

MUCH HADHAM NEIGHBOURHOOD PLAN 2019 - 2033

(Submission Version 2021)

Report of the Examination into the
Much Hadham Neighbourhood Plan 2019 - 2033

Timothy Jones, Barrister, FCI Arb,
Independent Examiner



No 5 Chambers,
Birmingham - London - Bristol - Leicester

To East Hertfordshire District Council
And to Much Hadham Parish Council

16th March 2022.

<u>Contents</u>	Page(s)
1. Introduction	1
- Neighbourhood planning	1
- Appointment and role	1
2. Preliminary Matters	2
- Public consultation	2
- Other statutory requirements	2
3. The Extent and Limits of an Examiner's Role	2 - 4
4. Consideration of Representations	4
5. Public Hearing and Site Visit	4- 5
6. Basic Conditions and Human Rights	5 - 8
- Regard to national policies and advice	5 - 6
- Contributing to the achievement of sustainable development	6
- General conformity with the development plan	6
- EU obligations	6 - 7
- Conservation of Habitats and Species Regulations	7
- Human rights	7
7. The nature of the area	7 - 8
8. Contents of the Draft NDP	8 - 18
9. Updating and renumbering	18
10. Referendum Area	18
11. Summary of Main Findings	19
Appendix A: Recommended Modifications	20 - 22
Appendix B: Abbreviations	23

Report of the Examination into the
Much Hadham Neighbourhood Plan 2019 - 2033

1. Introduction

Neighbourhood planning

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

2. This report concerns the Submission Version 2021 of the Much Hadham Neighbourhood Plan 2019-2033 (“the Draft NDP”).

Appointment and role

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

4. My examination has involved considering written submissions and a detailed site visit on Monday 31st January 2022. I have considered all the documents with which I have been provided.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 12 below applies and, if appropriate, to consider the referendum area. I must act proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive with costs being proportionate.

2. Preliminary Matters

Public consultation

6. Consultation and community involvement are important parts of the process of producing a neighbourhood plan. I am satisfied that MHPC took public consultation seriously. I do not consider there has been a failure in consultation, let alone one that would have caused substantial prejudice. The consultation was sufficient and met the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”).

Other statutory requirements

7. I am also satisfied of the following matters:

- (1) The Draft NDP area is the parish of Much Hadham. On 1st September 2015 this was designated as a neighbourhood area for the purposes of neighbourhood planning. MHPC is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
- (2) The Draft NDP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
- (5) The Draft NDP specifies the period for which it is to have effect, namely 2019-2033, as required by PCPA s38B(1)(a).

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

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

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
- (d)¹ The making of the Plan contributes to the achievement of sustainable development;
- (e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- (f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and

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

(g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.

9. There is one prescribed basic condition:² *“The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.”* Chapter 8 comprises regulations 105 to 111.

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

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

12. Having considered the basic conditions and human rights, I have three options, which I must exercise in the light of my findings. These are: (1) that the Draft NDP proceeds to a referendum as submitted; (2) that the Draft NDP is modified to meet basic conditions and then the modified version proceeds to a referendum; or (3) that the Draft NDP does not proceed to referendum. If I determine that either of the first two options is appropriate, I must also consider whether the referendum area should be extended. My power to recommend modifications is limited by statute in the following terms:

The only modifications that may be recommended are—

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

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

² Sch 2 of the General Regulations prescribes this.

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

*(c) modifications that the examiner considers need to be made to secure that the draft [NDP] complies with the provision made by or under sections 61E(2), 61J and 61L, (d) modifications specifying a period under section 61L(2)(b) or (5), and (e) modifications for the purpose of correcting errors.*⁴

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

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

4. Consideration of Representations

15. I have given the representations careful consideration, but have not felt it necessary to comment on most of them. Rather in accordance with the statutory requirement and bearing in mind the judgment of Lang J in R (Bewley Homes Plc) v. Waverley District Council,⁶ I have mainly concentrated on giving reasons for my recommendations.⁷ Where I am required to consider the effect of the whole Draft NDP, I have borne it all in mind.

5. Public Hearing and Site Visit

16. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, an examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to

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

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

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

⁷ TCPA Sch 4B, para 10(6).

ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. Since neither applied in this case, I did not hold a public hearing.

17. After particularly careful consideration in the light of current circumstances, I concluded that an unaccompanied site visit⁸ was necessary and held an extensive one on Monday 31st January 2022 covering the village of Much Hadham, the smaller settlements of Green Tye, Perry Green and South End, and the rural area. The site visit helped me to gain a sufficient impression of the nature of the area for the purpose of my role.

6. Basic conditions and human rights

Regard to national policies and advice

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

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

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

28. non-strategic policies should be used by... communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development

⁸ Unaccompanied site visit is the phrase used for a site visit in which no interested person accompanies an examiner. I was in fact accompanied by my wife who has taken no part in the examination, who is not a lawyer, planner or other property professional and who like me has no financial interest in the area.

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

¹⁰ NPPF para 13.

plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.

Contributing to the achievement of sustainable development

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

General conformity with the development plan's strategic policies

22. The third basic condition means that I must consider whether the Draft NDP as a whole is in general conformity with the strategic policies contained in the development plan for the area of the authority. The relevant part of the development plan is the East Hertfordshire District Plan (October 2018) (“the District Plan”). The development plan that applies to Much Hadham also includes the Minerals Local Plan for Hertfordshire and the Waste Local Plan for Hertfordshire, but these are not relevant to this examination.

23. The adjective ‘*general*’ allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. The draft NDP “*need not slavishly adopt every detail*”.¹¹ This condition only applies to strategic policies - there is no conformity requirement in respect of non-strategic policies in the development plan or in respect of other local authority documents that do not form part of the development plan, although such documents may be relevant to other matters. In assessing general conformity and whether a policy is strategic, I have borne in mind helpful PPG advice.¹² I have also borne in mind the relevant part of the judgment in R (Swan Quay LLP) v Swale District Council.¹³

EU obligations

24. The fourth basic condition requires me to consider whether the Draft NDP breaches, or is otherwise incompatible with, EU obligations. I have in particular considered the following,

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

¹² Paras 074 to 077 of the section on neighbourhood planning.

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

together with the UK statutory instruments implementing them in England: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); the Water Framework Directive (2000/60/EC); and the General Data Protection Regulation (2016/679/EU). I have also considered the judgment of the European Court of Justice in People Over Wind v Coillte Teoranta.¹⁴ I have born in mind that proportionality is a concept of and underlies EU law and must be wary of requirements that are disproportionate for a plan as relatively small as the Draft NDP.

25. I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive.

Conservation of Habitats and Species Regulations

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

Human Rights

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

7. The nature of the area

28. In considering the contents of the Draft NDP I must consider the nature of the parish. It is accurately described in the Draft NDP. It has a small population (2,087 in the 2011 census).

29. The village of Much Hadham is relatively sustainable and is one of eight Group 1 villages¹⁵ identified in the District Plan as a sustainable location for further development of

¹⁴ Case C-323/17, 12th April 2018.

¹⁵ District Plan Policy VILL1.

housing, employment, leisure, recreation and community facilities. Its facilities include a shop and post office, public house, recreation ground with a pavilion, tennis courts and a bowling green, primary school and nursery, church, chapel, health centre and pharmacy, dental practice, village hall and garage. A bus service from Hertford bus station and Ware station to Bishop's Stortford Interchange runs through the village. The District Plan provides for 10% growth in Group 1 villages, which amounts to 54 new dwellings in Much Hadham.¹⁶

30. The much smaller settlements of Green Tye, Perry Green and South End are much less sustainable. The District Plan does not identify them as either Group 1 or Group 2 villages and they are therefore in the least sustainable category in the hierarchy, Group 3.

31. Most of the parish is countryside that is attractive, but not nationally designated. A small area of land to the north-east of the parish is Green Belt. The parish has an exceptionally high number of heritage assets, including 143 Listed buildings (4 at grade I and 12 grade II*), and a designated Scheduled Ancient Monument.

