

THE KIBWORTH VILLAGES NEIGHBOURHOOD PLAN 2017 - 2031 REVIEW

(Submission Version 2022)

**Report of the Examination into The**  
**Kibworth Villages Neighbourhood Plan 2017 – 2031 Review**

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To Harborough District Council,  
Kibworth Beauchamp Parish Council and  
Kibworth Harcourt Parish Council

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**Report of the Examination into the**  
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**1. Introduction**

*Neighbourhood planning*

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

2. This report concerns the Submission draft (2022) of the Kibworth Villages Neighbourhood Plan 2017-2031 Review (“the Draft NDP”).

*Appointment and role*

3. Harborough District Council (“HDC”), with the agreement of the qualifying body, Kibworth Beauchamp Parish Council (“KBPC”), has appointed me to examine the Draft NDP. I am a member of the planning bar and am independent of HDC, KBPC and Kibworth Harcourt Parish Council, and of those who have made representations in respect of the Draft NDP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service and have extensive experience both as a planning barrister and as a neighbourhood plan examiner. I do not have an interest in any land that is, or may be, affected by the Draft NDP.

4. My examination has involved considering written submissions and a detailed site visit on Saturday 8<sup>th</sup> October 2022. I have considered all the documents with which I have been provided.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 13 below applies and, if appropriate, to consider the referendum area. I must act proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive with costs being proportionate.

## **2. Preliminary Matters**

6. As a review, the draft NDP is a modification proposal as defined in the Planning and Compulsory Purchase Act 2004 Schedule A2, paragraph 1. All formal requirements in respect of modification proposals have been met. These include a statement that the qualifying body consider that the modifications contained in the modification proposal are so significant or substantial as to change the nature of the neighbourhood development plan which the modification proposal would modify, giving reasons for why the qualifying body is of this opinion (Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”) reg 15(1)(f)).

### *Public consultation*

7. Consultation and community involvement are important parts of the process of producing a neighbourhood plan. I am satisfied that the qualifying body took public consultation seriously and that the Consultation Statement is accurate. I do not consider there has been a failure in consultation. Consultation has been sufficient and has met the requirements of the General Regulations.

### *Other statutory requirements*

8. I am also satisfied of the following matters:

- (1) The Draft NDP area consists the parishes of the Kibworth Beauchamp and Kibworth Harcourt;
- (2) The Draft NDP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
- (5) The Draft NDP specifies the period for which it is to have effect, namely 2017-2031, as required by PCPA s38B(1)(a).

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

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

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;

- (d)<sup>1</sup> The making of the Plan contributes to the achievement of sustainable development;
- (e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- (f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and
- (g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.

10. There is one prescribed basic condition:<sup>2</sup> *“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.”* Chapter 8 comprises regulations 105 to 111.

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

12. In my examination of the substantial merits of the Draft NDP, I may not consider matters other than those specified in the last three paragraphs. In particular, I may not consider whether any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met.<sup>3</sup> Rather, Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is important to avoid unduly onerous demands on qualifying bodies. It is not my role to rewrite a neighbourhood development plan to create the plan that I would have written for the area. It is not my role to impose a different vision on the community.

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

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<sup>1</sup> The omission of (b) and (c) results from these clauses of para 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

<sup>2</sup> Sch 2 of the General Regulations prescribes this.

<sup>3</sup> Woodcock Holdings Ltd v Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin), Holgate J. para 57; R (Crownhall Estates Limited) v Chichester District Council [2016] EWHC 73 (Admin) , para 29 Holgate J. PPG Reference ID: 41-055-2018022.

whether the referendum area should be extended. My power to recommend modifications is limited by statute in the following terms:

*The only modifications that may be recommended are—*

*(a) modifications that the examiner considers need to be made to secure that the draft [NDP] meets the basic conditions mentioned in paragraph 8(2),*

*(b) modifications that the examiner considers need to be made to secure that the draft [NDP] is compatible with the Convention rights,*

