

Summary of main findings

0.1 It is a requirement of the Localism Act that this report should contain a summary of its main findings. The reasons for each of the recommendations are given in the following sections of the report.

0.2 The principal findings in this report are that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in the 1990 Act, does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

0.3 My main recommendations for modifications to the individual policies are:-

- The start date for the plan should be amended to 1st April 2010;
- Policy HOU01 should be deleted;
- Locational criteria for self-build housing should be introduced in Policy HOU05 as well as additional criteria for such housing on former farm complexes;
- 'Policy' HOU12 should change status to that of a definition of 'local housing connection(s)' for the purpose of implementing Policies HOU05 and HOU10;
- The scope of Policy HOU07 should be reduced to apply only to recreational land and open space with public access and be qualified by criteria from paragraph 74 of the NPPF. Part 2 of the policy should be more generally worded and omit specific figures for the width of buffer zones;
- Policy BUS01 should be re-worded to more clearly relate to land use matters;
- Policy ENV01 should be deleted and
- Policy ENV04 should be re-worded with a cross-reference to a new key map (C26) showing all sites of nature conservation interest in the parish, with that information deleted from key maps C21 and C22.

Introduction

Appointment

1.1 I have been appointed by the Cheshire East Council, acting as the Local Planning Authority, under the provisions of the Localism Act 2011, to carry out an independent examination of the Brereton Neighbourhood Plan. The proposed plan was submitted to the Local Planning Authority on 23 July 2015. Cheshire East Council carried out publicity for the proposed plan for 6 weeks between 10 August and 21 September 2015 giving details of how representations might be made, in accordance with Regulation 16 of the Neighbourhood Plans (General) Regulations 2012 ('the 2012 Regulations'). I was sent the documentation required under Regulation 17 on 30 September 2015 including copies of all of the representations received under Regulation 16. I have taken that documentation into account in carrying out the examination.

1.2 I am a Chartered Town Planner (Member of the Royal Town Planning Institute) with over 40 years post-qualification professional experience in local and central government. I am independent of the Brereton Parish Council and of the Local Planning Authority. I have no land interests in any part of the plan area.

My role as an examiner

1.3 The terms of reference for the independent examination of a Neighbourhood Development Plan are statutory. They are set out in the Localism Act 2011 and in the 2012 Regulations. As an examiner I must consider whether the plan meets what are called 'the basic conditions'¹. In summary, these require me to:-

- Have regard to national policies and to advice contained in guidance issued by the Secretary of State;
- Consider whether the making of the plan contributes to the achievement of sustainable development;

¹ These are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (as introduced in Schedule 10 of the Localism Act 2011)

- Consider whether the plan is in general conformity with the strategic policies contained in the development plan for the area;
- Ensure that the plan does not breach, and is otherwise compatible with EU obligations relating to Strategic Environmental and Habitats Assessment and that the plan is compatible with Convention rights, within the meaning of the Human Rights Act 1998.
- Ensure that 'prescribed conditions' are met and 'prescribed matters' have been complied with in plan preparation and submission.

1.4 Legislation requires that my report on the draft plan should contain one of the following recommendations:-

- a) that the draft plan is submitted to a referendum, or
- b) that modifications are made to the draft plan and the modified plan is submitted to a referendum, or
- c) that the proposal for the plan is refused.

I may make recommendations for modifications which I consider need to be made to secure that the plan meets the basic conditions or for compatibility with EU obligations and (Human Rights) Convention Rights. The only other modifications which I may recommend are those to correct errors.

Procedural matters, including the need for a hearing

1.5 Cheshire East Council formally designated the parish of Brereton as a Neighbourhood Area on 31 July 2013. The plan relates solely to the designated area and has been submitted by the Brereton Parish Council as the 'qualifying body'. The title of the plan, as given on the front cover and in the formal Regulation 15 submission is the 'Brereton Neighbourhood Plan'. For that reason, all references in this report to the plan use that title, abbreviated to 'BNP'. However, all references in the document itself are to the 'Brereton Parish Neighbourhood Plan' (my emphasis) as it was in the Regulation 14 notice. This should be corrected for consistency.

1.6 The plan period is specified as 10 April 2015 to 9 April 2030. That is a 15 year period from the start of the Regulation 14 consultation on the pre-submission plan ending in the same year as the emerging local plan, the Cheshire East Local Plan Strategy (CELPS). The only aspect of the BNP which is in any way time related is Policy HOU01 for the provision of housing which policy is discussed in more detail in paragraphs 3.15-18 below. The BPC acknowledged during the examination that to enable comparison with CELPS monitoring housing data it would be logical to use the local plan base date of 1st April 2010. Therefore, for consistency and for ease of monitoring the start date of the plan should be changed to 1 April 2010 (Recommendation 2). The plan does not relate to mineral extraction or waste development or to nationally significant infrastructure. The statutory requirements in these respects have been met.

1.7 The legislation states that the ‘general rule’ is that the examination of the issues by the examiner should take the form of the consideration of written representations. However, an examiner must hold a hearing ‘for the purpose of receiving oral representations about an issue’ where he or she considers a hearing ‘is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case’².

1.8 From my initial appraisal of the plan and the representations made, I came to the view that there were a number of issues relating to the housing policies in the plan which required in depth consideration before I could be satisfied that there had been an ‘adequate examination’ of such issues. In particular, this applied to the overall number of dwellings to be permitted over the plan period and the detailed implementation of policies intended to provide for local needs, especially in terms of provisions for ‘self-build’ housing which is a novel and emerging area of planning policy. Accordingly, I notified Cheshire East Council that it would be necessary to arrange a public hearing at which these issues might be discussed. This took place at Sandbach Town Hall on 11 November 2015. I spent the previous afternoon touring the parish so that I might fully appreciate the character of the area and look at more recently constructed housing and sites with outstanding planning permission.

² Paragraph 9 of Schedule 4B to the 1990 Act (as in reference 1 above)

1.9 There were a few other points upon which I sought clarification from the Parish Council but which I considered might be satisfactorily dealt with by way of a written exchange. These were sent to the local planning authority by e-mail on 21 October and a response was received on 6 November as part of BPC's written submissions for the hearing. At my request, all written submissions were placed in the public domain on the Cheshire East Council web site.

1.10 The Parish Council have submitted a Basic Conditions Statement in accordance with the Regulations. It provides a detailed assessment, including commentary in tabular form in relation to each of the policies in the plan, of the extent to which the plan meets the basic conditions, as summarised in paragraph 1.3 above. I have taken that assessment into account in my examination. I have also taken into account all of the written representations made on the submitted draft plan, along with the written and oral responses to the questions I raised during the examination.

Preparation of the plan and the pre-submission consultation process

2.1 As required by legislation, the Parish Council have submitted a Consultation Statement. It sets out in considerable detail the process of public engagement and sets out the manner in which the issues raised in the Regulation 14 consultation, which took place between 10 April and 22 May 2015, were considered and addressed in the final draft plan as now submitted for examination.

2.2 The measures taken to engage the local population in the plan preparation process from an early stage are very much in evidence. Public opinion sought on the principle of producing the plan before the application for designation. The first consultation event also took place in March 2013, before the neighbourhood plan area had been formally designated by Cheshire East Council. Every effort has been taken to publicise the plan across a wide spectrum of the community, including local groups and business interests. I have little doubt that the thoroughness of the engagement process has resulted in the noticeable lack of criticism in any of the representations made on the plan with a large majority being in support. The parish

council and the project group are to be congratulated on the effectiveness of the public engagement process.

The Plan

3.1 In paragraph 1.3 above I have set out the terms of reference for my examination of the plan in accordance with the relevant Act and Regulations. In doing so I will first consider the consistency of the plan with the Human Rights Act and then whether EU Regulations have been complied with. I will then consider the extent to which the plan meets the basic conditions.

The Human Rights Act and EU Obligations

3.2 In the second paragraph of section 6 in the Basic Conditions Statement it is stated that the Neighbourhood Plan, and the policies and proposals contained within it, has had regard to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights (as amended, 2010); and that the plan complies with the Human Rights Act. No representations have been made concerning this aspect but from my own assessment I have no reason to conclude other than that the approach taken in the plan is fully compatible with Convention Rights.

3.3 The same section of the Basic Conditions Statement also deals with the need for a Strategic Environmental Assessment (SEA) in accordance with EU Regulations³.

On 21 January 2015 the Parish Council requested that Cheshire East Council issue screening opinions as to whether the plan would require a SA/SEA and also whether an appropriate assessment under the Habitats Regulations would be required. An initial opinion was issued by the CEC on 20 March 2015, which was that the plan would not have any significant environmental effects and that, consequently, an environmental assessment would not be required⁴. In April 2015 the BPC produced a statement on Sustainability Appraisal⁵.

