

Portfolio Holder Decision

Report Title: Decision to Make the Marton Modification Neighbourhood Plan

Portfolio Holder: Councillor Toni Fox, Portfolio Holder for Planning

Senior Officer: Frank Jordan, Executive Director of Place

1. Report Summary

- 1.1. Once a neighbourhood plan has been approved at referendum, it becomes part of the development plan and the Council is required to confirm this status and 'make' the neighbourhood plan.
- 1.2. The original Marton Neighbourhood Plan was subject to a referendum and made by the Council on 29th November 2016.
- 1.3. The made plan has now been reviewed and updated. The plan has been subject to independent examination and the review process has resulted in a number of modifications to the original plan.
- 1.4. To implement those modifications and bring the updated plan into effect, the Council must now make the updated Marton Modification Neighbourhood Plan and revoke the original neighbourhood plan.

2. Recommendations

- 2.1. That the Portfolio Holder for Planning:
 - 2.1.1. Confirms that the Marton Neighbourhood Plan, made on 29th November 2016 is revoked.
 - 2.1.2. Accepts the examiner's recommendations to make modifications to the Marton Modification Neighbourhood Plan as set out in the examiner's report (at Appendix 1); and
 - 2.1.3. Confirms that the Marton Modification Neighbourhood Plan is now made, and forms part of the Development Plan for Cheshire East.
 - 2.1.4. Confirms that the Council will use the Marton Modification Neighbourhood Plan in planning decisions, giving policies significant

weight so far as they are material to planning applications within the Marton Neighbourhood Area.

3. Reasons for Recommendations

- 3.1. A neighbourhood plan must meet a number of legal and procedural requirements and satisfy the 'Basic Conditions' (as prescribed in Schedule 10, paragraph 8 of the Localism Act). These Basic Conditions require neighbourhood plans to:
 - 3.1.1. Have appropriate regard to national policy
 - 3.1.2. Contribute to the achievement of sustainable development
 - 3.1.3. Be in general conformity with the strategic policies in the development plan for the local area
 - 3.1.4. Be compatible with EU obligations
 - 3.1.5. Be compatible with human rights requirements
 - 3.1.6. Not be likely to have a significant effect on a European site or an offshore marine site.
- 3.2. If a qualifying body (the parish council) wishes to modify a neighbourhood plan beyond correcting errors or mistake, it must enter the modification process as governed by the regulations.
- 3.3. When modifying a neighbourhood plan, a qualifying body must submit a statement setting out whether they believe their proposals represent modifications that are substantial or significant enough to change the nature of the original plan.
- 3.4. If the proposed modifications do change the nature of the original plan, the modified plan must be subject to a referendum. If the modifications do not change the nature of the plan, a referendum is not required, and the plan may be adopted ('made') by the council.
- 3.5. An independent examination of the neighbourhood plan was undertaken and, subject to modifications that have since been implemented, the examiner found the plan was considered to meet the basic conditions; and did not require to be the subject of a referendum.

4. Other Options Considered

- 4.1. The Council could choose not to 'make' the Neighbourhood Plan as modified and therefore not bring it into force as part of the Development Plan for Cheshire East, however there are very limited circumstances under which this option can be pursued, related primarily to the processes and procedures undertaken during preparation of the plan.

- 4.2. There are no reasons why the Council should not proceed to 'make' the modified neighbourhood plan in accordance with the outcome of the examination.

5. Background

- 5.1. Planning policies may become out of date and given less weight in decision making as a result of being either time expired or where higher tier policies are altered and policies no longer align, therefore the monitoring and review of plans is standard practice to ensure policies remain up to date and can be given full weight in planning decisions. C
- 5.2. Completed neighbourhood plans may be reviewed and updated at any time; the Marton neighbourhood plan was completed and 'made' by the Council in November 2016 and since that time a number of significant changes have taken place that prompted a review of the plan. Significantly, the Council adopted its Local Plan Strategy in July 2017 setting a new strategic planning framework for the borough; the National Planning Policy Framework was updated in 2018 which altered some national policies that neighbourhood plans must align to; and more recently, the Council has finalised its part two local plan, the Site Allocations and Development Policies Document (SADPD) for submission to the Planning Inspectorate for examination.
- 5.3. The modified neighbourhood plan has been prepared in consultation with the local community and subject to various rounds of consultation prior to submission to the Council in November 2020.
- 5.4. Once submitted, the plan was subject to a period of publicity and consultation followed by an independent examination.
- 5.5. On reviewing the content of the Plan and the representations received as part of the publication process, the examiner found the plan to conform, subject to modifications, to the basic conditions tests.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. The Neighbourhood Plan meets the basic conditions tests and all relevant legal and procedural requirements; this is supported in the Examiner's Report. The original referendum returned a majority vote in favour of implementing the neighbourhood plan, which means that the plan now forms part of the Development Plan in accordance with which planning decisions should be made unless material considerations indicate otherwise.

