

WESTON-ON-THE-GREEN NEIGHBOURHOOD PLAN 2018 - 2031

(Submission Version)

Report of the Examination into the
Weston-on-the-Green Neighbourhood Plan 2018 - 2031

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To Cherwell District Council
And to Weston-on-the-Green Parish Council

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1. Introduction

Neighbourhood planning

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

Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. ... Parish Councils can use neighbourhood planning to: set planning policies through neighbourhood plans to determine decisions on planning applications...¹

2. This report concerns the Submission (Regulation 16) Version of the Weston-on-the-Green Neighbourhood Plan 2018 - 2031 (“the Draft WNP”).

Appointment and role

3. Cherwell District Council (“CDC”), with the agreement of Weston-on-the-Green Parish Council (“WPC”), has appointed me to examine the Draft WNP. I am a member of the planning bar and am independent of CDC, WPC, and of those who have made representations in respect of the Draft WNP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service. I do not have an interest in any land that may be affected by it.

4. My examination has involved considering written submissions and an unaccompanied detailed site visit on Friday 31st May 2019.² The site visit helped me to gain a sufficient impression of the nature of the area for the purpose of my role. 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 WNP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in

¹ NPPF (2012), para 183. See also PPG Reference ID: 41-001-20190509.

² While in the area on Tuesday 9th July 2019 I had a further short site visit.

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. The statutory scheme means that the document that I am examining is the Draft WNP as subject to the Regulation 16 consultation, not as it would read if amended by the March 2019 schedule of changes although I bear that in mind and the representations in respect of it.

2. Preliminary Matters

Public consultation

6. I am satisfied that WPC took public consultation seriously. I do not consider there has been any 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 WNP area is the parish of Weston-on-the-Green. WPC, a parish council, 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 WNP 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 WNP specifies the period for which it is to have effect, namely 2018 - 2031, 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 WNP 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)³ 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.

9. There is one prescribed basic condition:⁴ *“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 WNP 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 WNP, 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.⁵ Rather, it is clear that 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, particularly for communities like Weston-on-the-Green with small populations. This is not a plan that requires a Strategic Environmental Assessment and the increased requirements in such cases do not apply here. It is not my role to rewrite a neighbourhood development plan to create the plan that I would have written for the area.

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 WNP proceeds to a referendum as submitted; (2) that the Draft WNP is modified to meet basic conditions and

³ The omission of (b) and (c) results from these clauses of para 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

⁴ Sch 2 of the General Regulations prescribes this.

⁵ PPG Reference ID: 41-055-2018022.

then the modified version proceeds to a referendum; or (3) that the Draft WNP 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,

(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.⁶

13. The word “only” prevents me recommending any other modifications. This means that I can only recommend changes within the March 2019 schedule of changes if one of the above applies and I have concluded that in most cases they don’t. I have however found comments in that schedule helpful. The fact that a modification would be of benefit is not a sufficient ground in itself to recommend it. So, for example, a suggested modification which gives additional information cannot be justified simply because some would find that information helpful. The same applies to a representation that a statement might be better included in some other document. It is not within my powers to recommend avoidance of repetition or other matters that some may consider unnecessary, unless it happens to come with one of the categories specified in the preceding paragraph. I cannot recommend the addition of non-planning matters. A representation that the draft WNP has not taken an opportunity would only be relevant if it related to my statutory role. 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.⁷ 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.

⁶ TCPA Sch 4B, para 10(3). The provisions in (a), (c) and (d) are in the TCPA.

⁷ [2018] EWCA Civ 450, 14th March 2018, paras 34 and 35.

14. It is not my role to consider matters that are solely for the determination of other bodies such as CDC or Oxfordshire County Council (“OCC”). Nor is it my role to consider matters that an NDP could consider, but which are not considered in the Draft WNP, unless this is necessary for my role as explained above. It is not my role to consider aspirations that are clearly identified as such and do not purport to be policies.

4. Consideration of Representations

15. I have given all 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*,⁸ I have mainly concentrated on giving reasons for my recommendations.⁹ Where I am required to consider the effect of the whole Draft WNP, 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 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. I did consider that an unaccompanied site visit was appropriate and held an extensive one on 31st May 2019. I also held a brief further site visit while in the area on 9th July 2019. I did not consider that the requested accompanied site visit of the Schoolfield site was necessary given the extent of public footpaths on the site and the photographs of it.

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 WNP 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 it is intended to have and does have a significant effect.

19. The principal document in which national planning policy is contained is the National Planning Policy Framework (March 2012) (“the NPPF”) and I have borne that in mind. Other

⁸ [2017] EWHC 1776 (Admin), Lang J, 18th July 2017.

⁹ TCPA Sch 4B, para 10(6).

policy and advice that I have borne in mind includes national Planning Practice Guidance (“PPG”). A revised version of the NPPF was issued in July 2018 and this was further revised in February 2019. However its paragraph 214 provides: *“The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.”* Its footnote 69 explains *“For neighbourhood plans, ‘submission’ in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.”* That has occurred in this case. There is therefore no need to revisit the NDP in the light of the new NPPF. I have therefore considered the policies in the 2012 NPPF. Among other things, this emphasises the importance of Green Belts and the need for more housing in appropriate locations.