3.4 A representation by Gladman's challenges the adequacy of CEC's screening opinion. They suggest that the screening was undertaken only on the submission

³ The Strategic Environmental Assessment Directive, 2001/42/EC

⁴ Document SD/C26a, included with Regulation 14 documentation on BPC web site. Regulation 5(6) of the Environmental Assessment of Plans and Programmes (SI 2004 No. 1663) applies.

⁵ Document SD/C28

draft and was too late to influence its content contrary to advice in Planning Policy Guidance (PPG)⁶. However, as indicated above, a screening opinion was requested from the CEC by the qualifying body as early as January 2015. The Cheshire East Council's initial screening document is a full and systematic assessment of the environmental implications of the policies and proposals in the draft BNP which is acknowledged not to seek to make site allocations but to include a number of protective policies. The initial opinion was consulted upon in parallel with the consultation on the pre-submission draft plan⁷ and responses received from statutory consultees in May, including confirmation by Natural England that a full environmental assessment would not be required.

3.5 The final screening opinion, or the 'determination' as required under the Regulations⁸, although not specifically identified as such, was made on 14 July 2015 and sent to the statutory consultees as part of the documentation made available publicly at the start of the Regulation 16 consultation on 10 August, within 28 days of the 'determination' under the Environmental Assessment Regulations⁹.

3.6 Gladman's also draw attention to the examiner's report into the Lindfield Neighbourhood Plan in which it was concluded that an additional site allocation should be made, requiring an SEA. As I discuss later in this report, the situation in Brereton is very different. It is an entirely rural parish containing two small villages which were not proposed in the statutory development plan to accommodate significant housing development, nor for that matter are they so proposed in the emerging CELPS. As an SEA is not required there is no requirement for alternative growth scenarios to be tested. That is more appropriate for the higher level local plan, for which an SA/SEA has been produced.

3.7 The plan-making body ('the relevant authority') must also consider the provisions of the Habitats Regulations.¹⁰ The Bagmere SSSI, which lies within Brereton Parish and within 700 metres of the settlement boundary of Brereton Heath, is part of the Midlands Meres and Mosses Phase 1 RAMSAR. Other Sites of

⁶ Ref. ID 11-028-20150209

⁷ The 'Regulation 14' consultation

⁸ Regulation 9(1) of the 2004 Regulations, see footnote 4 above.

⁹ Regulation 11 of the 2004 Regulations

¹⁰ The Conservation of Habitats and Species Regulations, 2010 ('the Habitats Regulations')

European significance fall within a 15 km. radius of the centre of the parish. Consequently, the HRA screening assessment undertaken by Cheshire East Council as set out in Appendix 1 of Document SD/C29a, finalised in July 2015, presents a detailed and thorough analysis. It concludes that neither the Neighbourhood Plan itself nor in combination with the policies and proposals of the CELPS, would have a 'significant adverse effect' on the sites and that an 'appropriate assessment' was not required. This conclusion was supported in consultation by Natural England subject to a strengthening of policy ENV04 to clarify that protection should be applied to land 'adjacent to or within the proximity of' the designated sites'.

3.8 Policy ENV04 in the submitted plan has been strengthened as required.

There is also a mitigation clause written into policies HOU01 and HOU02.

Nevertheless, Natural England have made representation on the submitted plan in which they express concern that the mitigation policy safeguards in the plan might not be sufficient in themselves should the neighbourhood plan be 'made' before the CELPS is adopted and the additional protective policies therein come into effect. They suggest that, should that be a possibility, then the policy wording of the draft CELPS should be included in the BNP to ensure that the appropriate mitigation measures are undertaken before any development takes place. As I considered this to be somewhat of a novel argument I requested that the CEC should formally respond to Natural England by letter, which they have done. I have taken that response into account along with Natural England's representation.

3.9 I consider that Natural England's concerns represent an over-reaction, especially as the BNP is not a plan which seeks to promote development over and beyond that envisaged in the CELPS. The CEC have drawn attention to the strongly protective policies NR2 and NR3 which are both saved in the Congleton Borough Local Plan (CBLP), which remains the statutory plan and which, until the CELPS is adopted, has the full force of s.38(6) of the 1990 Act (as amended) behind it. The same would apply to neighbourhood plan policies should the plan be 'made' before adoption of the CELPS. The policies in the emerging CELPS are 'material considerations' in the decision-making process and that would apply equally to the mitigation policies as it would to those which promote development; they are inter-linked and all part of a package of measures. It would not be appropriate for a

decision-maker to attach significant weight to pro-development policies without also taking full account of any significant environmental effect such development would have in the absence of mitigation. Furthermore, it is not good practice to replicate policy in documents at different 'tiers' of the statutory development plan

3.10 Taking all of the above into account, I am satisfied that the submitted plan is compatible with EU environmental obligations and does not breach Convention Rights.

General conformity with the strategic policies of the Development Plan for the Area

Summary of development plan policy

3.11 As mentioned in paragraph 3.9 above, the statutory development plan for the area is the Congleton Borough Local Plan (CBLP) First Review which was adopted in 2005. The plan period ended in 2011 and, consequently, the plan does not provide an up-to-date context for decision making at least in relation to those policies, such as for housing, which are time-related. A 'saving direction' under the provisions of the Planning and Compulsory Purchase Act 2004 was made by the Secretary of State in January 2008¹¹ in which the majority of the plan policies were retained and still form part of the statutory development plan.

3.12 The parish of Brereton lies within what is described in the CBLP as part of the rural area where 'Limited development will ... be facilitated in smaller settlements where it may aid the provision of rural services or provide effective housing to meet local need.'¹² The plan includes a settlement hierarchy (Policy PS3) which looks to focus most development in the towns, which include Sandbach and Congleton. Sandbach abuts Brereton to the west whereas Congleton is close by to the east. Holmes Chapel, which abuts to the north, and Brereton Green have equal status as a 'village in the countryside' to which Policy PS5 applies. They have a 'settlement zone line' shown on the proposals map. Brereton Heath is described as a 'settlement in the countryside' to which Policy PS6 applies. It has a defined 'infill boundary line'. All other parts of the parish are classified as being in the 'open countryside' to which Policy PS8 applies. Under that policy the types of

¹¹ Paragraph 1(3) of Schedule 8 of the 2004 Act

¹² Extract paragraph 2.48 of the CBLP

development which might be permitted are listed, including affordable homes subject to Policy H14. On the economy, the plan recognises the need for rural diversification and the types of development which might be permitted within the 'open countryside' are listed under Policy E5. Policy E4 is permissive of employment development within the settlement zone line of the Policy PS5 villages. Other policies cover transport and the environment.

3.13 The overall thrust of the statutory plan as it applies to Brereton parish is that it is a countryside area where development should be to meet local needs and where the rural character is to be protected. I consider that the BNP is entirely in conformity with the aims and objectives of the CBLP although, as discussed below, the scale of the housing development which has taken place in recent years, especially at Brereton Heath, has to be recognised. In that regard, it seems to me apt that the vision should refer to the parish being a 'Green Gap' between the surrounding towns and villages. Not only is such a concept in line with the statutory plan but the settlement strategy in the emerging CELPS¹³ remains substantially as in the CBLP. Brereton parish comes within the 'other settlements and rural areas' subject to CELPS Policy PG2 where development 'in the interests of sustainable development' is envisaged 'in order to sustain local services', with affordable housing 'to meet a particular local need'.

Does the plan meet local needs?

3.14 The concept of meeting local needs is not an easy one because in most cases planning decisions are not taken on the basis of the personal circumstances of an applicant. Dwellings for agricultural workers are a special case to which CBLP Policy H6(1) applies¹⁴. Affordable housing is also recognised as an 'exception' under CBLP Policy H14 subject to a local occupancy condition.

3.15 The difficulty is in assessing exactly what local needs are. A local housing needs survey was undertaken in Brereton in 2013¹⁵ which identified a need for the housing of 32 households over the plan period with a minimum of 12 needing affordable housing, for rent, within the first five years. Some caution is required in

¹³ Holmes Chapel, however, is proposed as a 'Local Service Centre'. Brereton Green does not have that status.

¹⁴ Paragraph 55 in the NPPF also refers

¹⁵ Document SD/C10

the figures because the return of questionnaires was only 39%. Even so, permissions for housing granted in recent years provide for an element of affordable housing with 7 already constructed as part of the Rose Cottage development fronting Holmes Chapel Road in Brereton Heath with a further 2 permitted on Moss Lane. The permission granted on appeal for 18 affordable homes on a site at London Road, Holmes Chapel, has been recognised as providing for the needs of Holmes Chapel and not Brereton despite the land being within the parish. Nevertheless, there will clearly be a need to monitor the delivery of affordable housing over the remainder of the plan period and, with the provision for exception sites in policy HOU03, there may be additional potential for such development.

