

SUBMISSION HUNSDON AREA NEIGHBOURHOOD PLAN

2019-2033

Report

By

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Independent Examiner

June 2022

SUMMARY

This Report is into the Examination of the Submission Hunsdon Area Neighbourhood Plan 2019-2033 (the NP).

I was appointed in April 2022 by East Herts District Council (EHDC) with the support of Hunsdon Parish Council (HPC) the qualifying body.

The NP area is shown on Figure 1 of the plan. Broadly to its east lies the Joint Hunsdon with Eastwick and Gilston Neighbourhood Plan area, within which is the site of the proposed Gilston area development, designated by the East Herts District Plan adopted in 2018. This forms part of the Harlow and Gilston Garden Town.

The Examination was conducted by consideration of all the relevant documents only. I did not consider that the exceptional circumstances for the holding of a hearing existed.

I find that the NP was subject to a satisfactory process of local engagement and consultation.

I find that the NP is very clearly and logically presented.

The role of the Examination is to consider whether the statutory tests applicable to neighbourhood plans, in particular compliance with the “basic conditions”, are met. It is not the role of the Examination to carry out the more intensive scrutiny that applies to local plans.

There are limited and specific instances where, in my opinion, parts of the NP as drafted do not comply with the statutory tests. I have recommended that modifications be made in these instances.

Subject to those modifications being made, I find that the NP meets the statutory tests and should proceed to referendum.

I further recommend that the area of the referendum should be extended to include the whole of Hunsdon parish.

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Introduction

1. I was appointed by East Herts District Council (EHDC) with the support of Hunsdon Parish Council (HPC), the qualifying body, to undertake the independent examination of the Submission Hunsdon Area Neighbourhood Plan 2019-2033 (the NP).
2. I am a Queen's Counsel with over 40 years experience of planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections or interests, and have no conflicts of interest.

Hunsdon Parish in Context

3. Hunsdon Parish is described in these terms in paragraph 2.1 of the NP:

The parish of Hunsdon lies within the District of East Herts. It is a typical rural parish having primarily agricultural economic activities with the bulk being arable farming. The parish enjoys a rich heritage. To the south it borders the River Stort, marking the Herts/Essex boundary and extends to the limit of Widford in the north. The western boundary broadly follows the watershed overlooking the Ash and Lea valleys and in the east the parish takes in much of the old RAF Hunsdon Base bordering Eastwick. However, part of the parish comprising the old airfield and Brickhouse Farm lies within the allocated Gilston Area and consequently are not within the designated boundary of this Plan (see Figure 1).
4. The NP area was designated by EHDC on 29 November 2017. It is shown on Figure 1.
5. The East Herts District Plan (the DP) was adopted in October 2018. Chapter 11 shows proposals to construct seven distinct "Villages" in the Gilston Area, to the north of Harlow. The Gilston Area is covered by a made Neighbourhood Plan. The rest of Hunsdon parish is covered by the present NP. The Gilston Area is also shown on Figure 1.

The Structure of the NP

6. The NP is very clearly and logically presented. The supporting text is clearly distinguished from the Policies, which are presented on a purple background. The Figures (including photographs) are clear and helpful. The Table of Contents shows the sections of the NP. There is also a helpful Table of Figures and of Tables.

The Evolution of the NP

7. This is summarised in section 3, Summary of Plan Preparation Process and Consultation. Members of the community formed the Hunsdon Area Neighbourhood Plan Group (HANPG) and engaged an experienced neighbourhood plan consultant. The process of local engagement is fully described in the Consultation Statement October 2021. I do not consider it either necessary or helpful to recite the contents of the CS in this Report. I simply record that regulation 14 consultation was carried out between 1 February – 22 March 2021. The process was constrained by Covid, and hence 8 weeks were allowed for that stage. Issues raised were recorded and analysed. Substantial revisions of the draft NP reflected the consultation.
8. I am quite satisfied that the process of engagement and consultation was satisfactory.
9. Regulation 16 consultation was carried out between 6 January – 17 February 2022. Thirty two representations were received. I have taken careful account of all these representations. I respond (and respond only) in this Report to those which (a) are directed to the statutory tests (see below) and (b) which caused me to make a recommendation for modification.

SEA and HRA

10. HPC prepared a Strategic Environmental Assessment Screening Report. That concluded that the NP was not likely to have significant environmental effects. On 29 September 2021 EHDC determined that an SEA was not required.
11. A Habitat Regulations Assessment Screening was carried out, and concluded (bearing in mind the HRA carried out for the DP) that an HRA on the NP was not required. EHDC, as “competent authority”, so determined on 29 September 2021.
12. I have no reason to doubt the above determination.