32. There is a pressing need for affordable housing.¹⁷ This is not surprising, given the parish's high house prices. As a result, younger residents have been prevented from remaining in the parish.¹⁸

33. Some representations raise traffic and parking concerns. While this is understandable, there is no objection to any allocation from the highway authority. I am conscious that my site visit was a "snapshot in time" during a working day. I therefore do not rely on it, other than to say that it does not alter my view that traffic and parking in the parish is not likely to be a more serious problem than in many other communities in the Home Counties. If parking during construction would cause problems when residents are not likely to be at work, this can be dealt with by a planning condition limiting construction and delivery hours.

8. The contents of the Draft NDP

Page 3

34. Since I recommend deletion of policy MH H7 for the reasons given below, the policy table of contents also requires modification

Recommended modification 1

Page 3

Replace "Policy MH H7" with "Former Policy MH H7".

¹⁶ District Plan pp 138 and 139.

¹⁷ Draft NDP page 12

¹⁸ Draft NDP page 24.

Page 9

35. The fourth indent on page 9 “*Not breach, and otherwise be compatible with, European Union (EU) Regulations, including human rights requirements, as incorporated into UK law*” contains an error. The human rights requirements that apply to neighbourhood plans arise under the European Convention on Human Rights, which is a creature of the Council of Europe, not the EU.

Recommended modification 2

Page 9, fourth indent

Replace “*Not breach, and otherwise be compatible with, European Union (EU) Regulations, including human rights requirements, as incorporated into UK law*” with “*Not breach, and otherwise be compatible with, European Union (EU) Regulations and human rights requirements, as incorporated into UK law*”.

Page 18 Policies Map

36. For the reasons given in paragraph 56 below, I recommend the removal of H7 and its colouring.

Recommended modification 3

Page 18

In the policies map, remove “H7” and its colouring.

Page 19

37. Policy MH H1: Village Housing Numbers needs to be updated to reflect the commencement of development on site H7. Footnote 16 needs to be updated.

Recommended modification 4

Page 19

In policy MH H1 replace (a), and (b) with:

- a) 21 homes on Housing Site Allocation Policies MH H4 to MH H6
- b) 7 homes on sites with planning approval Policies MH H7 and MH H8

In Table 1, replace ‘4’ with ‘7’ and ‘54’ with ‘55’, and delete the row relating to South Plot, Culver.

Footnote 16

Replace “2019 para 65” with “2021 para 66”.

Page 21

38. Since construction of the permitted three homes with planning permission on South Plot Culver is now well underway, the last two sentences of the second paragraph are no longer appropriate.

Recommended modification 5

Page 21, 2nd paragraph

Delete the last two sentences.

Page 22

39. The 5th paragraph needs updating in light of implementation of the planning permission for 3 dwellings at South Plot, Culver.

Recommended modification 6

Page 22, 5th paragraph

Replace with: “South Plot, Culver (X5). The boundary is extended eastwards from Widford Road to include the South Plot where three homes are being constructed.”

Page 24

40. Footnotes 24 and 25 need updating to correspond with the updating of the NPPF.

Recommended modification 7

Page 24, footnote 24

Replace “2019” with “2021”.

Page 24, footnote 25

Replace “63” with “64”.

Pages 25 – 27 Priest House, H4

41. The first specific site that the draft NDP considers in detail is Priest House. This lies between the eastern end of Ash Meadow and the north end of Malting Lane. I viewed the site from Ash Meadow, footpath 25 and Maltings Lane. There is a conflict between “8+ units” in the box on page 25, “a minimum of 7 dwellings” on page 26 and “a net gain of at least 7 homes” on page 27. This is an error that should be rectified. Having raised this matter with MHPC, I am satisfied that the intention is a minimum of 7 additional dwellings.

42. The site density of 45dph has not been justified by the evidence and should be deleted.

43. The proposal is for a mix of low rent, low-cost sale and market sale homes and so would provide some of the needed affordable housing. The housing density would not be exceptional, would not be unacceptable “cramming” and would not be out of character with the vicinity. There is no objection from the highway authority in respect of this development. As for construction and delivery traffic, concerns about parking outside normal working hours and weekends can (if justified) be dealt with by condition. Nothing in the draft NDP purports to or could constitute the blocking up of a public highway if what has been described as a “turning area” is in fact a public highway. No view of sufficient importance to prevent needed development would be harmed.¹⁹ While understanding that residents are concerned about traffic from new developments and the views they enjoy, there is no objective reason to consider that this would be excessive or exceptional. If it is correct that Ash Meadow is privately owned, EHC and HCC have compulsory purchase powers that it can, if necessary, be used to ensure needed development.

