in PPG which clearly states that a substantial majority of buildings have little or no heritage significance and thus do not constitute heritage assets. Only a minority have enough heritage significance to merit identification as non-designated heritage assets.²⁰ Therefore, I recommend the addition of a qualifying comment after paragraph 9.6 to the effect that the list of features in Figure M and the properties in paragraph 9.3 do not comprise NDHA for the purposes of the application of development plan policies but that, at some later stage, should a local list of heritage assets be produced with the degree of consultation considered appropriate in HEAN 7, the features in Figure M and the properties in paragraph 9.3 will merit consideration. **(PM4)** The recommended modifications would ensure that Policy HER1 generally conforms with the CELPS Policy SE 7 and would have regard to national guidance.

Local Economy (Policies LE1 and LE2)

- 4.15 Policy LE1 seeks to support and enhance the local economy by the development of new businesses and the expansion of those which exist. Policy LE2 supports tourism and also aims to discourage development which would harm tourist facilities. Both policies generally conform with the CELPS Policy EG 2 and have regard to national guidance, with one reservation.²¹ Although Policy LE2 also generally conforms with the CELPS Policy EG 4, one

¹⁷ See response from NPC dated 22 October 2019.

¹⁸ NPPF: paragraph 197.

¹⁹ Historic England Advice Note (HEAN) 7.

²⁰ PPG: Reference ID: 18a-039-20190723.

²¹ NPPF: paragraph 83.

phrase lacks the precision necessary for effective development management. I shall recommend modifying the policy by the deletion of "... negatively impact on the attraction of visitors to the area ..." and the substitution of a more appropriate requirement in order to meet the Basic Conditions. **(PM5)**

Transport and Travel (Policies T1, T2 and T3)

- 4.16 The objectives of the Transport and Travel policies are to reduce the need for travel by car and encourage safe and sustainable forms of transport. Policy T1 considers footpaths, cycleways and towpaths. Policy T2 seeks to improve the sustainability of travel, transport and road safety. Policy T3 concerns vehicular access through the Parish. Each policy generally conforms with the relevant strategic policies of the CELPS: NPNP Policy T1 with CELPS Policy CO 1; NPNP Policy T2 with CELPS Policies CO 1 and CO 4 and NPNP Policy T3 with CELPS Policies CO 4, IN 1 and IN 2. In addition, each policy has regard to national guidance.²²

Community Facilities and Infrastructure (Policies CF1, CF2, CF3 and CF4)

- 4.17 The objectives of the policies on community facilities and infrastructure are to improve services and facilities and ensure that infrastructure meets the needs of residents. Policy CF1 supports proposals for new community facilities and the improvement of those which already exist. The policy generally conforms with the CELPS Policy SC 3 and has regard to national guidance.²³
- 4.18 Policy CF2 describes priorities for spending any income from Community Infrastructure Levy and developer contributions. The policy generally conforms with the CELPS Policy IN 2 and has regard to national guidance.²⁴ Policy CF3 considers foul and surface water drainage, generally conforms with the CELPS Policy SE 13 and has regard to national guidance, subject to the qualification of the need for new houses to connect to a main sewer for foul drainage, where appropriate.²⁵ **(PM6)** Policy CF4 supports the development of high quality communications infrastructure. The policy generally conforms with the CELPS Policy CO 3 and has regard to national guidance.²⁶

²² NPPF: Section 9 Promoting sustainable transport.

²³ NPPF: paragraph 92.

²⁴ PPG: Reference ID: 25-144-20190901.

²⁵ NPPF: paragraph 150 & Planning and Flood Risk.

²⁶ NPPF: Section 10 Supporting high quality communications.

Overview

- 4.19 Accordingly, on the evidence before me, with the recommended modifications PM1, PM2, PM3, PM4, PM5 and PM6, I consider that the policies within the NPNP are in general conformity with the strategic policies of the CELPS, minimise conflict with the emerging SADPD, have regard to national guidance, would contribute to the achievement of sustainable development and so would meet the Basic Conditions.

5. Conclusions

Summary

- 5.1 The Newhall Parish Neighbourhood Plan has been duly prepared in compliance with the procedural requirements. My examination has investigated whether the Plan meets the Basic Conditions and other legal requirements for neighbourhood plans. I have had regard to all the responses made following consultation on the Neighbourhood Plan, and the evidence documents submitted with it.
- 5.2 I have made recommendations to modify a small number of policies to ensure the Plan meets the Basic Conditions and other legal requirements. I recommend that the Plan, once modified, proceeds to referendum.

The Referendum and its Area

- 5.3 I have considered whether or not the referendum area should be extended beyond the designated area to which the Plan relates. The Newhall Parish Neighbourhood Plan, as modified, has no policy which I consider significant enough to have an impact beyond the designated Neighbourhood Plan boundary, requiring the referendum to extend to areas beyond the boundary of the Plan.
- 5.4 I recommend that the boundary for the purposes of any future referendum on the Plan should be the boundary of the designated Neighbourhood Plan Area.

Comments

- 5.5 In conducting the examination, I enjoyed visiting the Parish and reading the Plan. The Plan is concise and very well illustrated. The Consultation Statement and especially the Basic Conditions Statement were extremely helpful. The Parish Council, the supporting Steering Group and the volunteers are to be commended for their efforts in producing a succinct document which, incorporating the modifications I have recommended, will make a positive contribution to the Development Plan for Newhall Parish and will assist in creating sustainable development.

Andrew Mead

Examiner

Appendix: Modifications

| Proposed modification number (PM) | Plan reference | Modification |
|-----------------------------------|-----------------------|---|
| PM1 | Policy LC2 | Rephrase the third sentence to: “Development will not be supported if it causes significant harm to the character of the rural setting of the parish, particularly with respect to the effect from public viewpoints, including from public rights of way and canals.” |
| PM2 | Policy NEGS1 | Alter the final phrase in the policy to: “..., the planning application will not be supported.” |
| PM3 | Policy HER1 | Delete from the second paragraph: “... and, in the case of a designated heritage asset, any public benefits of the proposal to be weighed against any harm or loss of significance.” Delete the final paragraph of the policy. |
| PM4 | Add new paragraph 9.7 | Add: “The list of properties in paragraph 9.3 and the features in Figure M are not defined as non-designated heritage assets for the purpose of applying development plan policies. Their eventual inclusion on a local list of heritage assets will depend on the appropriate publicity and procedures advised in Historic England Advice Note (HEAN) 7.” |
| PM5 | Policy LE2 | Delete: “... would negatively impact on the attraction of visitors to the area ...” and substitute: “... cannot demonstrate how the above matters have been successfully addressed” |
| PM6 | Policy CF3 | Amend the first sentence of the second paragraph to: “All new houses shall be connected to a mains sewer for foul drainage so long as... .” |