

Brackenfield Parish Council

Brackenfield Neighbourhood Development Plan

A report to North East Derbyshire District Council of the
Independent Examination of the Brackenfield Neighbourhood
Development Plan

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Overall Finding

This is the report of the Independent Examination of the Brackenfield Neighbourhood Development Plan. The plan area is the administrative area of Brackenfield Parish Council within the North East Derbyshire District Council area, with the exception of a small area of land adjacent to Wessington previously included in the Wessington Neighbourhood Plan. The plan period is 2017-2034. The Neighbourhood Plan includes policies relating to the development and use of land. The Neighbourhood Plan does not allocate land for development.

This report finds that subject to specified modifications the Neighbourhood Plan meets the Basic Conditions and other requirements. It is recommended the Neighbourhood Plan should proceed to a local referendum based on the plan area.

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”¹
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Brackenfield Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Brackenfield Parish Council (the Parish Council). The draft plan has been submitted by the Parish Council, a qualifying body able to prepare a neighbourhood plan, in respect of the Brackenfield Neighbourhood Area which was formally designated by North East Derbyshire District Council (the District Council) on 20 June 2017. The Neighbourhood Plan has been produced by the Neighbourhood Plan Steering Group made up of volunteers from within the local community including a representative of the Parish Council.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to the District Council.² The District Council arranged a period of publication between 1 March 2019 and 12 April 2019 and subsequently submitted the Neighbourhood Plan to me for independent examination.

¹ Paragraph 183 National Planning Policy Framework (2012) (See paragraph 214 of the NPPF 2019 for an explanation why this Independent Examination is being undertaken in the context of the NPPF 2012)

² Submission date 21 January 2019 confirmed by the District Council

Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan.³ The report makes recommendations to the District Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. The District Council will decide what action to take in response to the recommendations in this report.
6. The District Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Once a neighbourhood plan has been independently examined, and the decision taken to put the plan to a referendum, it must be taken into account when determining a planning application, in so far as the policies in the plan are material to the application⁴.
7. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will form part of the Development Plan and be given full weight in the determination of planning applications and decisions on planning appeals in the plan area⁵ unless the District Council subsequently decide the Neighbourhood Plan should not be 'made'. The Housing and Planning Act 2016 requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan⁶. The Framework is very clear that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted⁷.
8. I have been appointed by the District Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and the District Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have

³ Paragraph 10 Schedule 4B Town and Country Planning Act 1990

⁴ Paragraph 216 of the National Planning Policy Framework 2012 explains full weight is not given at this stage

⁵ Section 3 Neighbourhood Planning Act 2017

⁶ Section 156 Housing and Planning Act 2016

⁷ Paragraph 198 National Planning Policy Framework 2012

appropriate experience. I am an experienced Independent Examiner of Neighbourhood Plans. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.

9. As independent examiner, I am required to produce this report and must recommend either:

- that the Neighbourhood Plan is submitted to a referendum, or
- that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
- that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.

10. I make my recommendation in this respect and in respect to any extension to the referendum area,⁸ in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.⁹

11. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.¹⁰ The Planning Practice Guidance (the Guidance) states “*it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.*”

12. The examiner has the ability to call a hearing 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 adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary, I proceeded on the basis of written representations and unaccompanied visits to the Neighbourhood Plan area made during May 2019.

⁸ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁹ Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

¹⁰ Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

Basic Conditions and other Statutory Requirements

13. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.¹¹ A neighbourhood plan meets the Basic Conditions if:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the 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 of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
- 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 2017.¹²

14. As the final basic condition, on 28 December 2018, replaced a different basic condition that had previously been in place throughout much of the period of preparation of the Neighbourhood Plan I advised the District Council of the need to confirm the Neighbourhood Plan meets the new basic condition. On 29 May 2019 I received satisfactory confirmation which I refer to later in my report.

15. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention Rights.¹³ All of these matters are considered in the later sections of this report titled ‘The Neighbourhood Plan taken as a whole’¹⁴ and ‘The Neighbourhood Plan Policies’.

16. In addition to the Basic Conditions and Convention Rights, I am also required to consider whether the Neighbourhood Plan complies with

¹¹ Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

¹² This Basic Condition arises from the coming into force, on 28 December 2018, of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 whereby the Neighbourhood Planning Regulations 2012 are amended. This basic condition replaced a basic condition “the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects”.

¹³ The Convention Rights has the same meaning as in the Human Rights Act 1998

¹⁴ Where I am required to consider the whole Neighbourhood Plan, I have borne it all in mind

the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.¹⁵ I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 (the Regulations) which are made pursuant to the powers given in those sections.

17. The Neighbourhood Plan relates to the area that was designated by the District Council as a neighbourhood area on 20 June 2017. A map of the Neighbourhood Plan boundary is included as Figure 1 of the Submission Version Plan. The Neighbourhood Plan designated area is coterminous with the Brackenfield Parish boundaries with the exception of a small area of land adjacent to Wessington previously included in the Wessington Neighbourhood Plan. The Neighbourhood Plan does not relate to more than one neighbourhood area,¹⁶ and no other neighbourhood development plan has been made for the neighbourhood area.¹⁷ All requirements relating to the plan area have been met.

18. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;¹⁸ and the Neighbourhood Plan does not include provision about excluded development.¹⁹ I am able to confirm that I am satisfied that each of these requirements has been met.

19. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.²⁰ The front cover of the Submission Version Plan clearly states the plan period to be 2017-2034.

20. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.²¹ It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan, except where this arises as a result of my

¹⁵ In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

¹⁶ Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

¹⁷ Section 38B (2) Planning and Compulsory Purchase Act 2004

¹⁸ Section 38A (2) Planning and Compulsory Purchase Act 2004

¹⁹ Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

²⁰ Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

²¹ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the National Planning Policy Framework 2012

recommended modifications so that the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention Rights, and the other Statutory Requirements.

21. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.
22. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans reflect thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.
23. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the Basic Conditions and the other requirements I have identified.²²

Documents

24. I have considered each of the following documents in so far as they have assisted me in determining whether the Neighbourhood Plan meets the Basic Conditions and other requirements:
 - Brackenfield Neighbourhood Plan 2017-2034 Submission Draft January 2019
 - Brackenfield Neighbourhood Plan Statement of Basic Conditions January 2019 [*In this report referred to as the Basic Conditions Statement*]
 - Brackenfield Neighbourhood Plan 2017-2034 Consultation Statement January 2019 including Appendices 1 to 17 [*In this report referred to as the Consultation Statement*]

²² See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990 and *Kebbell Developments Ltd v Leeds City Council* [2018] EWCA Civ 450 14 March 2018 paragraphs 34 and 35

- Brackenfield Neighbourhood Plan 2017-2034 Strategic Environmental Assessment Screening and Habitats Regulations Assessment Screening Report December 2018 and Addendum sent to me on 29 May 2019
- Background documents published on the www.brackenfield.org website including: Brackenfield Heritage and Character Assessment 2018; Brackenfield Important Views Report 2018; Brackenfield Local Character Buildings, Structures and Sites Report 2018; and Brackenfield Housing Needs and Characteristics Report October 2017.
- Representations received during the Regulation 16 publicity period and the representation setting out the District Council Officer comments
- Correspondence between the Independent Examiner and the District and Parish Councils, including the Parish Council response to the representations of other parties sent to me on 30 May 2019
- List of Local Plan 2001-2001 saved policies considered to be strategic policies emailed to me by the District Council on 1 May 2019
- North-East Derbyshire Local Plan 2001-2011 (saved policies)
- North-East Derbyshire Local Plan 2014-2034 (subject to examination November 2018 to March 2019)
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*] and later revisions
- Permitted development rights for householders' technical guidance DCLG (June 2017) [*In this report referred to as the Permitted Development Guidance*]
- Planning Practice Guidance web-based resource MHCLG (first fully launched 6 March 2014 and subsequently updated) [*In this report referred to as the Guidance*]
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- The Town and Country Planning Act 1990 (as amended)
- The Town and Country Planning (General Permitted Development) (England) (Amendment) (No 2) Order 2017
- The Planning and Compulsory Purchase Act 2004 (as amended)
- The Localism Act 2011
- Community Right to Bid: Non-statutory advice note for local authorities. Department for Communities and Local Government October 2012
- The Housing and Planning Act 2016
- The Neighbourhood Planning Act 2017 and Commencement Regulations 19 July 2017, 22 September 2017, and 15 January 2019
- The Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations. References to Regulation 14, Regulation 16 etc in this report refer to these Regulations*].