3.16 A further study was commissioned by the BPC in 2014 from URS to provide housing needs advice for the Neighbourhood Plan¹⁶. It examines alternative approaches to the calculation of housing need at the local level. One approach is to apportion the total housing provision for the rural area in CELPS, which has been increased to 2950 for Cheshire East as a whole, on a population basis. This results in a requirement for 43 additional dwellings over the whole CELPS plan period of 2010-30. The alternative approach is derived from CLG Household projections, termed an 'unconstrained figure' of 58 dwellings over the same period. The recommended mid-point figure of 50 is that given in NP Policy HOU01. It also derives from a community survey in which the majority of respondents indicated that they would prefer 1-50 new homes to be built in the plan period.

3.17 Representations from the development industry question the basis for this figure with an assertion that provision should be significantly higher although no additional justification has been provided. However, I consider that the URS study represents reasonably robust evidence on the issue¹⁷ and, if anything, is more detailed than that which might be reasonably expected to support a neighbourhood plan. Along with those policies which look to providing for specific needs on an 'exceptions' basis, I consider that the plan adequately provides for local needs. It need go no further.

¹⁶ Document SD/C17

¹⁷ In accordance with guidance in the PPG, ref. ID 41-040-20140306

3.18 In that context, it is important to distinguish between need arising from the existing population of a rural area and externally generated demand by those who might be attracted to move to the area from outside. In view of the scale of recent development there is no case for additional development being required to maintain the viability of the limited local services. It is for that reason that I have questioned the inclusion of a reference to meeting external demand in the text under the objective for housing development on page 15 of the plan. It may well be that existing housing will be taken up by people moving from outside, and it is correct to say that there can be no control over it. Indeed, as recognised in the Taylor Review¹⁸, a common problem in rural areas which are within easy commuting distance of major employment centres is that such demand increases local house prices making it increasingly difficult for local people on lower incomes to buy houses locally. The plan contains policies which might enable such people to gain permission but the plan does not seek to meet external demand. The wording under the objective is misleading and does not reflect the development strategy. It should be omitted for that reason.

Recommendation 1

At the end of the first paragraph of text under the objective for Housing Development in section 6.1 on page 15 of the Plan, delete the words ‘and the demand from people who want to live in a rural area such as ours but work in urban areas nearby.’

The achievement of sustainable development and consistency with national policy and guidance

3.19 As indicated in paragraph 1.3 above the basic conditions include requirements to ‘have regard’ to national policies and advice¹⁹ and that the plan ‘contributes to the achievement of sustainable development’²⁰ In paragraph 6 of the NPPF it is stated that the major part of that document, paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development

¹⁸ “Living Working Countryside” - The Taylor Review of Rural Economy and Affordable Housing, 2008

¹⁹ Schedule 4B, Paragraph 8(2)(a)

²⁰ Schedule 4B, Paragraph 8(2)(d)

means in practice for the planning system. Therefore, the two basic conditions are closely linked and I shall consider them together.

3.20 In that context, although neighbourhood plans should be in 'general conformity' with the strategic policies of the development plan, it is good practice that it should, as far as reasonably practicable, be up to date and consistent with the emerging plan, the CELPS. That is so that, once that plan is adopted, the chances of any inconsistency, or even conflict, are reduced²¹.

3.21 It is not appropriate or necessary for me to rehearse here in any detail the background to the on-going examination of the CELPS. The examination had been suspended but it is now progressing following the submission by the CEC of updated evidence on Objectively Assessed Housing Needs (OAHN), as requested by the Inspector. As stated above the apportionment method for calculating need in the URS study uses the currently submitted figures. I accept that the issue is still open for debate and it is possible that the rural areas housing requirement in the finally adopted plan could be higher. But, to my mind, it is significant that the level of commitment to new housing development in Brereton as the result of planning permissions granted in recent years would, if all implemented, and taking account of completions since 2010, exceed even the 'unconstrained' figure for housing needed over the whole plan period until 2030. *See paragraph 3.29 below.*

3.22 The thrust of the representations on this issue is that because the plan, through Policy HOU01, seeks to constrain housing development to approximately the level of existing permissions it is unduly restrictive and does not accord with the Government's growth agenda. I consider that the national policy as expressed in the NPPF puts the onus first and foremost on the local planning authority, through the local plan process to demonstrate that the OAHN for the Strategic Housing Market Area (SHMA) is met. To achieve that, the overall provision in the rural area is proposed to be increased from that in the submitted plan but the URS study for Brereton takes account of that. I accept that the figure is not yet finalised, but even should the rural areas figure be increased further in the finally adopted CELPS the strategic direction of the plan and its settlement hierarchy has already been endorsed by the Local Plan Inspector. I do not accept, therefore, that the BNP is

²¹ PPG, Ref. ID 41-009-20140306

unduly restrictive in its approach to housing provision nor that its progression prior to local plan adoption would necessarily increase pressure on other parts of the rural area. There is no strategic context for increasing the housing provision in the BNP above the proposed level.

3.23 Gladman Developments have given some details of a planning application they have submitted for residential development on land off London Road, Holmes Chapel but which lies within Brereton parish. The proposal is now before the Secretary of State on appeal and a Public Inquiry is scheduled for March 2016. Gladman's submit that an expansion of Holmes Chapel might well be required to accommodate the increase of around 50% in Cheshire East's revised evidence base for the CELPS²². In their view, a southerly expansion of the town would represent a sustainable pattern of development but it would be contrary to the submitted BNP which makes no provision for it. The BNP would, therefore, restrict development and thus undermine the spatial objectives of the emerging CELPS and the core principles of sustainable development.

3.24 This raises an interesting issue with regard to the relationship between neighbourhood plans and emerging development plans, especially where the latter is looking to increase housing development in line with Government policy but the statutory development plan pre-dates the NPPF. However, it is clear from Planning Practice Guidance that neighbourhood plans may be prepared, indeed 'made' ahead of a development plan review. In the case of any conflict then, under s38(5) of the 1990 Act, any decision should be resolved in favour of the policy contained in the last document to become part of the development plan²³. This principle has been upheld by the courts.

3.25 The overall scale of housing to be accommodated within any local planning authority area and the options for distributing that housing between different settlements in order to optimise the sustainability of the plan strategy is very much a strategic issue. It is right and proper that such matters should be examined through the local plan process, as is happening in Cheshire East. It cannot reasonably be expected that a small-scale plan drawn up for an individual parish such as Brereton

²² In the draft CELPS, policy PG2, Holmes Chapel is classified as a 'Local Service Centre'.

²³ PPG, ID ref. 41-009-20140306

should accommodate wider area, strategic, requirements until they have the status of inclusion in the statutory local plan, at which point paragraph 184 in the NPPF would apply.

3.26 I agree that a Neighbourhood Plan should not prejudice the possibility of meeting wider housing needs, such as those of towns abutting the neighbourhood area (the classic ‘cross-boundary issue’), where there is a clear-cut commitment to such a proposal in an emerging development plan. However, as things stand, that is not the case in Cheshire East. In this regard, I cannot conclude on the evidence before me, which I consider to be proportionate for the purposes of a neighbourhood plan, that the BNP fails against either basic condition a) or d). Should the BNP be ‘made’ before the CELPS is adopted it would be apparent to any decision-maker that it did not seek to accommodate any wider strategic or cross-boundary housing requirement.

The overall provision for new housing in the plan: the purpose of Policy HOU01 and the means to its implementation

3.27 The wording of Policy HOU01 in the submitted plan is that ‘proposals totalling up to 50 houses will be allowed ... by the end of the plan period to 2030’. Desirable though it may be to use plain English in drafting Neighbourhood Plans, it is important, especially in the wording of policy statements, that there should be no ambiguity of meaning. The plan is implemented, as part of the wider development plan, through decisions on planning applications made to the local planning authority. In practice, to ‘allow’ a ‘proposal’ can only mean to grant planning permission upon application. The policy is also written in the future tense. Consequently, a common sense interpretation of the policy would be that planning permission will be granted for up to 50 new houses over and above those which already have planning permission. There is no means to limit or control the implementation of existing permissions and, conventionally, they are accepted as ‘commitments’ for the purpose of plan making.