*(c) modifications that the examiner considers need to be made to secure that the draft [NDP] complies with the provision made by or under sections 61E(2), 61J and 61L,*

*(d) modifications specifying a period under section 61L(2)(b) or (5), and*

*(e) modifications for the purpose of correcting errors.<sup>4</sup>*

14. The word “only” prevents me recommending any other modifications. The fact that a modification would be of benefit is not a sufficient ground in itself to recommend it. So, for example, the fact that a policy could be strengthened or added to does not justify a modification unless this is necessary for the reasons given above. I must not take an excessively restrictive view of the power to recommend modifications, but must bear in mind Lindblom LJ’s explanation of its extent in his judgment in Kebbell Developments Ltd v. Leeds City Council.<sup>5</sup> I may not recommend a modification that would put the draft NDP in breach of a basic condition or of human rights. When I conclude that a modification is necessary, I must, in deciding its wording, bear in mind material considerations including government advice. This includes the importance of localism. Where I properly can, my suggested modifications seek to limit the extent to which the substance of the draft NDP is changed.

15. It is not my role to consider matters that are solely for the determination of other bodies such as HDC, Leicestershire County Council or the Environment Agency. Nor is it my role to consider matters that an NDP could consider, but which are not considered in the Draft NDP, unless this is necessary for my role as explained above. It is not my role to consider aspirations that are not policies.

#### **4. Consideration of Representations**

16. I have given the representations careful consideration, but have not felt it necessary to comment on most of them. Rather in accordance with the statutory requirement and bearing in mind the judgment of Lang J in R (Bewley Homes Plc) v. Waverley District Council,<sup>6</sup> I have

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<sup>4</sup> TCPA Sch 4B, para 10(3). The provisions in (a), (c) and (d) are in the TCPA.

<sup>5</sup> [2018] EWCA Civ 450, 14<sup>th</sup> March 2018, paras 34 and 35.

<sup>6</sup> [2017] EWHC 1776 (Admin), Lang J, 18<sup>th</sup> July 2017.

mainly concentrated on giving reasons for my recommendations.<sup>7</sup> Where I am required to consider the effect of the whole Draft NDP, I have borne it all in mind.

## **5. Public Hearing and Site Visit**

17. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, an examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. Since neither applied in this case, I did not hold a public hearing.

18. After particularly careful consideration in the light of current circumstances, I concluded that an unaccompanied site visit<sup>8</sup> was necessary and held an extensive one on Saturday 8<sup>th</sup> October 2022. The site visit helped me to gain a sufficient impression of the nature of the area for the purpose of my role.

## **6. Basic conditions and human rights**

### *Regard to national policies and advice*

19. The first basic condition requires that I consider whether it is appropriate that the NDP should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but they should only be departed from if there are clear reasons, which should be explained, for doing so.<sup>9</sup>

20. The principal document in which national planning policy is contained is the National Planning Policy Framework 20<sup>th</sup> July 2021 (“the NPPF”) and I have borne that in mind. Other policy and advice that I have borne in mind includes national Planning Practice Guidance (“PPG”).

21. The NPPF provides that neighbourhood plans should support the delivery of strategic policies contained in local plans and should shape and direct development that is outside of these strategic policies.<sup>10</sup> Its paragraphs 28 and 29 state:

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<sup>7</sup> TCPA Sch 4B, para 10(6).

<sup>8</sup> I am using the phrase “*unaccompanied site visit*” in the way in which it is generally used in planning, that is, no participant or representative of a participant in the examination accompanied me. I was in fact accompanied by my wife (and nobody else). She is not a lawyer, planner, or other property professional and has no interest in the examination. She took no part in the examination.

<sup>9</sup> *R. (Lochailort Investments Limited) v. Mendip District Council* [2020] EWCA Civ 1259, Lewison LJ, paras 6, 31 and 33, 2<sup>nd</sup> October 2020.

<sup>10</sup> NPPF para 13.