Contributing to the achievement of sustainable development

20. 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 WNP, or the Draft WNP 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 (including the Green Belt, the heritage assets and their settings and flood zones 2 and 3) and those proposed in the Draft WNP. The total effect of the constraints introduced by the Draft WNP when read with existing constraints should not prevent the achievement of sustainable development. In assessing the totality of constraints I have found Figure 15 particularly helpful.

21. The bulk of the NPPF constitutes guidance on sustainable development. Its paragraph 6 says, *“The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development... means in practice for the planning system.”*

22. I welcome the draft WNP’s support for pedestrians and cyclists. This contributes to the environmental element of sustainable development. I also welcome the draft WNP’s support for young families and young people, older people and disabled people. This contributes to the social element of sustainable development.

23. The draft WNP’s support for the neighbourhood’s heritage assets, particularly policy H4 is amply merited, is consistent with the duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990 and contributes to the environmental element of

sustainable development. The heritage assets that I was able to view and in three cases enter, impressed me.

General conformity with the development plan's strategic policies

24. The third basic condition means that I must consider whether the Draft WNP is in general conformity with the strategic policies contained in the development plan for the area of the authority.

25. The adjective 'general' allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. 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 (such as the 2014 Oxon SHMA and the Cherwell Residential Design Code Supplementary Planning Document), 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.¹⁰ I have also borne in mind the relevant part of the judgment in R (Swan Quay LLP) v Swale District Council.¹¹

26. The development plan includes the Cherwell Local Plan Part 1 2011-2031 ("CLPP1") and the saved policies of the adopted Cherwell Local Plan 1996 ("CLP"). A revised Cherwell Local Plan is in preparation. This is not part of the development plan and hence not relevant to this basic condition. Since 2018, the formerly intended Cherwell Local Plan Part 2 (never part of the adopted development plan) has not been in CDC's Local Development Scheme. It should not be mentioned other than as part of the history of the draft NDP.

EU obligations

27. The fourth basic condition requires me to consider whether the Draft WNP breaches or is otherwise incompatible with, EU obligations. I have in particular considered the following, together with the UK statutory instruments implementing them: 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.¹²

¹⁰ Paragraphs 074 to 077 of the section on neighbourhood planning.

¹¹ [2017] EWHC 420 (Admin), para 29, Dove J, 27th January 2017.

¹² Case C-323/17, 12th April 2018.

28. I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive. I am satisfied that the making of the NDP would not breach, and be otherwise incompatible with, EU obligations and that (except to the extent to which I may recommend modification) it is not necessary to consider the matter further in this report.

Conservation of Habitats and Species Regulations

29. I am satisfied that the making of the NDP would not be incompatible with the prescribed basic condition and that (except to the extent to which I may recommend modification) it is not necessary to consider the matter further in this report.

Human Rights

30. English planning law in general complies with the Convention. This matter can also be dealt with briefly in advance of detailed consideration of the contents of the Draft WNP. I have considered whether anything in the Draft WNP 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. Nothing in my examination of the Draft WNP indicates any breach of a Convention right, so that no modifications need to be made to secure that the Draft WNP 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 WNP.

7. The nature of the area

31. In considering the contents of the Draft WNP I must consider the nature of the village of Weston-on-the-Green and of the parish as a whole. In the 2011 census the parish had a population of 523 with a median age of 48.5 in 218 households. It lies partly in and partly outside the Oxford Green Belt, the extent of which within the parish is shown on Figure 5. Most of the village is in the Weston-on-the-Green Conservation Area. There are two grade II* listed buildings (St Mary's church and Weston Manor, now an hotel) and 31 grade II listed buildings. The B430, a busy road, is immediately to the east of the village.

32. There is no scheduled public transport¹³ and no secondary or primary school in the parish. There is a shop and post office, two public houses, a café and ice-cream parlour, an hotel, a church, a village hall, one playing field, a small village green, a nursery school (1.5 miles east of the village centre) and a bookable and relatively expensive door-to-door transport service. This level of services is greater than typically found in a village with a small population and seems to result in part from passing trade on the B430.

¹³ I share Oxfordshire County Council's view that it is not clear how the objective to reinstate a public-transport service to the village could be achieved (Transport Strategy Comment of December 2018, A31).

33. The village is in Category A (the most sustainable villages) in CLPP1, being the fourth smallest of 23 settlements in this category.

