

Town and Country Planning Act 1990
Neighbourhood Planning (General) Regulations 2012

WALKERN PARISH NEIGHBOURHOOD DEVELOPMENT PLAN 2017 – 2033
FIRST REVISION

INDEPENDENT EXAMINATION

Final Report to East Herts District Council
by Edward F Cousins BA, BL, LL.M, Barrister

April 2024

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PART 1

INTRODUCTION

1. This Report comprises the findings of my examination (*‘the Examination’*) into the draft Walkern Parish Neighbourhood Development Plan First Revision (*‘the Neighbourhood Plan’*). As required by Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (*‘the 2012 Regulations’*) the Neighbourhood Plan was duly submitted for consultation by Walkern Parish Council (*‘the Parish Council’*). Subsequently, in accordance with Regulation 16 of the 2012 Regulations the Parish Council formally submitted the Neighbourhood Plan to East Herts District Council (*‘EHDC’*). EHDC then held a consultation which concluded on 24th July 2023. I was then retained as the Examiner commencing on 25th October 2023 and the documentation was made available to me by email and in the form of hard copy to enable me to conduct the Examination. I have also accessed EHDC’s website. A distinct and separate eight week consultation was undertaken with North Hertfordshire District Council and two local Parish Councils as they had been omitted from both the Regulation 14 and Regulation 16 Consultation and notification on the Neighbourhood Plan. The submission documents were updated and submitted for Examination on 8th February 2024.
2. In my judgment, and subject to the modifications set out in this Report, I consider that the Neighbourhood Plan complies with the Basic Conditions and other statutory requirements. I therefore conclude that EHDC should make the Neighbourhood Plan subject to the recommended modifications, as specified.

My appointment

3. I have been appointed by EHDC to conduct an independent examination into the Neighbourhood Plan. I am independent of the Parish Council and of EHDC. I do not have any interest in any land that may be the subject of the Neighbourhood Plan - nor do I have any professional conflicts of interest.
4. I am a Barrister in practice at Radcliffe Chambers, where additionally I act as a Mediator. I have also joined a set of Chambers in Manchester – Nine St John Street – as an Associate Member. Previously, I was the Principal Judge of the Land Registration Division of the Property Chamber and a Chancery barrister in practice in Lincoln’s Inn. Currently I am a specialist property and planning lawyer, with particular expertise in markets and fairs, including street trading; commons and town and village greens; manorial rights; mines and minerals; and land registration law and practice. I have wide experience examining neighbourhood development

plans and, when necessary, conducting public hearings as part of the examination process. In addition to my membership of the Bar of England and Wales, I was also called to the Bar of Ireland at Trinity Term 2001, and I hold a Practising Certificate in Ireland, together with a Practising Certificate in Northern Ireland where I was called in October 2022.

PART 2

THE LEGAL FRAMEWORK

Neighbourhood Planning

The Background

1. Neighbourhood planning is the process introduced by Parliament as enacted by the Localism Act 2011 (*'the 2011 Act'*). The intellectual purpose of neighbourhood planning is to seek to enfranchise those persons living and working in a community by providing the basis through which they can play a more active role in the process of deciding the future of their neighbourhood. It has been described as the ability: -

‘to give to communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.’

2. Thus, the 2011 Act gave powers to parish councils to involve their communities in the creation of neighbourhood development plans in order to provide them with a greater say in planning matters. Parish councils are therefore able to play a role in the establishment of general planning policies for the development and use of land in their neighbourhoods. Examples of such involvement are directed to the siting, design and construction of new homes and offices, and the designation of local green space. The neighbourhood development plan sets a vision for the future for the area concerned. It can be detailed, or general, depending on the views of local people.
3. In order to ensure that the new process is workable and effective the 2011 Act introduced the requisite amendments into the Town and Country Planning Act 1990, and the Planning and Compensation Act 2004 (*'the 2004 Act'*).¹

¹ The 1990 Act, ss. 61E to 61P, Sch. 4B (neighbourhood development orders); the Planning and Compulsory Purchase Act 2004, ss. 38A to 38C (neighbourhood plans), as amended by the 2011 Act. These amendments variously came into force on subsequent days in 2012 and 2013 and were supplemented by detailed procedures provided in the 2012 and 2013 Regulations.

Qualifying Body

4. I am satisfied that the Parish Council is an appropriate ‘*Qualifying Body*,’ as defined. It is therefore entitled to submit a proposal to the local planning authority for the modification of the Neighbourhood Plan as an essential prerequisite to its being ‘*made*.’

Neighbourhood Plan Area

5. The first step towards producing a neighbourhood plan is for a parish council, or other qualifying body, to define a ‘*neighbourhood area*’ for which it considers that a plan should be prepared and presented.² This is part of the process which that body is entitled to initiate for the purpose of requiring the local planning authority in England to make a neighbourhood development plan for the whole or any part of its area specified in the plan.³ A ‘*neighbourhood development plan*’ is a plan -

‘... which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area.’⁴

6. I note from the evidence and Basic Conditions Statement that the Neighbourhood Plan Area was designated and approved by EHDC on 6th January 2015.
7. The Neighbourhood Plan states at paragraph 1.6 that the Neighbourhood Plan Area is the same as the Parish boundary of Walkern Parish. A plan showing the boundary of the Neighbourhood Plan Area is shown in the Neighbourhood Plan on page 7, at Figure 1.

Public Consultation

8. Regulation 14 of the 2012 Regulations sets out the requirements for pre-submission consultation, and Schedule 1 thereto makes reference to the relevant consultation bodies. The Consultation Statement, as amended 8th February 2024, sets out the aim of the consultation activities, and the design of consultation events to satisfy those aims. It is apparent that the Parish Council and the Walkern Neighbourhood Plan Group (‘*WNPG*’) have engaged with the local community.
9. The Consultation Statement accompanying the Neighbourhood Plan sets out the pre-submission consultation process. This refers to an informal and formal consultation with the community and other stakeholders at paragraphs 3.1 to 5.3. This process included an open event

² See s 38A(1).

³ The 1990 Act, s. 61F(1), (2), applied by the 2004 Act, s. 38C(2)(a).

⁴ By virtue of 38A(2).

at the local community centre on 1st August 2021 and questionnaires were completed. The Parish Council also engaged with a series of local groups and organisations on specific policy areas. The draft Neighbourhood Plan was sent to a list of statutory consultees and others for consultation between 3rd January 2023 and 15th February 2023. The Regulation 14 responses, together with the Parish Council's assessment of the main issues, are included in the Consultation Statement. Feedback gathered from the community and stakeholders shaped subsequent iterations of the neighbourhood Plan, refining its objectives, and strengthening its policies.