3.28 That is the approach which has been taken in the CELPS²⁴. The rural areas figure of 2950 is for the whole plan period of 2010 to 2030. Housing completions

²⁴ Table A

from the base date are deducted to give a residual figure of the number of houses which need to be delivered during the remainder of the plan period. Unimplemented planning permissions at a given date would be part of the potential housing supply with the rest being provided by allocation in the plan. The URS study equates the 'local need' for Brereton as 42-58 dwellings for the whole plan period from 2010. For consistency and 'read across' between figures it is sensible that the neighbourhood plan base or 'start' date should also be 2010 and I recommend that modification. However, consideration might be given to updating all statistics to 1st April 2015 and using that as the 'start' date for monitoring purposes.

Recommendation 2.

Amend the 'start' date for the plan period from 9th April 2015 to 1st April 2010.

3.29 At the hearing, the CEC provided updated figures for housing completions in Brereton, as at 30 September 2015, on sites granted permission since 1st April 2010. 33 houses had been completed and occupied in that period. At the same date there were extant permissions for a further 54 dwellings of which 18 are the affordable homes near Holmes Chapel which it was agreed should be discounted, leaving 36. Therefore, if all permissions were to be implemented the total 69 dwellings would exceed the URS 'local need' calculation by a wide margin. Even if a 10% allowance is made for non-implementation (a common practice) the resultant 32 dwellings in addition to the 33 completed would give a total of 65, 7 (12%) above the URS 'unconstrained' figure of 58. That is a comfortable margin, even should some other method be used to apportion the rural areas figure in the CELPS, for example to take account of the policy constraint applying in green belt areas which do not apply to Brereton.

3.30 The BPC have confirmed that it was not their intention that policy HOU01 should permit the granting of permission for another 50 houses over and beyond existing commitments. In that context, I note that the community survey was dated in 2013 before the permissions for development on Holmes Chapel Road, Brereton Heath were given. From that it is clear to me that the community of Brereton would not wish to see further significant housing development in the parish, over and above the level of existing commitments or what might be regarded as meeting a local need. As submitted, policy HOU01 would be likely to be misinterpreted. It is neither

clear nor unambiguous as required in Planning Policy Guidance²⁵ and needs to be modified to meet basic condition a).

3.31 Representations from the development industry object to Policy HOU01 on the basis that it is overly restrictive, particularly in inclusion of the words 'up to'. It is argued that such an approach is contrary to government guidance in the NPPF and any figure should be regarded as a minimum. It has been suggested that the average of 6 completions a year should continue. I find no evidential basis for making such provision especially when it is recognised that most completions have occurred within the last 2 years as a result of decisions taken to remedy a shortfall in an identified five year supply of land across Cheshire East. As the Local Plan Inspector has indicated in agreeing to suspend the examination of the CELPS the supply situation will have to be remedied for that plan to be found 'sound'.

3.32 I do, however, agree that setting a policy cap on the number of dwellings to be built over the whole plan period does not comply with the NPPF and so fails a basic condition. It is also totally unrealistic to include a figure which is significantly (around 23%) below the number of dwellings either already completed since 2010 or with unimplemented permissions. Furthermore, as BPC acknowledged at the hearing, there may be some limited potential for further development within the existing settlement boundaries, including through re-development in accordance with paragraph 2 of BNP Policy HOU02. There would be no justification for with-holding permission for development on a site which complied with all other development plan policies simply because a particular figure had been reached.

3.33 In discussion at the hearing the BPC suggested that, perhaps, the word 'around' might be substituted for 'up to'. However, not only would that be vague but also there would no practical means to implement it. As there is no existing or emerging strategic requirement for additional housing in Brereton I consider that other BNP policies are sufficient in their own right to protect the rural character of the parish. Policy HOU01 does not, in reality, serve any useful purpose AS A POLICY. It has value to the community as a signal of intent, but the plan must also be realistic about what can be achieved. I therefore recommend the deletion of the policy. The second part, which contains an important statement with regard to mitigation relating

²⁵ Ref. ID 41-041-20140306

to the Bagmere RAMSAR site, is duplicated in policy HOU02 where it is more appropriately placed. The justification and evidence to support the policy within Appendix A1 has a useful role as background material but it may be merged with that for policy HOU02. In that context it would be useful to include as up-to-date information as possible on housing completions and commitments.

Recommendation 3

Delete Policy HOU01 and integrate the justification and evidence material in Appendix A1 with that for Policy HOU02 updated to the latest available information on housing completions since 2010 and remaining unimplemented permissions.

The approach to policy wording

3.34 I refer above to PPG guidance about the need for policies to be expressed clearly and unambiguously. I drew attention to this by way of written question. Policy HOU01 was case in point. Not all of the text under the policy headings in the plan is actually policy which would be used in the determination of planning applications. Some is more in the nature of an informative or an indication of intended administrative action. Where this occurs I will refer to it in the recommendations which follow.

Is the identification of settlement boundaries for Brereton Green and Brereton Heath in the BNP an undue restriction on future growth?

3.35 As stated in paragraph 3.12 above the settlement boundaries for Brereton Green and Brereton Heath are shown on the CBLP proposals map. At the present time, the CEC has not proposed any change to those boundaries through the CELPS although I am informed this will be done in a 'part 2' plan dealing with smaller site allocations. Sensible adjustments to the boundaries, particularly at Brereton Heath to take account of recent planning permissions, are proposed in the BNP as shown in key maps 20a and 20b in Appendix C. Policy HOU02 continues the CBLP approach to policy as it applies to the settlement boundaries and development within or outside those limits.

3.36 The arguments advanced that the limits are unrealistic and unduly restrictive because they do not allow for any significant expansion of the villages in the period

up to 2030 are closely allied to submissions about the overall level of housing allowed for under Policy HOU01. The answer is the same. There is no strategic requirement for significantly greater housing development in this rural area. The plan meets the basic conditions in this regard. The BPC have indicated a willingness to review the BNP should the context change upon adoption of the CELPS. As was mentioned at the hearing there is currently no guidance on how neighbourhood plans might be reviewed but, as they are part of the statutory development plan it might be expected that there would be a positive and on-going review to maintain consistency between the different tiers of the plan.

3.37 The BPC have not quantified the potential for further development within the revised settlement boundaries in the BNP but it appears to be very limited. The CEC have explained that the boundary will be reviewed in a second part of the local plan when more detailed site allocations are considered. At that point the strategic requirements for the rural areas will have been decided. That may necessitate a review of the BNP. The BNP also allows for some development, in specified circumstances, outside settlement boundaries and, consequently, cannot be regarded as being unduly restrictive.

Application of 'exceptions' Policy HOU03, self-build Policy HOU05, housing for local people Policy HOU10 and the definition of 'local connections' in Policy HOU12.

3.38 In view of the novelty of self-build housing as a policy area, not dealt with in either the CBLP or, for that matter, in the CELPS, I considered that the application of BNP policies HOU03, HOU05, HOU10 and HOU12 required special scrutiny and warranted a hearing so that the issue might be fully discussed in the light of concern expressed by Cheshire East Council that the BNP policies would permit isolated dwellings in the countryside contrary to paragraph 55 of the NPPF.

3.39 The BNP is undoubtedly forward looking in seeking to encourage self-build and custom-build housing as an element in meeting local need. Councils are now required to maintain registers of those wishing to acquire land for self-build²⁶ and further provisions are included in the Housing and Planning Bill. However, current Government planning policy, as expressed in paragraph 55 of the NPPF, refers to

²⁶ Self-Build and Custom House Building Act, 2015, section 1

self-build as one type of housing within an appropriate mix. It is not suggested that self-build housing should be treated as an exception to policies which restrict development in the open countryside, in other words away from recognised settlements. It is also possible, even likely, that some plots for self-build housing might become available within the Brereton settlement boundaries, in which case Policy HOU02 would apply and the question of a local needs connection would not arise, other than under Policy HOU09. The second sentence of Part 1 of Policy HOU05 suggests that self-build dwellings would only be for 'local people' but that could only be the case on 'exception sites'. As the sentence is more of an informative than policy it should be deleted for clarity.

3.40 The term 'rural exception site' has conventionally been applied only to sites for affordable housing. The term is used in that sense in paragraph 54 of the NPPF. That is the concept behind CBLP Policies H6(vi) and H14. In the emerging CELPS it is Policy SC6. In BNP Policy HOU03 part c) refers to affordable housing for local needs and applies the Local Plan criteria. If adopted in its present form CELPS Policy SC6 would provide for an element of market housing on such sites in certain circumstances, as mentioned in paragraph 54 of the NPPF. It is to be noted that the maximum of 10 affordable units on any one site is included in emerging local plan policy and, as that might possibly change before the CELP is adopted, it need not be repeated in the BNP.