8. Housing

34. The matter that has occupied more of my time than any other is the extent of constraints to development, particularly those shown on figure 15, and the impact of these on supplying housing. I am satisfied that the proposed local green spaces (“LGSs”) meet the test specified in the NPPF and that they can be designated without impeding the achievement of sustainable development. I am also satisfied that the smaller “*important green spaces*”, (a to j) merit some protection and that they can be identified without impeding the achievement of sustainable development. The areas shaded in light green (areas A to J inclusive) and the largest of the “*important green spaces*”, namely ‘h’ (also known as Area B or the Schoolfield) leave the village almost surrounded by constraints. To the extent that these are in the Green Belt and to the extent that some flood zone 2 and 3 land is included, these are unlikely to make a significant difference. However the total effect of all the other land just mentioned is to provide a real risk of preventing the achievement sustainable development. I therefore spent some time viewing all the land concerned. It is attractive and understandably valued by the local community. It merits some protection, but not as strong protection as Green Belt or Local Green Space land. It would not be right to create what is in effect close to the equivalent of Green Belt or LGS land. That doesn’t mean that it should not have protection, but it does mean that its protection should not be as strong as that for a Green Belt or LGS. I specifically considered whether the information before me including Appendix G, representations and my own judgement meant this was an appropriate case for identifying land to be held in reserve for housing, including the whole or part of sites put forward in representations. However I concluded that this would not be appropriate. Further consultation and possibly surveys or further surveys in respect of protected species would be required. I therefore consider that the land concerned should have a degree of protection that prevented its development unless it was needed for sustainable development. If a need is shown to exist, the best (or as some might put it least bad) site should be selected.

35. My concern that the total effects of constraints should not be so strong as to prevent providing for the need for more housing should this arise applies to affordable housing as well as to open-market housing and I have particular concerns about the former. I note that the draft NDP records that:

“house prices are high and young people and local families find it increasingly difficult to find housing in the village”; ¹⁴

¹⁴ Page 13, paragraph 1.3 – see also page 110.

*“38% of survey respondents from all age groups wanted new housing for young families to be part of the Neighbourhood Plan policies”;*¹⁵

*“housing is required that is attractive and affordable for younger people”;*¹⁶

*“the majority of housing [is] unaffordable for younger families and single occupants”;*¹⁷
and

*“there are a number of young adults who were raised in the village and would like to return as homeowners, but are unable to do so because of the lack of affordable, available housing.”*¹⁸

36. Affordable housing is needed. The thresholds for affordable housing in both national and local policy mean that small infill windfall sites seldom provide this. (Such sites also seldom provide funding for community aspirations.)

9. The contents of the Draft WNP

Foreword

37. The final paragraph is out of date and will be more so by the time of the referendum.

Recommended modification 1

Page 2

Delete: *“which now moves to formal examination by Cherwell District Council and their appointed Examiner before being put to a village referendum”.*

Abbreviations/Glossary

38. CLPP2 is only mentioned once more in the Draft WNP . It should be deleted from the glossary.

Recommended modification 2

Page 5

Delete *“CLPP2 Cherwell Local Plan Part 2”.*

Executive Summary

39. For the reasons given later in this report, the second indent to Theme 1 should be deleted. The first sentence in the box at the bottom of the page will need updating.

¹⁵ Page 44.

¹⁶ Page 45.

¹⁷ Page 50.

¹⁸ Page 110 (Appendix D).

Recommended modification 3

Page 9

Delete “– in particular to conserve and re-establish a lowland meadow ecology and community benefits of the Schoolfield.”

In the box at the bottom of the page, delete the second sentence.

Chapter 1

40. The second grammatical paragraph on page 11 is out of date and will be more so by the time of the referendum.

Recommended modification 4

Page 11, paragraph 1.1

Delete the whole of the second grammatical paragraph.

41. Page 15 needs updating and correcting.

Recommended modification 5

Page 15

Replace the first two sentences of the second paragraph with “*This Neighbourhood Plan was prepared within the context of the adopted Cherwell Local Plan Part 1 2011-2031 (CLPP1), the saved policies of the adopted Cherwell Local Plan 1996 (CLP) and the former Cherwell Local Plan Part 2. Policy Villages 1 of the adopted local plan identifies Weston-on-the-Green as a Category A settlement. Weston-on-the-Green is the fourth smallest of the Category A settlements*”.

At the end of the third paragraph, replace “*Figure 1*” with “*Figure 5*”.

Chapter 2

Page 25

42. Figure 5 does not show ancient woodland. The text therefore needs to be corrected.

Recommended modification 6

Page 25

Delete “; see *Figure 5*”.

Page 26

43. As explained in paragraphs 34 and 57 of this report I do not consider that the Schoolfield in general can have as substantial protection as land in the Green Belt or land that

satisfies the criteria for an LGS. However land on the western side of the Schoolfield within flood zones 2 and 3 is part of the natural wildlife corridor along the millstream. There are strong grounds for protecting it and, even if it were the case that part of the Schoolfield were needed for housing, there would be no need to use this flood-risk part.

Recommended modification 7

Page 26

Replace the second complete sentence with:

“The Schoolfield (see Appendix G, site h) and the subject of policy C1 (Area B) includes land in flood zones 2 and 3 that will help to establish an important link between the Weston Fen SSSI and the fields linking with rich habitats in the south (Westonwood and Otmoor CTA, Figure 6a and 6b below).”