10. The Neighbourhood Plan, and accompanying documents, had been submitted to EHDC as required under Regulation 15 of the 2012 Regulations. In accordance with Regulation 16 of the 2012 Regulations, EHDC, as the relevant local planning authority, was required to publicise the Neighbourhood Plan proposal. The Regulation 16 consultation period was 12th June to 24th July 2023.
11. The consultations generated representations at the Regulations 16 consultations stage. These have been made available to me through EHDC's website and by email. I confirm that all representations on the Neighbourhood Plan received at the Regulation 16 stage have been considered when undertaking this examination. I have considered each of the representations made in reaching my conclusions on whether the Neighbourhood Plan has met the Basic Conditions. Where appropriate, I have made specific reference to the individual comments by the person or organisation.
12. Successful public consultation enables the Neighbourhood Plan to reflect the needs, views and priorities of the local community and help achieve consensus. I have already noted that the Consultation Statement includes a consultation event and engagement with stakeholders.
13. At an early stage of the examination, I raised a series of questions on the consultation process with EHDC and the Parish Council. Appendix I to the Consultation Statement contains a list of the consultees who were informed of the six week consultation period by email.
14. I note that many of the adjoining Parish Councils were consulted on the Pre-Submission and Submission versions of the plan, including Stevenage Borough Council. However, two Parish Councils (Clothall Parish Council and Little Munden Parish Council) together with North Hertfordshire District Council were omitted from the Regulation 14 consultation list. Each of these consultation bodies has a boundary which adjoins the neighbourhood plan area.

15. Regulation 14 of the 2012 Regulations requires the qualifying body to consult any consultation body referred to in paragraph 1 of Schedule 1 whose interests the qualifying body considers may be affected by the proposals for a neighbourhood development plan. Schedule 1 of the 2012 Regulations confirms that a consultation body includes a local planning authority, county council or parish council any part of whose area is in or adjoins the area of the local planning authority. A similar obligation is placed on the local planning authority to notify those affected by the Neighbourhood Plan proposals (Regulation 6 of the Neighbourhood Planning (General) Regulations 2012).
16. The Parish Council and EHDC have confirmed that the appropriate consultation and notification of the revision to the Neighbourhood Plan did not occur in accordance with Regulation 14 and Regulation 16.
17. The local planning authority has determined that an appropriate remedy was available. Subsequently, between 4th December 2023 and 28th January 2024 the Parish Council consulted with the two Parish Council's noted above and North Hertfordshire District Council. One response was received from North Hertfordshire District Council on 19th December 2023.
18. Subsequently the Consultation Statement has been updated to reflect the additional consultation and submitted to me as part of the examination. The revised Consultation Statement contains an inaccuracy at paragraph 6.8 relating to the assertion that the three Councils referred to needed to be consulted in order to meet the Basic Conditions. This was not so in that the necessity to consult is a requirement of the Regulations, not the Basic Conditions.
19. I am satisfied that the consultation process, as corrected by the subsequent submissions, together with the second consultation conducted by the Parish Council, and the updated Consultation Statement, have now satisfied the consultation requirements for consultation on the Neighbourhood Plan.

THE STATUTORY FRAMEWORK

The Detail

Referendum

20. Section 38A(11A) of the 2004 Act (as amended) provides that Schedule A2 applies provisions for the modification of a neighbourhood development plan.
21. The relevant provisions of Schedule A2 are as follows - Paragraph 1 provides that a qualifying body can submit a proposal to the local planning authority for the modification of a neighbourhood development plan. Paragraph 7 provides that it applies if:-

‘(c) the authority consider that the modifications contained in the draft plan to which it relates are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace.’

If that is the position, the authority must consider the plan under the provisions of Schedule 4B that apply to an original neighbourhood plan (including referendum). Paragraph 10(1) provides that the matter referred to above is the first matter that the examiner must determine Paragraph 11 provides that if the determination is made that the modifications are not such as to change the nature of the plan, then -

‘...the examiner must consider the following –

- (a) whether the draft plan meets the basic conditions (see subparagraph (2));*
- (b) whether the draft plan complies with the provision made by or under sections 38A and 38B;*
- (c) such other matters as may be prescribed.”*

22. In reaching decision on whether the revisions are so significant or substantial as to change the nature of the Neighbourhood Plan, I am required to consider the nature of the existing Neighbourhood Plan and the statements prepared by the Parish Council and EHDC.
23. In accordance with the statutory requirements both the Parish Council and EHDC modifications statements are required to address the aspect whether the qualifying body and the District Council consider that the modifications to the Neighbourhood Plan are

so significant or substantial as to change the nature of the neighbourhood plan, giving reasons for these opinions.

24. The statements provided by the Parish Council and EHDC set out a summary of the proposed main modifications to the Neighbourhood Plan. Both statements conclude that the modifications materially affect the policies in the Plan. However, they are not so significant or substantial to change its nature. The Neighbourhood Plan therefore has been submitted for Examination and I conclude that it will not require a referendum. A detailed description of the modifications is included in the statements and the rationale is detailed and clear. NPPG advises that allocating new sites for development might require both examination and referendum. However, no such allocations are made in the Neighbourhood Plan.
25. I am in agreement with the conclusions of the Parish Council and EHDC. Accordingly, in my judgment the Neighbourhood Plan does not require a Referendum.

Compliance with provision made by or under sections 38A and 38B of the 2004 Act

Section 38A – Meaning of “neighbourhood development plan”

26. Section 38A of the 2004 Act (as amended) provides that any ‘*qualifying body*’ is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plan. As noted above, the Parish Council is a Qualifying Body by virtue of the provisions of 38A(12). Further, as stated above, EHDC is the local planning authority for the purpose of the 2004 Act.
27. Section 38A(2) requires the neighbourhood development plan only to contain policies relating to the development and use of land lying in the neighbourhood area. The policies are set out in Section 5 of the Neighbourhood Plan. I should state at this stage that I am satisfied that the Policies do relate to the use and development of land within the neighbourhood area, and not to extraneous matters.
28. By Section 38(3)(c) of the 2004 Act, a neighbourhood development plan that has been made in relation to an area forms part of the statutory development plan, for the purpose of guiding town and country planning decisions. Under Section 38(6) there is a presumption in favour of determining planning applications in accordance with the neighbourhood development plan unless material considerations indicate otherwise.

Section 38B

29. Section 38B of the 2004 Act provides as follows:

'38B Provision that may be made by neighbourhood development plans

(1) A neighbourhood development plan—

- (a) must specify the period for which it is to have effect,*
- (b) may not include provision about development that is excluded development, and*
- (c) may not relate to more than one neighbourhood area.*

(2) Only one neighbourhood development plan may be made for each neighbourhood area.

(3) If to any extent a policy set out in a neighbourhood development plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy.

