

Malvern Hills District Council

**Abberley
Neighbourhood Development
Plan
2020-2030**

Independent Examiner's Report

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Summary

I have been appointed as the independent examiner of the Abberley Neighbourhood Development Plan.

The Parish of Abberley contains the settlements of Abberley village, Abberley Common, The Hill and Elms Green and a number of smaller dispersed clusters of housing. It is situated about 9 miles from Kidderminster and some 13 miles from Worcester.

The Parish is situated on the northern slopes of Abberley Hill and lies between the River Severn and River Teme. The main centre is Abberley Common which has a primary school, village hall, shop and post office and a garage. It has a population of about 836 according to the 2011 Census.

The well-presented and well-written Plan has a clear vision and objectives. It takes the approach of seeking to complement and add a local layer of detail to the strategic policies which is welcomed. There are 12 policies in total covering a variety of issues including the identification of a number of Local Green Spaces, heritage and businesses.

It has been necessary to recommend some modifications. In the main these are intended to ensure the Plan is clear and precise and provides a practical framework for decision-making as required by national policy and guidance. These do not significantly or substantially alter the overall nature of the Plan.

Subject to those modifications, I have concluded that the Plan does meet the basic conditions and all the other requirements I am obliged to examine. I am therefore pleased to recommend to Malvern Hills District Council that the Abberley Neighbourhood Development Plan can go forward to a referendum.

In considering whether the referendum area should be extended beyond the Neighbourhood Plan area I see no reason to alter or extend this area for the purpose of holding a referendum.

Ann Skippers MRTPI
Ann Skippers Planning
16 April 2021



1.0 Introduction

This is the report of the independent examiner into the Abberley Neighbourhood Development Plan (the Plan).

The Localism Act 2011 provides a welcome opportunity for communities to shape the future of the places where they live and work and to deliver the sustainable development they need. One way of achieving this is through the production of a neighbourhood plan.

I have been appointed by Malvern Hills District Council (MHDC) with the agreement of the Parish Council, to undertake this independent examination.

I am independent of the qualifying body and the local authority. I have no interest in any land that may be affected by the Plan. I am a chartered town planner with over thirty years experience in planning and have worked in the public, private and academic sectors and am an experienced examiner of neighbourhood plans. I therefore have the appropriate qualifications and professional experience to carry out this independent examination.

2.0 The role of the independent examiner

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

The basic conditions¹ are:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan
- The making of the neighbourhood plan contributes to the achievement of sustainable development
- The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area
- The making of the neighbourhood plan does not breach, and is otherwise compatible with, retained European Union (EU) obligations²
- Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

¹ Set out in paragraph 8 (2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

² Substituted by the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018/1232 which came into force on 31 December 2020

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to in the paragraph above. Only one is applicable to neighbourhood plans and was brought into effect on 28 December 2018.³ It states that:

- The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

The examiner is also required to check⁴ whether the neighbourhood plan:

- Has been prepared and submitted for examination by a qualifying body
- Has been prepared for an area that has been properly designated for such plan preparation
- Meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one neighbourhood area and that
- Its policies relate to the development and use of land for a designated neighbourhood area.

I must also consider whether the draft neighbourhood plan is compatible with Convention rights.⁵

The examiner must then make one of the following recommendations:

- The neighbourhood plan can proceed to a referendum on the basis it meets all the necessary legal requirements
- The neighbourhood plan can proceed to a referendum subject to modifications or
- The neighbourhood plan should not proceed to a referendum on the basis it does not meet the necessary legal requirements.

If the plan can proceed to a referendum with or without modifications, the examiner must also consider whether the referendum area should be extended beyond the neighbourhood plan area to which it relates.

If the plan goes forward to referendum and more than 50% of those voting vote in favour of the plan then it is made by the relevant local authority, in this case MHDC. The plan then becomes part of the 'development plan' for the area and a statutory consideration in guiding future development and in the determination of planning applications within the plan area.

³ Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

⁴ Set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act

⁵ The combined effect of the Town and Country Planning Act Schedule 4B para 8(6) and para 10 (3)(b) and the Human Rights Act 1998

3.0 The examination process

I have set out my remit in the previous section. It is useful to bear in mind that the examiner's role is limited to testing whether or not the submitted neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).⁶

PPG confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.⁷ Often representations suggest additions and amendments to policies. Where I find that policies do meet the basic conditions, it is not necessary for me to consider if further amendments or additions are required.

PPG⁸ explains that it is expected that the examination will not include a public hearing. Rather the examiner should reach a view by considering written representations. Where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.⁹

After reviewing all the documentation and the representations made, I decided a hearing was not necessary.

In 2018, the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) published guidance to service users and examiners. Amongst other matters, the guidance indicates that the qualifying body will normally be given an opportunity to comment upon any representations made by other parties at the Regulation 16 consultation stage should they wish to do so. There is no obligation for a qualifying body to make any comments; it is only if they wish to do so. The Parish Council chose not to make any comments.

I am very grateful to everyone for ensuring that the examination has run so smoothly and in particular David Clarke at MHDC.

Where modifications are recommended they appear in **bold text**. Where I have suggested specific changes to the wording of the policies or new wording these appear in ***bold italics***.

As a result of some modifications consequential amendments may be required. These can include changing section headings, amending the contents page, renumbering paragraphs or pages, ensuring that supporting appendices and other documents align with the final version of the Plan and so on.

I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be

⁶ PPG para 055 ref id 41-055-20180222

⁷ Ibid

⁸ Ibid para 056 ref id 41-056-20180222

⁹ Ibid

taken and any such necessary editing will be carried out and the Plan's presentation made consistent.