Delete the third complete sentence.

Pages 27 and 28

44. This gives the wrong name for the Act and does not accurately state its content.

Recommended modification 8

Pages 27 and 28

Replace *“Natural Environment and Conservation Act (2006) places a duty on all public bodies, including Parish Councils) to conserve biodiversity (section 40 of the Act), taking account of species that are important to conserve.”* with: *“Natural Environment and Rural Communities Act 2006 places a duty on all public bodies, including Parish Councils in exercising their functions, to have regard (so far as is consistent with the proper exercise of those functions) to the purpose of conserving biodiversity, including, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.”*

Page 37

45. There is insufficient evidence to justify identifying the whole of the Schoolfield as a potential priority and, given the insufficiency of proven developable land, this might impede sustainable development. However the land immediately to the east of the millstream is part of a natural wildlife corridor and the identification of land within flood zones 2 and 3 would not impede such development.

Recommended modification 9

Page 37

Replace the first two lines of the third paragraph with:

“In Weston-on-the-Green, there is a ‘potential priority habitat’, namely that part of the area known as ‘the Schoolfield’ that lies within flood zones 2 and 3. This forms a link between existing preserved areas of rich biodiversity in the”.

Page 39

46. I have explained my concerns about the extent of constraints in Figure 15 in paragraph 34 above. It needs a key and modification to reflect the recommendations in this report. The four LGSs can remain shown in dark green and numbered I to IV. The important green spaces within the village (a to g) needs to be identified, but should be a different colour to the LGSs. Areas A to J and h should be in same colour as each other but in a different colour to the other categories just mentioned. The same applies to the plan in Appendix G

Recommended modification 10

Page 39, figure 15 and Appendix G page 146

Add a key

Alter the figure so that (1) the green spaces within the village (a to g) are a different colour to the LGSs and (2) Areas A to J and h are in same colour as each other but in a different colour to the other categories on the figure.

Chapter 3

Page 45

47. The approach on page 45 is broad brush. To some extent this is understandable given the absence as yet of figures under the NPPF (2019) paragraphs 66 and 67. As explained in paragraph 19 above this does not apply to this examination and (contrary to one representation) there is no reason why WPC at a relatively late stage in its NDP preparation should have contacted CDC about it. I have no hesitation in rejecting the argument in one representation that a village that provides 20 dwellings with planning permission as well as windfalls should be treated as making a nil contribution as unrealistic - the argument used to justify this would equally lead to the conclusion that a planning permission for 100 houses would result in the villages contribution being nil. Applying proportionality, I consider the

assessment of total need of a 15% growth in housing stock although broad brush, is reasonable. It is however clear that significantly more housing will be needed in addition to the 20 dwellings that have planning permission. The Green Belt exception site mentioned on page 38 is a mere possibility and allowance must be made for it not being developed. There is no objective basis for confidence that the total need can all be provided by Site A and windfalls and, given policy on the threshold for requiring affordable dwellings, good reason to doubt that small site windfalls could provide such dwellings. I have no doubt that a substantial level of affordable housing is needed. However the 60% is exceptionally high and is not justified by sufficient evidence. It should be removed. Since I am not in a position to recommend an alternative figure, the matter must be left to policy at a district level. I am also concerned that the definition in the draft WNP is too imprecise and could include some who are not in need and see no reason to depart from national and local strategic policy on this matter. As for the rest of page 45, it is not policy and can remain.

Recommended modification 11

Page 45

Replace the final sentence with “*Of these, at least 35% (or such higher figure as is fixed in local policy) shall be affordable housing as defined in local and national policy.*”

Page 48

48. I share CDC’s view that the source of the figures in Table B should be given and consider their omission to be within the relatively broad meaning of ‘error’ explained in Kebbell Developments Ltd.

Recommended modification 12

Page 48, Table B

Replace the text below the table with “*Table B: Population structure of Weston-on-the-Green compared with related regional figures (2011 UK Census data, Office of National Statistics www.ons.gov.uk).*”

Chapter 4

49. The role of an examiner in respect of a chapter recording concerns and aspirations is limited. The aspirations are clearly identified as such and do not purport to be policies. I am however satisfied that two changes proposed in the schedule of changes are appropriate.

Recommended modification 13

Page 60

Add at the end of the row beginning A23 “*subject to the outcome of the statutory consultation*”.

After the box, add, “*The Parish Council is aware that central funding is not available to address the aspirations above and are committed to a long-term plan to make improvements incrementally as funding allows.*”

Chapter 5

Page 64

50. An NDP cannot require a landowner to manage land in a particular way. This is an appropriate place to show that possible exception site mentioned on pages 46 and 130. While no other potential exception site has been identified, this does not prevent further sites coming forward.

Recommended modification 14

Page 64

Delete “*grassland habitat in this Plan*” and replace it with “*exception site*”.