6.1.2. The Council is also required to 'make' the neighbourhood plan, confirming this position. Proposals that are contrary to a made neighbourhood plan should not normally be approved and although in the absence of a 5 year housing land supply, housing policies in the Development Plan may be considered out of date and adversely affect the weight that can be ascribed to them, the weight given to such policies is a matter for the decision maker.

6.1.3. The Secretary of State has made the Neighbourhood Planning (General) Regulations 2012 under powers conferred by the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004, and these Regulations ("the Regulations"), which came into force on 6 April 2012 and have since been updated to set out the process and requirements for revoking a made neighbourhood plan, and for replacing it with a modified version at section 31 of the Regulations.

6.2. Finance Implications

6.2.1. There are no direct financial costs to the Council of implementing this decision. Confirming that the Marton Modification Neighbourhood Plan is 'made' enables the Council to draw down £10,000 grant funding which will offset the cost of funding the independent examination of the plan.

6.2.2. The decision to confirm that the neighbourhood plan is made, like all decisions of a public authority, is open to challenge by Judicial Review. The costs of defending any judicial review will be borne by the Council. There are no financial implications of amending the plan.

6.3. Policy Implications

6.3.1. Once subject to a successful referendum, the policies in a neighbourhood plan are given full statutory weight in planning decisions. Decisions should be taken in accordance with the policies contained in the neighbourhood plan unless material circumstances indicate otherwise. The relevant policies of the neighbourhood plan must be used in planning decisions within the neighbourhood area. Revoking the original neighbourhood plan and replacing it with the modification neighbourhood plan ensures the relevant policies are up to date and may continue to be used in decision taking.

6.4. Equality Implications

6.4.1. The neighbourhood plan review has been prepared over approximately 18 months and included a variety of methods of engagement to enable those with protected characteristics to participate in the process.

6.5. Human Resources Implications

6.5.1. The process related to this decision is undertaken by existing staff within the Strategic Planning Team. Therefore, the decision to make the Marton Modification Neighbourhood Plan has no direct human resource implications.

6.6. Risk Management Implications

6.6.1. The decision to confirm that the Marton Modification Neighbourhood Development Plan is made, 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 and the high quality of the examination process.

6.7. Rural Communities Implications

6.7.1. The Marton Modification Neighbourhood Plan covers a mainly rural community located north of Congleton. The plan addresses a number of rural issues including the environment, rural economy, appropriate development in the open countryside, and biodiversity. The policies in the plan have been developed by the community, with opportunities for the rural community to participate in the plan making process.

6.8. Implications for Children & Young People/Cared for Children

6.8.1. The neighbourhood plan includes policies that seek to protect facilities and assets that contribute to the well being of children and young people. Neighbourhood plans are an opportunity to promote the safety, interests and well-being of children in the statutory planning framework, most notably through policies on leisure, recreation and access to the countryside.

6.9. Public Health Implications

6.9.1. The neighbourhood plan includes policies that support public health through the promotion of walking, cycling and enabling access to opportunities for active recreation. As such, neighbourhood plans are an opportunity to promote public health in the statutory planning framework.

6.10. Climate Change Implications

6.10.1. The Marton Modification Neighbourhood Plan includes a number of policies that seek to ensure the sustainable development of land and the retention of land in sustainable uses. 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. Councillor Lesley Smetham, Gawsworth Ward.
- 7.2. Ward members will be informed of the decision to make the Marton Modification Neighbourhood Plan when the 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 original Marton Neighbourhood Plan, and the Modification Plan, with multiple opportunities for the community and interested parties to participate in the development of the plan.

9. Access to Information

- 9.1. All relevant material and background documents related to this decision 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>

10. Contact Information

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

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**Report on Updated Marton Village
Neighbourhood Plan
2020 - 2030**

**An Examination undertaken for Cheshire East Council with the support of Marton Parish Council
on the November 2020 submission version of the draft Updated Plan.**

Independent Examiner: Andrew S Freeman BSc (Hons) DipTP DipEM FRTPI

Date of Report: 11 March 2021

OFFICIAL

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Main Findings - Executive Summary

I made an initial determination on 4 February 2021 that the modifications contained in the draft Updated Marton Village Neighbourhood Plan (the draft Plan) are not so significant or substantial as to change the nature of the Neighbourhood Development Plan which the draft Plan would replace.