4.0 Neighbourhood plan preparation

A Consultation Statement has been submitted. It meets the requirements of Regulation 15(2) of the Neighbourhood Planning (General) Regulations 2012. It is a comprehensive document presented well.

Work on the Plan began in earnest in April 2016 with the formation of a Steering Group and working groups. A launch meeting was held in June 2016 and well attended by some 65 people. The first meetings of the working groups were held in November 2016.

A survey was carried out in July 2017. Copies were available electronically and in print. A drop-in event was held in August. A response rate of 22% was achieved. The responses formed the basis of the next stages of work on the Plan.

Work on the review of the SWDP by MHDC took place concurrently and this informed some of the work on the Plan. A drop-in event was held in June 2019 to consider housing requirements. It was later decided to align the draft Plan with the adopted SWDP.

Pre-submission (Regulation 14) consultation took place between 29 June – 24 August 2020. This longer period of eight weeks took account of some of the restrictions in place associated with the pandemic and the traditional Summer holiday period.

Flyers were hand delivered to households and businesses in the Plan area. Posters and banners were put up in various locations. Email and the Parish magazine and a press release also advertised the consultation. Care was taken to ensure those without internet access could engage with printed copies made available at the local shop and on request. Comments could be made in a variety of ways both electronically and using more traditional methods. Two Parish Councillors were available by telephone to answer queries.

Appendix 8 of the Consultation Statement details the pre-submission responses received.¹⁰

Throughout the process, information has been made available on a dedicated section of the Parish Council website, regular reports have been made by the Steering Group to the Parish Council, minutes of both Steering Group and Parish Council meetings have been available, noticeboards have been used, articles in the Parish magazine, email lists have been used to publicise events.

¹⁰ Consultation Statement Parts 1 and 2 page 15 onwards

I consider that the consultation and engagement carried out is satisfactory.

Submission (Regulation 16) consultation was carried out between 4 December 2020 - 22 January 2021.

The Regulation 16 stage resulted in 11 representations. Whilst I make reference to some responses and not others, I have considered all of the representations and taken them into account in preparing my report.

5.0 Compliance with matters other than the basic conditions

I now check the various matters set out in section 2.0 of this report.

Qualifying body

Abberley Parish Council is the qualifying body able to lead preparation of a neighbourhood plan. This requirement is satisfactorily met.

Plan area

The Plan area is coterminous with the administrative boundary for the Parish. MHDC approved the designation of the area on 28 August 2015. The Plan relates to this area and does not relate to more than one neighbourhood area and therefore complies with these requirements. The Plan area is shown on page 5 of the Plan.

Plan period

The Plan period is 2020 – 2030. This is clearly stated in the Plan itself and confirmed in the Basic Conditions Statement. This requirement is therefore satisfactorily met.

Excluded development

The Plan does not include policies that relate to any of the categories of excluded development and therefore meets this requirement. This is also helpfully confirmed in the Basic Conditions Statement.

Development and use of land

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because wider community aspirations than those relating to development and use of land can be

included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable.¹¹

In this instance, a table of “Community actions” has been included in section 9 of the Plan.¹² The Plan clearly explains what they are and that they do not form part of the policies. This is an appropriate approach which I commend to others.

6.0 The basic conditions

Regard to national policy and advice

The Government published a National Planning Policy Framework (NPPF) in 2012. A revised NPPF was first published on 24 July 2018. This revised NPPF was further updated on 19 February 2019. When published, it replaced both the 2012 and 2018 documents.

The NPPF is the main document that sets out national planning policy. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the delivery of strategic policies and should shape and direct development outside of these strategic policies.¹³

Non-strategic policies are more detailed for specific areas, neighbourhoods or types of development.¹⁴ They can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment as well as set out other development management policies.¹⁵

The NPPF also makes it clear that neighbourhood plans should not promote less development than that set out in strategic policies or undermine those strategic policies.¹⁶

The NPPF states that all policies should be underpinned by relevant and up to date evidence; evidence should be adequate and proportionate, focused tightly on supporting and justifying policies and take into account relevant market signals.¹⁷ Policies should be clearly written and unambiguous so that it is evident how a decision maker should react to development proposals. They should serve a clear purpose and avoid unnecessary duplication of policies that apply to a particular area including those in the NPPF.¹⁸

¹¹ PPG para 004 ref id 41-004-20190509

¹² The Plan pages 42, 43 and 44

¹³ NPPF para 13

¹⁴ Ibid para 28

¹⁵ Ibid

¹⁶ Ibid para 29

¹⁷ Ibid para 31

¹⁸ Ibid para 16

On 6 March 2014, the Government published a suite of planning guidance referred to as Planning Practice Guidance (PPG). This is an online resource available at www.gov.uk/government/collections/planning-practice-guidance which is regularly updated. The planning guidance contains a wealth of information relating to neighbourhood planning. I have also had regard to PPG in preparing this report.

PPG indicates that a policy should be clear and unambiguous¹⁹ to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the planning context and the characteristics of the area.²⁰

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.²¹ It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.²²

Whilst this has formed part of my own assessment, the Basic Conditions Statement sets out how the Plan has responded to national policy and guidance.²³

Contribute to the achievement of sustainable development

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development.

The NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development.²⁴ This means that the planning system has three overarching and interdependent objectives which should be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the different objectives.²⁵ The objectives are economic, social and environmental.²⁶

The NPPF confirms that planning policies should play an active role in guiding development towards sustainable solutions, but should take local circumstances into account to reflect the character, needs and opportunities of each area.²⁷

Whilst this has formed part of my own assessment, the Basic Conditions Statement explains how each Plan policy helps to achieve sustainable development as outlined in the NPPF.²⁸

¹⁹ PPG para 041 ref id 41-041-20140306

²⁰ Ibid

²¹ Ibid para 040 ref id 41-040-20160211

²² Ibid

²³ Basic Conditions Statement Table 1 page 5 and following

²⁴ NPPF para 7

²⁵ Ibid para 8

²⁶ Ibid

²⁷ Ibid para 9

²⁸ Basic Conditions Statement page 13 onwards and Table 2 in particular

General conformity with the strategic policies in the development plan

The development plan relevant to this examination includes the South Worcestershire Development Plan (SWDP) adopted on 25 February 2016. Helpfully, the South Worcestershire Councils have produced a list of what policies are considered ‘strategic’ for the purposes of neighbourhood planning.

The Basic Conditions Statement contains a table²⁹ that shows the relationship between the Plan and those SWDP policies considered to be relevant to this Plan together with a commentary.

Emerging Joint Local Plan

In 2018, the South Worcestershire authorities began a review of the South Worcestershire Development Plan to cover the period 2021 – 2041. A preferred options was consulted upon between November and December 2019.

There is no legal requirement to examine the Plan against emerging policy. However, PPG³⁰ advises that the reasoning and evidence informing the Local Plan process may be relevant to the consideration of the basic conditions against which the Plan is tested.

Furthermore Parish Councils and local planning authorities should aim to agree the relationship between policies in the emerging neighbourhood plan, the emerging Local Plan and the adopted development plan with appropriate regard to national policy and guidance.³¹

Commentary

The Plan does not include any additional site allocations over and above that in the SWDP. The SWDP makes provision for approximately 28,400 dwellings over its plan period of 2006 – 2030.

In the SWDP, Abberley Common is classed as a ‘Category 1’ settlement and Abberley Village as a ‘Category 4A’ settlement. It is noted that the South Worcestershire Councils published an updated Village Facilities and Rural Transport Study in September 2019 which now reclassifies Abberley Common as a Category 2 settlement.

SWDP Policy SWDP 2 indicates that a number of housing sites are allocated to Category 1, 2 and 3 villages to address the need for housing and to support local services. In the lower category villages, infill development within defined development boundaries is acceptable in principle.

²⁹ Basic Conditions Statement page 17

³⁰ PPG para 009 ref id 41-009-20190509

³¹ Ibid

The latest available figures anticipate that around 14,000 additional dwellings will need to be planned for. The Review will allocate sites to meet this unmet need as necessary. This presently includes a proposed housing allocation at land east of Clows Top Road.

SWDP Policy SWDP 2 sets out the development strategy and the settlement hierarchy. It directs around 13% growth to the rural areas. The indicative housing requirement given for the Plan area is less than one dwelling for the period 2021 – 2030 and 14 dwellings between 2031 – 2041. These are minimum figures and by their nature may change. They take account of 35 units allocated to the Plan area in the SWDP, but windfalls are not included and these could be counted towards the figure.

The Plan period aligns with the adopted SWDP to 2030 and so the housing requirement for the Plan is less than one dwelling.

Retained European Union Obligations

A neighbourhood plan must be compatible with retained European Union (EU) obligations. A number of retained EU obligations may be of relevance for these purposes including those obligations in respect of Strategic Environmental Assessment, Environmental Impact Assessment, Habitats, Wild Birds, Waste, Air Quality and Water matters.

With reference to Strategic Environmental Assessment (SEA) requirements, PPG³² confirms that it is the responsibility of the local planning authority, in this case MHDC, to ensure that all the regulations appropriate to the nature and scope of the draft neighbourhood plan have been met. It states that it is MHDC who must decide whether the draft plan is compatible with relevant retained EU obligations when it takes the decision on whether the plan should proceed to referendum and when it takes the decision on whether or not to make the plan.

Strategic Environmental Assessment and Habitats Regulations Assessment

The provisions of the Environmental Assessment of Plans and Programmes Regulations 2004 (the 'SEA Regulations') concerning the assessment of the effects of certain plans and programmes on the environment are relevant. The purpose of the SEA Regulations, which transposed into domestic law Directive 2001/42/EC ('SEA Directive'), are to provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes.

The provisions of the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'), which transposed into domestic law Directive 92/43/EEC (the 'Habitats Directive'), are also of relevance to this examination.

Regulation 63 of the Habitats Regulations requires a Habitats Regulations Assessment (HRA) to be undertaken to determine whether a plan is likely to have a significant effect

³² PPG para 031 ref id 11-031-20150209

on a European site, either alone or in combination with other plans or projects. The HRA assessment determines whether the Plan is likely to have significant effects on a European site considering the potential effects both of the Plan itself and in combination with other plans or projects. Where the potential for likely significant effects cannot be excluded, an appropriate assessment of the implications of the Plan for that European Site, in view of the Site's conservation objectives, must be carried out.

A SEA and HRA Screening Opinion dated April 2020, prepared by MHDC on the draft pre-submission version of the Plan, has been submitted. This screens out the Plan.

Consultation with the three statutory bodies was undertaken and the Environment Agency (EA), Natural England (NE) and Historic England (HE) agreed with the conclusions.

The Screening Opinion therefore concludes that the Plan does not require a SEA.

I have treated the Screening Opinion to be the statement of reasons that PPG advises must be prepared and submitted with the neighbourhood plan proposal and made available to the independent examiner where it is determined that the plan is unlikely to have significant environmental effects.³³

Taking account of the characteristics of the Plan and the characteristics of the areas likely to be affected, I am of the view that EU obligations in respect of SEA have been satisfied.

The Screening Opinion also considered whether a full HRA was needed. There are no European sites within the Plan area. The nearest Site is the Lyppard Grange Ponds Special Area of Conservation within a 20km radius.