(4) Regulations made by the Secretary of State may make provision—

- (a) restricting the provision that may be included in neighbourhood development plans about the use of land,*
- (b) requiring neighbourhood development plans to include such matters as are prescribed in the regulations, and*
- (c) prescribing the form of neighbourhood development plans.*

(5) A local planning authority must publish each neighbourhood development plan that they make in such manner as may be prescribed by regulations made by the Secretary of State.

(6) Section 61K of the principal Act (meaning of “excluded development”) is to apply for the purposes of subsection (1)(b).’

30. Section 61K provides, so far as is material, as follows: -

'61K Meaning of “excluded development”

The following development is excluded development for the purposes of section 61J—

- (a) development that consists of a county matter within paragraph 1(1)(a) to (h) of Schedule 1,*
- (b) development that consists of the carrying out of any operation, or class of operation, prescribed under paragraph 1(j) of that Schedule (waste development) but that does not consist of development of a prescribed description,*
- (c) development that falls within Annex 1 to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended from time to time),⁵*

⁵ This must now be taken to refer to codifying Directive 2011/92/EU. This repealed and re-enacted Directive 85/337/EEC and its amending instruments. It states at Article 14 that references to the repealed directive are to be construed as references to the new directive as a matter of consistent interpretation

(d) *development that consists (whether wholly or partly) of a nationally significant infrastructure project (within the meaning of the Planning Act 2008).*'

31. I should state at this stage that I am satisfied that the Neighbourhood Plan clearly specifies the period for which it is to have effect (2017-2033); it does not include 'excluded development'; and it is the only neighbourhood plan for the area.
32. The 2012 Regulations are made under section 38B of the 2004 Act. These prescribe detailed requirements for neighbourhood development plan proposals and how they are to be consulted upon, publicised, and submitted. My consideration of this matter is addressed in paragraphs 8 to 17 above.

What must the Examiner examine?

33. Paragraph 8 of Schedule 4B to the 1990 Act, as modified by section 38C (5) of the 2004 Act, requires the examiner to consider the following:
- whether the draft plan meets the Basic Conditions. These are defined at sub-paragraph (2);
 - whether it complies with the provision made by or under sections 38A and 38B of the 2004 Act; and
 - whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates; and
 - whether the draft plan is compatible with 'the Convention rights,' as defined by the Human Rights Act 1998⁶.
34. Paragraph 11(2) of Schedule 4B, as modified by section 38C(5)(d) of the 2004 Act provides that:
- '(2) A draft [plan] meets the basic conditions if—
- (a) *having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the [plan],*
 - (b).....
 - (c).....

and under the principle of construction codified in relation to domestic law by s.17(2)(a) of the Interpretation Act 1978.

⁶ Section 1 of the 1998 Act defines these as the rights and fundamental freedoms set out in Articles 2 to 12 and 14 of the European Convention on Human Rights, Articles 1 to 3 of the First Protocol to the Convention, and Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.

- (d) *the making of the [plan] contributes to the achievement of sustainable development,*
- (e) *the making of the [plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),*
- (f) *the making of the [plan] does not breach, and is otherwise compatible with, EU obligations, and*
- (g) *prescribed conditions are met in relation to the [plan] and prescribed matters have been complied with in connection with the proposal for the [plan]”*

35. Basic Conditions (b) and (c), relating to the built heritage, apply to the examination of proposed neighbourhood development orders, but not to that of neighbourhood development plans.

36. Regulations 32 and paragraph 1 of Schedule 2 of the General Regulations, has prescribed a further condition for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act, as follows -

‘[the] making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects).’

37. Since 28th December 2018, the General Regulations, Schedule 2 paragraph 1, has prescribed a further Basic Condition, namely:

‘In relation to the examination of neighbourhood development plans the following Basic Condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act—

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. It is to be noted that if a proposed neighbourhood development plan it is to be made it must meet all of the Basic Conditions specified in paragraph 8(2) - not just some of them.

39. Further, and importantly, the examination process is not intended to put the Examiner into the shoes of the ‘*qualifying body*’ so as to usurp its function and re-make its decisions. The statutory remit of the Examiner is limited.

40. Thus, the examination process is less intrusive than that required in respect of a local development plan document. For instance:

'the remit of an examiner dealing with a neighbourhood plan does not include the requirement to consider whether that plan is 'sound' (as in section 20(5)(b) of the 2004 Act), so the requirements of 'soundness' contained in paragraph 182 of the NPPF⁷ do not apply to a neighbourhood plan. The Examiner of a neighbourhood plan does not consider whether that plan is 'justified' in the sense used in paragraph 182 of the NPPF. In other words, the Examiner does not have to consider whether a draft policy is the 'most appropriate strategy' compared against alternatives, nor is it for him to judge whether it is supported by a 'proportionate evidence base.'

- *Whereas under paragraph 182 of the NPPF a local plan needs to be "consistent with national policy" an examiner of a neighbourhood plan has a discretion to determine whether it is appropriate that the plan should proceed having regard to national policy.*
- *The basic condition only requires the examiner to consider whether the draft neighbourhood plan as a whole is in general conformity with the strategic policies in the adopted Development Plan taken together. I am not charged with determining in respect of each particular policy or element whether there is a tension between the local and neighbourhood plans, and if there is such tension in places, that may not be determinative of the overall question of general conformity.⁸*

41. The concept of 'soundness,' referred to by Holgate J in this case refers to the text in a former edition of the NPPF. This text has now been superseded in the new edition of the NPPF published in July 2021. This retains a section now referred to as 'Examining plans' and refers to the same four requirements for 'soundness.' However, paragraph 37 of the new edition of the NPPF contains a separate reference to the examination process, notably that neighbourhood plans must meet the Basic Conditions and other legal requirements before they can come into force which '*... are tested through an independent examination before the neighbourhood plan may proceed to referendum.*'
42. Thus, although the Examiner has a general discretion whether to recommend modification to bring the neighbourhood plan into line with national policy if he finds points of departure, it is necessary to bear in mind that it would normally be expected that appeal decisions would follow current national policy where it conflicts with a local or neighbourhood plan. A neighbourhood plan that is at odds with national policy is in danger of becoming otiose. Unless the Examiner considers that there is evidence demonstrating good reason to depart from national policy in the neighbourhood, he would be expected to recommend that it be followed.

⁷ The National Planning Policy Framework ('the NPPF').

⁸ See *R(Maynard) v Chiltern DC* [2015] EWHC 3817 (Admin) at [13] per Holgate J.

43. In essence, therefore, the role of the Examiner is to assess whether the draft plan is compliant with the Basic Conditions and other legal requirements. If in the event that the draft plan does not comply with the various statutory requirements, the Examiner then is obliged to consider whether it can be modified so that it does so comply. Other legal requirements include consideration of the NPPF and the NPPG. As the sections on the Legal and Statutory Frameworks draw extensively on the provisions contained in both the NPPF and the NPPG, no further reference will be made to either document at this stage.