The Examination Process

13. I was appointed at the end of April 2022. The Examination commenced in the first week of May 2022. I was supplied electronically with all relevant documents (and sent hard copies of the key documents). I have carefully reviewed all the documents supplied.
14. On 9 May I issued (as Note 1) a limited list of queries I had. EHDC and HPC responded to those queries on 18/19 May.
15. On 22 May I notified EHDC and HPC that I did not consider that the statutory conditions for holding a hearing existed. Hence the Examination has proceeded on the basis of the consideration of the document only.
16. I carried out an unaccompanied visit to Hunsdon on 15 May 2022. (I had previously visited the parish at some length during my examination of the Gilston Area NP).

Basic Conditions – General

17. Schedule 4B paragraph 8 to the Town and Country Planning Act 1990 provides that a neighbourhood plan meets the Basic Conditions if it meets those specified in paragraphs (a), (d), (e), and (f). One further basic condition has been prescribed under paragraph 8(2)(g), as follows:

“The making of the Neighbourhood Development Plan is not likely to have a significant effect on a European Site...or a European Off-shore marine site...either alone or in combination with other plans or projects”.

18. As the courts have frequently emphasised, as I do now, the role of a Neighbourhood Plan Examiner is tightly constrained. It is (apart from dealing with other statutory requirements referred to at paragraphs 20-24 below) confined to considering compliance with the basic conditions. The Examiner cannot consider anything else: paragraph 8(6). Therefore the Examiner is not able to consider whether – as would be the case for a local plan – the NP is “sound” (in accordance with paragraph 35 of the NPPF). Accordingly, the Examiner can only consider the content of the NP (the planning judgments made, the choices made, the views regarded as important etc.) insofar as those matters impact on the basic conditions. This inevitably limits, significantly, the extent to which it is proper to respond to what I might call wider “planning merits” points made by representors.
19. I address the criteria in the basic conditions where relevant as I assess, below, the contents of the NP.

Other statutory requirements

20. These are set out in the Town and Country Planning Act 1990 (as amended) and sections 38A-38C of the Planning and Compulsory Purchase Act 2004.
21. The NP was prepared and submitted for examination by a qualifying body: section 38A.

22. It has been prepared for an area designated under section 61G of the 1990 Act.
23. The NP meets section 38A(2) in that it sets out policies in relation to the development and use of land in the neighbourhood area.
24. The NP meets the requirements of section 38B – it specifies the period for which it is to have effect (2019-2033), it does not include provisions about development which is excluded development, and does not relate to more than one neighbourhood area.

Assessment of the NP

25. As I have commented above (paragraph 6) I commend all those involved in the preparation of the NP. Its high quality means that this Report can be much more concise than would otherwise be the case. I consider it neither necessary or helpful to recite the many parts of the NP which do not, in my judgment, fall foul of the basic conditions or other statutory tests. I only deal with matters which need to be modified to comply with one or more of the statutory tests.
26. Paragraph 1.5 refers to the National Planning Policy Framework February 2019 (NPPF). The current version is that issued in November 2021. All references, including paragraph numbers, should be updated accordingly, and I so **Recommend**.
27. The Objectives are set out in paragraph 4.1. In relation to Objective D (to improve transport links etc.) there is no mention of the sustainable travel objectives in paragraphs 9.14 - 9.18 and Policy HT2. Whilst I acknowledge that the Objectives were formulated at the outset – so that their scope or amendment at this stage is limited – this seems to me to be a simple omission. Therefore to ensure consistency and compliance with national policy, I **Recommend** to delete “and” in line 1, and add at the end: “and to provide sustainable modes of transport including active travel”.

28. The Policies Map is at page 22. In the area of Hunsdon Park there appears to be a very minor discrepancy with Figure 1. I have been advised that there is a minor error on Figure 1. I **Recommend** that the necessary amendment be made.
29. Paragraphs 6.1 – 6.6 and Policy HHD1 deal with the potential enhancement of the Green Belt. The question of including a policy or objective for the enhancement of Green Belt within a NP is a difficult one. NP policies are not to be strategic in nature, but can “support the delivery of strategic policies” in the local plan: PPG41-004-20190509. Subsequent to the adoption of the DP, PPG was amended to encourage local planning authorities to make policies for compensatory improvements to Green Belt following release of Green Belt land (Green Belt land was released for the Gilston development). PPG was (not surprisingly) not amended in similar terms for neighbourhood plans. So the question is whether it is appropriate for this NP to contain, in paragraph 6.4 of the text and by the inclusion of “enhance” in Policy HHD1 Green Belt, such references to enhancement. Representation 005 contends that it is not appropriate. I agree with this representation insofar as the reference in paragraph 6.3 last sentence is concerned, and **Recommend** its deletion. However, in support of PPG (as above), it seems to me appropriate for the NP to “support” (paragraph 6.4) the beneficial use of green belt land consistent with national policy and guidance in the terms set out. However, the reference to “enhance” in Policy HHD1 on balance falls foul of the scope of a neighbourhood plan. I therefore **Recommend** (1) that the third sentence in paragraph 6.4 be deleted and replaced by: *NPPF and PPG encourage such compensatory improvements.*, (2) that the word “other” before “policies” be deleted and (3) that Policy HHD1 should be deleted as written, and replaced by:

Green Belt land in the Neighbourhood Plan Area will be protected in accordance with the National Planning Policy Framework, current planning practice guidance and Policy GBR1 of the East Herts District Plan.