Given the conformity with the SWDP, the Screening Opinion concludes that a full appropriate assessment is not required.

Consultation with NE has taken place and they concur with this conclusion.

On 28 December 2018, the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) was substituted by a new basic condition brought into force by the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 which provides that the making of the plan does not breach the requirements of Chapter 8 of Part 6 of the Habitats Regulations.

Given the distance, nature and characteristics of the nearest European sites and the nature and contents of this Plan, I agree with the conclusion of the Screening Opinion and the view of NE that an appropriate assessment is not required and accordingly

³³ PPG para 028 ref id 11-028-20150209

consider that the prescribed basic condition is complied with, namely that the making of the Plan does not breach the requirements of Chapter 8 of Part 6 of the Habitats Regulations.

Conclusion on retained EU obligations

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.³⁴ In undertaking work on SEA and HRA, MHDC has considered the compatibility of the Plan in regard to retained EU obligations and does not raise any concerns in this regard.

European Convention on Human Rights (ECHR)

The Basic Conditions Statement contains a statement in relation to human rights.³⁵ Having regard to the Basic Conditions Statement, there is nothing in the Plan that leads me to conclude there is any breach or incompatibility with Convention rights.

7.0 Detailed comments on the Plan and its policies

In this section I consider the Plan and its policies against the basic conditions. As a reminder, where modifications are recommended they appear in **bold text** and where I suggest specific changes to the wording of the policies or new wording these appear in **bold italics**.

The Plan is presented to a very high standard and contains 12 policies. There is an eye catching front cover. The Plan begins with a helpful contents page and list of policies.

1. Setting the scene

This is a helpful introduction to the Plan which sets out background information, signposts the contents of the Plan and sets out the planning context for the Plan. It does so in a clear and well-written way. Some natural updating will be needed as the Plan progresses through the various stages of preparation. I regard this as a matter of final presentation and do not make a specific modification in this respect.

³⁴ PPG para 031 ref id 11-031-20150209

³⁵ Basic Conditions Statement page 20

2. Abberley Neighbourhood Area

This well-written and informative section sets the scene well providing a wealth of information about the Parish and its characteristics. It identifies the key issues for the local community which have informed the development of the Plan.

3. Vision and objectives

The vision for the area is:

“In 2030, Abberley will be:

- A home for healthy and thriving local communities, where the differing housing needs of all ages (including those of the younger generation) can be met; and
- A place where high-quality and sustainable community services are available, with additional provision delivered by or in step with new development; and
- A sustainable rural environment where the distinctive character of the villages, important green spaces, the separation between settlements, the natural beauty of the landscape, wildlife and historic heritage are conserved and enhanced, providing an attractive and peaceful countryside for all to enjoy; and
- A location which supports successful and environmentally-sustainable farming enterprises and other small businesses compatible in scale with the rural surroundings, providing local employment.”

The vision is supported by 11 objectives across the broad topic areas of community, natural environment, built environment and the economy. All are articulated well, relate to the development and use of land and will help to deliver the vision.

4. Sustainable development

Policy ABY1: Sustainable development

The Plan focuses on how it might deliver sustainable development recognising that the three aspects of sustainable development are mutually interdependent.

Policy ABY1 sets out four considerations aimed at helping to deliver sustainable development in the Plan area, placing emphasis on balancing what are sometimes conflicting objectives.

It is a positive policy that takes account of national policy and guidance and in particular takes account of the NPPF's stance on achieving sustainable development,³⁶ reflects the principles in the SWDP and especially its vision, objectives and Policy SWDP 1 and helps to achieve sustainable development. This clearly worded policy meets the basic conditions and no modifications are therefore recommended.

5. Social and Community

Policy ABY2: Type of new housing

The NPPF states that the needs of groups with specific housing requirements should be addressed to support the Government's objective of significantly boosting housing supply.³⁷ It supports housing of different sizes, types and tenures to meet the needs of different groups.³⁸

The Plan explains that SWDP Policy SWDP 14 requires all new residential developments of five or more units to have a mix of size and house type as informed by the latest available data. Reference is made to the South Worcestershire Design Guide Supplementary Planning Document which indicates smaller units are needed.

A Housing Needs Assessment conducted by AECOM as part of the supporting information for the Plan also particularly supports smaller family housing of three bedrooms or less and housing for older people.

In addition, three site allocations in the SWDP and windfall development has meant that the most recent indicative housing requirements for the Parish for less than one unit can be readily met.

Policy ABY2 seeks to ensure new housing developments of five or more units provide for a mix of types, sizes and tenure to meet local housing need. Particular support is given for smaller family housing of three bedrooms or less and homes suitable for older people. This aligns with the NPPF and SWDP Policy SWDP 14.

The policy is flexibly written recognising viability and other site constraints as well as evidence based on the latest housing needs evidence.

The policy has regard to national policy, is in general conformity with strategic policy, particularly SWDP Policy SWDP 14 and contributes to the achievement of sustainable development. It therefore meets the basic conditions and no modifications are put forward.

³⁶ NPPF paras 7, 8, 9, 10, 11, 13

³⁷ Ibid para 59

³⁸ Ibid para 61

Policy ABY3: Criteria for development of Land at The Orchard

This policy concerns a site which is allocated in the SWDP for new housing with an indicative capacity of six dwellings. It sets out a number of criteria and a concept plan for the development of this site of about 0.85 hectares.

I am mindful that the site is already allocated in the SWDP and that duplication between plans should be avoided. PPG is clear that neighbourhood plans should not re-allocate sites that are already allocated through these strategic policies.³⁹ MHDC takes the view that the policy adds detail to SWDP Policy 59/1 and I agree. This is something which the NPPF indicates non-strategic policies can do.⁴⁰ In fact the NPPF specifically refers to establishing design principles⁴¹ which both Policy ABY3 and the Design Guide seek to do.