- The Neighbourhood Planning (General) (Amendment) Regulations 2015
- The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016.
- The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

Consultation

25. The submitted Neighbourhood Plan is accompanied by a Consultation Statement which outlines the process undertaken in the preparation of the plan. In addition to detailing who was consulted and by what methods, it also provides a summary of comments received from local community members, and other consultees, and how these have been addressed in the Submission Plan. I highlight here a number of key stages of consultation undertaken in order to illustrate the approach adopted.
26. The Plan preparation process commenced in February 2017 when all residents in Brackenfield were invited to a public meeting. A wide range of consultation methods have been utilised throughout the plan preparation process including a display and discussions at the ‘Picnic on the Green’ in July 2017; a community survey delivered to every household during October 2017; consultation with businesses in April 2018; a two day drop-in event on the initial draft Plan at Brackenfield Church Hall; publicity through a page on the Brackenfield Village website; a Facebook page; use of noticeboards; and updates included in the quarterly Brackenfield newsletter. Minutes of Steering Group meetings have been published.
27. Pre-submission consultation in accordance with Regulation 14 was undertaken between 21 September 2018 and 16 November 2018 during which period electronic and paper versions of the draft Plan were made available for inspection. Publicity included a flyer and submission form delivered to every household and business; a notice on the Parish Council website; posters displayed around the area; and emails or letters to statutory consultees and other organisations. This consultation generated 11 submissions. The representations arising from the consultation are summarised in Appendix 17 of the Consultation Statement and responses and changes made to the Neighbourhood Plan, are set out. The suggestions have, where considered appropriate, been reflected in a number of changes to the

Plan that was approved by the Parish Council, for submission to the District Council.

28. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 period of publication between 1 March 2019 and 12 April 2019. Representations from 19 different parties were submitted during the period of publication. I have been provided with copies of each of these representations and the representation made by the District Council. In preparing this report I have taken into consideration all of the representations even though they may not be referred to in whole, or in part. Where representations relate to specific policies, I refer to these later in my report when considering the policy in question, particularly where they are relevant to the reasons for my recommendations.²³
29. Eight separate representations express support for the Neighbourhood Plan one of which states *“I believe the document reflects the views and aspirations of the local community who support its introduction. In particular I am supportive of the 10 objectives of the plan. It is important that the area retains its rural charm and I certainly want to see that retained by avoiding any moderate or significant scale housing development in the area. It is also important that Brackenfield and Wessington retain their identities and that any development does not affect this. Ensuring we maintain the natural environment of the area is a priority from my perspective as well. I believe the plan sets out a clear direction for the area over the next 20 years and it has my support.”* A further representation includes the statement *“There have also been many opportunities for wider community consultation and comment. Consequently, I believe that the Plan and supporting documents accurately reflect the character of the plan area and the aspirations of the local community.”*
30. Another representation states *“The NP process has facilitated focused, constructive engagement within our community. As a dispersed hamlet, we have endeavoured to reach a settled consensus. Our community represents simply one of the little pieces of a complex jigsaw, which contribute to make the full picture of the English Countryside. I trust we have balanced development and preservation and the tensions inherent therein. Community led housing responses to local need, effective rural business diversification, local green*

²³ Bewley Homes Plc v Waverley Borough Council [2017] EWHC 1776 (Admin) Lang J, 18 July 2017 and Town and Country Planning Act Schedule 4B paragraph 10(6)

tourism and transport partnerships allied to a review of infrastructure may yield a future as envisioned in our plan.” A further representation states “As residents of Brackenfield for 30 years my wife and I support this neighbourhood plan wholeheartedly. The information therein appears to be well researched and evidence is clear. Through thorough consultation we feel that our views have been well represented. The historic rural character of this area is of high value for the region. Many features draw residents from adjacent parishes to enjoy the peaceful escape from busy roads and urban areas. Modest development of existing properties has allowed accommodation of new families in line with the modest facilities available to us. We hope that the District Council can support this plan to help guide future development.” In addition to stating support for the Neighbourhood Plan another representation makes comment on Policy H1. I refer to this representation when considering that policy later in my report.

31. Chesterfield CAMRA consider it would be useful to make reference to compulsory purchase in the context of assets of community value. I refer to this representation when considering Policy HW2.
32. The Coal Authority state *“As you will be aware the Neighbourhood Plan area lies within the current defined coalfield. According to the Coal Authority Development High Risk Area Plans, there are recorded risks from past coal mining activity in the area including; 1 mine entry, recorded and likely unrecorded coal workings at shallow depth and areas of past surface mining activity. It is noted that the Neighbourhood Plan does not propose to allocate any sites for future development and therefore we have no specific comments to make”*. The Environment Agency states *“As no growth is proposed the Environment Agency does not have any detailed comments to make on the Neighbourhood Plan. We note that any housing will have to adhere to the requirements of the Local Plan and the policies within it such as flood risk. As previously mentioned within our response to the pre submission version of the Neighbourhood Plan, we welcome the requirement for biodiversity to be protected and enhanced to achieve an overall net gain in biodiversity.”* Highways England *“note that Brackenfield is defined as a Level 4 Settlement with very limited sustainability in the emerging NED Local Plan and therefore is not expected to accommodate any further development other than existing commitments or windfall developments which will be of appropriate scale on unallocated sites within the built-up areas of the Parish”*. Natural England has set out generic advice and stated it does not have

any specific comments to make. Crich Parish Council also has no comments to make. These representations do not necessitate any modification of the Neighbourhood Plan.

33. The District Council has submitted a substantial representation setting out Officer comments on the Neighbourhood Plan. The representation states *“Overall, the draft Plan is well presented, and scoped appropriately, dealing with relevant local issues, leaving more strategic matters, to the Local Plan. In the main, policies are consistent, well-evidenced and clear. The supporting documents are a particularly valuable resource.”* The District Council representation in large part relates to the policies of the Neighbourhood Plan. I have taken the comments into account when considering the relevant policies. Where the District Council has identified necessary corrections of the Neighbourhood Plan, I have referred to these in the Annex to my report. A number of the District Council representations propose changes to the Plan that are not necessary to meet the Basic Conditions or Convention Rights and are therefore beyond my remit with respect to the recommendation of modifications. I have made reference to some of these matters in the Annex to my report.
34. I provided the Parish Council with an opportunity to comment on the Regulation 16 representations of other parties. I placed no obligation on the Parish Council to offer any comments but such an opportunity can prove helpful where representations of other parties include matters that have not been raised earlier in the plan preparation process. The Parish Council responded to the opportunity to comment by setting out a statement in respect of some of the representations. I have taken the Parish Council response, which I received on 30 May 2019, into account in preparing my report even though I may not have referred to every point made. I requested the District Council to publish the Regulation 16 representations, including its own representation, and the Parish Council comments on the representations of other parties, on their website.
35. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which:
- a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
 - b) explains how they were consulted;
 - c) summarises the main issues and concerns raised by the persons

consulted; and

- d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.²⁴

36. The Consultation Statement and Evidence Base include information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Working Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.

The Neighbourhood Plan taken as a whole

37. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and Human Rights requirements; has regard to national policies and advice contained in guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the development plan for the area. Each of the plan policies is considered in turn in the section of my report that follows this. In considering all of these matters I have referred to the submission, background, and supporting documents, and copies of the representations and other material provided to me.

Consideration of Convention Rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and 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

38. The Basic Conditions Statement states “The Plan has regard to and is compatible with the fundamental rights and freedoms guaranteed under the European Convention on Human Rights”. I have considered the European Convention on Human Rights and in particular Article 6 (1) (fairness); Article 8 (privacy); Article 14 (discrimination); and Article

²⁴ Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

1 of the first Protocol (property).²⁵ I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. The Basic Conditions Statement states that in preparing the Neighbourhood Plan the views of the whole community have been embraced “*to avoid any unintentional negative impacts on particular groups*”. From my own examination, the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics as identified in the Equality Act 2010.

39. The objective of EU Directive 2001/42²⁶ is “*to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.*” The Neighbourhood Plan falls within the definition of ‘plans and programmes’²⁷ as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.²⁸

40. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council, as the Qualifying Body, to submit to North East Derbyshire District Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.

41. A Strategic Environmental Assessment Screening and Habitats Regulation Assessment Screening Report prepared in December 2018 concludes “*The SEA screening finds that no significant effects are likely as a result of the implementation of the Neighbourhood Plan. On this basis, a full SEA will not be required to be undertaken.*” The Screening Report includes at paragraph 1.1.5 confirmation that the Statutory Bodies have been consulted. I am satisfied the requirements regarding Strategic Environmental Assessment have been met.