Delete “*Area B: community/ Neighbourhood Green Space (to be managed as a lowland meadow)*” and the associated colouring and letter B.

Show the exception site mentioned on pages 46 and 130 and label it “*potential exception site*”.

Page 66

51. Policies E1 and E2 go considerably beyond national policy. Their effect would be to create significant obstacles to sustainable development. While as explained in paragraph 18 above, my role is to have regard to national policy, not to follow it come what may, I have concluded that their departure from national policy goes too far. The reasoning in paragraph 34 above applies to the final indent.

Recommended modification 15

Pages 65-66

Replace E1 with:

“E1: Development should provide a positive contribution to the locally distinctive character of Weston-on-the-Green and conserve important aspects of the setting of the village, in particular it should:

- Recognise the importance of open space, rural character and important views;*
- Achieve a biodiversity net gain for the parish including appropriate maintenance and expansion of green spaces;*
- Implement a biodiversity measure for all development proposals; and*
- Resist development outside the village confines along the B430 unless both (1) a need for further sustainable development in or next to the village has been shown to exist and the extent of land used for the development does not exceed that needed to meet the need and (2) it is shown that there is no more sustainable place where such development is deliverable.”*

Replace “, in particular” in E2 with “ and where appropriate”.

Page 67

52. The final sentence of policy E6 is not policy, but explanation, and should be removed. The point this makes has already been made on page 38 and does not need to be repeated. The last four words of the policy’s first sentence partly overlap policy E7, but unlike E7 omit national policy’s reference to very special circumstances. These four words should also be deleted. A reference to Figure 15 would assist clarity.

Recommended modification 16

Page 67, policy E6

Replace policy E6 with “E6: Four sites, the boundaries of which are shown in Figure 15, are designated as Local Green Spaces. They are:

I: Weston Manor grounds fronting the B430;

II: the Stocks situated on a small green at the junction of Church Road and the B430;

III: St. Mary’s Churchyard;

IV: the playing field.”

53. The second and third sentences of policy E7 are not policy and should be deleted.

Recommended modification 17

Page 67, policy E7

Delete the second and third sentences.

Page 70

54. As CDC point out a further planning application is possible. It follows that policy H3 could apply to Site A.

Recommended modification 18

Page 70, policy H1

Delete “(as planning approval has been granted, policy H3 does not apply).”

55. CLPP1 policy BSC 3 provides a qualifying threshold for affordable homes of 11 dwellings (or which would be provided on sites suitable for 11 dwellings). Policy H2 as worded would therefore inhibit the provision of needed affordable homes. This has not been sufficiently justified. The same applies to the word “*minor*”, which may imply fewer than 10 homes. Notwithstanding Local Plan policy Villages 1, I consider it particularly important to limit the extent of constraints on the provision of clearly needed affordable housing.

Recommended modification 19

Page 70, policy H2

Replace “*minor*” with “*other*”

Delete “*typically but not exclusively less than 10 dwellings,*”.

Page 71

56. The community’s desire for affordable housing is appropriate. It is not enough to place something that ought to be a policy elsewhere in a neighbourhood plan¹⁹ and the omission of a policy dealing with the percentage of affordable housing is an error that should be rectified. It is not enough to state this in the text of the draft NDP.

¹⁹ A point illustrated in Bassetlaw v. Secretary of State [2019] EWHC 556 (Admin), Andrews J., 23rd January 2019.

Recommended modification 20

Page 71

Insert the following new policy

“H9: Developments of 10 or more dwellings (gross), or which would be provided on sites suitable for 10 or more dwellings (gross), will provide at least 35% of new housing as affordable homes on site. In the event of a lower threshold for affordable housing or a higher percentage for provision becoming local policy, these will apply. Where this would result in a requirement that part of an affordable home should be provided, a financial contribution of equivalent value will be required for that part only. Otherwise, financial contributions in lieu of on-site provision will not be accepted.”

Page 73

57. A planning policy cannot require a landowner to manage land in a particular way, nor can it extend existing public rights of access limited to footpaths to other areas of land over which the public have no right of access. Nothing in the papers that I seen shows that acquisition (compulsory or otherwise) is a realistic prospect. Rather it is aspirational. An NDP may however record community aspirations and contain planning policies that advance these. I also agree with CDC that the second paragraph of policy C1 is supporting text, not policy. Having borne in mind representations and my site visit, I consider that the Schoolfield merits a degree of protection, but that this should not be the strong degree of protection afforded to Green Belt and LGS land. Development should only take place if fully justified by proven need. If there development of the site, it could in any event only take place after the possible presence of protected species mentioned in the 4 Acre Ecology report has been fully investigated at appropriate times of the year. Any such development should avoid flood zones 2 and 3, minimise adverse effect on the Oxfordshire Way and make a full contribution to affordable housing.

58. The proposed modification is not intended to indicate that the Schoolfield site is suitable for development. I have no reason to disagree with CDC’s Strategic Housing Land Availability Assessment Report 2013’s and the Conservation Area Appraisal’s conclusions in respect of it. Rather it is intended to provide for circumstances where need is shown to exist and there is no better deliverable site.