The Report

44. The Examiner then produces a report, which contains one of three possible recommendations, namely, whether:

- (a) the draft plan is to be submitted to a referendum;*
- (b) the modifications specified in the report are to be made to the draft plan, and that the draft plan as modified is submitted to a referendum; or*
- (c) the proposal for a plan is to be refused.⁹*

45. The recommended modifications can only be those that the Examiner feels are necessary to ensure that the draft plan complies with the Basic Conditions and the other relevant statutory requirements or are needed for the purpose of correcting errors. If the changes are substantial, then they may have to be the subject of a further round of consultation.

46. The further requirements of the Examiner, as defined in the 2012 Regulations, include considering whether the draft plan complies with the definition of a neighbourhood plan, and the provisions that can be made by a neighbourhood plan; and whether the draft plan is compatible with the European Convention on Human Rights. The Examiner may also make recommendations on whether the neighbourhood plan area for referendum should extend beyond the neighbourhood plan boundaries.

47. In this Report, I shall first consider address the European dimension and the question of human rights. I shall then the Basic Conditions, and then formal compliance with the

⁹ 1990 Act, Sch 4B, para 10(2), applied by the 2004 Act, s 38A(3).

provisions contained within sections 38A and 38B of the 2004 Act. Finally, I shall make recommendations as to the modification or amendment of the draft Policies. The modifications or amendments do not include minor updates to the contents and where necessary, Policy, paragraph, and page numbering. It is recommended that this is undertaken by EHDC, where necessary.

European Law obligations

Strategic Environmental Assessment

48. I am still required to check that the making of the Neighbourhood Plan does not breach EU obligations. This means that I must consider whether there has been compliance with the SEA Directive and SEA Regulations.

49. Directive 2001/42/EC - known as the Strategic Environmental Assessment Directive - on the assessment of the effects of certain plans and programmes on the environment ('the SEA') - provides by Article 3(2) that an environmental assessment is to be carried out for plans prepared for town and country planning or land use. These set a framework for development consent of certain projects, or which in view of the likely effect on protected sites, have been determined to require assessment under the Habitats Directive. Where a neighbourhood plan determines the use of small areas at local level and makes minor modifications to other town and country planning or land use plans, they require such assessment only where Member States determine that they are likely to have significant environmental effects (by virtue of article 3(3)).

50. EHDC undertook a screening assessment of the draft Neighbourhood Plan in September 2022, to determine whether a SEA of emerging Neighbourhood Plan should be screened into the SEA process, informed by consultation with the statutory consultees. The report concluded that the Neighbourhood Plan Revision does not require a SEA because the Plan is not likely to have any significant environmental effects.

Habitats Regulations Assessment

51. Article 6(3) of the Habitats Directive¹⁰ requires that any plan which is not directly connected with or necessary to the management of a protected site but is likely to have a significant effect thereon (meaning that such an effect cannot be excluded beyond

¹⁰ Council Directive 92/43/EEC of 21 May 1992.

reasonable scientific doubt on the basis of objective information), must not be the subject of agreement unless it has been subject to an ‘*appropriate assessment of the implications for the site*’. Further it must have been ascertained that it will ‘*not adversely affect the integrity of the site concerned.*’ If a neighbourhood development plan is assessed and found to cause harm to the integrity of a protected site, Article 6(4) enumerates some conditions under which a plan may exceptionally be approved where the plan must nevertheless be carried out for imperative reasons of overriding public interest.

52. Those obligations have been transposed into national law by Regulations 102, 102A and 103 of the Conservation of Habitats and Species Regulations 2010 (‘the *Habitats Regulations*’). Regulation 102 states:

- ‘(1) Where a land use plan—
- (a) is 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), and
 - (b) is not directly connected with or necessary to the management of the site,
- the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.’
- (4) In the light of the conclusions of the assessment, and subject to regulation 103 (considerations of overriding public interest), the plan-making authority... must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site...’

Regulation 102A states:

‘A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required.’

53. Regulation 107(1) of the Habitats Regulations then sets out definitions. ‘*Land-use plan*’ is defined to include a neighbourhood development plan. ‘*Plan-making authority*’ is defined to mean ‘*the local planning authority when exercising powers under Schedule 4B to the TCPA 1990 (as applied by section 38A (3) of the 2004 Planning Act)*’. The term ‘*competent authority*’ is not defined by Regulation 107, but by Regulation 7 it

includes (but not be limited to) a ‘*public body of any description or person holding a public office*’. It includes local authorities and parish councils.

54. Case law establishes that plans cannot be approved in reliance upon the duty to assess the planned projects as and when they come forward, and only approve them at that stage if found not to harm any protected site.¹¹ Consequently, for instance, the fact that there may be ‘*boiler plate*’ language in the statutory development plan stating that projects cannot be approved if they would harm a protected site, cannot itself be sufficient to enable the plan to be approved without assessment, where it allocates or encourages particular development that is liable to harm a protected site.
55. There is no requirement for any formal decision to be made under the Habitats Regulations whether or not an ‘*appropriate assessment*’ has been required. However, the Parish Council will be in breach of Regulation 102 of the Habitats Regulations if in fact a plan is likely to have a significant effect on a European site and has not been assessed.
56. EHDC undertook a HRA screening assessment of the draft Neighbourhood Plan in September 2022. It notes that the HRA in the District Plan reported that it will not result in significant effect, either alone or in combination, upon any European sites. The Neighbourhood Plan does not allocate any sites or growth not accounted for in the District Plan. Therefore, the report concludes that the Neighbourhood Plan Revision does not require an HRA.

Human Rights

57. The Basic Conditions Statement comments that the Neighbourhood Plan is compatible with human rights legislation. In my view, the Neighbourhood Plan is not likely to lead to increased inequalities or discrimination in the plan area. I have identified that some of the policies are identified as having positive impacts on people who may experience disadvantage by virtue of their age or disability.

¹¹ Case C-6/04, *Commission v UK* [2006] Env. L.R. 29 at [51]-[56].