30. Policy HHD3 addresses infill development. It provides that, subject to criteria, applications for small scale housing “will be considered”. For this to make sense, I assume that it is intended to mean “considered favourably” and I **Recommend** this addition.
31. Policy HHD4 is prefaced “In the parish of Hunsdon” and HHD5 is prefaced “For the purposes of the Hunsdon Area Neighbourhood Plan”. These phrases seem to me to add nothing (and anyway not all of the parish of Hunsdon is within the neighbourhood plan area), and for reasons of clarity I **Recommend** their deletion. Further, for the same reason, the words “in the parish” in the second line of HHD5 should be deleted, and I so **Recommend**.
32. Policy HHD6 deals with Design Criteria. Paragraph e) requires applications for extension or alteration of dwellings “which provide more bedrooms” to include additional off-street parking. There will be many instances – for example, additional bedroom(s) for a growing family – where additional parking demand will not be generated. Additional parking which is not clearly necessary is undesirable on sustainability and environmental grounds. I therefore **Recommend** that after “bedrooms” there should be added “and which are likely to create additional parking demands”. This is to ensure compliance with national policy in relation to travel restraint.
33. The Stort Navigation towpath is clearly the subject of potentially conflicting interests. It is a statutory footpath and adjacent to the Hunsdon Mead SSSI. It is used for recreational purposes. Over the plan period, it will inevitably face greater demand, especially as the Gilston Area Development is built and occupied. A complete embargo on certain measures necessary for upgrading – see, for example, paragraph 7.4 – seems to me to be too inflexible. I have recommended (see paragraph 39 below) modifications to Policy HE5II. To reflect these concerns, I **Recommend** deletion of “is unlikely to be acceptable” (in the 6th and 7th line) and replacement with “will be considered on the merits having regard to Policy HE5II”.

34. Paragraph 7.14 – 7.15 and Policy HE2 deal with proposed Local Green Spaces. Four LGS are proposed for designation, in the light of NPPF criteria (paragraph 102). I consider that all four areas justify the designation.
35. Policy HE2II proposes a development management policy in relation to LGS's. The question of appropriate LGS policy is now subject to guidance from the Court of Appeal in R (Lochailort) v Mendip DC [2020] EWCA Civ. 1259, to the effect that, unless exceptional reasons exist and are given, LGS policy should be consistent with NPPF policy in relation to LGS's. This judgment, of course, post-dates the LGS policy in the DP. However, the range of development regarded as not “inappropriate” in the NPPF includes (paragraph 149) limited infilling in villages, limited affordable housing and the like. Such development would conflict with the special value of the LGS's in Hunsdon, and with other policies of the NP. I therefore find that Part II of the Policy is in principle acceptable.
36. However, the last phrase of Part II re-introduces the NPPF, which would potentially create the inconsistency just referred to. Further, the incorporation of policy CFLR2 of the DP in my view adds nothing to the clarity of the first four lines. I therefore **Recommend** that Part II ends with “or appreciation.” The remainder of Part II should be deleted.
37. Policy HE3 addresses Landscape Character and Cherished Views. Eight “cherished views” have been identified, following analysis of the area and consultation. These views could, of course, only constrain development within the NP area, and thus they could not (cf representation 005) constrain development of the Gilston area. I note that concern has been expressed in particular as to View 8, Across Spratt's Field from Hunsdon to Hunsdonbury. This is linked to an earlier proposal that this area should be designated a “green gap” (now not pursued). Having visited the area of this View, I see no reason to doubt its presently proposed designation.