28. *non-strategic policies should be used by... communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This 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 and setting out other development management policies.*

29. *Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.*

#### *Contributing to the achievement of sustainable development*

22. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft NDP, or the Draft NDP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the draft Plan as a whole (not solely to those parts that have been modified). It does not require that each policy in it must contribute to sustainable development. It does require me to consider whether constraints might prevent sustainable development and, if they might, whether the evidence justifies them. That involves consideration of site-specific constraints, both existing and those proposed in the Draft NDP. The total effect of the constraints introduced by the Draft NDP when read with existing constraints should not prevent the achievement of sustainable development.

#### *General conformity with the development plan's strategic policies*

23. The third basic condition means that I must consider whether the Draft NDP as a whole is in general conformity with the strategic policies contained in the development plan for the area of the authority. The relevant part of the development plan is the Harborough Local Plan to 2011 to 2031, which was adopted on 30<sup>th</sup> April 2019.

24. The adjective '*general*' allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. The draft NDP "*need not slavishly adopt every detail*".<sup>11</sup> This condition only applies to strategic policies - there is no conformity requirement in respect of non-strategic policies in the development plan or in respect of other local authority documents that do not form part of the development plan, although such documents may be relevant to other matters. In assessing general conformity and whether a policy is strategic, I

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<sup>11</sup> Wiltshire Council v Cooper Estates Strategic Land Ltd [2019] EWCA Civ 840, para 3.



have borne in mind helpful PPG advice.<sup>12</sup> I have also borne in mind the relevant part of the judgment in R (Swan Quay LLP) v Swale District Council.<sup>13</sup>

### *EU obligations*

25. The fourth basic condition requires me to consider whether the Draft NDP breaches, or is otherwise incompatible with, EU obligations. I have in particular considered the following, together with the UK statutory instruments implementing them in England: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); the Water Framework Directive (2000/60/EC); and the General Data Protection Regulation (2016/679/EU). I have also considered the judgment of the European Court of Justice in People Over Wind v Coillte Teoranta.<sup>14</sup> I have borne in mind that proportionality is a concept of and underlies EU law and must be wary of requirements that might be disproportionate. I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive.

### *Conservation of Habitats and Species Regulations*

26. I am satisfied that the making of the Draft NDP would not be incompatible with the prescribed basic condition and that it is not necessary to consider the matter further in this report.

### *Human Rights*

27. The planning law of England and Wales in general complies with the Convention. This matter can be dealt with briefly in advance of further consideration of the contents of the Draft NDP. I have considered whether anything in the Draft NDP would cause a breach of any Convention right. In particular, I have considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. This last-mentioned article reinforces the common-law principle that private property rights should not be removed without proper justification and I have borne that in mind. Nothing in my examination of the Draft NDP indicates any breach of a Convention right, so that no modifications need to be made to secure that the Draft NDP is compatible with these rights. It is therefore not necessary to consider human rights in the parts of this report that deal with specific parts of the Draft NDP.

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<sup>12</sup> Paras 074 to 077 of the section on neighbourhood planning.

<sup>13</sup> [2017] EWHC 420 (Admin), para 29, Dove J, 27<sup>th</sup> January 2017.

<sup>14</sup> Case C-323/17, 12<sup>th</sup> April 2018.

## **7. The nature of the area**

28. In considering the contents of the Draft NDP I must consider the nature of the parish. It is accurately described in the body of the Draft NDP and its Appendix 1.<sup>15</sup> Together the villages are relatively sustainable with facilities similar to those of a small town, including those mentioned on the draft NDP's page 23.

29. The parish contains 2 scheduled monuments and 38 listed buildings, many of which I viewed and two conservation areas each of which I visited.