42. The Strategic Environmental Assessment Screening and Habitats Regulation Assessment Screening Report prepared in December 2018

²⁵ The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

²⁶ Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

²⁷ Defined in Article 2(a) of Directive 2001/42

²⁸ Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

includes an assessment of likely environmental impacts on European Sites in respect of each of the Neighbourhood Plan policies and finds no likely significant effect on the site's qualifying features in every case. The Screening Report concludes *"The HRA screening finds that no significant adverse effects are likely as a result of the implementation of the Neighbourhood Plan. It is not necessary to prepare an Appropriate Assessment, as part of the Brackenfield Neighbourhood Plan preparation."*

43. I have earlier in my report referred to the replacement on 28 December 2018 of the basic condition relating to Habitats that had previously been in place throughout the period of preparation of the Neighbourhood Plan. On 24 April 2019 I advised the District Council, with copy to the Parish Council, that I must undertake the Independent Examination of the Brackenfield Neighbourhood Plan in the context of the new basic condition stating *"I have noted your website includes a Strategic Environmental Assessment Screening and Habitats Regulations Assessment Screening Report in respect of the Brackenfield Neighbourhood Development Plan. The HRA Screening refers to the EU Court of Justice ruling in People Over Wind and Sweetman v Coillte Teoranta. (Judgement of the Court Seventh Chamber 12 April 2018) and was clearly prepared after the Court of Justice (Second Chamber) judgement of 25 July 2018 Grace, Sweetman, and National Planning Appeals Board Ireland (ECLI:EU:C2018:593). The Screening Report is dated December 2018. If the HRA Screening Opinion was not prepared in the light of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 which came into force on 28 December 2018 an update or addendum Screening Report will be necessary confirming the District Council is of the opinion the Neighbourhood Plan meets the new Basic Condition. It would be appropriate for you to consult with Natural England in this respect."*
44. On 29 May 2019 the District Council sent me an Addendum to the Brackenfield Neighbourhood Plan Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report. The District Council advised me this Addendum was being published on its website. The Addendum identifies the four European sites located within a 10km radius of the Brackenfield Neighbourhood Area that were considered in the 2018 Screening Report and includes confirmation the District Council *"is satisfied, in consultation with Natural England, that the Brackenfield Neighbourhood Plan has no likely significant effects on a European site and thus Regulation 107"*

does not apply". The Addendum concludes "*NEDDC have considered the HRA Screening Opinion in light of the legislative changes, and it is satisfied that the Screening Opinion for the Brackenfield Neighbourhood Plan remains valid, as criteria 105 1) to 5) of the Conservation of Habitats and Species Regulations 2017 are met. The reasons are: i) The distance of the Neighbourhood Area from a European site. ii) The HRA screening does not seek to take account of any measures intended to reduce or avoid any harmful effects of the Plan on any European site, in part due to the fact that the Neighbourhood Plan does not allocate any development sites.*" The Addendum states "*Natural England confirmed that their position had not changed in light of the Conservation of Habitats and Species Planning (Various Amendments) (England) and Wales) Regulation 2018 for Brackenfield Neighbourhood Plan.*" I am satisfied with this response and I conclude the Neighbourhood Plan meets the requirements of the revised Basic Condition relating to Habitats Regulations.

45. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.

46. I conclude that the Neighbourhood Plan is compatible with the Convention Rights, and does not breach, and is otherwise compatible with, EU obligations. I also conclude the making of the Neighbourhood Plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

47. The Guidance states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The District Council as local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations:

- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).²⁹

Consideration whether having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to

²⁹ Planning Practice Guidance paragraph 080 Reference ID: 41-080-20150209

make the Neighbourhood Plan; and whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development

48. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans³⁰ which requires plans to be “*consistent with national policy*”.
49. Lord Goldsmith has provided guidance³¹ that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”
50. The Basic Conditions Statement includes, in Table 1 a comprehensive statement how the objectives and policies of the Neighbourhood Plan have regard to relevant components of the Framework (2012). I am satisfied the Basic Conditions Statement demonstrates how the Neighbourhood Plan has regard to relevant identified components of the Framework.
51. The most recent National Planning Policy Framework published on 19 February 2019 sets out the government’s planning policies for England and how these are expected to be applied. This most recent Framework supersedes the previous version of the National Planning Policy Framework published in July 2018, which in turn superseded the first National Planning Policy Framework published in March 2012. Paragraph 214 of the most recent Framework states “*The policies in the previous Framework published in March 2012 will apply for the*

³⁰ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the National Planning Policy Framework 2012

³¹ The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the House of Lords Grand Committee on 6 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

purpose of examining plans, where those plans are submitted³² on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.” As the District Council has confirmed a submission date of 21 January 2019, I have undertaken this Independent Examination of the Neighbourhood Plan in the context of the Framework published in March 2012.

52. The Neighbourhood Plan includes a positive vision for the Brackenfield Plan area that refers to *“growth and development”* being economically, socially and environmentally sustainable. The vision refers to a *“thriving community where people can feel safe and can enjoy healthy and fulfilled lives”*. The vision also refers to environmental considerations, in particular, *“a peaceful, rural environment which is settled within the landscape and where wildlife habitats, archaeological features and traditional architecture are protected and enhanced.”* The vision is underpinned by ten objectives relating to: scale and design of development; protection of the natural environment; tranquillity and dark skies; historic environment; community safety and movement; sustainable transport; promotion of the local economy; community facilities; and tourism enterprises. The Objectives provide a link between the vision and the policies of the Neighbourhood Plan.
53. The Neighbourhood Plan includes, at Section 4.0, proposed arrangements for the monitoring and review of the Neighbourhood Plan. Section 5 of the Neighbourhood Plan sets out projects to support the aims of the Plan. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The Guidance states, *“Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements.”* The acknowledgement in the Neighbourhood Plan of issues raised in consultation processes that do not have a direct relevance to land use planning is consistent with this guidance and represents good practice. The Guidance states, *“Wider community aspirations than those*

³² Footnote 69 of the most recent Framework states that *“for neighbourhood plans, ‘submission’ in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.”*

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. For example, set out in a companion document or annex.” I am satisfied the approach adopted in the Neighbourhood Plan presenting projects in a separate section that clearly states *“This does not form part of the Statutory Development Plan”* adequately differentiates the projects from the policies of the Plan and has sufficient regard for the Guidance.

54. The evidence base that supports the Neighbourhood Plan includes a series of background documents published on the www.brackenfield.org and District Council websites. The quality of three of those documents (the Brackenfield Heritage and Character Assessment 2018; the Brackenfield Important Views Report 2018; and the Brackenfield Local Character Buildings, Structures and Sites Report 2018) is worthy of particular note. The attention to detail and care that has been taken to record and analyse the characteristics of the Plan area is an example of the very best practice. These documents very adequately evidence the choices made in formulating the Plan policies and will be invaluable in assisting Plan implementation.
55. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that the need to *‘have regard to’* national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition *“having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.”*
56. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking.³³ The Guidance states, *“This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental,*

³³ Paragraph 14 National Planning Policy Framework 2012

economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions”³⁴.

57. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.

58. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes between paragraphs 3.5 and 3.8 a statement that confirms the ways in which the Neighbourhood Plan contributes to the achievement of sustainable development considering social, economic, and environmental factors. The assessment identifies sustainability benefits arising from the Neighbourhood Plan. The assessment does not highlight any negative impacts on sustainability objectives.

59. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes will protect local distinctiveness; will serve economic needs; will protect and enhance social facilities; and will protect important environmental features. In particular, I consider the Neighbourhood Plan seeks to:

- Protect landscape features and important views;
- Ensure built development protects local character and distinctiveness;
- Protect identified significant heritage assets from harm;
- Ensure archaeological remains are properly considered in development schemes;
- Protect and enhance biodiversity;

³⁴ Planning Practice Guidance (Ref ID:41-072-20140306)

- Protect views of night skies;
- Protect woodland, trees and hedgerows and support new planting;
- Designate two Local Green Spaces;
- Conditionally support re-use or conversion of buildings for rural tourism enterprise;
- Conditionally support home-based businesses;
- Conditionally support infill housing development;
- Protect and enhance community facilities;
- Protect and support improvement of Assets of Community Value.
- Ensure highway implications of development proposals are satisfactory; and
- Protect and enhance the active travel route network.

60. Subject to my recommended modifications of the Submission Plan including those relating to specific policies, as set out later in this report, I find it is appropriate that the Neighbourhood Plan should be made having regard to national policies and advice contained in guidance issued by the Secretary of State. I have also found the Neighbourhood Plan contributes to the achievement of sustainable development.

Consideration whether the making of the Neighbourhood 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)

61. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.³⁵ “*Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies*”.³⁶

62. In this independent examination, I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the

³⁵ Paragraph 16 National Planning Policy Framework 2012

³⁶ Paragraph 184 National Planning Policy Framework 2012

strategic policies contained in the development plan for the area of the authority (or any part of that area). North East Derbyshire District Council has informed me that the Development Plan applying in the Brackenfield Neighbourhood Area and relevant to the Neighbourhood Plan comprises the North-East Derbyshire Local Plan 2001-2011 (saved policies). Whilst saved policies of the Derby and Derbyshire Minerals Local Plan (adopted 2000 and amended in 2002) and saved policies of the Derby and Derbyshire Waste Local Plan (adopted 2005) also form part of the Development Plan applying in the Neighbourhood Area these policies are not relevant to the Independent Examination of the Neighbourhood Plan.