38. I note that the direction of one of the Views (View 6) is shown on the Policies Map as wrongly directed (though the text is correct). I **Recommend** that the symbols on the Map be reviewed and any correction(s) made.
39. I considered at paragraph 33 above the impact of the intensified use of the Stort Navigation towpath, and its environmental sensitivity. This is addressed in Policy HE5II. I regard the terms of the last sentence as potentially too restrictive. I **Recommend** that it be deleted and replaced with: *Any proposal for the alteration of the towpath must pay careful regard to the historic importance and ecological value of the towpath and its surroundings. Proposals for its use or alteration for purposes other than recreational purposes will not be supported.*
40. Policy HHC1 addresses Heritage and Conservation. The second sentence of paragraph III addresses enabling development. It requires, in accordance with national and DP policy, an assessment of heritage benefits versus harm. It finally adds a criterion “and would not impact the openness of the Green Belt”. This is quite inappropriate. The protection of the Green Belt is addressed in national and DP policy and earlier in the NP. It should not be re-introduced into a heritage policy. I therefore **Recommend** deletion of this final phrase, to ensure compliance with national policy.
41. Policy HHC2 addresses Non-designated Heritage Assets. In Part II the “and” in the second line – “and other non-designated heritage assets” – is doubtless a mistake: it should be “or” and I so **Recommend** in order to achieve clarity.
42. Part III is an instruction to EHDC, and therefore not appropriate. In any event, it repeats Policy HA3 of the DP and is therefore unnecessary. I **Recommend** its deletion.
43. There are two further points on this section. First, in paragraph 8.24 the words “has been” in the 4th line appear to be an error, and should be deleted. Second, more broadly, Appendix A is titled “Heritage Assets”, whereas it only lists

designated assets. I **Recommend** that it be titled accordingly. Also, it would assist if at the beginning or end of Appendix A there was a note to the effect that “Non-designated assets are specified in Policy HHC2”.

44. I turn to section 9, Infrastructure, Roads and Transport. I recognise the community’s concerns in relation to traffic, especially HGV’s. Whether these problems are really “extreme” (paragraph 9.11) in comparison to such issues generally, I leave to HPC’s judgment.
45. Paragraph 9.12 is concerned with the potential impact of major development, including development in the Gilston area, upon roads in the parish. The second sentence urges that any proposals for new roads should be dealt with in a certain manner. I raised this point in Note 1. The treatment of new roads is a matter for the highway authority. I **Recommend** that this sentence be deleted.
46. I have significant concerns in relation to Policy HT1. First, a traffic impact assessment (or transport statement or transport assessment as appropriate) is required by paragraph 113 of the NPPF in relation to “all developments that will generate significant amounts of movement...so that the likely impact of the proposal can be assessed”. This is a more appropriate formulation than the ambiguous “major or new development” in Part I. There is no need to duplicate this requirement. Second, it is not generally within the scope of a TIA/TS/TA to assess the impact on “amenities, environmental sensitivities...” etc. albeit that these considerations are of understandable concern to the community. Third, Part III incorporates some of the “non-land use matters” (see paragraph 1.7) referenced in Appendix B: Task List. I note that traffic and related matters are specified as High Priority.
47. I do not consider that the community’s concerns on these important matters will benefit from Policy HT1, with its defects I have identified. I therefore **Recommend** that Policy HT1 should be deleted (and Policy HT2 re-numbered). In its place, I **Recommend** that an additional paragraph 9.14 of text (with existing paragraph 9.14-9.18 re-numbered) be added after paragraph 9.13 as follows:

The impact of additional traffic on a range of environmental matters – such as amenities, environmental sensitivities, heritage assets, watercourses – should also be carefully addressed in any proposals creating further traffic. The community gives High Priority to the mitigation of traffic impact in Tasks 10 and 11 in Appendix B.

48. Policy HT2 deals with Sustainable Modes of Travel. As the highway authority point out, in relation to Part II, the construction of new cycle routes and footpaths is a matter for the highway authority. I therefore **Recommend** that Part II be deleted. This is in order that the NP addresses land use matters properly within its scope.
49. Section 10 and Policy HB1 address New Businesses. I am concerned in relation to criterion b) “Not generate any further HGV traffic in the parish”. This would mean that a small industrial or storage development generating a minimal level of HGV movement would not be permitted. This is over-restrictive and is contrary to national policy (NPPF paragraph 82) and the DP (Policy ED1). I therefore **Recommend** that “any” be deleted and “significant” substituted.

Conclusion

50. I accept that the NP has had regard to the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and complies with the Human Rights Act.
51. The NP is well-researched, well-evidenced, and clearly and logically presented. It is easy to navigate. If it is made, it will – in my opinion – form a valuable and positive element of the statutory development plan for the area.
52. In my judgment the NP, with the modifications recommended in this Report, will comply with the basic conditions and other statutory requirements.

53. I therefore **Recommend** that, subject to such modifications, it should proceed to referendum.
54. In accordance with the Town and Country Planning Act 1990 Schedule 4B paragraph 10(5) I must consider whether the area for the referendum should extend beyond the neighbourhood plan area. There are good administrative and inclusivity reasons for extending the area to the whole of Hunsdon Parish, and I so **Recommend**.

Christopher Lockhart-Mummery QC

Examiner

13 June 2022