3.41 I raised concern about part 2 of Policy HOU03. This applies the 'not exceed 10 dwellings' criterion to all 'exception' sites as listed in the first part of the policy, but without a clear evidential basis for so doing. Although the figure of 10 is a maximum the inclusion of such a figure might well encourage schemes for that number. In combination with policy HOU05 for self-build housing, bearing in mind that these would be outside settlement boundaries, the requirement in policy ENV06(2) for development to 'complement the existing pattern of ribbon development and avoiding the use of cul-de-sacs' could lead to a significant extension of ribbon development into the countryside. In itself, such a form of development would be unlikely to meet the requirement in part 2 of Policy HOU05 for it to minimise visual environmental impact. After discussion at the hearing it was agreed that there would be advantage in amending the wording of part 2 to that used

in CBLP Policy H14. This would be less prescriptive and provide greater flexibility for schemes to be judged on individual merit. Such wording is recommended to be included in Policy HOU03. For consistency, the last sentence in part 2 of Policy HOU05 should also be deleted. It is, in any event, not expressed as policy.

3.42 The Housing and Planning Bill currently before Parliament includes provisions for starter homes but it is unclear how that will relate to smaller rural affordable housing exception sites. Together with homes suitable for elderly people, these are part of the overall housing mix and although such categories might usefully be mentioned in Policy HOU09 I find no basis for including them as ‘exceptions’ under Policy HOU03.

3.43 At the hearing, the BPC accepted the CEC request that locational criteria be included in Policy HOU05 to prevent isolated development in the countryside and thus ensure that the plan conforms with Government policy in this regard and meets the basic conditions. These criteria are that self-build housing should only be permitted on sites adjacent to settlement boundaries or in the form of infill, defined as ‘the filling of a small gap in an otherwise substantially developed frontage’. A modification is recommended to that effect. Such restrictions would also be consistent with long-standing policies which permit dwellings to be built for agricultural workers or to provide necessary accommodation associated with rural businesses. These would often come within the self-build category but are only permitted provided viability and functionality tests are met and subject to occupancy tying conditions.

3.44 With the agreed inclusion of locational criteria for self-build, the BPC sought greater flexibility relating to the redevelopment of former farm complexes for a mix of housing to include self-build on the basis that services are already available. This would go beyond conversion of existing buildings and the development of previously-developed (brownfield) land under categories 1(a) and (b) of policy HOU03.

Although paragraph 17 of the NPPF encourages the re-use of previously developed land and the re-use of redundant or disused buildings in rural areas is encouraged in paragraph 55 of that document, it is to be noted that definition of previously developed land in the NPPF document specifically excludes land that is, or has been, occupied by agricultural or forestry buildings.

3.45 The 're-use of land' is synonymous with 're-development'. The NPPF policy (and PPG/S 3 before it) has been used to justify the re-development of former hospital sites in the countryside and even in the green belt provided the open-ness of the area was not compromised. Category 1(a) of Policy HOU03 is a reflection of that in so far as it relates only to previously developed land, as is made clear in paragraph 3 of the justification for the policy on page 37 of the BNP. It does not follow that the introduction of locational criteria for self-build housing into the plan would be a basis for extending the concept of redevelopment in general to any 'farm complexes'. They could be quite extensive, including areas of hard standing or open barn structures which might not be suitable for 're-use' or conversion. A policy which simply allowed the redevelopment of former farm complexes would apply to some which are not only quite extensive but in relatively remote locations. That would not be sustainable development nor would it be consistent with the development plan and it is not clear what 'regard' it would have to national policy for rural areas.

3.46 Nevertheless, with the widening of permitted development rights and the generally supportive policy stance given to the re-use of redundant buildings in the countryside, it would be but a small step to allow for an element of self-build, as distinct from re-development, specifically to meet a local need as defined in Policy HOU12, provided that it was within the confines of the existing complex, and was not on land which had never been developed (greenfield land). It would, however, include hard-surfaced areas and land which is or has been occupied by agricultural buildings.

3.47 With the above limitations, provided that any new housing small-scale compared to what might otherwise be permitted development, I accept that the concept might be regarded as being broadly consistent with the thrust of government policy and thus represent sustainable development. New build should certainly not be a dominant element within any scheme for the re-use of farm complexes. Although, there is no specific reference in the plan as submitted to the development of self-build housing on farmyards, with the inclusion of other locational criteria modifications are required to make the policy intention clear.

3.48 'Policy' HOU12 is not phrased as a land-use policy in itself but includes the definition of the term 'local housing connection' as used in Policies HOU05 and

HOU10. Therefore, for clarity and to be consistent with PPG advice, it should be headed only as 'Definitions of the term 'Local (Housing) Connection' for the purpose of Policies HOU05 and HOU10'. All references in the plan to 'Policy HOU12' will need to be deleted and replaced by a reference to the definition of 'local housing connection'.

3.49 I drew attention in my questions for the hearing to the potentially wide scope for people to qualify under the local housing connection as defined in the submitted plan. However, the key service centre of Sandbach and the local service centre of Holmes Chapel, with sizeable populations, are both 'immediately adjoining parishes' meaning that the residents of those areas or the employees of businesses located there would, potentially, satisfy the local connection requirement. I consider that with such a wide definition the potential demand from those wishing to build their own houses, even with the suggested occupancy restriction using s106 obligations, might well be significant. It would not represent sustainable development.

3.50 This point was acknowledged at the hearing by the BPC. The intention is clearly to meet the local need for rural housing. Although a degree of flexibility was sought to meet the needs of adjoining rural parishes, to be consistent with development plan policies it was agreed that the definition of 'immediately adjoining parish' should not apply to either Holmes Chapel or Sandbach. I agree that a modification to that effect is needed to bring the policy in line with development plan policy.

3.51 The CEC have raised some detailed concerns on the terms of the s106 obligations which would be required to secure the occupancy of dwellings permitted as self-build under Policy HOU05. The reference in part 4 of the policy to a requirement to 'construct' the house within two years is ambiguous because it is unclear whether that applies to commencement or completion. BPC confirm this should be 'to commence construction'. I agree with the CEC that time limits under a s106 obligation should not be such as to act as a disincentive to self-build. The wording of part 4 assumes that an individual looking to develop a plot of land for a self-build house would need to purchase the land, which will not always be the case. Any time limit under s106 could only be to the grant of permission and not to 'purchase'. Subject to that, however, I accept that in the particular circumstances

under which this policy would be implemented it would not be unreasonable to expect construction to commence within two years of the grant of full planning permission, or that of the final reserved matters on an outline application. It would, however, be unreasonable to require construction works to be completed within a specified time period. Traffic flows and hours of work are matters which can be controlled by condition if justified to minimise disruption to residents.

3.52 The s106 obligation would also require an applicant to confirm 'their intention to live in the property once built'. People might well have good intentions which do not come about for one reason or another. CEC suggest, and the BPC accept, that for clarity this should require 'first occupation' by the applicant. The BPC have acknowledged that there is a risk that houses built to meet a local need might be sold within a relatively short time to others who do not have any local connection. That would require monitoring over time and the effectiveness of the policy reviewed.

3.53 In the light of paragraphs 203 and 204 of the NPPF and the guidance in the PPG²⁷ I have considered whether requiring all the matters in part 4 of Policy HOU05 to be subject to a s106 obligation meets the basic conditions. Where possible planning conditions should be used rather than a s106 obligation. The 'confirmation of their local connections' by the applicant(s) is something which might be expected to be included as part of a planning application. The LPA would then need to be satisfied on the evidence provided that the local connections definition in the BNP would be met. Whereas a planning condition might reasonably require occupancy by persons demonstrating a local needs connection such provision would be satisfied by persons other than the applicant(s), which would run counter to the concept of 'self-build'. The only effective way to ensure self- or custom-build is through a s106 undertaking. There is an error in the text of the justification for Policy HOU05 in paragraph 3. An agreement cannot be unilateral; 'obligation' is the correct generic term for either a unilateral undertaking or an agreement.

3.54 I agree that for consistency with the approach taken to the provision of affordable housing in the emerging CELP and for the ease of implementation the threshold in Policy HOU10 should be 10 dwellings rather than 9 and I recommend that. Other points for clarity relate to details of implementation. It would be helpful to

²⁷ Ref. ID 21a-011-20140306

clarify whether 10% would mean two dwellings on a site for 16 dwellings or more (rounding up) or would only be 'triggered' for each whole 10, i.e. 2 for 20+, 3 for 30+ etc. A further question raised by Barton Willmore in their representation is when the 9 month period under part 2 should apply; whether it includes 'off-plan'. I consider that such detail is a matter for the CEC to discuss with the developer pursuant to a s106 agreement or obligation.