From my examination of the draft Plan and its supporting documentation, including the representations made, I have concluded that subject to the Examiner Modifications (EMs) 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 – Marton Parish Council;
- The Plan has been prepared for an area properly designated – the Parish of Marton as shown on Map 1 of the Plan;
- The Plan specifies the period to which it is to take effect – 2020-2030; and
- The policies relate to the development and use of land for a designated neighbourhood area.

Therefore, I recommend that the local planning authority should make the Plan with the EMs specified in this report (there will be no statutory requirement for a referendum).

1. Introduction and Context

Updated Marton Village Neighbourhood Plan 2020-2030

- 1.1 The designated Neighbourhood Plan Area, centred on the village of Marton, extends east and west of the A34 between Congleton and Alderley Edge some 5 km to the north-northeast of Congleton and 9 km southwest of Macclesfield. It is the subject of the Marton Village Neighbourhood Plan 2015–2030 which was “made” (approved and adopted) in November 2016.

- 1.2 In the intervening years, the Cheshire East Local Plan Strategy 2010 – 2030 has been adopted (July 2017). The main source of Government planning policy, the National Planning Policy Framework, has also been updated (most recently in February 2019). These are the principal reasons why it was deemed appropriate to update the original Neighbourhood Plan for Marton.
- 1.3 Certain policies have been amended or omitted. The content of others has been reviewed and moved into new and expanded policies on housing and design; protection of the environment; traffic and safety; protecting community assets; and small business support. The non-policy sections have also been updated and amended. They now include a new section on Marton’s proximity to the World Heritage Site at Jodrell Bank and an appendix comprising Neighbourhood Planning Design Guidance.¹

The Independent Examiner

- 1.4 As the draft Plan has now reached the examination stage, I have been appointed as the examiner of the Marton Village Neighbourhood Plan by Cheshire East Council (CEC) with the agreement of Marton Parish Council.
- 1.5 I am a chartered town planner and former government Planning Inspector with over forty years’ experience. I have worked in both the public and the private sectors. I am an independent examiner and do not have an interest in any of the land that may be affected by the draft Plan.

Submitted Documents

- 1.6 I have considered all policy, guidance and other reference documents relevant to the examination, including those submitted which comprise:
- the draft Marton Village Neighbourhood Plan 2020-2030, November 2020, as proposed to be modified;
 - the summary of the proposals and reasons for the modifications;
 - the statements from the qualifying body (QB) and local planning authority (LPA) on the nature of the proposed modifications;
 - a map of the Plan which identifies the area to which the proposed Neighbourhood Development Plan relates;
 - a copy of the extant Marton Village Plan 2015-2030 as made;
 - the Consultation Statement, November 2020;

¹ More details of the changes are set out in the Parish Council’s schedule “Submission Version Updated Marton Neighbourhood Plan 2020 – Schedule of Changes”.

- the Basic Conditions Statement, November 2020;
- the Marton Parish Neighbourhood Plan Update Strategic Environmental Assessment Screening Report, September 2020;
- all the representations that have been made in accordance with the Regulation 16 consultation; and
- the joint response from Marton Parish Council and CEC (16 February 2021) to the examiner’s questions (4 February 2021).²

Planning Policy Context

- 1.7 The Development Plan for this part of Cheshire East Council, not including documents relating to excluded minerals and waste development, is the Cheshire East Local Plan Strategy 2010–2030; also, saved policies from the Macclesfield Borough Local Plan. In addition, there is an emerging development plan in the form of the draft Site Allocations and Development Policies Document (SADPD).
- 1.8 Planning policy for England is set out principally in the National Planning Policy Framework (NPPF). Planning Practice Guidance (PPG) offers guidance on how this policy should be implemented. All references in this report are to the February 2019 NPPF and its accompanying PPG.

2. Procedural Considerations

Initial Determination

- 2.1 As the proposal has been submitted as a modification of the made Neighbourhood Plan, I was required to undertake an initial determination under Paragraph 10(1) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (as amended) (“the 2004 Act”). This concerned whether the modifications contained in the draft Plan are so significant or substantial as to change the nature of the Neighbourhood Development Plan which the draft Plan would replace.
- 2.2 If there is no change to the nature of the made Plan, the modification proposal can be examined under the streamlined process set out in Schedule A2 of the 2004 Act (no referendum). Otherwise, the examination would proceed under Schedule 4B of the Town and Country Planning Act 1990 (as amended), whereby an examination and referendum would be required.