63. I have noted the Basic Conditions Statement submitted by the Parish Council contains Table 2 which identifies the policies of the Local Plan 2001-2011 that are considered to be relevant to the Neighbourhood Plan. The Guidance states, “A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.”³⁷ The District Council has informed me that the Local Plan 2001-2011 did not have strategic policies established, nor has any formal statement been made about the matter. However, in light of work relating to the emerging Local Plan (referred to below) the District Council has stated the following saved policies of the Local Plan 2001-2011 are considered to be strategic: GS1, GS2, GS3, GS5, GS6, GS7, GS9, NE9, E1, E2, E3, E4, E5, E6, E9, E10, E11, E12, H1, H2, H3, H6, H7, H8, H11, SH2, SH3, SH4, SH5, SH6, SH8, SH9, SH11, SH12, T2, T4, T5, T6, T8, R2, R3, R4, R12, R13 and CSU7.
64. The District Council has informed me the Local Plan 2001-2011 is significantly out-of-date and is due to be replaced by the emerging North-East Derbyshire Local Plan 2014-2034. This emerging plan was subject to examination between November 2018 and March 2019. Neither an inspector’s report nor any modifications have been published yet, although the Inspector has provided initial letters in response to the hearing sessions.
65. The Neighbourhood Plan can proceed ahead of preparation of the North-East Derbyshire Local Plan 2014-2034. The Guidance states: “Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed

³⁷ Planning Practice Guidance Paragraph 077 Reference ID: 41-077-20140306

before or at the same time as the local planning authority is producing its Local Plan. A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- the emerging neighbourhood plan*
- the emerging Local Plan*
- the adopted development plan*

with appropriate regard to national policy and guidance. The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan. Neighbourhood plans should consider providing indicative delivery timetables and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new Local Plan.”³⁸

66. I am mindful of the fact that should there ultimately be any conflict between the Neighbourhood Plan, and the emerging North-East Derbyshire Local Plan 2014-2034 when it is adopted; the matter will be resolved in favour of the plan most recently becoming part of the

³⁸ Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20160211

Development Plan; however, the Guidance is clear in that potential conflicts should be minimised.

67. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. The emerging North-East Derbyshire Local Plan 2014-2034 is not part of the Development Plan and this requirement does not apply in respect of that. Emerging planning policy is subject to change as plan preparation work proceeds. The Guidance states *“Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood areas. They can be developed before or at the same time as the local planning authority is producing its Local Plan”*. In *BDW Trading Limited, Wainholmes Developments Ltd v Cheshire West & Chester BC* [2014] EWHC1470 (Admin) it was held that the only statutory requirement imposed by basic condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted development plan as a whole. The emerging North-East Derbyshire Local Plan 2014-2034 is not part of the Development Plan for the purpose of the third basic condition, but its reasoning and evidence may be relevant.

68. In considering a now-repealed provision that *“a local plan shall be in general conformity with the structure plan”* the Court of Appeal stated *“the adjective ‘general’ is there to introduce a degree of flexibility.”*³⁹ The use of *‘general’* allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

69. The Guidance states, *“When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:*

- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;*
- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;*
- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local*

³⁹ *Persimmon Homes v. Stevenage BC* the Court of Appeal [2006] 1 P &CR 31

approach to that set out in the strategic policy without undermining that policy;

- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.”⁴⁰*

My approach to the examination of the Neighbourhood Plan Policies has been in accordance with this guidance.

70. Consideration as to whether the making of the Neighbourhood 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) has been addressed through examination of the plan as a whole and each of the plan policies below. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

The Neighbourhood Plan Policies

71. The Neighbourhood Plan includes 15 policies as follows:

Policy CH1 Protecting the Countryside and Landscape

Policy CH2 Protecting Local Character and Distinctiveness

Policy CH3 Local Character Buildings, Structures and Archaeology

Policy CH4 Protecting and Enhancing Archaeological Sites

Policy NE1 Biodiversity

Policy NE2 Dark Skies

Policy NE3 Woodland, Trees and Hedgerows

Policy NE4 Protecting Important Local Green Spaces

Policy REE1 Rural Tourism and employment

Policy REE2 Working from Home

Policy H1 Housing

⁴⁰ Planning Practice Guidance (ID ref: 41-074 201 40306)

Policy HW1 Protection and enhancement of community facilities

Policy HW2 Assets of Community Value

Policy HW3 Road safety measures

Policy HW4 Footpaths and bridleways

72. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.”* *“Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”*⁴¹

73. The Guidance states *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”*⁴²

74. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.*⁴³

75. *“A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations*

⁴¹ Paragraphs 184 and 185 National Planning Policy Framework 2012

⁴² Planning Practice Guidance Paragraph 041 Reference ID: 41-041-20140306

⁴³ Planning Practice Guidance Paragraph 040 Reference ID: 41-040-20160211

indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004).⁴⁴

76. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is 'made' they will be utilised in the determination of planning applications and appeals, I have examined each policy individually in turn. I have considered any inter-relationships between policies where these are relevant to my remit.

Policy CH1 Protecting the Countryside and Landscape

77. This policy seeks to protect and enhance the historic landscape and local character of the Plan area.

78. In a representation the District Council states *"NP Policy CH1 complements Policy GS6 in the Adopted Local Plan and Policy SS9 in the emerging Local Plan, but adds detail of the local landscape characteristics of the NP area. The Policy may however benefit from the following amendments: The second sentence could begin: "Where appropriate important ..." The second part of the Policy could be re-phrased to make it more effective: "Development proposals that have the potential to significantly impact on the established character of the Plan area will be required to respect Brackenfield's historic character and important views, by taking full account of the Brackenfield Historic Character Assessment and Brackenfield Important Views Report, if necessary this should be made clear as part of the design and access statement." The policy could be further strengthened by the inclusion of a map within the NP that identifies the important views. Supporting Text: Policy CH1 may be afforded greater weight by cross referencing relevant Local Plan policies, GS6 & NE1 of the adopted Local Plan and SS9 & SDC3 of the emerging Local Plan."*

79. In commenting on the representations of other parties the Parish Council states *"Comments were submitted by NEDDC on this particular policy as part of the Regulation 14 Consultation, including that 'the second and third paragraph could be simplified and strengthened with this wording: "Development proposals will be required to respect Brackenfield's historic character and important views by taking full account of the 'Brackenfield Historic and Character Assessment' and 'Brackenfield Important Views Report' if necessary*

⁴⁴ Planning Practice Guidance Paragraph 004 Reference ID: 41-004-20140306

*as part of a design and access statement.” Further that in the supporting text reference be made to the evidence, the Brackenfield Important Views Report & the Brackenfield Historic and Character Assessment and outline which development will require a heritage and character statement. The Steering Group agreed to the recommendations and amended the second paragraph and made reference to the important views report in the supporting text and policy. The supporting text (para 68) states that ‘the Brackenfield Historic and Character Assessment should be used in considering new development proposals, that have the potential to **significantly impact** on the established character of the Plan area. The suggested amendments offered by NEDDC to ‘simplify and strengthen’ the wording of policy CH1 were thus incorporated into the Plan as part of the Regulation 14 process. It is argued therefore that the submission made as part of Regulation 16 regarding CH1 has already been suitably addressed and reflected in the submission draft of the Plan. A map of important views is provided in the Brackenfield Important Views Report, one of a number of documents that support and are referenced in the Plan.”*

80. I have earlier in my report explained the relationship of the Neighbourhood Plan with the emerging Local Plan. In this respect no modification of Policy CH1 or its supporting text is necessary. Reference to existing Local Plan policies GS6 and NE1 in the supporting text would assist Plan users and contribute to the achievement of a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification in this respect.

81. The Framework recognises “*the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes...*”. Policy CH1 is however without consequence. The terms “*should recognise and seek to*”; “*should be*”; “*will be required to respect*” and “*by taking full account of*” do not provide a basis for the determination of a planning application. The terms “*such as*” and “*if necessary*” introduce uncertainty. The insertion of the term “*where appropriate*” would introduce further uncertainty. It is unnecessary to state “*of the Plan area*” as all the policies of the Neighbourhood Plan apply throughout the Neighbourhood Area unless a smaller area is specified. I have recommended a modification so that the policy provides a practical framework within which decisions on

planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

82. The policy includes provisions relating to hedgerows. The Hedgerows Regulations 1997 establish a balanced regime to protect hedgerows in specified locations but exclude any hedgerow which is within, or borders, a domestic garden. It is appropriate for the Neighbourhood Plan to seek to introduce an additional regime of protection to apply in the context of development proposals. The Framework states development resulting in the loss of aged or veteran trees found outside ancient woodland should be refused unless the need for, and benefits of, the development in that location clearly outweigh the loss. Paragraph 173 of the Framework requires Plans to be viable and deliverable. The “ensuring” of long-term maintenance of landscape features is not appropriate in the context of paragraphs 203 to 206 of the Framework relating to planning conditions and obligations. I have recommended a modification so that the policy has regard for national policy in these respects. I have recommended a modification so that the policy can operate efficiently in association with Policy NE3, and makes reference to Appendix B where important woodlands, hedgerows and trees are identified, so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
83. Subject to the modifications I have recommended I am satisfied the policy identifies the locations where an important view will be a factor in the assessment of a proposal. In this context I am satisfied the important views are adequately identified in the Brackenfield Important Views Report 2018 and that supporting information relating to those important views, in photographs and descriptions of visual attributes, and in particular relating to direction, provides sufficient detail to guide the preparation and determination of development schemes. I am satisfied the selection of important views has been adequately explained and their local significance has been tested through extensive consultation. Planning policy must operate in the public interest. I am satisfied the important views are seen from locations to which the general public have free and unrestricted access. I have recommended the Neighbourhood Plan document includes a copy of the map of the important views so that the Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

84. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
85. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 1:

Replace Policy CH1 with “To be supported development proposals must protect and enhance the historic landscape and local character identified in the Brackenfield Historic and Character Assessment Report 2018.