3.55 Finally in this section, as I am recommending that the definitions of 'local housing connection' should not be treated as policy it would be logical if the plan were to be re-organised so that the Policies HOU03, HOU05 and HOU10 are brought together in succession followed immediately by the definitions of 'Policy HOU12'. The plan does not contravene any basic condition in this respect and so I make the point only as a suggestion for the benefit of the plan user.

Recommendations for Policies HOU03, HOU05, HOU10 and HOU12

4. Delete Part 2 of Policy HOU03 and replace by the following text:-

The development of an exception site shall comprise of a small scheme, which must be appropriate in scale, design and character to the locality.

In paragraph 2 of the justification and evidence for Policy HOU03 in Appendix A1 (page 37) delete the words 'not exceeding 10 dwellings on any site'.

5. Delete Part 1 of Policy HOU05. In paragraph 3 of the justification and evidence for the policy in Appendix A1, page 38, line 3, delete the words 'by local people' and insert the words 'On exception sites' at the beginning of line 4; replace 'A unilateral agreement' by 'A s106 obligation ...'

In Part 2 of Policy HOU05, after the words 'will be supported where' in the first sentence, insert:-

a) the location ... environmental impact; (*as in submitted plan*)

b) the site immediately adjoins a settlement boundary as shown on key maps C20a and C20b or the development would represent infilling*;

*defined as 'the filling of a small gap with one or two dwellings in an otherwise substantially built-up frontage'

c) the development would be on land within the confines of a farm complex which is no longer in use for agricultural purposes and in association with the re-use of existing buildings, on land which:-

- (i) is hard-surfaced, or**
- (ii) is occupied by agricultural buildings which are not capable of re-use without extensive re-building, or**
- (iii) has previously been occupied by agricultural buildings.**

Move the second and third sentences commencing 'Dwellings can..' to become a new part 3. Delete the fifth sentence commencing 'For example,'

Part 3 becomes Part 4 and Part 4 becomes Part 5

6. Modify Part 4 (new Part 5) of Policy HOU05 to read as follows:-

Planning applications for the erection of self-build dwellings on exception sites as defined in Policy HOU03 shall be accompanied by evidence of the local housing connection(s) of the applicant(s) with Brereton Parish as defined in this plan. Planning permission for self-build dwellings on exception sites will be granted only where such a connection has been demonstrated.

In addition, planning permission will be granted provided that an obligation is concluded under s106 of the Town and Country Planning Act 1990 in which the applicant(s) undertake(s) to commence construction of the dwelling within two years of the grant of a full permission or of the final approval of reserved matters submitted in accordance with an outline permission. The applicant(s) shall also undertake to occupy the dwelling upon completion.

7. Modify Policy HOU10 by the replacement of the figure '9' in the first line by '10'. Amend the justification and evidence section, paragraph 1 on

page 41, to reflect this and include a clarification on the application of the 10% requirement for larger sites.

- 8. Delete 'Policy' HOU12 as a policy but retain the section within the plan as a definition of the term 'local housing connection(s)' for the purpose of implementing Policies HOU05 and HOU10.**

In Parts 3 and 4 of 'Policy' HOU12 insert the word 'rural' before 'parish' in all references to 'immediately adjoining parish' and qualify the word 'rural' by a footnote stating that this excludes Sandbach and Holmes Chapel.

Housing mix Policy HOU09

3.56 This policy is closely associated with those discussed above, in particular in seeking to achieve a housing mix which assists in meeting local needs. However, the policy is very broadly worded and might prove difficult for the LPA to interpret in making decisions on any applications received for any larger schemes within the parish, in which the issue of mix might be an issue. As indicated in paragraph 3.42 above, self-build housing would normally be regarded as an element within any mix, as would starter homes and housing suitable for the elderly.

3.57 The policy is somewhat vague in its requirement that 'each new dwelling should contribute in some manner to improving the quality of local life' but the BPC have now suggested what I regard as useful criteria against which a planning application might be judged and, for clarity and to assist implementation, I recommend the addition of those criteria to the policy.

3.58 It is also not at all clear what giving priority to the provision of smaller units to meet local needs would mean in practice. Greater specification is required and the BPC have provided it.

3.59 Barton Willmore are correct to draw attention to the fact that many of the details required under this policy would not be normally be included in an outline application. However, if a particular mix or house type is to be required by the LPA that would have to be conditioned at outline stage, when that applies. It is otherwise

clear that the policy would only 'bite' when full or reserved matter applications were being considered.

Recommendation 9

Modify Policy HOU09 by the addition of the following text at the end of Part 2:-

This will be assessed against the following criteria:-

- (i) the degree to which the design reflects the local vernacular architecture;**
- (ii) whether the scheme is sufficiently flexible to cope with changes over the plan period;**
- (iii) the extent to which the proposal would meet local housing needs, such as those wishing to build their own homes, meeting the needs of elderly people, those with disabilities or single persons and**
- (iv) the inclusion of energy efficiency measures to meet the challenge of climate change.**

Replace Part 3 of Policy HOU09 by the following text:-

Any housing scheme of two or more units should include at least one smaller unit designed to meet locally arising needs, including from newly formed households, elderly households and for single persons.

Provision of Open Space in New Housing Development, Policy HOU06

3.60 As Barton Willmore state in their representation on behalf of Ashall Land, this policy does not specify at what scale of development it would apply. For it to be reasonable for the LPA to require such provision it would have to be related in scale to the proposed development, directly related and necessary to make the development acceptable. However, the policy specifically refers to the Cheshire East standards for such provision which would have to take national policy guidance on such matters into account. It would clearly need to be demonstrated that without additional provision there would be a shortfall against such standards. The policy adds little, if anything, to the development plan but nor does it contravene it, nor is it necessarily in conflict with national policy. I do not find it fails any basic condition.

Preservation of Existing Open Spaces, Policy HOU07

3.61 Part 1. This part of the policy gives blanket protection from development of all of the open spaces which are listed in supporting document SD/C21a. and shown, albeit at a rather small scale, as Key Map C21 on page 61 of the BNP. A study of the list in SD/C21a indicates that there is a wide variation in the types of area included with all public footpaths, bridleways and cycle routes shown on the plan. Clearly those have recreational value but they are not generally regarded as land uses because they are all public highways. Other 'open spaces' do not have public access and it is inappropriate to categorise SSSIs, including RAMSAR sites, as recreational resources even if there is limited educational use. They are protected by national and local policies as well as BNP policy ENV04. Including them under this policy is an unnecessary duplication which reduces the clarity of the plan.

3.62 The policy is criticised in representations on the basis that it seeks to protect all open space from development and is tantamount to the introduction of a 'Local Green Space' policy without demonstrating compliance with paragraphs 76 and 77 of the NPPF. Although the term 'Local Green Space' has not been used in the plan and it is not explicitly suggested that a green belt policy approach²⁸ should apply, it is difficult to reconcile the policy with NPPF guidance because it 'protects' all the identified areas of open space from development.

3.63 In response, the BPC have suggested that the policy should be qualified by cross-reference to paragraph 74 of the NPPF which sets out the circumstances under which open space might be considered for development, including when it is clearly shown to be 'surplus to requirements'. Yet, the context for that paragraph is the consideration of proposals relating to the redevelopment of playing fields and other recreational land and it would not be possible to apply the criteria to most of the areas listed in SD/C21a. as shown on key map C21.

3.64 This part of the policy also bears little, if any, relationship to the justification given on page 39 of the plan. It is not a landscape policy, as such, to which CBLP policy GR5 and CELP Policy SE4 apply. It also overlaps to a significant extent with Policy COM03 as well as ENV01, ENV04 and ENV07.

²⁸ As in paragraph 78 of the NPPF

3.65 My conclusion is that adequate regard has not been had to national policy in drawing up the first part of Policy HOU07 and it does not meet a basic condition in that regard. However, I accept the principle of including text from paragraph 74 of the NPPF²⁹ as a qualification relating only to land in recreational use, that is with a right of public access. Green space in private ownership should be tested against paragraphs 76 and 77 of the NPPF, which has not been done. It is not necessary to include footpaths. SSSIs and nature reserves should be included on a new plan to accompany policy ENV04 (see recommendation 14 below). The scope of policy HOU07 would thus be much reduced to avoid unnecessary overlap.

3.66 There are strong representations against the second part of Policy HOU07 in that it requires a buffer zone of between 20 metres and 50 metres between existing development and 'any new housing development'. In questioning, the BPC were not able to point to any specific evidence, including the Landscape Character Assessment³⁰ to justify the creation of a 'buffer' zone as wide as 50 metres. There has been no consideration given to the effect such a provision might have on the viability of development, especially as it would apply even to the development of a single dwelling. In so far as the intention is to soften the edges of new development and ensure that it fits in to the rural character of the area that may be achieved by a more generally worded policy without a degree of prescription which is unjustified.