30. The villages are on relatively high ground and in flood zone 1.

## **8. The contents of the Draft NDP**

### *General points*

31. In a substantial number of places places words are joined together without the gaps between them that should be there. These include: page 8, lines 12 and 13; page 10, lines 12, 13, 14 and 28; page 12, lines 29, 31 and 32; page 13, line 13; page 14, line 31; page 15, line 16; page 16, lines 19 and 24; page 18, lines 7 and 9; page 19, line 3; page 20, line 6; page 21, lines 3, 6, 10, 19 and 25; page 22, lines 12 and 15; page 23, lines 9 and 19; page 31, line 18; page 32, line. 10; page 34, lines 19, 23 and 25; page 35, line 16; page 37, line 23 and 33; page 38, lines 6, 18 and 34; page 39, lines 23 and 33; page 40, line 36; page 41, lines 39 and 41; page 42, line 31; page 44, line 323; page 45, line 7; page 46, line 11; page 47, lines 20, 28 and 37; page 48, lines 6, 14 and 16; page 49, line 1; page 52, line 17; page 63, line 15; page 68, lines 36 and 39; page 69 lines 21, 24, 28 and 33; page 70, line 25; page 71, lines 10 and 35; and page 72, line 30.

32. I share the concern of a resident in respect of the string of letters. These are errors that, for some, will make reading the plan more difficult. They and any similar errors that I have missed should be corrected.

### **Recommended modification 1**

*Wherever this occurs*

Insert gaps between inappropriately joined words.

32. Historic England listed one of the four proposed locally important buildings the Kibworth Cemetery Lychgate, on 28<sup>th</sup> July 2022, after the draft NDP was produced. As explained below, I consider the other three should remain in the plan. It follows that the number four should be reduced to three and the number 37 increased to 38.

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<sup>15</sup> Subject to updating in respect of the number of listed buildings which I consider below.

Recommended modification 2

*Page 6, 6<sup>th</sup> paragraph*

Replace “four” with “three”.

*Page 39*

Replace “37” with “38”.

*Page 65, final paragraph*

Replace “four” with “three” .

*Appendix 7, 1<sup>st</sup> paragraph*

Replace “we list the 37 existing” with “we listed the 37 then existing”.

33. Some of the figures are unreadable even with a magnifying glass. They should be included in A3 a new appendix 10. This recommendation should not be read as being against the Appendix including other figures if this is considered convenient.

Recommended modification 3

Insert a new Appendix 10 containing readable copies in A3 of the following: Figures 2, 4.1, 4.2, 7, 9, 10.1, 10.2, 12, 13, 14 and 15.

34. The word ‘Development’ that requires express planning permission covers many small matters, such as an extension to a house or a flagpole in excess of permitted development rights. Policies that cover all development may be unreasonably onerous. A widespread means of distinguishing between smaller and larger developments that is often used in planning policies is the phrase ‘major development’, which is defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 regulation 2(1) as (unless the context otherwise requires):

*“major development” means development involving any one or more of the following—*

- (a) the winning and working of minerals or the use of land for mineral-working deposits;*
- (b) waste development;*
- (c) the provision of dwellinghouses where—*
  - (i) the number of dwellinghouses to be provided is 10 or more; or*
  - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);*
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or*
- (e) development carried out on a site having an area of 1 hectare or more.*

35. Given the widespread use of the phrase in policy, I consider it appropriate to be used in a neighbourhood plan to ensure that excessively onerous demands are not placed on small

developments, unless there is evidence that some other threshold would be better. I have therefore used it in two of my recommended modifications.

*Page 8*

36. The quote from the NPPF now appears in its paragraph 29

Recommended modification 4

*Page 8, 4<sup>th</sup> paragraph*

Replace “28” with “29”.

*Page 22*

36. I have given full consideration to policy SD1: Limits to Development, particularly in the light of the objection to it. I can see no breach of basic conditions in Figure 2, policy SD1 or the accompanying text. Harborough district has more than 5 years housing land supply, the Kibworths have made a considerable contribution to the district’s housing in recent years and the draft NDP allocates land for housing. The policy does not inhibit the ability of HDC to meet its strategic aims. Should those aims be varied in a relevant way by a revision of the Local Plan, that revision will prevail as a result of the Planning and Compulsory Purchase Act 2004 section 38(5). That is enough to prevent me proposing any modification. While I accept the representation that Kibworth Garden centre and Nursery is a key employment and business provider for the Kibworths, extending the limit to include it is unnecessary and might lead to its being redeveloped for housing and hence to the loss of valuable jobs.