Recommended modification 21

Page 73

Insert before the heading Community Policies

“Area B (The Schoolfield as shown in Appendix F) lies within the Weston-on-the-Green Conservation Area Boundary (see Figure 9) and has three public rights of way traversing or bounding the site (public footpaths 404/23; 404/27; 404/28). These are used by local villagers for general movement around the village and by walkers as part of the Oxfordshire Way route from Henley-on-Thames to Bourton-on-the-Water and in the general enjoyment of the environment. The site is important to the village, being adjacent to the Mill stream and still showing evidence of an ancient ridge and furrow pattern. As such it is a special space in the village and it places Weston-on-the-Green in the broader context of historic connections in the Oxfordshire landscape. The community wishes to see Area B preserved and managed as a potential grassland habitat with access for passive recreational open space commensurate with the maintenance of a lowland meadow. It also wishes to see this site carefully managed to enhance natural grassland and wildlife biodiversity.”

Replace the whole of the bold text shown as policy C1

“Development that prevents Area B’s preservation as an open space or that destroys ridge and furrow of value on it on it will only be permitted if each of the following apply:

- (1) a need for further sustainable development in or next to the village has been shown to exist and the extent of land used for the development does not exceed that needed to meet the need;*
- (2) it is shown that there is no more sustainable place where such development is deliverable;*
- (3) no development takes place in flood zones 2 and 3;*
- (4) no development harms the potential priority habitat area in flood zones 2 and 3, the millstream and Gallos Brook;*
- (5) the site has been fully surveyed at appropriate times of the year for the presence of protected species;*
- (6) there is full compliance with policy H9; and*
- (7) the impact on the Oxfordshire Way is kept to a minimum.”*

Page 74

59. Policy C5 is worded too broadly. There may be development that does not affect the specified matters.

Recommended modification 22

Page 74, policy C5

Replace the first three lines with “*Developments should not harm a heritage asset, character of the village centre, or important space, key street scenes and views such that:*”

Replace “*Development shall show that the design will conserve*” with “*Unless required for sustainable development (and then only to the extent necessary) development will not harm*”.

60. Natural England is not a part of OCC and should not be shown as such.

Recommended modification 23

Page 77, paragraph 5.3

Replace “*, Natural England),*” with “*),Natural England*”.

Pages 79 - 86 Table C

61. This should reflect the modifications recommended above and show OCC’s responsibilities

Recommended modification 24

Pages 79 - 86 Table C

In column 1 under E1, replace the wording with, “*Development should provide a positive contribution to the locally distinctive character of Weston-on-the-Green and conserve important aspects of the setting of the village*”.

In column 1 under E7, delete all but the first sentence.

In column 1 under H2, replace the existing wording with: “*In addition to the major development set out in Policy H1, sustainable residential development within the village confines will be permitted for conversion, infilling and other development, provided that they protect the character of the village and are in accord with the other policies in the Neighbourhood Plan and Local Planning Policies.*”

Page 81, row relating to E5, 3rd column

Add “*Oxfordshire County Council*”.

Page 83-84

Insert a new row dealing with recommended policy H9. In column 1 insert, “*H9: Developments of 10 or more dwellings (gross), or which would be provided on sites suitable for 10 or more dwellings (gross), will provide at least 35% of new housing as affordable homes on site.*” In column 2 insert “*Refuse planning applications that do not provide the*

required level of affordable housing". In column 3 insert, "*Weston-on-the-Green PC Cherwell District Council*".

Page 84

Replace the wording under C1 with:

"Development that significantly prevents Area B's preservation as an open space or that destroys ridge and furrow of value on it will only be permitted if each of 7 criteria apply."

Pages 84-85

Replace all the wording under C5 with, "*Developments should not harm a heritage asset, character of the village centre, or important space, key street scenes and views*"

Page 86, 1, row relating to T2 and T3, 3rd column

In each case add "*Oxfordshire County Council*".

Appendix F

Page 129

62. In order to ensure that the constraints in the plan do not prevent further sustainable development should this be needed the heading "Reason for rejection under this Plan" should be modified to "Reason for non-allocation under this Plan".

Recommended modification 25

Appendix F, page 129, column 3

Replace "*Reason for rejection under this Plan*" with "*Reason for non-allocation under this Plan*".

Pages 140-141

63. This should reflect the modification to policy C1 above.

Recommended modification 26

Appendix F, page 140, box

Delete the box and the text in it and replace it with "*Policy C1 is set out on page*" [AS MAY BE] "*above*".

Pages 143-144

64. Similarly pages 143 and 144, which may record the community's aspirations, should reflect the modification to policy C1.

Recommended modification 27

Appendix F, page 143

Replace "*The intention of this policy (C1)*" with "*The hope of the community*".

Replace "*The plan will retain*" with "*Unless needed for sustainable development the plan will retain*".