² View at: <https://www.cheshireeast.gov.uk/planning/neighbourhood-plans/neighbourhood-plans-g-m/marton-neighbourhood-plan.aspx>

- 2.3 As part of the publicity arrangements, the QB and LPA are required to publicise statements setting out their reasoned views on this matter. For the QB, the provision is contained in Regulations 15(1)(f) of the Neighbourhood Planning (General) Regulations 2012 (as amended) (“the 2012 Regulations”). For the LPA, the provision is at Regulation 17(e)(ii).
- 2.4 The views of the QB are also to be publicised at the Regulation 14 stage. In this regard, views are expressed in the Regulation 14 version of the Updated Marton Neighbourhood Plan. This indicates that the changes are material and require examination; that the Parish Council is therefore carrying out consultation; and that, upon submission of the Plan for examination, Cheshire East Council will state whether the nature of the Plan would be changed, giving reasons.
- 2.5 A later, more comprehensive, statement of the views of the QB is contained in its “Statement of Compliance”.³ For the LPA, its Regulation 17(e)(ii) Statement, 25 January 2021, refers.
- 2.6 To inform this determination, I considered all the relevant submitted documents including the written statements on this matter provided by the QB and LPA as well as the third-party representations. I have also considered the guidance given in the PPG.⁴
- 2.7 The Parish Council⁵ is of the opinion that the changes to the original Plan are material modifications but do not change the nature of the Plan. This is because the policies have been updated to reflect the changes in the local policy framework and the NPPF. In this regard, the Cheshire East Local Plan Part One was adopted after the original Marton Neighbourhood Plan was made; and Part Two of the Local Plan, the draft SADPD, has since been prepared. Furthermore, the NPPF was updated in 2019.
- 2.8 The Parish Council adds that the Neighbourhood Plan has been updated to ensure that the policies remain in general conformity with local and national policy and reflect the strategic policies in the Local Plan. The Plan has kept to its original vision with only slight amendment to the original objectives. No sites have been allocated for development.

³ Statement of Compliance (Letter and statement (undated) from Marton Parish Council accompanying submission of proposed updated Marton Neighbourhood Plan to Cheshire East Council). View at: <https://www.cheshireeast.gov.uk/planning/neighbourhood-plans/neighbourhood-plans-g-m/marton-neighbourhood-plan.aspx>

⁴ PPG Reference IDs: 41-106-20190509 and 41-085-20180222.

⁵ Statement of Compliance.

- 2.9 Cheshire East Council states⁶ that the proposed Modification Plan materially amends and updates policies from the made Marton Neighbourhood Development Plan but does not introduce new policies, or alterations to existing policies, that are so significant or substantial that the nature, scope or objectives of the made Plan would be changed.
- 2.10 In making my determination, I was aware that the statement of the QB at the Regulation 14 stage was incomplete. There was no conclusion on whether the nature of the made Plan would be changed. This view was not expressed until the Regulation 15 stage. Nevertheless, there was reference to the topic at both stages of the statutory consultation and there has been an opportunity for representations to be made. No related comments were received. In all the circumstances, I am satisfied that no prejudice has arisen.
- 2.11 I note that the made Neighbourhood Plan was prepared in order to protect the interests of the village, having regard to the emerging Local Plan. It contains 32 policies under 6 topic headings. In the draft update, original material including the policy context has been updated, expanded and clarified. The 6 policy topics have been replaced by 5 very similar topics.
- 2.12 Some policies have been deleted and replaced by new content. Others have been incorporated into wider-ranging policies covering the same subject matter. New material has been added as indicated above. However, the overall nature of the Plan including its scope, objectives and policy context is much the same.
- 2.13 I am content that the modifications proposed in the draft Plan are material but are not so significant or substantial as to change the nature of the Neighbourhood Development Plan which the draft Plan would replace. I set out my determination in my procedural letter of 4 February 2021 to the LPA and QB.⁷ Therefore, I have conducted this examination in accordance with the relevant provisions in Schedule A2 to the 2004 Act, which I set out below.

The Scope of the Examination

- 2.14 As the independent examiner, I am required to produce this report and recommend either:
- (a) that the local planning authority should make the draft plan; or

⁶ Regulation 17(e)(ii) Statement, 25 January 2021.