44. The site is particularly sustainable being close to the health centre, the food store and post office, a kindergarten, the recreation ground and bus stops. The proposed allocation does not conflict with any basic condition or with any Convention right.

Recommended modification 8

Page 25

Replace “Residential 8+ units” with “Residential 7+ additional dwellings”

Page 26

Delete “(45dph)”

Pages 28 – 31 Land at Hopleys, H5

45. This site lies to the west of High Street behind numbers 49 to 54 and a little to the north of the Bull Inn. I had limited views of the area proposed for housing from the unmarked path that leaves High Street between the Old Police House and the Square fuller views of the land proposed for a café and shop from the land behind the Bull Inn. It is close to listed buildings. I have therefore given careful consideration to whether a development of 9 new homes, the large majority of which must meet the identified local need for smaller 2 and 3-bed homes, would harm them, their setting, or the Conservation. Area. I have concluded that a satisfactory scheme could be designed. No view of sufficient importance to prevent needed development would be harmed.²⁰ The loss of a small part of the historic garden is justified in the circumstances. There is no evidence that would justify me determining that a scheme could not be devised that would

¹⁹ It would not, among other things, harm priority views V8, V9, VA10 OR V12.

²⁰ Among other things, no priority view is relevant to this site (Draft NDP policy MH PV1).

avoid flood risk and no evidence that would justify me concluding that a scheme could not be devised that would avoid invasion of privacy.

46. I share the view of Herts Garden Trust “*Careful planning must ensure that no development on the Hopleys site causes harm to the setting, and therefore significance of any of the High Street listed buildings*” and am satisfied that this can be achieved.

47. I am satisfied that a suitable access can be achieved.

48. There is a conflict between “*up to 9 new homes*” (pages 22 and 28) and “*at least 9 new homes*” (page 30). This error should be rectified. Having raised this matter with MHPC, I am satisfied that the intention is a minimum of 9 additional dwellings.

49. The draft NDP gives the site area as 0.9 ha. This refers to the whole site (including the café and shop) with the area of the site designated for housing 0.49ha. Since this is only very slightly before the threshold for affordable housing provided by the NPPF,²¹ this will require careful checking at the development-control stage. Nothing in this report should be taken as indicating that the NPPF’s and the District Plan’s guidance in respect of affordable housing do not apply if, on investigation, it turns out that the housing site has an area of 0.5 hectares or more. The mere fact that smaller 2 and 3-bed homes would meet a local need would not be enough to meet that requirement. Provision of affordable homes, especially in an area where there is a pressing need for it, should not depend solely “*on the goodwill of landowners and developers*”.²² That would be likely to result in continued under-provision.

50. The words “*the need to avoid overlooking of neighbours*” on page 29 go beyond what policy and the article 8 Convention right justify and should be replaced by “*the need to avoid harmful overlooking of neighbours*”.

51. Subject to these modifications, the proposed allocation did not cause any conflict with the basic conditions or with human rights.

Recommended modification 9

Page 22

Replace “up to 9 new houses” with “at least 9 new houses”

Page 29

Replace “Up to 9 new homes” with “at least 9 new homes”

Page 29

Replace “the need to avoid overlooking of neighbours” with “the need to avoid harmful overlooking of neighbours”.

²¹ NPPF Para 64 and glossary and District Plan para 14.4.4.

²² Draft NDP para 4.5. This point is emphasised by the absence of any affordable housing on the 0.49 ha South Plot, Culver, that is currently being developed.

Pages 31-33 The Bull Inn, H6

52. This site lies immediately behind and to the west of the Bull Inn, Bull Cottage and Campden Cottage and to the south of the land proposed for a café and shop²³. I had permission to enter the site and did so, viewing all of it thoroughly.