*Page 24*

37. There is an obvious error in line 17.

Recommended modification 5

*Page 24, line 17*

Replace “Anglian” with “Anglican”.

*Page 26*

38. There is an obvious error in the second line.

Recommended modification 6

*Page 26, line 2*

‘In policy CSA2 replace “Has” with “It has”.

*Page 28*

39. Design requirements are now in Policy H6.

Recommended modification 7

*Page 28*

In policy CSA 4 replace “H7” with “H6”.

40. The photograph of the New Kibworth Health Centre obscures some of the text on this page. This should be corrected. I have phrased my recommended modification to allow either the removal or the moving of the photograph.

Recommended modification 8

*Page 28*

Make the text obscured by the photograph visible.

*Page 36*

41. Paragraph H1 is to some extent too detailed and risks impeding the provision of needed affordable homes. Windfall housing seldom includes affordable housing and affordable housing cannot be required in sites as small as sites 1 and 2. During the last ten years windfall units have provided about one unit per annum and I have no reason to consider that this will change so greatly that affordable housing could be required on a windfall site.<sup>16</sup> , The likely source of all future affordable housing during the plan period is limited to sites 3 and 4. There is no reason to specify low density in addition to being sympathetic to the Conservation Area. Unnecessary tension between the support for the provision of smaller homes in policies H3, H5 and H6 on the other hand and policy H1 on the other hand should be avoided.

Recommended modification 9

*Page 36*

Amend the entries for Sites 3 and 4 to read:

“Site 3 – Rear of 4 Station Street for at least 11 mixed-sized dwellings (net at least 10 allowing for demolition and replacement of existing building). Development to be designed to be sympathetic to the Conservation Area.

Site 4 – St Wilfrid’s Close for at least 10 dwellings – at least 5 no. 2 bed bungalows, and at least 3 no 3 bed bungalows.”

*Page 44*

42. Leicestershire County Council (“LCC”), the local highway authority has adopted parking standards in its Leicestershire Highway Design Guide. The draft NDP seeks to depart from this. LCC has objected on the ground that the Draft NDP should accord with its Design Guide. The Qualifying body has responded that the criterion was introduced in the made NDP. I have given particularly careful consideration to the difference. The view of the previous examiner and the resulting contents of the made NDP deserve respect and I should pause before

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<sup>16</sup> Draft NDP page 10.

departing from them. On the other hand LCC's Design Guide has been produced by people with appropriate expertise. I do not consider that such Design Guide can never be departed from, but I do not consider that they should apply unless there is good evidence to justify a departure. Nothing in the documents that I have seen constitutes such evidence. While I am conscious that my site visit was only a "snapshot in time", it is also the case that nothing that I saw caused me to suspect (let alone conclude) that parking in the Kibworths was significantly worse from that in many other Leicestershire communities. I have therefore concluded that LCC's representation, although too absolute, is substantially right.

Recommended modification 10

*Page 44*

Replace policy H7 with

"POLICY H7: RESIDENTIAL CAR PARKING - New residential development should incorporate sufficient parking provision to meet the needs of future residents in accordance with the Leicestershire parking standards.

Extensions to existing dwellings should not result in the loss of parking spaces below the minimum level in these standards.

*Page 49*

43. Figure 6 relates to the 2016 consultation. This should be made clear to avoid confusion. The reference to "next" page in line 4 is currently wrong.

Recommended modification 11

*Page 49*

Replace "this map (next page) of the Plan area at a community" with "figure 6 at a 2016 community".

Replace "identified by residents in Community Consultation" with "identified by residents in 2016 Community Consultation".