⁷ View at: [marton-ndp-modification-examiners-procedural-matters-letter.pdf](https://www.cheshireeast.gov.uk/marton-ndp-modification-examiners-procedural-matters-letter.pdf) ([cheshireeast.gov.uk](https://www.cheshireeast.gov.uk))

(b) that the local planning authority should make the draft plan with the modifications specified in this report; or

(c) that the local planning authority should not make the draft plan.

2.15 The scope of the examination is set out in Paragraph 11(1) of Schedule A2 to the 2004 Act. The examiner must consider:

- Whether the draft plan meets the Basic Conditions.
- Whether the draft plan complies with the provisions made by or under Section 38A and Section 38B of 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; and
 - it does not include provisions and policies for “excluded development”.
- Such matters as prescribed in the 2012 Regulations.

2.16 I have considered only matters that fall within Paragraph 11(1) of Schedule A2 to the 2004 Act, with one exception. That is the requirement that the draft Plan is compatible with the Human Rights Convention.

The Basic Conditions

2.17 The “Basic Conditions” are set out in Paragraph 11(2) of Schedule A2 to the 2004 Act. In order to meet the Basic Conditions, the draft plan 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 (under retained EU law)⁸; and
- meet prescribed conditions and comply with prescribed matters.

2.18 Regulation 32 of 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 2017.⁹

Site Visit

2.19 I made an unaccompanied site visit to the Neighbourhood Plan Area on 17 February 2021 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

2.20 This examination has been dealt with by written representations. At the Regulation 14 stage, one representor stated that a hearing would be welcomed (and that representation was also appended to their Regulation 16 response). However, comprehensive written evidence has been provided. In all respects, the representations clearly articulate the objections to the draft Plan. There are no exceptional reasons to justify convening a public hearing.

Examiner Modifications

⁸ The existing body of environmental regulation is retained in UK law.

⁹ 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.

- 2.21 Where necessary, I have specified Examiner Modifications (**EMs**) 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. Compliance Matters and Human Rights

Qualifying Body and Neighbourhood Plan Area

- 3.1 The Updated Marton Village Neighbourhood Plan has been prepared and submitted for examination by Marton Parish Council which is a qualifying body for an area that was designated by Cheshire East Council on 23 February 2015.
- 3.2 It is the only Neighbourhood Plan for Marton Parish and does not relate to land outside the designated Neighbourhood Plan Area.

Plan Period

- 3.3 The Plan specifies clearly the period to which it is to take effect, which is from 2020 to 2030.

Neighbourhood Plan Preparation and Consultation

- 3.4 Details of Plan preparation and consultation are set out in the Parish Council's Consultation Statement, dated November 2020. The decision to update the made Plan was first mooted in September 2018. Work began in earnest in 2019 and early 2020. Covid-19 restrictions meant that the consultation was not as straightforward as it had been originally. Nevertheless, information was placed on-line and, in some cases, hand delivered. Hard copies of documents were available to those not able to view them electronically.
- 3.5 Regulation 14 consultation took place between 7 September 2020 and 19 October 2020. Thirty-four comments were made by 14 respondents, 9 of whom were local residents. Fourteen changes were made, all as detailed in Appendix 2 of the Consultation Statement.
- 3.6 At the Regulation 16 stage, between 25 November 2020 and 6 January 2021, representations were received from 11 different parties. The majority of these were

statutory consultees, although two substantial responses were made by planning consultants.

- 3.7 I confirm that the legal requirements have been met by the consultation process. In addition, there has been regard to the advice in PPG on plan preparation.

Development and Use of Land

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

Excluded Development

- 3.9 The Plan does not include provisions and policies for “excluded development”.

Human Rights

- 3.10 Both the Parish Council and Cheshire East Council are satisfied that the draft Plan does not breach, and is compatible with, EU Obligations and Convention rights (within the meaning of the Human Rights Act 1998). I see no reason to disagree.

4. Assessment of the Basic Conditions

EU Obligations

- 4.1 The Neighbourhood Plan was screened for Strategic Environmental Assessment (SEA) by Cheshire East Council, which found that it was unnecessary to undertake SEA. Having read the Strategic Environmental Assessment Screening Report, I support this conclusion.
- 4.2 The Updated Marton Village Neighbourhood Plan was further screened for Habitats Regulations Assessment (HRA), which also was not triggered. The Neighbourhood Plan Area is not in close proximity to a European designated nature site. Natural England agreed¹⁰ that there are unlikely to be any significant environmental effects from the proposed Plan. From my independent assessment of this matter, I have no reason to disagree.