53. The Bull Inn is identified as a ‘Valued Community Assets’,²⁴ a description with which I agree. It is important that the proposed development does not prevent it remaining as such. While the concerns of some residents on this are understandable, there is no objective reason to say that the loss of some of the inn’s car park to provide an access to the site would make the Bull unviable. The site’s proximity to heritage assets means that special care must be taken the design of any development. I agree that the topography means that new housing should be limited to single storey.

54. I have no reason to fear that development would cause ecological harm and am satisfied that no view of sufficient importance to prevent needed development would be harmed.²⁵ I have no reason to doubt that appropriate design could avoid increased flood risk.

55. The proposed allocation does not conflict with the basic conditions or with human rights. I do not recommend any modification to it.

Pages 34 – 35 South Plot, Culver, H7

56. This site lies immediately to the east of Widford Road. On my site visit I saw substantial detached houses being constructed. It would be fanciful to assume that these would be demolished within the Plan period, so that some of the concerns in representations are now academic and some parts of the draft NDP are now out-of-date. The draft NDP needs updating. Policy MH H7 no longer serves any purpose and should be deleted. The three new dwellings should be recorded in the plan to avoid doubt as to this part of the parish’s contribution to housing need.

Recommended modification 10

Pages 34 and 35

Delete the plan and table on page 34

Replace the whole of paragraph 4.6.4, that is from “Background” to the end of policy MH7. with:

²³ Boundary extension X1.

²⁴ Draft NDP page 58, policy MH HA3: Valued Community Assets.

²⁵ No priority view is relevant to this site (policy MH PV1).

“In the submission draft of this Plan a 0.49-hectare site at South Plot Culver (boundary extension X5) was allocated for housing. A planning permission for 3 detached houses has now been implemented. This will count towards the parish’s contribution to housing need.”

Page 37-38 Hill House and Land to the Rear, H10

57. This proposed reserve site lies to the south of St Andrew’s Primary School and Nursery, to the west of Oudle Lane, north of footpath 25 and east of Hill House and other properties fronting Tower Hill. I was able to gain good views of it from footpaths 22 and 25 and from Oudle Lane. A preliminary concept plan²⁶ has the built development to the south of the site.

58. Its allocation as a reserve site is justified. It may be needed if either sufficient housing in general or sufficient affordable housing in particular is not met elsewhere in the village. The latter will be a matter of particular concern if there is no affordable housing on sites H5 and H6.

59. Since there is no breach of the basic conditions or human rights in retaining this site as a reserved site, I am not recommending any modification in respect of it.

Page 39

60. The first paragraph and footnote 38 requires updating to correspond with the updating of the NPPF.

Recommended modification 11

Page 39, first paragraph

Replace the whole of the first paragraph with “The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this.”

Page 39, footnote 38

Replace “2019 para 124 extract” with “2021 para 126 extract”.

Pages 45-46

61. The draft NDP departs from the District Plan’s Policy TRA3 Vehicle Parking Provision. The reasons for this are not based on any empirical analysis and the approach is opposed by HCC in its capacity as the local highway authority. I agree with HCC’s representation on this point and therefore recommend modification.

²⁶ Hill’s Heritage Assessment, figure 17.

Recommended modification 12

Page 45

Replace “Therefore, these allowances are insufficient for the parish” with “It is recognised that developers may wish to exceed EHC’s standards”.

Page 46

Delete the whole of the first sentence and footnote 46.

Page 46, policy MH D3

Replace the whole of I with “The District Plan’s standards shall apply, but where this can be achieved without reducing the number of houses specified for a site in this Plan, more extensive parking provision will be welcomed”.

Page 51

62. Footnote 53 requires updating to correspond with the updating of the NPPF.

Recommended modification 13

Page 51, footnote 53

Replace “170” with “174”.