*Pages 51 and 52*

44. These pages deal with the two proposed local green spaces (Kibworth storm water retention basin, (031) and Church Road east woodland, allotments and pond (Rookery Close (096)) and include policy ENV 1. I viewed them on the site visit and walked over part of them.

45. The NPPF provides for Local Green Spaces (LGSs) in its chapter 8, which is headed "Promoting healthy and safe communities". Under the sub-heading "Open Spaces and Recreation", paragraphs 101 to 103 state:

*101. The designation of land as Local Green Space through ... neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of*

*sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.*

*102. The Local Green Space designation should only be used where the green space is:*

- a) in reasonably close proximity to the community it serves;*
- b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- c) local in character and is not an extensive tract of land.*

*103. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.*

46. These paragraphs are central to any consideration of whether land should be designated as an LGS. They should be followed unless there is a good reason not to do so and none is apparent to me. In considering the proposed LGS designations, I have born in mind and found helpful the judgment Court of Appeal in R. (Lochailort Investments Ltd) v Mendip District Council.<sup>17</sup> The phrase in para 101 “*capable of enduring beyond the end of the plan period*” was given specific consideration. It is less demanding policy than applies to Green Belt designation where the stronger word “*permanently*” is used. I am satisfied that each proposed LGS is capable of enduring beyond the plan period.

47. I have considered each proposed LGS and the reason for their designation in the papers that I have seen. I am satisfied that each satisfies the requirements for inclusion in an NDP and involves no conflict with either the NPPF or the Local Plan. I am satisfied that the designation of these LGSs in the made NDP was justified and that it remains justified and that the modest extent of LGS designation in the Draft NDP does not come close to undermining sustainable development.

*Page 53*

48. There is an obvious error in the fourth line.

Recommended modification 12

*Page 54, line 4*

Replace “t is” with “It is”.

*Pages 57 and 58*

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<sup>17</sup> [2020] EWCA Civ 1259, 2<sup>nd</sup> October 2020.

49. The source of Figure 12 is the Environmental Inventory (2015-16). Since then, some of the land coloured brown, filed 041 and 042, has been developed. This makes the mention of the figure in the policy out of date

Recommended modification 13

*Page 57, policy ENV4*

Delete “mapped in figure 12”.

*Pages 62 and 63*

50. Policy ENV7 is restrictive of renewable and low carbon development and not justified by its supporting text. Such developments will often have some adverse impact and this should be balanced against their benefits, not an automatic bar to development. Rewriting the policy to alter it greatly would exceed my powers. Rather I consider that the matter is better left to national and local policy.

Recommended modification 14

*Page 62 and 63, Sustainable Development*

Delete all from the heading “SUSTAINABLE DEVELOPMENT” to the end of policy ENV7.

*Page 63*

51. Policy ENV8 goes considerably beyond what is not justified by national or local policy or by robust evidence. Both parts would impose a sequential test for all developments however small, adding unnecessarily to the cost of development. In this case the policy can be modified to make its requirements more focussed.

52. The policy should be renumbered to reflect my previous recommendation.

Recommended modification 15

*Page 63, policy ENV8*

Replace policy ENV8 with:

“POLICY ENV7: WATERCOURSES AND FLOODING

The sequential test is required in flood zones 2 and 3. In addition, development proposals in areas adjacent to zones 2 and 3 should take account of the forecast flooding levels arising as a result of climate change.

Every development proposal in flood zones 2 and 3 and every major development (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 regulation 2(1) in the Plan Area will be required to demonstrate that:

Its location takes geology, hydrology and flood risk into account;



Its design includes, as appropriate, sustainable drainage systems (SuDS), surface water management measures and permeable surfaces; and  
It does not increase the risk of flooding downstream.”

*Page 66 and Appendix 7*

53. As mentioned above,<sup>18</sup> one of the four identified non-designated heritage assets, the Kibworth Cemetery Lychgate, has been listed. It is therefore no longer non-designated and has more than local significance. I recommend modifications that reflect this.