Main Issues

- 4.3 Before I deal with the main issues, I have a few observations to make with regard to the representations. First, the Updated Marton Village Neighbourhood Plan should be seen in the context of the wider planning system. This includes the Cheshire East Local Plan Strategy 2010–2030 as well as the NPPF and PPG. It is not necessary, and it would be inappropriate, to repeat in the Neighbourhood Plan matters that are quite adequately dealt with elsewhere.¹¹
- 4.4 Secondly, the Neighbourhood Plan does not have to deal with each and every topic raised through the consultation. In this regard, the content of the Neighbourhood Plan and the scope of the policies is largely at the discretion of the QB, albeit informed by the consultation process and the requirements set by the Basic Conditions.
- 4.5 Thirdly, my central task is to judge whether the Neighbourhood Plan satisfies the Basic Conditions. Many of the representations do not demonstrate or indicate a failure to meet those conditions or other legal requirements. Similarly, many of the suggested additions and improvements are not necessary when judged against the Basic Conditions. Be that as it may, non-material changes, including suggestions and corrections set out in the representations, can be incorporated into the final version of the Plan.
- 4.6 The following section of my report sets out modifications that are necessary in order to meet the Basic Conditions. Some of the proposed examiner modifications are necessary to have closer regard to national policies and advice. In particular, plans should contain policies that

¹⁰ See Appendix 5 of Screening Report.

¹¹ See NPPF Paragraph 16 f).

are clearly written and unambiguous.¹² In addition, the policies should be supported by appropriate evidence.¹³

4.7 Having regard to the draft Plan, the consultation responses and other evidence, and the site visit, I consider that there are four main issues that relate to the remaining Basic Conditions in so far as 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 strategic development plan policies. These concern:

- Housing Provision;
- Policy Expression;
- Protection of Views; and
- Heritage.

Issue 1: Housing Provision

4.8 The NPPF, at Paragraphs 65 and 66, provides for the setting of a housing requirement for designated neighbourhood areas. This provision post-dates the making of the Marton Village Neighbourhood Plan 2015 - 2030 and adoption of the Local Plan Strategy. As such, I have considered its relevance to the Neighbourhood Plan update.

4.9 Under the Local Plan Strategy, Marton falls within the category of “Other Settlements and Rural Areas” (OSRA). In this regard, the housing and design objective of the draft Plan envisages a slightly larger population due to carefully planned and proportionate increases in housing in accordance with Cheshire East Local Plan Policy PG 6 for development in the Open Countryside. Thus, there may be an increase in the number of residents through development such as essential agricultural dwellings, infilling, rural exceptions housing and re-use of existing rural buildings.

4.10 I am advised¹⁴ that the total supply in the OSRA, to 31 March 2020, was 3,366 homes against a requirement to deliver some 3,378 homes across the district over the Plan period. With 9 years of the Plan period remaining, the supply of housing in rural areas and villages is very close to meeting the requirement.

4.11 In all the circumstances, it does not appear to me that Marton needs to be given, or ask for, a specific housing requirement. Reliance can be placed on provision in accordance with Local Plan Strategy Policy PG 6 and draft Plan Policy HD1. Through these policies, appropriate provision would be made.

¹² NPPF Paragraphs 15 and 16.

¹³ PPG Reference: 41-041-20140306.

¹⁴ Response to Examiner’s Questions, Marton Parish Council, 16 February 2021.

- 4.12 With regard to the wording of Policy HD1 itself, this makes reference to residential properties which support a rural business. This could be interpreted quite widely and include cases outside the scope of Policy PG 6 of the Local Plan Strategy. The intention¹⁵ is to limit the exemption to circumstances where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside in accordance with the Local Plan Strategy and Paragraph 79 of the NPPF.
- 4.13 Modification is necessary in order to have regard to national policy and secure general conformity with strategic Policy PG 6. Examiner modification **EM1** refers. With this modification in place, there would be compliance with the Basic Conditions.

Issue 2: Policy Expression

- 4.14 Many of the policies, and Policy HD2 in particular, use the conditional tense through the word “should”. There is an implication that something *ought* to happen but there may be circumstances where a different course of action could be appropriate.
- 4.15 I appreciate that accordance with the Development Plan may be affected by other material circumstances.¹⁶ Nevertheless, policies should be clear and unambiguous. They should be drafted with sufficient clarity that a decision maker can apply them consistently and with confidence when determining planning applications.¹⁷ In the circumstances, to pay appropriate regard to national guidance and meet the Basic Conditions, the relevant policies should use the word “shall”. Examiner modification (**EM2**) refers.