To be supported development proposals that have potential to adversely affect ancient enclosures; preserved medieval strips of cultivation; or the important woodlands, trees and hedgerows identified in Appendix B, must protect and incorporate those features into a landscape design scheme.

To be supported development proposals must not significantly harm the important views identified on the Map in Appendix F and described in the Brackenfield Important Views Report 2018.”

Extend the legend of the Map in Appendix B to name items 1 to 9 (as in paragraph 123).

Insert the Map of Important Views from the Brackenfield Important Views Report 2018 as Appendix F of the Neighbourhood Plan.

In the supporting text refer to policies, GS6 & NE1 of the adopted Local Plan.

Policy CH2 Protecting Local Character and Distinctiveness

86. This policy seeks to establish that development proposals reinforce and enhance local character and reflect local development history.

87. In a representation the District Council states *“Development in small village and hamlets is restricted to infill development in the emerging Local Plan Policy SS8. Policy CH2 helps clarify what the plan means by ‘local character’. However, the second sentence may be more effective by amending the wording to: “Where proposals will have a significant effect on the character of the area full reference should be made in any ...”.*
88. The Framework states it is proper for planning policy to seek to promote or reinforce local distinctiveness. Policy CH2 has regard for this approach whilst avoiding unnecessary prescription. The first paragraph of the policy is without consequence. The term *“should as appropriate”* does not provide a basis for the determination of planning proposals and introduces uncertainty. The District Council suggestion regarding the second sentence of Policy CH2 will assist policy implementation. In the context of part e) of the policy the term *“conserve”* is imprecise. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification so that the policy has regard to the balanced approach of national policy relating to the significance of heritage assets.
89. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
90. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 2:
In Policy CH2**

- **commence the policy with “To be supported”**
- **commence the second sentence with “Where proposals will have a significant effect on the character of the area”**

- replace “Proposals should as appropriate” with “To be supported development proposals must”
- replace part d) with “ensure any landscaping and boundary treatments are local in character and that any proposed trees and hedgerows are native species”
- replace “conserve” with “avoid harm to the significance of”

Policy CH3 Local Character Buildings, Structures and Archaeology

91. This policy seeks to identify and protect local heritage assets.
92. In a representation the District Council states *“The Policy would be strengthened by listing the buildings HA1 – HA12 within the policy itself and cross referencing to a map which identifies the location of these Locally Valued Heritage Assets.* I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. The District Council also states *“Para. 87 may be afforded greater weight by referring to the Local Plan Policy SDC9: Non-designated Local Heritage Assets.”* I have earlier in my report explained the relationship of the Neighbourhood Plan with the emerging Local Plan. In this respect no modification of the supporting text to Policy CH3 is necessary.
93. Paragraph 135 of the Framework states *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”* I have recommended a modification in this respect so that the policy has sufficient regard for national policy and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
94. The Guidance states *“Where it is relevant, neighbourhood plans need to include enough information about local heritage to guide decisions and put broader strategic heritage policies from the Local Plan into action at a neighbourhood scale. Where it is relevant, designated heritage assets within the plan area should be clearly identified at the*

start of the plan-making process so they can be appropriately taken into account. In addition, and where relevant, neighbourhood plans need to include enough information about local non-designated heritage assets including sites of archaeological interest to guide decisions. The local planning authority heritage advisers should be able to advise on local heritage issues that should be considered when preparing a neighbourhood plan. The local historic environment record and any local list will be important sources of information on non-designated heritage assets.”⁴⁵

95. *“Local planning authorities may identify non-designated heritage assets. These are buildings, monuments, sites, places, areas or landscapes identified as having a degree of significance meriting consideration in planning decisions but which are not formally designated heritage assets. In some areas, local authorities identify some non-designated heritage assets as ‘locally listed’.⁴⁶ Local lists incorporated into Local Plans can be a positive way for the local planning authority to identify non-designated heritage assets against consistent criteria so as to improve the predictability of the potential for sustainable development.”⁴⁷*

96. It is appropriate for a community to use the neighbourhood plan preparation process to identify buildings and structures of local interest, and to include policies to require particular consideration of identified assets in the determination of planning applications. The emerging Local Plan states with respect to non-designated heritage assets the District Council *“will aim to identify and establish a list of locally important buildings and structures”*. Work in connection with the preparation of such a list would usually include an invitation for nominations in line with published criteria and a scoring system which may include weighted criteria relating to, for example: authenticity; architectural interest; historic interest; visual importance; and community value. The status of the locally identified non-designated heritage assets should be clarified in supporting text, and the action required to achieve their formal recognition should be included in Section 5 of the Neighbourhood Plan. I have recommended a modification in this respect so that the policy has sufficient regard for national policy and provides a practical framework within which decisions on planning applications can be made with a high degree of

⁴⁵ Planning Practice Guidance Paragraph: 007 Reference ID: 18a-007-20140306

⁴⁶ Planning Practice Guidance Paragraph: 039 Reference ID: 18a-039-20140306

⁴⁷ Planning Practice Guidance Paragraph: 041 Reference ID: 18a-041-20140306

predictability and efficiency as required by paragraph 17 of the Framework.

97. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

98. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with requiring good design, and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 3:

In Policy CH3

- after “identifies” insert “the following”
- continue the first sentence with “: [insert the list of assets HA1 to HA12] (see Map in Appendix G)”

Insert the Map in Appendix B of the Brackenfield Neighbourhood Plan Local Character Buildings, Structures and Archaeology Report March 2019 as Appendix G of the Neighbourhood Plan.

The status of the locally identified non-designated heritage assets should be clarified in supporting text.

Include in Section 5 of the Neighbourhood Plan an action to propose the list of assets HA1 to HA12 is submitted to the District Council to be considered for inclusion in a list of locally important buildings and structures.

Policy CH4 Protecting and Enhancing Archaeological Sites

99. This policy seeks to establish that development proposals should demonstrate that they have taken into account potential impact on archaeological remains.

100. In a representation the District Council states *“Archaeology is protected through adopted Local Plan Policy BE6 and emerging Local Plan Policy SDC7, therefore this policy may result in duplication”*.
101. In commenting on the representations of other parties the Parish Council states *“The response by the Steering Group to the same submission made at the Regulation 14 stage was: Local Plan Policy SDC7 is a draft policy. Policy CH4 provides further local preference, emphasis and context regarding archaeological sites in the Plan area and ties in with the Brackenfield Historic and Character Assessment. The Steering Group liaised with Historic England in the development of Brackenfield Historic and Character Assessment and associated Plan policies. It was on the recommendation of Simon Taylor, Historic England’s Senior Investigator and Lead Professional (Architectural Investigations), that a specific archaeological policy was added to the Plan. It is the preference of the group to retain this policy given the aforementioned factors and the strong body of evidence to support in the Brackenfield Historic and Character Assessment.”*
102. I have earlier in my report explained the relationship of the Neighbourhood Plan with the emerging Local Plan. In this respect deletion of Policy CH4 is not necessary. Policy CH4 does provide an additional level of detail or distinct local approach to that set out in the policies of the existing Local Plan. I have noted the District Council do not regard existing Local Plan Policy BE6 as strategic.
103. The Guidance states *“Where it is relevant, neighbourhood plans need to include enough information about local heritage to guide decisions and put broader strategic heritage policies from the Local Plan into action at a neighbourhood scale. Where it is relevant, designated heritage assets within the plan area should be clearly identified at the start of the plan-making process so they can be appropriately taken into account. In addition, and where relevant, neighbourhood plans need to include enough information about local non-designated heritage assets including sites of archaeological interest to guide decisions.”*⁴⁸
104. *“The National Planning Policy Framework identifies 2 categories of non-designated site of archaeological interest:*
(1) Those that are demonstrably of equivalent significance to scheduled monuments and are therefore considered subject to the

⁴⁸ Planning Practice guidance Paragraph: 007 Reference ID: 18a-007-20140306

same policies as those for designated heritage assets (National Planning Policy Framework paragraph 194). They are of 3 types:

- those that have yet to be formally assessed for designation
- those that have been assessed as being nationally important and therefore, capable of designation, but which the Secretary of State has exercised his discretion not to designate usually because they are given the appropriate level of protection under national planning policy
- those that are incapable of being designated by virtue of being outside the scope of the Ancient Monuments and Archaeological Areas Act 1979 because of their physical nature

The reason why many nationally important monuments are not scheduled is set out in the document *Scheduled Monuments*, published by the Department for Digital, Culture, Media and Sport. Information on location and significance of such assets is found in the same way as for all heritage assets. Judging whether sites fall into this category may be assisted by reference to the criteria for scheduling monuments. Further information on scheduled monuments can be found on the Department for Digital, Culture, Media and Sport's website.