The capacity figure in Policy ABY3 reflects that in the SWDP and recognises the topography of this sloping site and the highway requirements at that time which restricted density to a maximum of six. The owner of the site has objected to the maximum figure and explains that more than six units can be accommodated because of a different access arrangement.

SWDP Policy 59/1 is a strategic policy; therefore the Plan should not promote less development than the strategic policy or constrain its delivery. Whilst the site allocation is carried through to the emerging SWDP Review, I note that SWDP Policy 59/1 and the emerging policy also show an indicative figure of six. This policy then should be changed to reflect the indicative figures in both the SWDP and its Review. This will increase flexibility over dwelling numbers should an appropriate design-led scheme be found.

The second criterion refers to affordable housing. The policy requires that 20% of the units are affordable in perpetuity.

The NPPF indicates that the provision of affordable housing should not be sought for developments which are not major other than in Designated Rural Areas where policies may set out a lower threshold.⁴² The Plan indicates that the Plan area is a Designated Rural Area.

SWDP Policy SWDP 15 indicates that on sites of 5 – 9 dwellings, 20% of units should be affordable and be provided on site. The emerging SWDP Review increases this to 40% citing evidence in the Viability Study (2019) that this is viable for sites between 6 - 9 dwellings in Designated Rural Areas.

Whilst the landowner has objected to this element of the policy, the policy requirement appears to conform to both SWDP Policy 15 and reflect the available evidence for the

³⁹ PPG para 044 ref id 41-044-20190509

⁴⁰ NPPF para 28

⁴¹ Ibid

⁴² Ibid para 63

emerging SWDP Review. No substantive evidence has been put forward by the owner to support the argument that this would not be viable. However, I note that Policy SWDP 15 does include a viability clause and a modification is made to reflect this and to increase flexibility over the site's delivery.

Points 3, 4,5 and 6 refer to Policy ABY9, the Design Guide and a concept plan prepared for the site as well as highway issues and design matters. The policy also seeks the retention of the existing house and outbuilding.

The SWDP Non-strategic Housing Allocations Background Paper indicated the site "...lends itself to modest form of development on part of site fronting Clows Top Road".⁴³ It continues "Reduced site density required due to extreme topography of site on lower section fronting The Common and tapering of site to south."⁴⁴

It seems to me that the concept for the site reflects this. Although the existing house does not appear to be of any historic interest, it is apparent that the concept reflects the local community's design principles for the site. It may be that if the condition of the existing house is poor, it can be replaced with new build in a similar location for example. A modification is made to reflect this comment, increasing flexibility over delivery of the site.

The site is also to be developed in accordance with Policy ABY2, type of new housing. I cannot readily see how the requirements to provide smaller units or housing for older people, including bungalows, but not exclusively bungalows, is at odds with the design concept. It may well be that the topography of the site supports lower profile dwellings given the relationship with existing housing and views across the site.

Finally, the owner indicates that the scheme put forward in the Plan is not viable and will remove any possibility of the site being developed in an economically viable way. It is important to ensure that whilst design principles are set out and a vision developed, these do not undermine the delivery of this site.⁴⁵ At the same time, no demonstrative evidence has been put forward to support the objection on the grounds of viability.

I have therefore recommended some modifications which add flexibility in this respect and have explained why the concept plan appears both to reflect the contents of the SWDP Non-strategic Housing Allocations Background Paper and the local community's design principles and vision for the site.

With these modifications, I consider the policy takes account of national policy and guidance, is in general conformity with the SWDP and Policies 15 and 59/1 in particular and will help to achieve sustainable development.

- **Change point 1. of the policy to read: "*an indicative figure of six dwellings are provided which accord with policy ABY2; and*"**

⁴³ SWDP Non-strategic Housing Allocations Background Paper page 123

⁴⁴ Ibid

⁴⁵ NPPF paras 28 and 29

- **Add at the end of point 2. “...unless it can be satisfactorily and independently demonstrated that the affordable housing provision sought would not be viable in which case the maximum proportion of affordable housing (either on or off-site) will be sought that does not undermine the development’s viability; and”**
- **Add a new sentence at the end of point 4. “If the condition of the existing house is found to prohibit a design-led scheme as illustrated in the concept plan, then the footprint of the house and its outbuildings should influence the overall design of any scheme; and”**

Policy ABY4: Community facilities

This policy identifies seven facilities which are particularly valued by the community; the village hall, the primary school, the Abberley Hall School, the Manor Arms Public House, the Elms Hotel and Spa, St Michael’s Church and St Mary’s Church. It seeks to protect these existing facilities, only permitting their loss subject to the criteria in SWDP Policy SWDP 37B.

It also recognises that, on occasion, new development can adversely affect the operation of existing facilities and seeks to ensure that it is the ‘agent of change’ that is required to ensure a satisfactory relationship and provide any necessary mitigation to ensure the continued running of the existing facility.⁴⁶

The second element of the policy encourages the enhancement of these existing facilities and the provision of new facilities subject to three criteria. These are suitable siting, design and scale, highway considerations and car and cycle parking provision. MHDC has suggested the addition of a criterion regarding residential amenity. I agree this would be useful in this context and add clarity to the policy. It would, as MHDC point out, also help with consistency with Policy ABY12.

To support a prosperous rural economy, the NPPF expects planning policies to enable the retention and development of accessible local services and community facilities.⁴⁷ It also states that policies should guard against the unnecessary loss of valued facilities and services as part of its drive to promote healthy and safe communities.⁴⁸

With this modification, the clearly worded policy will take account of national policy. It is in general conformity with the SWDP as a whole and specifically Policy SWDP 37 (although this is not a strategic policy). It will help to achieve sustainable development. It therefore will meet the basic conditions.