Replace "*The proposal includes an option to set*" with "*The community's aspirations might be met by setting up*"

Page 144

Replace "*Policy C1 embodies the importance of securing this site for the wellbeing of current and future village residents and is strongly supported by the Parish Council*" with "*Policy C1 recognises the importance of this site and provides some protection for it*".

10. Updating

65. 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.

11. The Referendum Area

66. I have considered whether the referendum area should be extended beyond the designated plan area. In particular I have considered the farms a little to the west of the village, but outside the village boundary. However I can see no sufficient reason to extend the area and therefore recommend that the referendum area be limited to the parish.

12. Summary of Main Findings

67. I commend the Draft WNP for being clear, intelligible and well written and for its logical structure.

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

69. With those modifications the Draft WNP 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 Weston-on-the-Green (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 WNP is in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

70. I recommend that the modified NDP proceed to a referendum, the referendum area being the area of the Draft WNP.

Timothy Jones, Barrister, FCI Arb,

Independent Examiner,

No 5 Chambers

11th September 2019.

Appendix A: Recommended Modifications

Recommended modification 1

Page 2

Delete: *“which now moves to formal examination by Cherwell District Council and their appointed Examiner before being put to a village referendum”*.

Recommended modification 2

Page 5

Delete *“CLPP2 Cherwell Local Plan Part 2”*.

Recommended modification 3

Page 9

Delete *“– in particular to conserve and re-establish a lowland meadow ecology and community benefits of the Schoolfield.”*

In the box at the bottom of the page, delete the second sentence.

Recommended modification 4

Page 11, paragraph 1.1

Delete the whole of the second grammatical paragraph.

Recommended modification 5

Page 15

Replace the first two sentences of the second paragraph with *“This Neighbourhood Plan was prepared within the context of the adopted Cherwell Local Plan Part 1 2011-2031 (CLPP1), the saved policies of the adopted Cherwell Local Plan 1996 (CLP) and the former Cherwell Local Plan Part 2. Policy Villages 1 of the adopted local plan identifies Weston-on-the-Green as a Category A settlement. Weston-on-the-Green is the fourth smallest of the Category A settlements”*.

At the end of the third paragraph, replace *“Figure 1”* with *“Figure 5”*.

Recommended modification 6

Page 25

Delete “; see Figure 5”.

Recommended modification 7

Page 26

Replace the second complete sentence with:

“The Schoolfield (see Appendix G, site h) and the subject of policy C1 (Area B) includes land in flood zones 2 and 3 that will help to establish an important link between the Weston Fen SSSI and the fields linking with rich habitats in the south (Westonwood and Otmoor CTA, Figure 6a and 6b below).”

Delete the third complete sentence.

Recommended modification 8

Pages 27 and 28

Replace “Natural Environment and Conservation Act (2006) places a duty on all public bodies, including Parish Councils) to conserve biodiversity (section 40 of the Act), taking account of species that are important to conserve.” with: “Natural Environment and Rural Communities Act 2006 places a duty on all public bodies, including Parish Councils in exercising their functions, to have regard (so far as is consistent with the proper exercise of those functions) to the purpose of conserving biodiversity, including, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.”

Recommended modification 9

Page 37

Replace the first two lines of the third paragraph with:

“In Weston-on-the-Green, there is a ‘potential priority habitat’, namely that part of the area known as ‘the Schoolfield’ that lies within flood zones 2 and 3. This forms a link between existing preserved areas of rich biodiversity in the”.

Recommended modification 10

Page 39, figure 15 and Appendix G page 146

Add a key

Alter the figure so that (1) the green spaces within the village (a to g) are a different colour to the LGSs and (2) Areas A to J and h are in same colour as each other but in a different colour to the other categories on the figure.

Recommended modification 11

Page 45

Replace the final sentence with *“Of these, at least 35% (or such higher figure as is fixed in local policy) shall be affordable housing as defined in local and national policy.”*

Recommended modification 12

Page 48, Table B

Replace the text below the table with *“Table B: Population structure of Weston-on-the-Green compared with related regional figures (2011 UK Census data, Office of National Statistics www.ons.gov.uk).”*

Recommended modification 13

Page 60

Add at the end of the row beginning A23 *“subject to the outcome of the statutory consultation”*.

After the box, add, *“The Parish Council is aware that central funding is not available to address the aspirations above and are committed to a long-term plan to make improvements incrementally as funding allows.”*

Recommended modification 14

Page 64

Delete *“grassland habitat in this Plan”* and replace it with *“exception site”*.

Delete *“Area B: community/ Neighbourhood Green Space (to be managed as a lowland meadow)”* and the associated colouring and letter B.

Show the exception site mentioned on pages 46 and 130 and label it *“potential exception site”*.