(2) Other non-designated heritage assets of archaeological interest. By comparison this is a much larger category of lesser heritage significance, although still subject to the conservation objective. On occasion the understanding of a site may change following assessment and evaluation prior to a planning decision and move it from this category to the first

Where an asset is thought to have archaeological interest, the potential knowledge which may be unlocked by investigation may be harmed even by minor disturbance, because the context in which archaeological evidence is found is crucial to furthering understanding.

Decision-taking regarding such assets requires a proportionate response by local planning authorities. Where an initial assessment indicates that the site on which development is proposed includes or has potential to include heritage assets with archaeological interest, applicants should be required to submit an appropriate desk-based assessment and, where necessary, a field evaluation. However, it is estimated following an initial assessment of archaeological interest only a small proportion – around 3% – of all planning applications justify a requirement for detailed assessment.”⁴⁹

⁴⁹ Planning Practice Guidance Paragraph: 040 Reference ID: 18a-040-20140306

105. The Framework states “*Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.*”

106. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include ‘*information to accompany the application as specified by the local planning authority on their local list of information requirements*’. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain ‘*relevant, necessary and material*’. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The policy is seeking to establish information requirements in support of planning applications. This is a function that must be achieved through inclusion in the District Council Local Area Planning Applications Requirements List that is subject to modification during the Plan period. I have made a recommendation for modification so that the policy has sufficient regard for national policy. The term “*where appropriate*” is imprecise. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

107. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan.

108. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 4:
In Policy CH4**

- replace “Where appropriate, development proposals” with “Where development proposals have potential to impact on archaeological remains included in the Historic Environment Record (HER), they”
- delete the final sentence

Policy NE1 Biodiversity

109. This policy seeks to establish that biodiversity should be protected and enhanced.

110. In a representation the Environment Agency welcomes the requirement for biodiversity to be protected and enhanced to achieve an overall net gain in biodiversity

111. In a representation the District Council states “*The opening sentence of the Policy reads as a statement of intent and could be strengthened by rewording to focus on encouraging a net gain in biodiversity through development proposals. The term ‘ecological enhancements’ is open to interpretation. It would be beneficial to the effectiveness of the plan if the term were defined clearly in the supporting text at para. 108. NPPF (2018) states that development plans, in order to protect and enhance biodiversity and geodiversity, should: (a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; ... The Submission Draft Local Plan Policy SDC4 aims to protect and enhance the District’s natural environment and increase the quantity and quality of biodiversity and geodiversity. Policy SDC4, point 1 offers protection to “designated national and local sites of nature conservation importance and geodiversity value including SSSI’s, LNR’s, LWS’s,*

and RIGS's as shown on the Policies Map". Point 2 promotes the enhancement of LWSs and suggests that this can be extended to 'other sites with protected or priority species' and supports similar measures to those outlined in NE1. The Neighbourhood Plan policy seeks to protect a further 5 Locally Important Wildlife Sites. These sites are protected in a similar way to the wording of Local Plan Policy SDC4, which may lead to some confusion over the level of protection given. It would therefore, be beneficial to refer to Local Plan Policy SDC4 in the supporting text of NE1 and to clarify the level of protection given to local sites."

112. In commenting on the representations of other parties the Parish Council states *"The Locally Important Ecological Sites have been identified in consultation with the Derbyshire Wildlife Trust and supported through local evidence provided by local community members that have been responsible for the management of a number of these areas. The Group wish to ensure that these sites are highlighted and protected through the Plan for the reasons outlined in the supporting text. The local plan is yet to be adopted, and therefore cross-referencing draft policies is not deemed to be relevant at this stage. The Plan policy, however, is in general conformity with both the adopted local plan and the emerging plan."*

113. I have earlier in my report explained the relationship of the Neighbourhood Plan with the emerging Local Plan. In this respect no modification of the supporting text to Policy NE1 is necessary. The first sentence of the policy does not provide a basis for the determination of planning applications and unnecessarily includes the term *"of Brackenfield"*. The term *"ecological enhancements"* is imprecise however the examples provided in paragraph 108 of the supporting text assist interpretation. The term *"unacceptable"* does not provide the basis for the determination of planning proposals. Inclusion of the names of the Locally Important Ecological Sites, which provide an additional level of detail to that provided in strategic policies, will improve clarity for Plan users. Policy NE1 has regard for the approach to the formulation of planning policies set out in paragraph 117 of the Framework, however a modification is necessary so that the policy has sufficient regard for the approach to determination of planning applications set out in the first bullet point of paragraph 118 of the Framework. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework within which decisions on planning applications

can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

114. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

115. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 5:

In Policy NE1

- **replace the first paragraph with “Development proposals that demonstrate their design and landscaping will achieve a net gain in biodiversity will be supported.”**
- **delete “(listed above)” and insert “identified on Figure 4 at Brackenfield Green; Amber River Water Meadow; Church Farm Meadow; Brackenfield Lodge (formerly Ryecroft House) Meadow; and School Lane Meadow”**
- **replace “unacceptable” with “significant”**
- **commence point 1 with “Development of the site cannot be avoided and”**
- **in point 2 replace “fully mitigate or” with “adequately mitigate or, as a last resort,”**

Policy NE2 Dark Skies

116. This policy seeks to establish criteria for support of proposals for external lighting.

117. In a representation the District Council states “*The effectiveness of the policy could be strengthened by reference to mitigation measures to minimise the impact of essential lighting; and some minor changes to wording such as ‘promoting’, rather than ‘maintaining’ dark skies.*”

118. The policy includes the term “*an assessment of the need for lighting*”. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include ‘*information to accompany the application as specified by the local planning authority on their local list of information requirements*’. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain ‘*relevant, necessary and material*’. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The policy is seeking to establish information requirements in support of planning applications. This is a function that must be achieved through inclusion in the District Council Local Area Planning Applications Requirements List that is subject to modification during the Plan period. I have made a recommendation of modification in this respect so that the policy has sufficient regard for national policy.

119. I am satisfied the term “*to maintain*” provides sufficient clarity for plan users however the term “*appropriate for its use and location*” is imprecise. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

120. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

121. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 6:

In Policy NE2 replace the text after “skies” with “to be supported planning proposals must: (a) only include external lighting that is essential; and (b) include measures to avoid light spillage beyond the application site.”

Policy NE3 Woodland, Trees and Hedgerows

122. This policy seeks to establish that, wherever practical, development proposals are required to retain woodland, trees and hedgerows. The policy also seeks to establish that where retention of significant trees is not practical, they should be replaced, preferably on site.

123. In a representation the District Council states *“Policy NE3 reflects the content of Local Plan Policy SDC2. However, it is noted that not all features listed at paragraph 123 of the NP benefit from specific protection. Criterion 2 of Local Plan Policy SDC2 states that: “Development that would result in the unacceptable loss of, or damage to, or threaten the continued well-being of protected trees, hedgerows, orchards, veteran trees or woodland (including those not protected but considered worthy of protection), will not be permitted.” It is therefore suggested that Policy NE3 would be strengthened by making reference to the Local Plan policy to clarify that they apply to both protected and unprotected features that are worthy of protection”*.

124. In commenting on the representations of other parties the Parish Council states *“The local plan is yet to be adopted, and therefore cross-referencing draft policies is not deemed to be relevant at this stage. The Plan policy, however, is in general conformity with both the adopted local plan and the emerging plan.”* I have explained the requirements of the Basic Conditions with respect to the issue of the relationship of the Neighbourhood Plan with the emerging Local Plan earlier in my report.

125. The term “*of good quality*” is imprecise. The final sentence of the policy refers to protection of trees but its positioning within a paragraph that otherwise refers to loss of trees is confusing. I have recommended this sentence is relocated to become part of the first paragraph which relates to retention of trees. The policy includes provisions relating to hedgerows. The Hedgerows Regulations 1997 establish a balanced regime to protect hedgerows in specified locations but exclude any hedgerow which is within, or borders, a domestic garden. It is appropriate for the Neighbourhood Plan to seek to introduce an additional regime of protection to apply in the context of development proposals. The Framework states development resulting in the loss of aged or veteran trees found outside ancient woodland should be refused unless the need for, and benefits of, the development in that location clearly outweigh the loss. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification so that the policy can operate efficiently in association with Policy CH1 which refers to woodlands, trees and hedgerows in the context of landscape features.

126. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

127. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 7:

Replace Policy NE3 with “To be supported development proposals must retain established woodland, trees and hedgerows that are of existing or proposed visual significance, or historic importance. Proposals must include measures to prevent harm to such trees and hedgerows during the course of development.”

Where it is demonstrated the benefits of development clearly outweigh the loss, and hedgerows or trees that are protected or considered worthy of protection are unavoidably lost, they must be replaced with species native to the landscape character, as close as possible to the location where the loss is to occur.”