Pages 67 – 74

63. Paragraph 10.1, and policy MH LGS1 deal with the six proposed local green spaces (five in Much Hadham and one in Green Tye). I viewed them from adjacent roads, from public rights of way and in the case of Court Orchard (L5) from the churchyard of St. Andrew’s Church. I found the views I had of L1 (Great Leys) and L2 (Lower Park) from footpath 10 particularly helpful.²⁷

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

101. The designation of land as Local Green Space through ... neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other

²⁷ This footpath was also particularly helpful in respect of priority views V2 and V3.

essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

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

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

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

65. These paragraphs are central to any consideration of whether land should be designated as an LGS. They should be followed unless there is a good reason not to do so and none is apparent to me. In considering the proposed LGS designations, I have borne in mind and found helpful the judgment of the Court of Appeal in R. (Lochailort Investments Ltd) v Mendip District Council.²⁸ The phrase in para 101 “*capable of enduring beyond the end of the plan period*” was given specific consideration. It is less demanding policy than applies to Green Belt designation where the stronger word “*permanently*” is used. I am satisfied that each proposed LGS is capable of enduring beyond the plan period.

66. Policy on LGSs is also contained in the District Plan policy CFLR2 and I have borne that and its supporting text in mind.

67. Designation as an LGS does not remove permitted development rights. That includes rights for the temporary use of land.²⁹ These remain notwithstanding District Plan policy CFLR2 unless removed by an article 4 direction.³⁰ They are likely to be sufficient for uses associated with occasional community events.

68. I have considered each proposed LGS and the reason for their designation in the papers that I have seen. I am satisfied that each satisfies the requirements for inclusion in an NDP and involves no conflict with either the NPPF or the District Plan. I have also considered the totality of LGS designations and found no breach of basic conditions in that. Among other things, I am satisfied that they do not either individually or collectively constitute “*an extensive tract of land*” and that (bearing in mind the housing allocations and the reserve site) their combined effect does not prevent sustainable development.

²⁸ [2020] EWCA Civ 1259, 2nd October 2020.

²⁹ The Town and Country Planning (General Permitted Development) (England) Order 2015 Sch 2 Part 4 Class B (and at present also class BA)

³⁰ That is a direction under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

69. Footnote 72 requires updating to correspond with the updating of the NPPF.

Recommended modification 14

Page 67, footnote 72

Replace “100” with “102”.

Pages 92 -93

70. Paragraph 12.4 and policy MH CFLR3 consider recreational open spaces, the latter being a policy to protect three of them. Among other things the NPPF states:

“Planning policies... should enable... the retention and development of accessible local services and community facilities, such as ... sports venues, open space...” [para 84]

“Planning policies and decisions should aim to achieve healthy, inclusive and safe places which... enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, access to healthier food, allotments ... [para 92]

“To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should... plan positively for the provision and use of shared spaces, community facilities (such as ... sports venues, open space, ...) ... to enhance the sustainability of communities and residential environments.” [para 93]

“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.” [para 99]*

71. I am satisfied that policy MH CFLR3 and its supporting text broadly reflects the NPPF and involve no breach of a basic condition or human rights. I have considered the three sites designated as recreational open spaces and am satisfied that each is justified.

Page 96

72. Footnote 82 requires updating to correspond with the updating of the NPPF.

Recommended modification 15

Page 96, footnote 82

Replace “National Planning Policy Framework 65” with “NPPF 66”.

Page 99, plan and final table

73. These needs to be updated

Recommended modification 16

Page 99, final table

Replace “South Plot (2) with South Plot (3)” and insert a new row “South Plot Culver (under construction) 3 detached”.

Page 121

74. The current version of the NPPF National Planning Policy was issued in 2021. The draft NDP should therefore be updated.

Recommended modification 17

Page 121

Replace “National Planning Policy Framework 2019” with “National Planning Policy Framework 2021”.

9. Updating and renumbering

75. It may be that certain passages need updating. Nothing in this report should deter appropriate updating prior to the referendum in respect of incontrovertible issues of primary fact. Nothing in this report should prevent the renumbering of housing policies following the removal of Policy MH H7 if this is desired. If I have missed any out-of-date references to the NPPF, these should be updated.

10. The Referendum Area

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

11. Summary of Main Findings

77. I commend the Draft NDP for being clear, intelligible and well written, and for the considerable effort that has gone into its creation.

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

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

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

80. I recommend that the modified NDP proceed to a referendum, the referendum area being the area of the Draft NDP, namely the parish of Much Hadham.