3.67 At the hearing on this issue discussion centred on the minimum 20 metre gap. There is no reference in the policy, as there is in paragraph 5 on page 30, to the distance of 21.3 m. (70 ft.) being a minimum distance of dwellings facing one another. As I stated, that distance is one which is commonly used by local planning authorities to minimise direct window to window overlooking but actually derives from the distance required in Britain between east-west oriented two-storey terraces to avoid over-shadowing in December. It may very well be that the justification for applying it in Brereton is to reflect the spacing between dwellings in the linear form which, it is suggested, is characteristic of the area, but there is little evidence to support that.

²⁹ Not just a reference to paragraph 74 because that could result in 'built-in obsolescence' for the plan

³⁰ SC/C16

3.68 At my request, the BPC submitted a suggested revised wording after the hearing, which I have considered. It removes any reference for a buffer of up to 50 metres but retains reference to 21 metres, albeit with it not applying to infill or single house plots. It also sets out some of the purposes of the creation of landscape buffers around development which helps in clarification of the meaning of the policy. In my view, there remains inadequate justification even for the 21 m. distance. Without that element of prescription the policy revision would provide sufficient flexibility to be applied by the local planning authority on a case-by-case basis without undermining the objective to reflect the character of the area. It would be somewhat more precise than that put forward in a representation. The concept of 'outdoor space for active uses' is better included in the supporting text although I consider that a buffer is likely always to include landscaping. I recommend the revision, with some amendment for clarity, to ensure that the policy does not unduly constrain development where it would otherwise be acceptable; to ensure viability and to properly reflect national policy. The need for buffers along watercourses, as sought by the Environment Agency, is not specific to Brereton and is an issue better dealt with at local plan level.

3.69 The BPC have accepted that the wording in part 3 of policy HOU07 was unclear of meaning. Cheshire East Council have put forward an alternative to clarify the intentions behind the policy to ensure correct interpretation for the purpose of decision-making. I recommend a variation of the CEC wording.

Recommendation 10 – Policy HOU07

Delete part 1 and replace it by the following text:-

Areas of land in recreational use and open space to which there is a right of public access, as shown on key map C21, will be protected from development which would result in the loss of that amenity unless:-

- **an assessment has been undertaken which has clearly shown the open space, or land, to be surplus to requirements; or**
- **the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or**

- **the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.**

Modify key map C21 to exclude all land which does not conform with the re-worded Policy HOU07, that is excluding all land to which there is no public access, footpaths, bridleways etc., and the SSSIs.

Delete part 2 and replace by the following text:-

A buffer zone between existing development and any new housing development scheme (excluding infill or single house plots) will be identified in planning applications and be protected from development. The size and nature of the buffer zone will vary according to the characteristics of the site. The application shall safeguard and, where possible, enhance any existing natural features (such as field boundaries). The buffer created should be designed to make a positive contribution to the visual amenity of the area, including by landscaping and, where possible, provide an outdoor space for active uses.

Include additional explanation in the justification section (Appendix A1) to explain the concept of ‘outdoor space for active uses’.

Delete part 3 and replace by the following text:-

Development proposals should respect their setting, including the effect they may have on the openness of the countryside and any important vistas which may be afforded across the site in its existing state.

Provision of Building Line in New Housing Development, Policy HOU08

3.70 Representations concern the limitations this policy would pose for undertaking future housing development and limiting sustainable development. I have questioned the justification for the inclusion of a figure of 10 metres. However, I accept that as the policy is dealing only with development fronting ‘main’³¹ roads it would have only a limited effect on the total development capacity. On such roads, the safety of pedestrians and road users would be paramount and the further explanation from the BPC that 10 m. is sufficient to allow 2 cars to be parked behind

³¹ Defined in the supporting text as the A50, A54, A534 and A5022

one another off-road is adequate justification. There would also have to be adequate turning space. The desire to protect and enhance the local landscape is a secondary consideration. I am satisfied that the policy meets the basic conditions.

Section 6.2 Community Facilities, Policies COM01-05

3.71 Policies COM01 and 02 both relate to the provision of a new community hub for the parish, clearly something which is very much desired locally. A representation suggests that because COM01 does no more than set criteria for consideration in any proposal and does not give locational guidance it requires clarification. I do not criticise the criteria which are broadly in line with national and local policy aspirations, including public transport accessibility to boost sustainability although, as BPC acknowledge, in practice it may not be possible to give great weight to that criterion.

3.72 Policy COM02 does not stand alone. Parts 1 and 3 are an amplification of the types of facilities which might be accommodated in the hub and describe the nature of the use. They could be merged with COM01 but that is a matter of choice. Part 2 of COM02, however, goes beyond the scope of a statutory neighbourhood plan as it does not relate to land use. It is an aspiration and should be deleted.

3.73 A representation on behalf of Ashall Land states that Policy COM03 does not positively support development which would assist in the continued vitality and vibrancy of existing community facilities. Whereas I accept that the policy broadly reflects the national policy in paragraph 70 of the NPPF, part 2 refers to support given to the retention and improvement of existing facilities which could be read to mean support for (housing) development which might assist in that aim. An amendment to that effect would have a closer regard to policy 55 of the NPPF. The point about safeguarding community facilities from 'inappropriate development' is adequately covered by other parts of the same policy, including part 4, and is unnecessary for clarity of meaning.

3.74 Part 1 of Policy COM03 already includes a reference to key plan C22 and a further reference to it in part 3 would serve no useful purpose. However, the inclusion of the Bagmere RAMSAR site and the Dane Valley SSSI as 'community facilities' gives a totally wrong impression, especially as there is no public access to

Bagmere. The two sites should be omitted from key map C22 and, as for policy HOU07, included on a new key map showing wildlife sites to be read with policy ENV04 (Recommendation 14).

3.75 Part 5 is an informative rather than a policy and the identification of Assets of Community Value (ACV) is, as stated, subject to regulations which are outside of the Neighbourhood Plan process. As CEC suggest, and the BPC accept in principle, that section should be deleted and replaced by a wording which refers to the weight to be accorded in decision-making to the existence of an ACV. I recommend an amended wording.

Recommendation 11

Delete part 2 of Policy COM02

In Policy COM03, part 2, insert between ‘given to’ and ‘the retention’ insert the words ‘proposals which would assist in’ and delete all after ‘... existing facilities’. Delete part 5 and replace with new wording ‘The loss of any building or site identified as an Asset of Community Value will be given significant weight as a material consideration in the determination of any planning application affecting that asset.’

Remove reference to the Bagmere and Dane Valley SSSIs from key map C22.

Section 6.3 Business and Economic Activity, Policy BUS01

3.76 The generally based representation by Barton Willmore for Ashall Land raises an issue about the role housing can play in supporting the rural economy. However, this policy is about rural businesses, not housing. Furthermore, the overall quantum of development needed to maintain the vitality and vibrancy of rural areas is a matter to be resolved at local plan level in the first instance. It is a question of balance if the rural character of an area is not to be diluted over time, that is progressively sub-urbanised. The vision of this plan is to avoid that and it is compliant with the development plan.

3.77 The overall aims of this policy are reasonably clear. They are closely aligned to paragraph 28 of the NPPF. However, the use of words such as ‘support’ and ‘encourage’, even ‘seek to encourage’ in a policy leads to questions as to exactly

how that is to be achieved. The policies in a neighbourhood plan should address the development and use of land providing a basis for decisions by the LPA on planning applications, they should be clear and unambiguous. Other actions might be taken beyond that framework to achieve wider aspirations but should be clearly distinguishable from land use policy³².

3.78 This policy is something of a hybrid. It is not clear from the first part what would be 'inappropriate' development and the CEC have suggested adding 'that does not support their operation.' I recommend reversing the wording to make it clear that development will not be permitted which would cause serious detriment. The BPC acknowledge that part 2 is aspirational. In part 3 I consider that b) and e) are aspirational with no clear land-use basis. These statements should be moved to the supporting text in Annex A. Otherwise the policy should be re-worded to relate more clearly to the making of planning decisions.

Recommendation 12

Delete part 1 of Policy BUS01 and replace by the following text:-

Planning permission will not be granted for development which would be seriously detrimental to the continued operation of any local businesses, including visitor attractions and countryside facilities.