Policy NE4 Protecting Important Local Green Spaces

128. This policy seeks to designate Brackenfield Green and Holy Trinity churchyard as Local Green Spaces.
129. In a representation the District Council states *“Policy NE4 designates two Local Green Spaces. Whilst evidence to support both designations is set out in Appendix C of the Plan, the supporting text to Policy NE4 only refers to Brackenfield Green. This may give the impression that one site is more important than the other. It would therefore be beneficial to include a paragraph justifying the special characteristics of Holy Trinity Churchyard.”* I have recommended a modification in this respect to assist clarity for Plan users.
130. Designation of Local Green Space can only follow identification of the land concerned. For a designation with important implications relating to development potential it is essential that precise definition is achieved. The proposed Local Green Spaces are presented on a map included within Appendix C of the Neighbourhood Plan. Given the nature of the areas of land concerned the map is presented at a scale that is just sufficient to identify the precise boundaries of each Local Green Space proposed for designation. The notation should be expanded to identify each Local Green Space by name or reference number. This will ensure that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
131. I have noted the policy seeks to introduce the term *“and where it is consistent with the function of the Local Green Space.”* I have given consideration to the possibility of the policy including a full explanation of *“very special circumstances”*. Such circumstances may be that development is proposed that would clearly enhance the Local Green Space for the purposes for which it was designated, or proposals are made for essential infrastructure that cannot be located elsewhere. I have concluded such explanation would necessarily be incomplete and that decision makers must rely on paragraph 78 of the Framework

that states “*local policy for managing development within a Local Green Space will be consistent with policy for Green Belts*” and the part of the Framework that relates to ‘Protecting Green Belt land’, in particular paragraphs 87 to 91 inclusive. The wording of the policy does not adequately reflect the terms of the designation of Local Green Spaces set out in paragraph 76 of the Framework where it is stated communities will be able to rule out development other than in very special circumstances. The Neighbourhood Plan is not able to designate Local Green Spaces on terms that are different to those set out in the Framework. I have recommended a modification in this respect so that the policy has sufficient regard for national policy.

132. The Framework states “*Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them*” and “*Identifying land as Local Green Space should therefore 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 reviewed and be capable of enduring beyond the end of the plan period.*”

133. In respect of both areas intended for designation as Local Green Space I find the Local Green Space designations are being made when a neighbourhood plan is being prepared, and I have seen nothing to suggest the designations are not capable of enduring beyond the end of the plan period. The intended designations have regard to the local planning of sustainable development contributing to the promotion of healthy communities, and conserving and enhancing the natural environment, as set out in the Framework.

134. The Framework states that Local Green Space designation “*should only be used:*

- *where the green space is in reasonably close proximity to the community it serves;*
- *where the green area is 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*
- *where the green area concerned is local in character and is not an extensive tract of land.*”⁵⁰

⁵⁰ Paragraph 77 National Planning Policy Framework 2012

135. I find that in respect of both of the intended Local Green Spaces the designation relates to green space that is in reasonably close proximity to the community it serves, is local in character, and is not an extensive tract of land.
136. Appendix C of the Neighbourhood Plan describes why the areas proposed for designation as Local Green Space are “*demonstrably special*” to a local community and hold a particular local significance. The evidence presented is helpfully structured around relevant matters referred to in the Framework. Appendix C provides sufficient evidence for me to conclude that each of the areas proposed for designation as Local Green Space is demonstrably special to a local community and holds a particular local significance.
137. I find that the areas proposed as Local Green Space are suitable for designation and have regard for paragraphs 76 and 77 of the Framework concerned with the identification and designation of Local Green Space.
138. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
139. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 8:

In Policy NE4 delete “and where it is consistent with the function of the Local Green Space”

Expand the notation on the map in Appendix 3 to identify each Local Green Space by name or reference number.

Include reference to Holy Trinity Church churchyard in the supporting text

Policy REE1 Rural Tourism Enterprise

140. This policy seeks to establish conditional support for small scale proposals for the re-use or conversion of existing buildings for rural tourism enterprises.
141. In a representation the District Council states *“This policy appears to be compatible with both the adopted Local Plan Policy E10 and emerging Local Plan Policy WC6.”*
142. The Framework states plans should *“support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.”*
143. The Policy title on the Neighbourhood plan contents page and the Policy title below paragraph 145 should reflect the policy content. The term *“disproportionate”* is imprecise. The Framework states *“development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”* I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
144. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
145. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with supporting a prosperous rural economy; requiring good design; promoting sustainable transport; and meeting and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 9:

In Policy REE1

- **replace “or disproportionate extension” with “and any extension would not dominate the existing building”**
- **after “safety and” insert “not result in severe cumulative impacts on”**

Change the Policy title and the title on the Neighbourhood Plan contents page to “Rural Tourism Enterprise”

Policy REE2 Working from Home

146. This policy seeks to establish conditional support for small-scale home-based businesses.
147. In a representation the District Council states *“This policy appears to duplicate elements of the Local Plan’s countryside and rural employment policies but does not contradict them.”* Policy REE2 provides an additional level of detail or distinct local approach to that set out in strategic policies.
148. The Framework states plans should *“support the sustainable growth and expansion of all types of business and enterprise in rural areas”*.
149. The term *“will be encouraged”* does not provide a basis for the determination of planning applications. The term *“scale and design”* is imprecise. I have recommended a modification so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
150. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan.
151. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with supporting a prosperous rural economy, and requiring good design. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 10:

In Policy REE2

- **replace “encouraged” with “supported”**
- **after “design” insert “of any building proposals”**

Policy H1 Housing

152. This policy seeks to establish conditional support for small scale infill housing development.
153. In a representation the Environment Agency states *“We note that any housing will have to adhere to the requirements of the Local Plan and the policies within it such as flood risk”*. Another representation states *“I am fully supportive of the above comments found in the Brackenfield Neighbourhood Plan. I have lived in Brackenfield for just over a year and it’s a wonderful place to live. Allowing for minor infill would, in my opinion, enhance the village by bringing different people from different backgrounds together and enjoy what Brackenfield has to offer - a friendly, welcoming community. I don’t believe allowing for minor infill would have a negative impact as one has the technology to work from home, order groceries on line etc. Offering minor infill may offer someone the opportunity to afford to buy/rent in Brackenfield and not just allow for expensive barn conversions.”*
154. In a representation the District Council states *“Policy H1 is consistent with emerging Local Plan Policy SS8. Brackenfield is a level 4 settlement (as defined in the Local Plan) where development is restricted to minor infill development (allocated by Neighbourhood Plans) to help meet local needs for housing.”*
155. The term *“well designed”* is imprecise. The Framework states planning policies should aim to ensure developments are visually attractive and reinforce local distinctiveness whilst avoiding unnecessary prescription. It is unnecessary and confusing for a policy to state *“meeting all relevant requirements set out in other policies in this plan and the Local Plan”* as the Neighbourhood Plan and the Development Plan should be read as a whole. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

156. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

157. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with delivering a wide choice of high-quality homes and requiring good design. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 11:

In Policy H1 replace the text after “being” with “visually attractive and reinforcing local distinctiveness”

Policy HW1 Protection and enhancement of community facilities

158. This policy seeks to establish that proposals that result in loss or significant harm to the community value of identified facilities will not be supported unless specified criteria are met. The policy also seeks to establish conditional support for proposals that enhance the provision of community buildings.

159. In a representation the District Council states *“This policy duplicates emerging Local Plan policies ID4 and ID5 which seek to protect community facilities. In addition, the Policy identifies a number of protected community facilities. It is considered that the Policy would be strengthened by the inclusion of a map identifying the location of the community facilities.”* I have earlier in my report explained the relationship of the Neighbourhood Plan with the emerging Local Plan. In this respect no modification of the supporting text to Policy HW1 is necessary. Policy HW1 provides an additional level of detail or distinct local approach to that set out in the strategic policies. I have recommended a modification so that the named community facilities are identified on a map.

160. The Framework states planning policies should plan positively for the provision, development, and modernisation of community facilities including places of worship, meeting places, and public houses to enhance the sustainability of communities and residential environments. The Framework also states planning policies should

guard against the unnecessary loss of valued facilities and services especially where this would reduce the community's ability to meet its day-to-day needs. The policy has sufficient regard for national policy in these respects, and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

161. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan.
162. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with promoting healthy communities, and meets the Basic Conditions.

**Recommended modification 12:
In Policy HW1 after “facilities” insert “(identified on the Map in Appendix G)”**

Insert a Map identifying the location of the named community facilities as Appendix G.