Issue 3: Protection of Views

- 4.16 In the made Neighbourhood Plan, provisions for the safeguarding of certain views are to be found in Policies PE7 and PE11. This matter is now covered in Policy PE1 of the draft Update. Of particular relevance is expansion of the policy to cover three local views as well as views, from the Parish, towards Jodrell Bank.
- 4.17 The local views are described in Section 4E of the draft Plan, “Marton’s Visual Amenity”, and in the Landscape and Settlement Character Assessment (Appendix 4 (separate) of the draft Plan). They are also shown on Map 8: Village Centre as “Key views to be retained and protected”.
- 4.18 I saw that the local views across the fields towards Bunce Lane and also to School Lane are in fact available along the frontages of the sites to Congleton Road. They are not a single view

¹⁵ Response to Examiner’s Questions, Marton Parish Council, 16 February 2021.

¹⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

¹⁷ PPG Reference ID: 41-041-20140306.

from a particular viewpoint. Similarly, views across the centre of the paddock are available along the School Lane frontage.

4.19 I appreciate that the parcels of land that can be seen in the respective views have long contributed to the character of Marton and, to local residents and others, are established and valued aspects of the village. However, they do not represent landmark views or views of any particular intrinsic beauty. It is the opportunity to look out over familiar territory that is of importance.

4.20 The effect of Policy PE1 would be to require developments to demonstrate that views are retained and integrated within proposals. To my mind, this would be a major and unjustified constraint in circumstances where the future use should be controlled by other land-use policies. The paddock off School Lane is a case in point. Draft Plan Policy PE3 requires the site to be retained as open green space. At the same time, in a dismissed appeal, there was acceptance that a scheme of 27 dwellings on this site “would not appear visually obtrusive or out of keeping with the settlement of Marton”.¹⁸

4.21 I appreciate that views of a site and its on-going land use go hand in hand. For so long as a site is retained as a valued feature, it is appropriate that public views of the site should be safeguarded where appropriate. However, the evidence from my site visit indicates that a more nuanced approach is necessary with an emphasis on safeguarding visual amenity rather than retaining and integrating views in development.

4.22 With regard to views towards Jodrell Bank, four viewpoints are identified on Map 10 in the draft Plan (Sightline and viewpoints to Jodrell Bank from Marton). There are also four photographs, one taken from each viewpoint. Although the view from viewpoint four is essentially screened by a roadside hedge,¹⁹ it is helpful to highlight locations from which Jodrell Bank can be seen. This will inform Policy PE1 which in turn reflects Policy SE 14 (Jodrell Bank) of the Local Plan Strategy.

4.23 The test in Policy PE1 is that new development should not harm the views to the World Heritage Site at Jodrell Bank. In this regard, I note that the views take in intervening trees, hedgerows, agricultural buildings, overhead transmission lines and the like. Nevertheless, to the extent that there is likely to be harm, Policy PE1 as modified will provide an appropriate context for consideration. However, the policy requires modification to indicate that it is unacceptable harm that would be material and, for clarity, that this is not a case where retention and integration of views are required.

4.24 With examiner modification **EM3** in place, there would be appropriate clarity and justification for the protection of the identified views. The Basic Conditions would be met.

Issue 4: Heritage

¹⁸ Appeal decision by the Secretary of State, 3 April 2017, Land off School Lane, Marton.

¹⁹ There is a public view over a field gate a few metres to the southwest.

4.25 Policy PCA1 (Heritage) covers matters that include the setting of listed buildings; development affecting heritage assets; and consideration of the World Heritage Site at Jodrell Bank. My principal focus has been whether appropriate regard has been paid to national policies.

4.26 With regard to the Church of St James and St Paul, I saw that this Grade I listed building stands on higher ground and is exposed to open views particularly from the south and southwest. On Map 8: Village Centre, land to the south and southwest is described as “Protected setting of Church”. Whilst the church’s setting cannot be regarded as fixed,²⁰ I would expect this “protected setting” to represent an area where development could, potentially, have an impact on the significance of the heritage asset and as appropriately identified on Map 8 and in Policy PCA1.