54. In addition to the documents with which I have been provided, I viewed the remaining proposed non-designated local heritage assets on the site visit. I have no doubt that it is appropriate to identify each of them as such assets.

Recommended modification 16

*Page 66*

Delete “Lychgate, Kibworth Cemetery from policy ENV10 and remove ‘Lychgate from Figure 18.

*Appendix 7, 1<sup>st</sup> page*

Delete the whole of the section that deals with the Lychgate.

*Appendix 7 final page*

Remove Lychgate from the map.

*Page 67*

55. There is an obvious error in the last line of this page.

Recommended modification 17

*Page 67, last line*

Replace “istow” with “Wistow”.

*Page 69*

56. Policy T1 applies to all housing developments, even a single house. Such a demanding policy is not justified by national or district policy and has not been justified by robust evidence.

Recommended modification 18

*Policy T1, first line*

Replace “new housing development” with “major development (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 regulation 2(1)) of new housing”.

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<sup>18</sup> Paragraph 32.

Page 74

57. The comments on electric vehicles are now out of date.

Recommended modification 19

*Page 74, lines 10 and 11*

Replace “The UK government has recently announced its intention to ban sales of new petrol and diesel cars from 2040” with “In 2020 the UK government announced its intention to ban sales of new petrol and diesel cars from 2030”.

*Page 74 line 17*

Replace “typical” with “formerly typical”.

Page 74, penultimate line

Replace “is emerging, which would halve” with “has emerged, which halves”.

Page 79

58. The last sentence is out of date, referring to repealed legislation.

Recommended modification 20

*Page 79, last sentence*

Replace this with “The Town and Country Planning (General Permitted Development) (England) Order 2015 allows, under certain circumstances the change of use of agricultural buildings to dwelling houses, a state-funded school, or a registered nursery”.

**9. Updating and renumbering**

59. It may be that certain passages need updating. Nothing in this report should deter appropriate updating prior to the referendum in respect of incontrovertible issues of primary fact.

**10. The Referendum Area**

60. I have considered whether the referendum area should be extended beyond the designated plan area. However, I can see no sufficient reason to extend the area and therefore recommend that the referendum area be limited to the parish.

**11. Summary of Main Findings**

61. I commend the Draft NDP for the considerable effort that has gone into its creation.

62. I recommend that the Draft NDP be modified in the terms specified in Appendix A to this report to meet basic conditions and to correct errors. I am satisfied with all parts of the Draft NDP to which I am not recommending modifications.

63. With those modifications the Draft NDP will meet all the basic conditions and human rights obligations. Specifically:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the NDP;
- The making of the NDP contributes to the achievement of sustainable development;
- The making of the NDP is in general conformity with the strategic policies contained in the development plan for the parishes of the Kibworth Beauchamp and Kibworth Harcourt (or any part of that area);
- The making of the NDP does not breach, and is not otherwise incompatible with, EU obligations;
- The making of the NDP does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017; and
- The modified Draft NDP is in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

64. I recommend that the modified NDP proceed to a referendum, the referendum area being the area of the Draft NDP, namely the parishes of the Kibworth Beauchamp and Kibworth Harcourt.

Timothy Jones, Barrister, FCI Arb,  
Independent Examiner,  
No 5 Chambers  
28<sup>th</sup> November 2022.

## Appendix A: Recommended Modifications

### Recommended modification 1

Wherever this occurs:

Insert gaps between inappropriately joined words.

### Recommended modification 2

*Page 6, 6th paragraph*

Replace “four” with “three”.

*Page 39*

Replace “37” with “38”.

*Page 65, final paragraph*

Replace “four” with “three” .

*Appendix 7, 1st paragraph*

Replace “we list the 37 existing” with “we listed the 37 then existing”.

### Recommended modification 3

Insert a new Appendix 10 containing readable copies in A3 of the following: Figures 2, 4.1, 4.2, 7, 9, 10.1, 10.3, 12, 13, 14 and 15.