Timothy Jones, Barrister, FCI Arb,
Independent Examiner,
No 5 Chambers
16th March 2022.

Appendix A: Recommended Modifications

Recommended modification 1

Page 3

Replace “Policy MH H7” with “Former Policy MH H7”.

Recommended modification 2

Page 9, fourth indent

Replace “Not breach, and otherwise be compatible with, European Union (EU) Regulations, including human rights requirements, as incorporated into UK law” with “Not breach, and otherwise be compatible with, European Union (EU) Regulations and human rights requirements, as incorporated into UK law”.

Recommended modification 3

Page 18

In the policies map, remove “H7” and its colouring.

Recommended modification 4

Page 19

In policy MH H1 replace (a), and (b) with:

- a) 21 homes on Housing Site Allocation Policies MH H4 to MH H6
- b) 7 homes on sites with planning approval Policies MH H7 and MH H8

In Table 1, replace ‘19’ with ‘22’ and ‘54’ with ‘55’, and delete the row relating to South Plot, Culver.

Footnote 16

Replace “2019 para 65” with “2021 para 66”.

Recommended modification 5

Page 21, 2nd paragraph

Delete the last two sentences.

Recommended modification 6

Page 22, 5th paragraph

Replace with: “South Plot, Culver (X5). The boundary is extended eastwards from Widford Road to include the South Plot where three homes are being constructed.”

Recommended modification 7

Page 24, footnote 24

Replace “2019” with “2021”.

Page 24, footnote 25

Replace “63” with “64”.

Recommended modification 8

Page 25

Replace “Residential 8+ units” with “Residential 7+ additional dwellings”

Page 26

Delete “(45dph)”

Recommended modification 9

Page 22

Replace “up to 9 new houses” with “at least 9 new houses”

Page 29

Replace “Up to 9 new homes” with “at least 9 new homes”

Page 30

Replace “the need to avoid overlooking of neighbours” with “the need to avoid harmful overlooking of neighbours”.

Recommended modification 10

Pages 34 and 35

Delete the plan and table on page 34

Replace the whole of paragraph 4.6.4, that is from “Background” to the end of policy MH7 with:

“In the submission draft of this Plan a 0.49-hectare site at South Plot Culver (boundary extension X5) was allocated for housing. A planning permission for 3 detached houses has now been implemented. This will count towards the parish’s contribution to housing need.”

Recommended modification 11

Page 39, first paragraph

Replace the whole of the first paragraph with “The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this.”

Page 39, footnote 38

Replace “2019 para 124 extract” with “2021 para 126 extract”.

Recommended modification 12

Page 45

Replace “Therefore, these allowances are insufficient for the parish” with “It is recognised that developers may wish to exceed EHC’s standards”.

Page 46

Delete the whole of the first sentence and footnote 46.

Page 46, policy MH D3

Replace the whole of 1 with “The District Plan’s standards shall apply, but where this can be achieved without reducing the number of houses specified for a site in this Plan, more extensive parking provision will be welcomed”.

Recommended modification 13

Page 51, footnote 53

Replace “170” with “174”.

Recommended modification 14

Page 67, footnote 72

Replace “100” with “102”.

Recommended modification 15

Page 96, footnote 82

Replace “National Planning Policy Framework 65” with “NPPF 66”.

Recommended modification 16

Page 99, final table

Replace “South Plot (2) with South Plot (3)” and insert a new row “South Plot Culver (under construction) 3 detached”.

Recommended modification 17

Page 121

Replace “National Planning Policy Framework 2019” with “National Planning Policy Framework 2021” .

Appendix B: Abbreviations

The following abbreviations are used in this report:

Convention	European Convention on Human Rights
District Plan	East Hertfordshire District Plan
Draft NDP	Submission (Regulation 16) Version of the Much Hadham Neighbourhood Plan 2019-2033
EHC	East Hertfordshire District Council
EU	European Union
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
HCC	Hertfordshire County Council
LGS	Local Green Space
MHPC	Much Hadham Parish Council
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework (2021)
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PPG	national Planning Practice Guidance
s	section
Sch	Schedule
TCPA	Town and Country Planning Act 1990 (as amended)

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