⁴⁶ NPPF para 182

⁴⁷ Ibid para 83

⁴⁸ Ibid para 92

- **Add the word “and” at the end of existing criterion 3. of the policy and add a new criterion 4. that reads: “there will be no significant harmful impacts on residential amenity.”**

6. Natural environment

Policy ABY5: Landscape character

The NPPF⁴⁹ is clear that planning policies should contribute to and enhance the natural and local environment including through the protection of valued landscape and the intrinsic character and beauty of the countryside.

The Plan explains that the Plan area falls within the Teme Valley National Character Area characterised by dispersed settlements, small villages, timber framed buildings, hop yards, kilns and cider houses and highlights the Abberley Hills as a conspicuous landscape feature. On lower land, there is undulating landscape with mixed agriculture.

The Worcestershire Landscape Character Assessment (LCA) identified four landscape types in the Plan area, the majority of which is identified as timbered plateau farmlands.

This policy requires development proposals to take account of the characteristics and guidelines for the landscape type in the LCA and take every available opportunity to enhance the landscape type.

It seems to me that the Plan area contains a number of identifiable landscape types and this policy will ensure that the overall character is considered as part of development proposals and encourage opportunities to conserve and restore key characteristics.

The policy is clearly worded. It has regard to the NPPF, is in general conformity with SWDP Policy SWDP 25 in particular which requires development proposals to show they have taken the latest LCA into account, that development is appropriate to its setting and that the primary characteristics and important features have been conserved and, where appropriate, enhanced. It will help to achieve sustainable development. It therefore meets the basic conditions and no modifications are recommended except to clarify the reference to the LCA and to future proof this reference.

- **Change paragraph 1. of the policy to read: “the characteristics and guidelines for the Landscape Type of the proposed site, as defined in the *latest Landscape Character Assessment...*” [retain remainder of existing paragraph as is]**

⁴⁹ NPPF para 170

Policy ABY6: Key views

The Plan explains that there are many views valued by the local community. This policy identifies 10 key views which are shown on Plan 5 and the Plan contains a photograph of each view.

The wording of the policy is, I feel, open to some interpretation as it refers to substantial harm and this may lead to confusion and disagreement about what that might constitute. The wording of the policy does not prevent any development per se. I consider a preferred wording, building on this approach, would be to ensure development does not have a detrimental impact on the key features of any view. This would also reflect SWDP Policy SWDP 25 which refers to primary characteristics and important features.

The position of Key View 8 on Plan 5 needs to be repositioned further south along Clows Top Road, closer to its junction with the A443 to reflect the photograph on page 25 of the Plan. In addition the text in Table 1 needs to be corrected to reflect this.

With these modifications, the policy will take account of national policy and guidance in recognising the intrinsic character and beauty of the countryside and promoting and reinforcing local distinctiveness.⁵⁰ It will be in general conformity with, and add a local layer of detail to the SWDP as a whole and Policy SWDP 25 in particular (whilst recognising this is not a strategic policy). It will help to achieve sustainable development.

- **Change the policy to read: “To be supported, development proposals must demonstrate that they are sited, designed and of a scale *so that they do not have a detrimental impact on the key features of the Key Views identified in Table 1 and on Plan 5.*”**
- **Substitute “north west” for “...north east...” in KV8 in Table 1 on page 23 of the Plan**
- **Correct the position of KV8 on Plan 5 by showing it further south along Clows Top Road, closer to its junction with the A443**

⁵⁰ NPPF paras 127, 170

Policy ABY7: Biodiversity and geodiversity

Policy ABY7 lists a number of Local Wildlife Sites, Local Geological Sites and a Grassland Inventory Site. All are shown on Plans 6 or 7.

The policy simply identifies these sites for protection in accordance with SWDP Policy SWDP 22D or its successor. In turn this seeks to prevent development which compromises the favourable condition or conservation status of such sites unless the need for and the benefits of the development outweigh the loss.

Whilst the policy does not add anything to District level policy, and of course duplication between plans should be avoided, it does identify the local sites pertinent to the Plan area and shows them on a map. I consider this then to be a local expression of the District level policy adding a local layer of helpful detail.

However, the policy refers to sites “immediately adjoining” the Plan area. Whilst I appreciate that development within the Plan area may affect these sites which lie outside the Plan area, the Plan can only deal with the Plan area. A modification is therefore made to delete these references.

The NPPF⁵¹ is clear that planning policies should contribute to and enhance the natural and local environment in a manner commensurate with the status of sites, including through minimising impacts on biodiversity and providing net gains. Policy ABY7 has regard to this stance. It is in general conformity with SWDP Policy SWDP 22 in particular and will help to achieve sustainable development. With the modifications put forward, the policy will meet the basic conditions.

- **Delete the words “or immediately adjoining” from the first sentence of the policy**
- **Delete the two Local Geological Sites (Abberley Hall East and Shavers End) which do not wholly or partly fall within the Plan area from the policy**
- **Change the wording of paragraph 6.13 on page 27 of the Plan to read: “There are *five* Local Geological Sites *within the Neighbourhood Area*, listed for their scientific and educational value (*Abberley Village Quarry is also designated for its historical value*). *Two sites, Abberley Hall east and Shavers End also adjoin the Plan area. It is possible that development within the Plan area may compromise their favourable condition and this should be noted by developers.*” [retain existing bullet point list but remove the sites which adjoin the Plan area]**
- **Amend Plan 7 to remove the two Local Geological Sites (Abberley Hall East and Shavers End) which do not wholly or partly fall within the Plan area**

⁵¹ Ibid para 170

Policy ABY8: Local Green Spaces

Six areas of Local Green Space (LGS) are proposed. All are shown on Plan 8.