### Recommended modification 4

*Page 8, 4th paragraph*

Replace “28” with “29”.

### Recommended modification 5

*Page 24, line 17*

Replace “Anglian” with “Anglican”.

### Recommended modification 6

*Page 26, line 2*

Replace “Has” with “It has”.

### Recommended modification 7

*Page 28*

In policy CSA 4 replace “H7” with “H6”.

Recommended modification 8

*Page 28*

Make the text obscured by the photograph visible.

Recommended modification 9

*Page 36*

Amend the entries for Sites 3 and 4 to read:

“Site 3 – Rear of 4 Station Street for at least 11 mixed-sized dwellings (net at least 10 allowing for demolition and replacement of existing building). Development to be designed to be sympathetic to the Conservation Area.

Site 4 – St Wilfrid’s Close for at least 10 dwellings – at least 5 no. 2 bed bungalows, and at least 3 no 3 bed bungalows.”

Recommended modification 10

*Page 44*

Replace policy H7 with

“POLICY H7: RESIDENTIAL CAR PARKING - New residential development should incorporate sufficient parking provision to meet the needs of future residents in accordance with the Leicestershire parking standards.

Extensions to existing dwellings should not result in the loss of parking spaces below the minimum level in these standards.

Recommended modification 11

*Page 49*

Replace “this map (next page) of the Plan area at a community” with “figure 6 at a 2016 community”.

Replace “identified by residents in Community Consultation” with “identified by residents in 2016 Community Consultation”.

Recommended modification 12

*Page 53, line 4*

Replace “t is” with “It is”.

Recommended modification 13

*Page 57, policy ENV4*

Delete “mapped in figure 12”.

Recommended modification 14

*Page 62 and 63, Sustainable Development*

Delete all from the heading “SUSTAINABLE DEVELOPMENT” to the end of policy ENV7.

Recommended modification 15

*Page 63, policy ENV8*

Replace policy ENV8 with:

“POLICY ENV7: WATERCOURSES AND FLOODING

The sequential test is required in flood zones 2 and 3. In addition, development proposals in areas adjacent to zones 2 and 3 should take account of the forecast flooding levels arising as a result of climate change.

Every development proposal flood zones 2 and 3 and every major development (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 regulation 2(1) in the Plan Area will be required to demonstrate that:

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Its design includes, as appropriate, sustainable drainage systems (SuDS), surface water management measures and permeable surfaces; and

It does not increase the risk of flooding downstream.”

Recommended modification 16

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Delete “Lychgate, Kibworth Cemetery from policy ENV10 and remove ‘Lychgate from Figure 18.

*Appendix 7, 1<sup>st</sup> page*

Delete the whole of the section that deals with the Lychgate.

*Appendix 7 final page*

Remove Lychgate from the map.

Recommended modification 17

*Page 67, last line*

Replace “istow” with “Wistow”.

Recommended modification 18

*Policy T1, first line*

Replace “new housing development” with “major development (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 regulation 2(1)) of new housing”.

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*Page 74, lines 10 and 11*

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*Page 74 line 17*

Replace “typical” with “formerly typical”.

*Page 74, penultimate line*

Replace “is emerging, which would halve” with “has emerged, which halves”.

Recommended modification 20

*Page 79, last sentence*

Replace this with “The Town and Country Planning (General Permitted Development) (England) Order 2015 allows, under certain circumstances the change of use of agricultural buildings to dwelling houses, a state-funded school, or a registered nursery”.

## Appendix B: Abbreviations

The following abbreviations are used in this report:

Convention	European Convention on Human Rights
Draft NDP	Submission draft of the Kibworth Villages Neighbourhood Plan 2017-2031 Review
EU	European Union
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework (2021)
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PPG	national Planning Practice Guidance
s	section
Sch	Schedule
HDC	Harborough District Council
TCPA	Town and Country Planning Act 1990 (as amended)

Where I use the verb *'include'*, I am not using it to mean *'comprise'*. The words that follow are not necessarily exclusive.