PART 3

THE EXAMINATION

SECTION 4 - VISION AND OBJECTIVES

1. Section 4 of the Neighbourhood Plan sets out the community's Vision. This Vision centres on ensuring that village preserves the character and the rural feel of the Parish. The Neighbourhood Plan will shape the evolution of the Parish to 2033 by meeting the aspirations and needs of the local community. It is stressed that there is a commitment to the preservation of Walkern's historic character and strong rural identity by ensuring that the development in the Parish is sustainable, protects valued natural features, strengthens a sense of community, and enhances the wellbeing of new and existing residents. In essence, the Vision is to ensure that the parish remains a great place to live.
2. The Neighbourhood Plan proposes the deletion of three Objectives (a, b, and c in the original Neighbourhood Plan). These set out objectives relevant to landscape character, biodiversity, the Conservation Area, and the Parish's open spaces. The rationale for the deletion of the 3 objectives is not made in the Neighbourhood Plan. However, the three Objectives, albeit less specific in nature, are implicit within new Objective D. There are also a few minor, inconsequential amendments from the original document.
3. Paragraph 4.3 states that a new Objective has been added relating to the location of new development. The details set out in the objective contained in the introductory sentence of the paragraph are worded differently to those listed in the main Objectives, in particular new Objective E. For accuracy, I recommend a modification to delete the first sentence of paragraph 4.3.
4. I am satisfied that the Vision Statement and Strategic Objectives set out in Section 4 of the Neighbourhood Plan reflect the aspiration of the community as referred to in the Consultation Document. Its vision and strategic objectives, taken as a whole, seek to support the sustainable growth of the parish whilst at the same time safeguarding the rural character of the village, the qualities of its environment and would contribute to the achievement of sustainable development. I am also satisfied that subject to the adoption of the various recommended modifications, set out below, the Vision Statement and the eleven Strategic Objectives will meet the Basic Conditions.

SECTION 5 - NEIGHBOURHOOD PLAN POLICIES

Format and Content

5. The construction and presentation of the Submission Version of the Plan is in general clear. However, the Regulation 16 Consultation version of the Neighbourhood Plan available on the Council's website includes a footer throughout the document describing the document as '*Walkern NP 14 dated 3rd May 2023*'. This is inaccurate. I do not consider that this error has materially misinformed or led to any particular confusion for the public during the consultation process.
6. For clarification purposes, I recommend modifications that the headers and footers, together with background information in the document, are updated to reflect the relevant stage of the Neighbourhood Plan process.

The Neighbourhood Plan

Planning Policy Context

7. For clarity, I recommend a modification that '*October 2018*' is added after the District Plan in line 3, paragraph 1.7.
8. For accuracy, I recommend modifications that the references to NPPF are updated to reflect the December 2023 version and all subsequent references to NPPF paragraph numbers are updated.

Policies Map

9. For accuracy, I recommend a modification that the light green shading shown surrounding the village on the Policies Map for the Village Inset Area, which does not have any policy designation in the Neighbourhood Plan or the District Plan, is deleted from the map.

Policy WLK1 Sustainable Development

10. The revisions in the supporting text usefully update the housing land supply position and the recent development at Froghall Lane. The policy is appropriately reworded to reflect the adopted District Plan and the NPPF, moving the statements which were needed to ensure the Policy 'stood on its own two feet' ahead of the adoption of the District Plan, to the supporting text. However, as amended, the Policy adds little to existing Policy, but this is beyond the scope of my examination to address.
11. The words 'The following 19 policies should be used to ensure' in the Policy are incorrect (there are 20 Policies) and are also ambiguous as it reflects only a partial element of the

Neighbourhood Plan. I recommend a modification that these words are deleted and replaced with '*The Neighbourhood Plan ensures.*'

Policy WLK2 Cherished Views, Vistas and Landscape Features

12. I shall divide this Policy into two parts. First - Cherished Views and Vistas, and secondly - Important Countryside Gaps.

Cherished Views, Vistas and Landscape Features

13. The adopted Neighbourhood Plan identifies seven important views in the parish. The revised Neighbourhood Plan helpfully defines the zone of views more closely in Appendix B and adds a further two Views to the east of the High Street. The Policy replaces the term 'Important' with 'Cherished' views in the title, but this is not reflected in the subsequent Policy content.
14. The 'new' View 8 is defined as 'East from west side of High Street at Glebe View over paddock'. Following my site visit, I can confirm that the view makes a significant contribution to this part of the village and should be recognised as such. The Parish Council have agreed that the Policy can more simply read '*East of High Street at Glebe View*' to be consistent with the Policy wording for other views.
15. View 8, although shown with a Cherished View symbol in the Village Inset Map, does not include the associated labelling. This should be corrected in the final drafting.
16. The Neighbourhood Plan identifies an additional View 9 - East from east side of High Street at Beecroft Lane over paddock. This view is not identified on Figure 26 – Detail of all cherished views in Appendix B. The evidence in Appendix B states that the rationale for the view is to protect a vulnerable listed building. It states:

'The importance of this view is to provide a deterrent to the premeditated or inadvertent neglect of this characterful listed farm building by protecting the historic significance of the view and thereby discouraging a modern replacement.'
17. The evidence submitted appears to protect a heritage asset and its setting, rather than identify an important, cherished view or vista. The view also forms part of the zone of view for View 8. There is unnecessary duplication and inappropriate justification for inclusion of View 9.
18. I recommend modifications that in respect of Views and Vistas the following amendments are made to Policy WLK2:

- Policy Title reflects the content of the Policy by reverting the term ‘*Cherished Views*’ to ‘*Important Views*’
- Bullet point II is amended to ‘*Eight important views and vistas....*’
- Bullet Point 8 is amended to read ‘*View 8 East of High Street at Glebe View*’
- View 9 is deleted with the necessary amendments to the Appendix B (page 58) including the deletion of figure 25 and the subsequent paragraph together with the removal of the Cherished View Symbol on the Policies Map
- Subsequent amendments are needed for consistency with the modification to the Policy Title amendment. This includes amendment to the legends in the Policies Map and the Policies Map for the Village Inset Area, and Figure 26 in Appendix B
- The Cherished Views symbol on the Policies Map for the Village Inset Area at page 17 should be amended to include the notation ‘V8’

Important Countryside Gaps

19. District Plan Policy GBR2 - Rural Area Beyond the Green Belt maintains the countryside as a valuable resource, permitting those developments that require a countryside location or are defined as appropriate development within the countryside. This district policy states that development should be compatible with the character and appearance of the rural area.
20. I consider the new paragraph 6.9, explaining the current Policy context in the District Plan to be unclear and ambiguous. It suggests that the District Plan’s ‘Rural Areas Beyond the Green Belt’ are the same as ‘Important Countryside Gaps’ identified in the Neighbourhood Plan. This is incorrect. Additionally, the purposes of the Green Belt as set out in paragraph 6.9 are also inaccurate. These purposes are set out in NPPF and include: ‘to prevent neighbouring towns merging into one another’ and ‘to preserve the special character of historic towns.’ It is not a stated purpose of the Green Belt to retain village character. It is factually correct that Bedfordshire has a similar policy in its Local and Neighbourhood Plans. However, this is not relevant to Walkern Neighbourhood Plan. I recommend modifications for clarity.
21. Representations made in response to the Regulation 16 consultation find the evidence base supporting the identification of ‘Important Countryside Gaps’ to be limited and ambiguous.
22. The supporting text describes the character of land north of Froghall Lane/west of High Street and land south of Stevenage Road/west of High Street. It identifies the need to retain the special built and rural character of this part of the Conservation Area and its setting (paragraphs 6.9 to 6.11). The description of land to the west of Midsummer Meadow states that the development can be seen from Box Wood (paragraph 6.13). Following my initial set of questions, the Parish Council has set out published material which has informed their decision. From my site visit, I note that land to the north of Stevenage Road rises immediately from Walkern High Street.