The NPPF explains that LGSs are green areas of particular importance to local communities.⁵²

The designation of LGSs should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.⁵³ It is only possible to designate LGSs when a plan is prepared or updated and LGSs should be capable of enduring beyond the end of the plan period.⁵⁴ The NPPF sets out three criteria for green spaces.⁵⁵ Further guidance about LGSs is given in PPG. A Local Green Space Assessment has been undertaken and is included in the Plan at Appendix B.

1. **St Mary's Churchyard** is valued for its role in the life of the community, as well as for its tranquility and amenity. It falls within the Conservation Area.
2. **Abberley Village Green** comprises amenity grassland, woodland and contains seating and a picnic area. It is used for recreation including walking with a footpath linking the Village to St Mary's Church as well as being valued for its tranquility. It partly falls within the Conservation Area.
3. **St Michael's Churchyard** is valued for its role in the life of the community as well as for its tranquility and amenity. It also has historic value. It falls within the Conservation Area.
4. **Village Hall green space** are the areas around the Village Hall valued for their landscaping, amenity and recreational value.
5. **Rosedale, Abberley Common** comprises two parcels of land at the entrance to Rosedale valued for their landscape and visual amenity.
6. **Abberley Parish Quarry** is a Local Geological Site subject of an earlier policy, Policy ABY7. It is valued for its local historic significance as it provided stone for local construction. As well as being a Local Geological Site it is included within an area of Priority Habitat Inventory. It is also valued for its scientific and educational role.

In my view, all of the proposed LGSs meet the criteria in the NPPF satisfactorily. All are demonstrably important to the local community, all are capable of enduring beyond the Plan period, all meet the criteria in paragraph 100 of the NPPF and their designation is consistent with the local planning of sustainable development and investment in

⁵² NPPF para 99

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid para 100

sufficient homes, jobs and other essential services given the housing figures for this local area and other policies in the development plan and this Plan.

Some of the proposed LGSs also fall within the Conservation Area; St Mary's Churchyard, St Michael's Churchyard and part of Abberley Village Green. I have considered whether there is any additional local benefit to be gained from designation as a LGS as advised by PPG.⁵⁶ I consider that different types of designation achieve different purposes. The LGS designation expresses the areas of particular significance and importance to the local community and therefore there is added local benefit.

Turning now to the wording of the policy, the proposed LGSs are referred to and cross-referenced to Plan 8. The next element in setting out what development might be permitted, should take account of and be consistent with the NPPF which explains the management of development in LGSs should be consistent with that in the Green Belt.⁵⁷ Therefore the policy needs modification to ensure that it takes account of national policy and is clear.

With this modification, the policy will meet the basic conditions.

- **Amend the second paragraph of the policy to read: “*Development in the Local Green Spaces will be consistent with national policy for Green Belts.*”**

7. Built environment

Policy ABY9: Building design

The NPPF states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.⁵⁸

It continues that neighbourhood plans can play an important role in identifying the special qualities of an area and explaining how this should be reflected in development.⁵⁹ It refers to design guides and codes to help provide a framework for creating distinctive places with a high and consistent quality of development.⁶⁰

It continues that planning policies should ensure developments function well and add to the overall quality of the area, are visually attractive, are sympathetic to local character and history whilst not preventing change or innovation, establish or maintain a strong sense of place and optimise site potential.⁶¹

⁵⁶ PPG para 011 ref id 37-011-20140306

⁵⁷ NPPF para 101

⁵⁸ NPPF para 124

⁵⁹ Ibid para 125

⁶⁰ Ibid para 126

⁶¹ Ibid para 127

Policy ABY9 is a relatively long policy with numerous and varied criteria covering a wide range of issues. In essence, the policy seeks to deliver locally distinctive development of a high quality that protects, reflects and enhances local character leading on from SWDP Policy SWDP 21 and also recognising the Worcestershire Partnership Climate Change Strategy.

It refers to the Abberley Design Guide. The supporting text explains that the objective is “to take inspiration from the context to form a contemporary approach which is in harmony with the surroundings and local vernacular”.⁶²

The second criterion of the policy refers to sustainability measures. The NPPF indicates that any local requirements for the sustainability of buildings should reflect the Government’s policy for national technical standards.⁶³

The Government introduced national technical standards for housing in 2015. A Written Ministerial Statement (WMS)⁶⁴ explains that neighbourhood plans should not set out any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. The WMS also states that neighbourhood plans should not be used to apply the national technical standard. This is echoed in PPG.⁶⁵ The policy applies to all new development not just housing.

This part of the policy seeks the incorporation of sustainability measures and compliance with Building Regulations as well as setting out water efficiency targets. I note this latter issue had been suggested by Severn Trent Water in their response to the pre-submission plan.⁶⁶ Three modifications are therefore made to address these concerns as this part of the policy does not have regard to national policy and guidance.

MHDC also point out that not all developments can promote walking and cycling as is put forward in criterion 3.. This would be the case, for example, in relation to minor household extensions and so a modification is made to clarify this.

The other criteria are clearly aimed at encouraging development of a high standard appropriate to this area.

With these modifications, the policy seems to me to reflect national policy by taking a locally distinctive approach and adding a local level of detail to SWDP policies and Policy SWDP 21 in particular. This in turn will help to achieve sustainable development. It will therefore meet the basic conditions.

- **In criterion 2 of the policy, delete the phrase “...(particularly for affordable and shared ownership homes)...” and the two sentences that begin “All new**

⁶² The Plan para 7.8 on page 35

⁶³ NPPF para 150

⁶⁴ Written Ministerial Statement 25 March 2015

⁶⁵ PPG para 001 ref id 56-001-20150327

⁶⁶ Consultation Statement page 26

housing should achieve the highest standards...” and “The estimated consumption...”