Policy HW2 Assets of Community Value

163. This policy seeks to establish encouragement for development proposals that support the longevity, appreciation and community value of an Asset of Community Value. The policy also seeks to establish that proposals for a change of use resulting in loss of an Asset of Community Value will not be supported.
164. A representation by Chesterfield CAMRA states *“Noted that it is sought to list the church hall. To this should be added the Plough Inn as too many pubs are closed on flimsy excuses to the detriment of local life. It would be useful to include a recommendation of the threat of compulsory purchase to paragraph 169. There is precedent for parishes to do this.”* It is beyond my remit to recommend a modification to include additional elements of policy.
165. The Policy title does not precisely match the Neighbourhood Plan contents page. Encouragement does not provide a basis for the determination of planning applications. I have recommended a

modification in these respects so that the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

166. The Community Right to Bid provisions give local groups a right to nominate a building or other land for listing by the local authority as an Asset of Community Value (ACV). It can be listed if a principal (“non-ancillary”) use of the asset furthers (or has recently furthered) their community’s social well-being or social interests (which include cultural, sporting or recreational interests) and is likely to do so in the future. When a listed asset is to be sold, local community groups will have an opportunity to make a bid to buy it on the open market. The Town and Country Planning (General Permitted Development) (England) (Amendment) (No 2) Order 2017, which came into force on 23 May 2017 removes permitted development rights so that planning permission is required to change a public house to specified uses or for it to be demolished. While this change negates the need for communities to list a public house as an ACV to prevent specified changes of use without planning permission, listing could still be pursued. Policy HW2 applies to all Assets of Community Value not just public houses.
167. ACV status can be material to planning decisions during the period the asset remains on the ACV List. *“The fact that a site is listed (as an ACV) may affect planning decisions - it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted considering all the circumstances in a case.”*⁵¹ A local planning authority can consider ACV status as a material consideration when determining a planning application, and so ACV listing could be an extra factor the local planning authority has to take into account when considering an application to change the use of an asset. This offers an extra layer of protection for communities wanting to prevent facilities being lost as a result of a change of use.
168. Policy HW2 seeks to supplement the community right to bid by not supporting a change of use that would result in loss of an Asset of Community Value. The more restrictive approach than that adopted in Policy HW1 is not sufficiently justified and does not have sufficient regard for attention to viability as required by paragraph 173 of the

⁵¹ Community Right to Bid: Non-statutory advice note for local authorities. Department for Communities and Local Government October 2012

Framework. I have recommended a modification in this respect so that the policy has sufficient regard for national policy and the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

169. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan.

170. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with promoting healthy communities, and meets the Basic Conditions.

Recommended modification 13:

In Policy HW2

- **delete “will be encouraged” and insert “(in the Register of Assets of Community Value held by the District Council) will be supported”**
- **delete “will not be supported” and insert “will only be supported where it is demonstrated the asset is no longer viable or no longer required by the community; or the asset is replaced by an equivalent or better facility in terms of quantity and quality in an equally suitable location”**

Amend the Policy title to match the Neighbourhood Plan contents page

Policy HW3 Road safety measures

171. This policy seeks to establish that development proposals should demonstrate no unacceptable adverse impact on congestion or road and pedestrian safety. The policy also states proposals that incorporate measures appropriate to the character of the Plan area that address speed and improve highway safety will be viewed sympathetically.

172. In a representation the District Council states *“The policy is contrary to Local Plan Policy ID2 and ID3 (Sustainable Travel), in that cumulative impacts cannot be considered. In addition, the second*

paragraph could be more suitably worded along the following lines: “Development proposals that incorporate measures to improve localised issues of vehicular and pedestrian safety and movement will be encouraged.”

173. In commenting on the representations of other parties the Parish Council states *“The consideration of cumulative effects in Policy HW3, has regard to the NPPF (2012) which states ‘development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe’ (para 32). The Plan is only required to be in general conformity with the adopted local plan. In regard to the comments made on the second paragraph of the policy, the Steering Group would like to retain the reference to the character of the place. The Brackenfield Historic and Character Assessment represents a substantial body of work, undertaken to support the policies in the Plan. The fabric and layout of the lane and road network in Brackenfield are integral to its character. It is important that any proposed measures that might address speed and safety, also take into account the potential impact on the character of the area as outlined in the Assessment.”*
174. The first paragraph of the policy is without consequence. Paragraph 32 of the Framework states *“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”* Encouragement and *“viewed sympathetically”* do not provide a basis for the determination of planning applications. Measures *“that address speed”* are often not matters requiring planning permission and therefore not suitable to be the subject of a development plan policy. The terms *“unacceptable”*, *“to the benefit of residents and visitors”*, and *“appropriate to the character of the Plan area”* are imprecise. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
175. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Policy T2.

176. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with promoting sustainable transport; requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 14:

Replace Policy HW3 with “To be supported development proposals must demonstrate they will not adversely affect vehicular or pedestrian safety and not result in severe adverse cumulative traffic impacts.

Development proposals that incorporate design features to improve localised issues of vehicular and pedestrian safety and movement will be supported where those design features do not harm local character.”

Policy HW4 Footpaths and bridleways

177. This policy states the Parish Council will work with others to maintain and enhance the footpath and bridleway network, and also encourages new rights of way prioritising the joining up of existing routes. The policy also seeks to establish that development proposals will be expected to protect the existing network of footpaths and bridleways, and where these are affected mitigation measures should be described.

178. Active working is not a land use matter, and it is not possible for the Neighbourhood Plan to commit other Councils or agencies to such working. The term “*existing and future*” is unnecessary. The terms “*will be encouraged*”, “*should be*”, and “*will be expected to*” do not provide a basis for the determination of planning applications. The reference to surrounding areas introduces ambiguity regarding application of the policy. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

179. The policy is in general conformity with the strategic policies included in the North-East Derbyshire Local Plan 2001-2011 (saved policies) and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

180. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to the components of the Framework concerned with promoting sustainable transport. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 15:

In Policy HW4

- **transfer the first paragraph to Section 5 of the Neighbourhood Plan**
- **in the second paragraph replace the text after “bridleways)” with “to create a more comprehensive network will be supported.”**
- **replace the third and fourth paragraph with “To be supported development proposals that affect any public right of way must demonstrate this cannot be avoided, and include mitigation measures to ameliorate the impact.”**

Summary and Referendum

181. I have recommended 15 modifications to the Submission Version Plan. I have also made a recommendation of modification in the Annex below.

182. I am satisfied that the Neighbourhood Plan⁵²:

- is compatible with the Convention Rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the Statutory Requirements set out in paragraph 8(1) of schedule 4B of

⁵² The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

the Parish and Country Planning Act 1990 and meets the Basic Conditions:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the 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 of the authority (or any part of that area);
- does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
- 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 2017.⁵³

I recommend to North East Derbyshire District Council that the Brackenfield Neighbourhood Development Plan for the plan period up to 2034 should, subject to the modifications I have put forward, be submitted to referendum.

183. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.⁵⁴ I have seen nothing to suggest that the policies of the Plan will have “*a substantial, direct and demonstrable impact beyond the neighbourhood area*”⁵⁵. I conclude the referendum area should not be extended beyond the designated Neighbourhood Area.

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by North East Derbyshire District Council as a Neighbourhood Area on 20 June 2017.

⁵³ This basic condition arises from the coming into force, on 28 December 2018, of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 whereby the Neighbourhood Planning Regulations 2012 (5) are amended

⁵⁴ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁵⁵ Planning Practice Guidance Reference ID: 41-059-20140306

Annex: Minor Corrections to the Neighbourhood Plan

184. A number of consequential modifications to the general text, and in particular the 'reasoned justification' of policies sections, of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies. Reasoned justification text must not introduce any element of policy that is not contained within the Neighbourhood Plan Policies.

185. I am able to recommend modification of the Neighbourhood Plan in order to correct errors.⁵⁶ The following should be corrected:

- Page 11 Para 37, there is a typographical error, a space required between 'to' and '19th'.
- Reference to Figure 4 in para 106 appears to be incorrect.
- Paragraph 164 line 7 insert "the" before "hall"
- The Contents page and Section/paragraph numbering in the main body of the Plan require reconciliation.

186. I recommend minor change only in so far as it is necessary to correct an error, including those arising from updates, or where it is necessary so that the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

Recommended modification 16:

Modify general text to achieve consistency with the modified policies, and to correct identified errors including those arising from updates.

187. The District Council has made some suggestions for changes to the Neighbourhood Plan that are not necessary to meet the Basic Conditions or Convention Rights nor necessary to correct errors. I would have no objection to these changes being made (set out below). However, I cannot recommend modifications as this would be beyond my remit.

⁵⁶ Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990

Page 5 It would be useful for the Introduction to the Plan to reference the status of the emerging Local Plan, which is currently going through examination; and to acknowledge that there will be some need for conformity with its strategic policies when it is adopted, which is likely during the life span of this Neighbourhood Plan. It is noted that the emerging Local Plan is referenced in paragraph 16 of the Plan however it would be useful to include some reference to it in paragraph 4.

Page 16 Objective O7 could be more positively worded for example: “Work with Derbyshire County Council, other transport bodies and community transport groups to deliver sustainable transport solutions.”

Paragraph 57 Suggest that the wording is strengthened by amending: “... seek to influence planning and development outcomes” to “... seek to deliver planning and ...,”

Paragraph 65, 3rd bullet point “Open agricultural land” – the term ‘open’ in this context will be subject to interpretation and could be deleted from the text without undermining the intention.

Paragraph 111 refers to the Council for the Preservation of Rural England’s (CPRE) ‘night blight map’, which illustrates that Brackenfield NPA is an area of relatively dark skies. For the sake of clarity, a footnote with a link to this document would be useful at the bottom of the page.

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REPORT ENDS