Midsummer Meadow is visible from the approach from Stevenage, as is the area of land proposed as an Important Countryside Gap to the north of Stevenage Road.

23. I also agree with the Parish Council that land to the south of Stevenage Road is different albeit important in terms of its historic character and settlement identity.
24. It is my view, the Parish Council's judgements are reasonable, and the assessment is proportionate and sufficiently robust for its intended purpose.
25. However, the Policy is clear in that it is not intended to preclude all development from taking place within the Important Countryside Gap. These areas are not Green Belt where this is a presumption against certain types of development. Where development is proposed within an Important Countryside Gap, the policy requires an assessment to be made of the impact of the physical and visual coalescence of Stevenage and Walkern and the separate character, appearance, and identity of Walkern.
26. In some instances, the supporting text states that development will not be permitted. These statements do not reflect the requirement for Neighbourhood Plans to be positively planned. They are also somewhat in conflict with the Policy itself. I recommend modifications to the supporting text to confirm that new development will be permitted, provided that it does not result in physical or visual coalescence of Stevenage and Walkern or that would undermine the separate character, appearance and/or identity of Walkern.
27. I recommend modifications for the Neighbourhood Plan to be positively planned and to provide clarity for decision makers the following amendments are made:
 - Paragraph 6.9 is deleted and replaced with *'Much of the land between Stevenage and Walkern is designated as Green Belt. A purpose of the Green Belt designation is to prevent neighbouring towns from merging into one another. Additionally, land between Walkern's village boundary and the Green Belt, together with land to the east of the village, is designated in the District Plan as 'Rural Areas Beyond the Green Belt' (Policy GBR2). The purpose of Rural Area Beyond the Green Belt policy is to maintain the countryside as a valuable resource, permitting those developments that require a countryside location or are defined as appropriate development within the countryside.'*
 - Amend paragraph 6.12 to read: *'To retain the special character of the conservation area, any significant development behind the High Street to the west should demonstrate that it will not have an adverse impact upon the character of this part of the village or the setting of the conservation area.'*
 - Delete the final two sentences of paragraph 6.13.
 - Delete the final sentence of paragraph 6.17

- Add at 6.17: *'Land lying in the Rural Area Beyond the Green Belt between Walkern and Stevenage is defined in this Plan as an Important Countryside Gap and is shown on the Village Inset Policies Map. New development will be permitted within the Important Countryside Gap provided that it does not result in physical or visual coalescence of Stevenage and Walkern or adversely impact the separate character, appearance, and identity of Walkern.'*

Policy WLK3 Walkern Conservation Area

28. For clarity, to remove ambiguity for decision makers and to align with national policy, I recommend modifications that Part I of the Policy is rewritten, as follows:

'Development within the Walkern Conservation Area should be preserved or enhanced. The elements of the Conservation Area which make a positive contribution to it, as defined in the Walkern Conservation Area Character Appraisal and Management Proposal 2016 (or an updated version) should be preserved in a manner appropriate to their significance.'

The second paragraph of the Policy is unclear as written. I recommend modifications for clarity that part ii. is replaced with:

'Development will be supported where it makes a positive contribution to the rural landscape of the Beane Valley and the setting of Walkern's Conservation Area.'

Policy WLK 4 Non Designated Heritage Assets

29. The majority of the assets listed in the Policy form part of the fabric and heritage of the neighbourhood area. In my view, with the exception below, the descriptions indicate that due to their age, rarity, architectural, archaeological, or historic interest or their landmark status, represent features which are reasonably designated as non-designated heritage assets. There are two issues that I address: Walkern Gardens and the Bridge and Ford at Church End
30. First, there is a degree of ambiguity between the supporting text and the Policy as it relates to Walkern Gardens. The Policy identifies the Gardens at Walkern Hall as a non-designated heritage asset although the extent of the Gardens is not detailed in the Neighbourhood Plan.
31. I note the District Council supports the identification of the Gardens as a Non- Designated Heritage Asset. The District Council confirms that the built structures within the Walkern Hall Historic Park and Garden that were in the same ownership at the date of listing and pre-date July 1948 are considered to be curtilage listed, and Listed Building Consent may be required for proposals that affect them. However, this protection does not extend to the land itself. The District Council also highlight District Plan Policy HA8 Historic Parks and Gardens which provides a degree of protection.

32. In response to my questions relating to the boundary of the Gardens, the Parish Council and the District Council have offered two different boundary areas. It is not my role to resolve this issue in this Examination. Indeed, there has been no direct consultation with the landowners of the Non-Designated Heritage Assets. Nor has there been any response through the Regulation 14 or Regulation 16 consultation which would have provided further insight into the extent or accuracy of the boundary.
33. Given the two opinions, I do not recommend modifications whereby either boundary is included in the Neighbourhood Plan. However, this does lead to a degree of ambiguity which is not helpful to decision makers. I would hope that this aspect can be resolved appropriately through the preparation of the updated Supplementary Planning Guidance being prepared by the District Council.
34. Secondly, I viewed the Bridge and Ford at Church End on my site visit. The bridge is of contemporary design with asphalt surfacing and metal handrails. In my view, the bridge does not represent a feature which is appropriate to classify as a non-designated heritage asset.
35. I recommend modifications that the Bridge and Ford at Church End are deleted from the Neighbourhood Plan at Policy WLK4 and at Appendix C including Figure 30.

Policy WLK5 Archaeology

36. The revised plan includes a new Policy supporting the identification and protection of archaeological sites reflecting ongoing project work in the Neighbourhood Plan area.
37. Part II of the Policy simply rehearses District Plan Policy HA3 Archaeology and therefore I recommend modification whereby this part of the Policy is deleted.

Policy WLK6 Biodiversity

38. The Environment Act 2021 sets out the components of mandatory biodiversity gain. For major sites, the requirement came into force on 12th February 2024. For small sites this will be applicable from 2nd April 2024. Household applications are exempt from this requirement and therefore the requirement does not apply to all development as required by the Policy. As a mandatory requirement, including the need to use the Biodiversity Metric, it should not be duplicated in planning policy.
39. NPPF is clear (at paragraph 186) that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission

should be refused. Policy WLK6 should be updated to reflect national policy in accordance with the Basic Conditions.

40. I recommend a modification that Policy WLK6 is updated to read:

'Wildlife and significant habitats including the River Beane will be protected from any significant harmful impacts of development, including pollution, unless avoided, adequately mitigated or compensated for in accordance with national policy.'