4.27 In terms of other elements of the policy, there is potential conflict with the aims of Section 16 of the NPPF. For example:

- Policy PCA1 indicates that, when considering the impact of a proposed development on the significance of “Marton’s heritage assets”, great weight should be given to the asset’s conservation; but the related provision in the NPPF (Paragraph 193) relates to *designated* heritage assets.
- The reference in Paragraph 195 of the NPPF to substantial benefits similarly relates to designated heritage assets (where there would be substantial harm), not to any of Marton’s heritage assets as would be the case under Policy PCA1.
- The reference at Paragraph 197 of the NPPF to the scale of any harm or loss and the significance of the heritage asset is directed at non-designated assets, not “any heritage assets” as in Policy PCA1.

4.28 I appreciate that the provisions in the NPPF on the historic environment can be difficult to interpret and understand. However, to avoid inappropriate regard to the policies, it would be better to cross-refer to the NPPF rather than paraphrase (incorrectly), in the draft Plan, national policies.

4.29 The final paragraph of Policy PCA1 deals with Jodrell Bank. Since the making of the Marton Village Neighbourhood Plan 2015-2030 and adoption of the Local Plan Strategy, Jodrell Bank has been designated as a World Heritage Site. It is appropriate to draw attention to this fact, in the draft Plan, and to make reference to its outstanding universal value.

4.30 The provisions of the policy are very similar to draft Policy HER 9 of the Revised Publication Draft SADPD to which representations have been lodged. These will be heard in due course. In this regard, objection has been raised to the requirement for a heritage impact

²⁰ NPPF Glossary, “Setting of a heritage asset”.

assessment. However, as the name implies, I would expect this to be confined to heritage matters, not such other non-heritage matters as may contribute to the outstanding universal value.

4.31 In due course, the provisions of Policy PCA1 may be overtaken by events through the SADPD. However, unless and until that happens, Policy PCA1 will afford appropriate protection, within Marton, to the Jodrell Bank observatory.

4.32 So far as other heritage matters are concerned, Policy PCA1 will require modification to pay appropriate regard to national policy and meet the Basic Conditions. Necessary amendments are set out in examiner modification **EM4**.

All Other Matters

4.33 In this examination, I have focussed on differences from the made Neighbourhood Plan and on relevant representations. Nevertheless, I have considered afresh the whole of the draft Plan. I have reviewed each policy, in terms of its consistency with national policy and guidance and general conformity with the strategic policies in the Development Plan. Aside from the issues that are discussed above, I am satisfied that there are no other matters that affect the Basic Conditions.

4.34 With the modifications that I have recommended, the Plan would meet the Basic Conditions. Other minor changes (that do not affect the Basic Conditions) could be made by the Parish Council and Cheshire East Council of their own volition.

5. Conclusions

Summary

- 5.1 The Updated Marton Village Neighbourhood Plan has been duly prepared in compliance with the procedural requirements. My examination has investigated whether the draft Plan meets the Basic Conditions and other legal requirements. I have had regard for all the responses made following consultation on the draft Neighbourhood Plan and the evidence documents submitted with it.
- 5.2 I have set out modifications to a number of policies and text to ensure the Plan meets the Basic Conditions and other legal requirements.

Examiner Recommendation

- 5.3 I recommend that Cheshire East Council should make the draft Plan with the modifications specified in the Appendix to this report.
- 5.4 It is evident that a considerable amount of time and effort has been devoted to the development and production of this Plan and I congratulate those who have been involved. The Plan should prove to be a useful tool for future planning and change in the Parish of Marton over the coming years.

Andrew S Freeman

Examiner

Appendix: Examiner Modifications

Examiner Modification (EM) number	Page no./ other reference	Modification
EM1	Page 38	In the second paragraph of Policy HD1, substitute “Proposals for houses of agricultural and other rural workers who have an essential need to live permanently at or near their place of work” for “Proposals for agricultural workers houses, or residential properties which support a rural business”.
EM2	Various pages	In the following policies, substitute “shall” for “should”: Policy HD2 Policies PE1–PE3 Policy TRA1 Policies PCA1 and PCA2
EM3	Page 41	In Policy PE1: Replace the second paragraph with the following: “Development shall not have an adverse visual impact on the landscape setting of the World Heritage Site at Jodrell Bank or unacceptably harm views towards the site from the parish of Marton.” Follow this amended paragraph with a new paragraph: “In the “local views” identified on Map 8: Village Centre, there shall be no unacceptable loss of visual amenity.” Delete the final sentence in the final paragraph.
EM4	Page 44	In Policy PCA1, replace the third sentence of the first paragraph with the following: “In this and all other respects, protection shall be afforded in accordance with Paragraphs 184 – 202 of the National Planning Policy Framework, February 2019.” Delete the second paragraph of the policy.

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				Name of officers consulted	Date consulted	