Move the aspirational and non land-use elements in part 2 and 3 b) and e) to the supporting text in Annex A. In part 3, replace the sentence 'This will achieved in the following ways:' by 'Planning permission will be granted for:'

The list of actions thereunder to be re-worded as follows:-

- a) schemes of agricultural diversification which would increase local employment opportunities;**
- b) the development of rural tourism particularly those businesses which would complement existing tourism related uses;**
- c) the re-use (as in d.)**
- d) social and community-led ... (as in f.)**

³² NPPF, paragraph 183 and PPG, ref. ID 41-004-20140306

Section 6.4 Protect the Rural Environment, Policies ENV01-11

3.79 It is understood that the countryside in Brereton parish is regarded as an important asset. From representations, including those in support, it is evident that the opportunities available for enjoyment of the countryside are seen as central to the health and wellbeing of residents. However, Policy ENV01 places a blanket protection on all existing countryside uses, especially should the term 'other rural uses' be intended to mean equine and agricultural uses as suggested by the BPC. Also as Barton Willmore remark in their representation 'landscape' is not a use of land.

3.80 Land in recreational use or open land with public access is covered by Policy HOU07, as recommended to be modified, as well as by Policy ENV07. Nature Conservation sites are protected by Policies ENV04 and 05. There are also several other general landscape protection policies in this section of the plan. It is, therefore, difficult to see what this policy adds to the plan. The blanket approach to the protection of the countryside is not consistent with national policy guidelines and I consider that the policy might be deleted without fundamentally altering the thrust of the plan.

Recommendation 13

Delete policy ENV01

3.81 The first part of Policy ENV04 refers to all sites of nature conservation value at European (RAMSAR), national (SSSI) and 'Cheshire East wide' levels. The meaning of the latter category is not immediately apparent to the plan user although more detail is given in paragraph 2c) in the justification section, page 49 of the plan. As mentioned elsewhere in this report, I consider that sites which are primarily intended to conserve and protect nature conservation interests, unless there is general public access as at Brereton Heath Local Nature Reserve, should not be treated as such and should not be shown on key maps C21 and C22.

3.82 In response to a representation by Natural England with regard to the identification of sites of 'Cheshire wide level', BPC propose that a new key map be included in the plan showing all sites of nature conservation interest. I shall refer to

that as key map C26 as that would be the next in sequence. The new key map should be referenced in policy ENV04 for ease of reference.

3.83 BPC have explained that the mitigation clause relating to development the affecting the Bagmere SSSI (RAMSAR site), which was included in policy HOU02 following earlier representation by Natural England, only applies to development within the settlement boundaries. Policy ENV04 applies to any development proposal outside those boundaries, including exception sites. I consider that part 2 should be clarified to state that a Biological Impact Assessment will be required for any development proposal adjacent to or in the proximity of any of the listed sites of nature conservation interest. It may be that a Habitats Regulations Assessment might also be required.

3.84 Bagmere, as a European site, should be accorded the highest level of protection. Very similar mitigation measures are likely to be required whether a site lies within or outside the Brereton Heath settlement boundary. Indeed, any proposals on the western side would be even nearer to the former mere than the village itself. As CEC point out, connection to a mains sewer is only one criterion for protecting the site from harm. However, the plan has to be read as a whole. Even should the criteria for protection of a nature conservation interest be met, other policies may preclude development. I recommend a restructuring of the policy.

Recommendation 14

In part 1 of Policy ENV04, at the end of the first sentence, add '(as shown on key map C26)'

Revise part 2 to read 'A Biological Impact Assessment shall be submitted with any planning application for development adjacent to or within the proximity of any site of high nature conservation value'.

Development adjacent to or within the proximity of the Bagmere SSSI (Midlands Meres and Mosses Phase 1 Ramsar) will not be permitted unless it is demonstrated by the submitted assessment that the potential hydrological impacts of the proposal in terms of water quality and supply can be avoided or adequately mitigated, with any foul water and effluent discharges made to a main sewer.

Include a new key map (C26) in the plan to show all wildlife sites in Brereton with a key to distinguish their differing status (Ramsar, SSSI, Local Nature Reserve etc.)

3.85 The Cheshire Gardens Trust have made representation that reference should be made to historic landscapes in the plan, specifically to Davenport Hall. They have submitted much information about the history of that house and the surrounding estate. The plan properly reflects the existing status of Brereton Hall and recognises the statutory listings. It refers to parks and gardens in policy ENV10. In that respect it has had regard to national policy. It meets the basic conditions. There are other procedures available to achieve the recognition of Davenport Hall which the Gardens Trust wish to see.

3.86 No other representations have been made on the Environment (ENV) policies. However, I draw attention to the overlap between the first part of Policy ENV07 and that of HOU07 which I recommend be modified to include criteria from the NPPF. This would be an equally valid consideration in the implementation of Policy ENV07 and should be recognised in the plan. Key Map C21 (as amended) is also relevant to this policy.

Recommendation 15

Include reference in Policy ENV07 to the NPPF criteria under modified Policy HOU07. (as in Recommendation 10)

Section 6.5 Transport and Infrastructure, Policies TRA01-04

3.87 It is not surprising that the policies in the section are somewhat generally worded as many of the decisions on highway spending priorities are matters for the Highway Authority. In particular, Policy TRA03 relating to road safety is not clearly related to land use nor does it provide a guide to any action by the local planning authority. It should be moved to an appendix.

Recommendation 16

Delete Policy TRA03 and move it to an appendix of the plan.

3.88 Barton Willmore make representation on Policy TRA04 but mainly to question the capacity of the CIL levy to fund the schemes listed if more housing development

does not take place. I have dealt with the general issue about the level of housing development, taking account of the outstanding commitments in the parish. Although the policy is largely aspirational I do not consider it infringes any basic condition.

3.89 United Utilities seek inclusion of a reference to the protection of underground utilities. In so far as this is a matter not subject to powers and controls outside of planning legislation it is a general issue, not specific to Brereton, and for that reason is best dealt with at local plan level.

Correction of errors

3.90 The writers of the plan are to be commended on the very few errors which have come to my attention during my examination of this plan. I list within the recommendation below those corrections which I consider need to be made.

Recommendation 17

Correct the page headers and all references to the title of the plan to the 'Brereton Neighbourhood Plan' (omit the word 'parish').

Amend the wording of Policy ENV02 to refer to only one Area of High Landscape Value. On key map C23 change the colouring of the M6 so that it appears differently to the Dane valley.

In paragraph 6 on page 47 in the justification section for Policy BUS01, first sentence, for 'policy EC2' substitute 'policy EG2'.

On the settlement boundary key map for Brereton Heath, C20a., delete the categories 'boundary changes due to approved planning proposals' and 'Congleton Borough Local Plan First Review 2005 Infill Boundary' from the legend. Delete the pink area, outside Brereton, shown as the 'Somerford Parish Retained Infill Boundary'.

FORMAL CONCLUSION, RECOMMENDATIONS AND CONSIDERATION OF REFERENDUM AREA

Conclusion

4.01 I conclude that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in Schedule 4B to the Town and Country Act 1990 (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

Overall Recommendation 1.

I recommend that the modifications specified in section 3 of this report be made to the draft Brereton Neighbourhood Plan and that the draft plan as modified be submitted to a referendum.

4.02 As I have recommended that the draft plan as modified be submitted to a referendum I am also required under s10(5)(a) of Schedule 4B to the Town and Country Planning Act 1990 to recommend as to whether the area for the referendum should extend beyond the neighbourhood area.

4.03 There have been no representations seeking an extension of the referendum area. As the plan is specifically concerned with the future development of the settlements within Brereton parish, I find there to be no need to extend the referendum area beyond the designated neighbourhood area.

Overall Recommendation 2.

The area for the referendum should not extend beyond the neighbourhood area to which the plan relates.

Signed:

John R Mattocks

JOHN R MATTOCKS BSc DipTP MRTPI FRGS

1 December 2015

APPENDIX 1.

Abbreviations used in this report.

BNP	Brereton Neighbourhood Plan ('the Plan')
BPC	Brereton Parish Council
CBLP	Congleton Borough Local Plan First Review 2005
CEC	Cheshire East Council
CELPS	The Cheshire East Local Plan Strategy
CIL	Community Infrastructure Levy
EU	European Union
HRA	Habitats Regulation Assessment
LP	Local Plan
LPA	Local Planning Authority (Cheshire East Council)
NP	Neighbourhood Plan (generic term)
NPPF ('the Framework')	The National Planning Policy Framework
OAHN	Objectively Assessed Housing Need
PPG	Planning Policy Guidance
SA	Sustainability Appraisal
SEA	Strategic Environmental Assessment
SHMA	Strategic Housing Market (Area) Assessment
SSSI	Site of Special Scientific Interest