41. Similarly, I recommend a modification that the supporting text at paragraph 6.37 is also updated to reflect national policy in accordance with the Basic Conditions. The final sentence of paragraph 6.37 should be modified to:

'There are several sites where species and habitats need to be protected and development proposals will be permitted, only where harm can be avoided, adequately mitigated or compensated for in accordance with national policy.'

42. The supporting text (at paragraph 6.33) states that the Local Wildlife Sites are shown on the policies maps. They are not so included, but appear in Appendix D. I recommend a modification to the effect that the Local Wildlife Sites detailed in Appendix D are shown on the Policies Maps. If the Local Wildlife Sites cannot be shown on the Policies Map, I recommend a modification that the reference in paragraph 6.33 to the sites shown on the Policies Map is deleted.

Policy WLK7 Protection of Trees and Hedges

43. Part II of the Policy seeks to retain Ancient Trees with recognisable amenity value. NPPF (at paragraph 186c) seeks to protect the loss of irreplaceable habitats including Ancient Trees and therefore the Policy rehearses national policy. The term '*recognisable amenity value*' does not provide sufficient clarity for decision makers. For these reasons, I recommend a modification to delete part II from policy WLK7.
44. The Walkern Tree Charter in Appendix 3 is a commendable statement to secure the longer term sustainability of the natural environment in Walkern with partners and stakeholders. However, the Policy as worded sets out the purpose of the charter rather than providing policy advice. For clarity I recommend a modification that Part IV is amended to:

- Delete Part II
- Amend Part IV to:

‘Development will be supported that adopts the principles in the Walkern Tree Charter as set out in Appendix E which provides information to assist developers to recognise the importance of trees in Walkern.’

Policy WLK8 Protected Recreational Open Spaces

45. The proposal to add the new recreational and open space associated with the new development at Midsummer Meadow recognises the importance of the site to the local community. There is appropriate justification to include the site as a Protected Recreational Open Space.
46. The Neighbourhood Plan seeks to identify two existing Local Green Spaces as Protected Recreational Open Spaces namely PROS5: River Bean Walk, north of Winters Lane, and PROS6: River Beane Walk, south of Winters Lane.
47. As existing Local Green Spaces, development on these sites would be assessed against the provisions of Green Belt policy as set out in NPPF. Development within a Protected Recreational Open Space is subject to a different set of local tests set out in District Plan policy CLR1. The local tests include the potential that existing Protected Recreational Open Spaces could be replaced by alternative provision where specified conditions are met. Such conditions do not exist in respect of Local Green Space policy. Therefore, I find the proposal for a site to be both a Local Green Space and a Protected Recreational Open Space to be ambiguous; add a layer of uncertainty for decision makers; and be inconsistent with the Green Belt policies’ as far as they apply to Local Green Spaces.
48. I recommend the following modification -

PROS5: River Bean Walk, north of Winters Lane and PROS6: River Beane Walk, south of Winters Lane be deleted from Policy WLK8, the Village Inset Map and supporting text at paragraph 6.51.
49. The Neighbourhood Plan Revision deletes the information at Appendix E which provides guidance to the decision maker on the key attributes of each of the existing PROS. I recommend a modification for clarity whereby -

Appendix E to be reinstated together with a statement on the attributes of PROS4 Midsummer Meadows.
50. For clarification purposes, I recommend the removal of the ambiguity and to facilitate the alignment with and not duplication of the District Wide policy, I recommend modifications’ as follows:
 - The words - ‘as identified in the Policies Map, and detailed in Appendix I’, are added after the words ‘the following sites’ If the Protected Recreational Open Spaces cannot be shown on the Policies Map, I

recommend a modification that the words *'and detailed in Appendix I'*, is added after the words *'the following sites'*

- Part II of the Policy should be redrafted to read:
'Development proposals that result in the loss of reduction of the Protected Recreational Open Space should be assessed against the criteria in Policy CFR1 part VI. Any enhanced, replacement provision should be as accessible to the local community as the current recreational open space.'

Policy WLK9 Green Corridors

51. For consistency I recommend a modification to *the* Policy at part I, bullet point 3, after *'... through Walkern Village'* the text is deleted and inserted at the end of paragraph 6.55.

Policy WLK10 Local Green Space

52. I am in no doubt that Box Wood is an asset which is highly valued by the local communities of both Walkern and Stevenage. It is also clear that the site has numerous environmental and historic designations which provide a wide range of protections. I am also aware that policy guidance recognises that different types of designations are intended to achieve different purposes and therefore it may be appropriate to identify sites as a Local Green Space in addition to other designations.
53. However, I must have regard to national guidance which requires me to assess whether the Local Green Spaces are extensive tracts of land. There are no hard and fast rules about the definition of the size of a Local Green Space.¹² Despite the proposal in the Neighbourhood Plan to separate Box Wood into three Local Green Spaces, it is a whole entity and must be seen as such. I conclude that the proposals represent an extensive tract of land and as such I recommend modifications that *Box Wood* is deleted from Policy WLK10, the policies map, the supporting text (paragraphs 6.59 to 6.61), and Appendix G and paragraph 6.62 should be amended to 8 sites.
54. I am satisfied that the evidence in Appendix G demonstrates that the two additional Local Green Spaces at the URC Graveyard, High Street (LGS 6), and the Graveyard at Froghall Lane (LGS 7) comply with the assessment criteria in NPPF necessary to identify the sites as Local Green Spaces.

Environmental Quality

55. For clarity at paragraph 6.66, I recommend a modification that *'whilst supporting'* be added before *'microscale renewable energy.'*

¹² See Paragraph: 015 Reference ID: 37-015-20140306.

Policy WLK11 Land south of Froghall Lane (Midsummer Meadow)

56. The Policy states that no buildings or impermeable hard surfaces will be constructed in the southwest and northwest corners of the site. The supporting text at paragraph 6.72 retains the adopted Neighbourhood Plan approach which resists such development in the southwest of the site.
57. In response to my questions, the Parish Council has confirmed that the Policy is correct, and the supporting text is out of date. For clarity and to remove an inconsistency, I recommend a modification:
- the final sentence of paragraph 6.72, line 7, is updated to state: *'In the south west and north west corners of this space, no buildings....'*
58. The East Hertfordshire Parking Standards adopted as Supplementary Planning Guidance by the District Council sets out the necessary parking provision required for residential development. I note that for sheltered housing and one bedroom properties, the parking standards are less than two spaces per dwelling. For dwellings with three or more bedrooms, the parking standards require at least 2.5 parking spaces per dwelling. The Neighbourhood Plan policy would appear to have the perverse effect of reducing the number of parking spaces required where the dwelling has more than 3 bedrooms.
59. The Neighbourhood Plan approach is not consistent with the adopted parking standards set out in the District Plan and the Supplementary Planning Guidance. For clarity and to avoid conflict with the District Plan, to provide the flexibility required by national policy and to ensure this part of the policy is positively worded I recommend a modification that:
- Part (d) is amended to *'Proposal should retain parking spaces in accordance with East Hertfordshire's Parking Standards to ensure that on street parking does not occur on surrounding streets.'*
60. I recommend a modification that a minor error is corrected to delete *'bounding'* in part 1(b) of the Policy.