- **Change the last part of criterion 3. to read: “...and *take every available opportunity to promote walking and cycling; and*”**

Policy ABY10: Abberley Conservation Area

The Plan explains that the Conservation Area (CA) was designated in 1975 and is shown on Plan 9 in the Plan. An Appraisal and Management Strategy was produced in 2010. The CA comprises a small hamlet.

Drawing on the Appraisal and Management Strategy, Policy ABY10 sets out particular criteria on how development proposals will be assessed to help ensure that the character or appearance of the CA is preserved or enhanced.

The NPPF is clear that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.⁶⁷ It continues⁶⁸ that great weight should be given to the assets’ conservation when considering the impact of development on the significance of the asset.

The NPPF distinguishes between designated heritage assets and non-designated heritage assets outlining different approaches. CAs are designated heritage assets.

This policy sets out a positive strategy for the conservation and enjoyment of the historic environment in line with the NPPF.⁶⁹ It is in general conformity with the SWDP and Policy SWDP 24 in particular (although this is not a strategic policy). It will help to achieve sustainable development. The policy therefore meets the basic conditions and no modifications to the policy are recommended.

MHDC refer to a subheading section of this part of the Plan which refers to non-designated heritage assets. There is a concern that the two paragraphs and bullet point list of buildings and structures identified could have a confusing status. To help with clarity, I recommend a number of modifications which are largely presentational.

- **Create a new section for paragraphs 7.19 and 7.20 with a heading “Non-designated Heritage Assets” to match other headings in the chapter, see for example Building Design**
- **Change the order of existing paragraphs 7.20 and 7.19 so that existing paragraph 7.20 becomes paragraph 7.19**

⁶⁷ NPPF para 184

⁶⁸ Ibid para 193

⁶⁹ Ibid para 185

8. Economy

Policy ABY11: Employment and farm diversification

Policy ABY11 supports development that promotes employment uses and farm diversification subject to their impact on character, highway safety and amenity.

The Plan recognises there are a variety of employment opportunities with existing businesses, but that the Plan area is predominantly rural in nature.

The policy reflects the NPPF's drive to build a strong, competitive economy⁷⁰ and to support the sustainable growth and expansion of all types of businesses in rural areas including through the diversification of agricultural businesses.⁷¹

It is in general conformity with the strategic policies and in particular Policy SWDP 12.

It contributes towards the economic role of achieving sustainable development. It therefore meets the basic conditions. It is not necessary to recommend any modifications to it.

Policy ABY12: Local retail and other services

This policy supports the expansion of retail and other services subject to a number of criteria. These include the scale, location, effect on amenity and parking. The use of existing buildings is preferred to new build and development is encouraged to focus on Abberley Common.

The NPPF is clear that planning policies should help create the conditions in which businesses can invest, expand and adapt.⁷² The sustainable growth and expansion of all types of businesses in rural areas is supported including through conversion and well-designed new buildings.⁷³ The retention and development of accessible local services and facilities should be enabled.⁷⁴ In addition, the NPPF is clear that the provision of local services should be planned for positively to enhance the sustainability of communities.⁷⁵

The policy is a local expression of this and takes account of national policy. It reflects Policy SWDP 10 in particular. It contributes to the achievement of sustainable

⁷⁰ NPPF para 80

⁷¹ Ibid para 83

⁷² Ibid para 80

⁷³ Ibid para 83

⁷⁴ Ibid

⁷⁵ Ibid para 92

development. It therefore meets the basic conditions and no modifications are recommended.

9. Delivering the Neighbourhood Development Plan

This section helpfully sets out how the Plan will be used.

It also contains a “Community actions” section explaining that these are issues captured during community engagement but are not related to the development and use of land. These are set out clearly in Table 2 on page 43 of the Plan.

Appendices

Two appendices are attached to the Plan. Appendix A is a list of the evidence base. Appendix B contains information on the proposed Local Green Spaces.

8.0 Conclusions and recommendations

I am satisfied that the Abberley Neighbourhood Development Plan, subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined earlier in this report.

I am therefore pleased to recommend to Malvern Hills District Council that, subject to the modifications proposed in this report, the Abberley Neighbourhood Development Plan can proceed to a referendum.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Neighbourhood Plan area. I see no reason to alter or extend the Plan area for the purpose of holding a referendum and no representations have been made that would lead me to reach a different conclusion.

I therefore consider that the Abberley Neighbourhood Development Plan should proceed to a referendum based on the Abberley Neighbourhood Plan area as approved by Malvern Hills District Council on 28 August 2015.

Ann Skippers MRTPI
Ann Skippers Planning
16 April 2021

Appendix 1 List of key documents specific to this examination

Abberley Neighbourhood Development Plan 2020 – 2030 Submission draft
November 2020

Basic Conditions Statement November 2020 (DJN Planning Ltd)

Consultation Statement November 2020 (DJN Planning Ltd)

Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA)
Screening Opinion April 2020

Design Guide August 2019

Indicative Housing Requirements for Abberley Neighbourhood Area 2021-2030 and
2031 – 2041 July 2019

South Worcestershire Development Plan February 2016

Abberley Appraisal and Management Strategy February 2010

The SWDP Non-strategic Housing Allocations Background Paper December 2012
(requested from MHDC by email 7 April 2021)

Other documents on the www.abberleyparish.org.uk website including Housing
Delivery Report June 2019 (DJN Planning Ltd) and Housing Needs Assessment Final
Report June 2019 (AECOM)

List ends