Policy WLK12 Housing Infill Sites

61. Walkern is identified in the District Plan (Policy VILL1) as a Group 1 Village being one of the most sustainable villages (paragraph 10.3.2 of the District Plan). The policy makes it clear that small-scale infill sites within the village boundary are supported. Brownfield sites are preferred to greenfield sites.

62. The more recent NPPF documents, since the adoption of the made Neighbourhood Plan, have promoted high quality development through the provision of Design Guidance and Codes. Policy WLK12 sets out generic guidance which is appropriate to the Neighbourhood Plan area and meets the Basic Conditions.
63. The supporting paragraph at 6.75 states that exceptional circumstances will be required for support to be given to proposals immediately adjacent to the village. Such a test is generally required in terms of proposals that have an impact upon land within the Green Belt, irreplaceable habitats, Listed Buildings, and assets of the highest historic significance. Therefore, the exceptional circumstances test does not accord with national policy nor the policies in the District Plan which support development in the countryside including policy GBR2 Rural Areas Beyond the Green Belt. As such the policy is not in accordance with the Basic Conditions.
64. I recommend a modification that the second sentence and final sentence in paragraph 6.75 is deleted.

Policy WLK13 Rural Homes

65. NPPF paragraph 84 states that isolated homes in the countryside may be supported where the *‘development would re-use redundant or disused buildings and enhance its immediate setting’*. Policy WLK13 Rural Homes requires the building to be of architectural merit. The policy as drafted is not consistent with national policy. I recommend a modification that part I of the policy is amended to reflect national policy to state:

Amend part 1 to ‘Outside the village boundary of Walkern, high quality conversions to single rural homes of Local Needs Affordable Housing, will be supported where development proposals are in accordance with national policy or the policies contained within the District Plan.’

66. The District Council is satisfied that the local connections approach in Policy WLK13 in the Walkern Neighbourhood Plan is broadly consistent with the District Plan. The District Council states that the purpose of District Plan Policy HOU4 is for rural exception sites to meet local affordable housing need in the district. When allocating from the housing register a local connection to the parish is usually found, but if there is no-one with a connection, it is usual for local lettings schemes to consider households outside the parish. However, rural exception sites should meet the identified housing needs of East Herts residents, not the needs of adjoining local authorities.
67. Therefore, in accordance with the District Council’s comments, I recommend a modification to the wording of WLK13, as follows -.

Amend paragraph under point b, to include reference to a local connection in East Herts, as follows:

‘.....If no applicant qualifies under the first set of criteria, those who are resident in, or have a strong local connection with neighbouring parishes will be eligible. If there are no nominations from the rural parishes within East Herts, then nominations from those in greatest need from within the district will be acceptable.’

68. Paragraph 6.77 states that ‘Rural exception sites and other single rural homes will be supported where there is a demonstrable need.’ This does not align with national policy (NPPF at paragraph 84) which sets out the circumstances in which isolated homes in the countryside may be permitted. I have no evidence before me which suggests that Walkern Neighbourhood Plan Area should adopt a different approach.

69. I recommend a modification that the final sentence in the supporting text at paragraph 6.77 and part IV of the policy is replaced with:

‘Other single rural homes in the countryside will be supported where development proposals are in accordance with national policy or the policies contained within the District Plan.’

Policy WLK14: Design of New Development

70. The more recent NPPF documents, published since the adoption of the Neighbourhood Plan have promoted high quality development through the provision of Design Guidance and Codes.

71. To avoid duplication with Building Regulation standards, provide flexibility, consistency and for clarity, I recommend modifications the following amendments to Policy WLK14:

- Delete (g) in section (f)
- In section (l) replace ‘*should have their own modest garden space*’ with ‘*access to a modest garden space, where appropriate.*’
- In section (n) delete ‘*...and electric charging points should be included in any new build in accordance with the current Building Regulations*’
- In paragraph 6.82 – replace ‘*should be exceeded*’ with ‘*East Herts Parking Standards should be adhered to whilst exceeding the targets will be welcomed.*’

Policy WLK15: New Businesses

72. No comments.

Policy WLK16 – Farm Diversification

73. The Woodland Creation Offer (EWCO) supports the creation of new woodland on areas as small as one hectare. The Environmental Land Management Scheme reward environmental land management for Sustainable Farming Incentive, Local Nature Recovery and Landscape Recovery. Such schemes are not examples of the way in which the traffic impact of a development proposal may be mitigated. As such, the examples are not relevant.
74. I recommend a modification that '*such as England Woodland Creation Offer (EWCO) and Environmental Land Management Scheme (ELM)*' is deleted from Part II of Policy WLK16.

Policy WLK17 – Home Businesses

75. No comments

Policy WLK18 – Sustainable Transport Provision

76. Hertfordshire County Council representations seek to ensure that the Neighbourhood Plan is more closely aligned with its Active Travel objectives, emerging Local Cycling and Walking infrastructure Plan for East Herts and funding priorities. The proposed amendments are not required to meet the Basic Conditions and I make no modifications in respect of these comments.

Policy WLK19 – Valued Community Assets

77. The Policy helpfully identifies the community facilities that fall within the provisions of Policy CFLR8 of the District Plan – Loss of Community Facilities. The facilities represent those which are important to the community. As the list includes a business, rather than a public or community use, the policy should also include reference to Policy ED1 and ED2 Employment of the District Plan which sets out the criteria against which the loss of a site or premises will be assessed.
78. I recommend a modification that Part I of the Policy is amended to:
- 'The proposed loss of the valued community assets listed below will be assessed, where appropriate, in accordance with District Plan Policies CFLR8, ED1 and ED2. New community assets will be considered against District Plan Policy CFLR7.'*

PART 4

CONCLUSIONS

1. In essence, subject to the adoption of the various recommended modifications and amendments set out above made in order to address various perceived deficiencies in the draft Neighbourhood Plan, I am satisfied that it should thereafter be compliant with the statutory requirements. The Policies set out in the draft Neighbourhood Plan are broadly justified by legitimate aims protection of the environment; amenity of local people; support for the local economy; conservation of landscape and local heritage. I am also satisfied that they do not strike an intrinsically unfair balance. I am further satisfied that the Policies will in general conform with the existing statutory development plan and support sustainable development.
2. Thus, in my judgment, no referendum is required.

Edward Cousins
Examiner

Radcliffe Chambers

29th April 2024