Recommended modification 15

Pages 65-66

Replace E1 with:

“E1: Development should provide a positive contribution to the locally distinctive character of Weston-on-the-Green and conserve important aspects of the setting of the village, in particular it should:

- *Recognise the importance of open space, rural character and important views;*
- *Achieve a biodiversity net gain for the parish including appropriate maintenance and expansion of green spaces;*
- *Implement a biodiversity measure for all development proposals; and*
- *Resist development outside the village confines along the B430 unless both (1) a need for further sustainable development in or next to the village has been shown to exist and the extent of land used for the development does not exceed that needed to meet the need and (2) it is shown that there is no more sustainable place where such development is deliverable.”*

Replace “, in particular” in E2 with “ and where appropriate”.

Recommended modification 16

Page 67, policy E6

Replace policy E6 with “*E6: Four sites, the boundaries of which are shown in Figure 15, are designated as Local Green Spaces. They are:*

I: Weston Manor grounds fronting the B430;

II: the Stocks situated on a small green at the junction of Church Road and the B430;

III: St. Mary’s Churchyard;

IV: the playing field.”

Recommended modification 17

Page 67, policy E7

Delete the second and third sentences.

Recommended modification 18

Page 70, policy H1

Delete “(as planning approval has been granted, policy H3 does not apply).”

Recommended modification 19

Page 70, policy H2

Replace “minor” with “other”

Delete “typically but not exclusively less than 10 dwellings,”.

Recommended modification 20

Insert the following new policy

“H9: Developments of 10 or more dwellings (gross), or which would be provided on sites suitable for 10 or more dwellings (gross), will provide at least 35% of new housing as affordable homes on site. In the event of a lower threshold for affordable housing or a higher percentage for provision becoming local policy, these will apply. Where this would result in a requirement that part of an affordable home should be provided, a financial contribution of equivalent value will be required for that part only. Otherwise, financial contributions in lieu of on-site provision will not be accepted.”

Recommended modification 21

Insert before the heading Community Policies

“Area B (The Schoolfield as shown in Appendix F) lies within the Weston-on-the-Green Conservation Area Boundary (see Figure 9) and has three public rights of way traversing or bounding the site (public footpaths 404/23; 404/27; 404/28). These are used by local villagers for general movement around the village and by walkers as part of the Oxfordshire Way route from Henley-on-Thames to Bourton-on-the-Water and in the general enjoyment of the environment. The site is important to the village, being adjacent to the Mill stream and still showing evidence of an ancient ridge and furrow pattern. As such it is a special space in the village and it places Weston-on-the-Green in the broader context of historic connections in the Oxfordshire landscape. The community wishes to see Area B preserved and managed as a potential grassland habitat with access for passive recreational open space commensurate with the maintenance of a lowland meadow. It also wishes to see this site carefully managed to enhance natural grassland and wildlife biodiversity.”

Replace the whole of the bold text shown as policy C1

“Development that prevents Area B’s preservation as an open space or that destroys ridge and furrow of value on it on it will only be permitted if each of the following apply:

- (1) a need for further sustainable development in or next to the village has been shown to exist and the extent of land used for the development does not exceed that needed to meet the need;*
- (2) it is shown that there is no more sustainable place where such development is deliverable;*
- (3) no development takes place in flood zones 2 and 3;*
- (4) no development harms the potential priority habitat area in flood zones 2 and 3, the millstream and Gallos Brook;*

(5) the site has been fully surveyed at appropriate times of the year for the presence of protected species;

(6) there is full compliance with policy H9; and

(7) the impact on the Oxfordshire Way is kept to a minimum.”

Recommended modification 22

Page 74, policy C5

Replace the first three lines with *“Developments should not harm a heritage asset, character of the village centre, or important space, key street scenes and views such that:”*

Replace *“Development shall show that the design will conserve”* with *“Unless required for sustainable development (and then only to the extent necessary) development will not harm”*.

Recommended modification 23

Page 77, paragraph 5.3

Replace *“, Natural England),”* with *“,Natural England”*.

Recommended modification 24

Pages 79 - 86 Table C

In column 1 under E1, replace the wording with, *“Development should provide a positive contribution to the locally distinctive character of Weston-on-the-Green and conserve important aspects of the setting of the village”*.

In column 1 under E7, delete all but the first sentence.

In column 1 under H2, replace the existing wording with: *“In addition to the major development set out in Policy H1, sustainable residential development within the village confines will be permitted for conversion, infilling and other development, provided that they protect the character of the village and are in accord with the other policies in the Neighbourhood Plan and Local Planning Policies.”*

Page 81, row relating to E5, 3rd column

Add *“Oxfordshire County Council ”*.

Page 83-84

Insert a new row dealing with recommended policy H9. In column 1 insert, *“H9: Developments of 10 or more dwellings (gross), or which would be provided on sites suitable for 10 or more dwellings (gross), will provide at least 35% of new housing as affordable*

homes on site.” In column 2 insert “*Refuse planning applications that do not provide the required level of affordable housing*”. In column 3 insert, “*Weston-on-the-Green PC Cherwell District Council*”.

Page 84

Replace the wording under C1 with:

“Development that significantly prevents Area B’s preservation as an open space or that destroys ridge and furrow of value on it will only be permitted if each of 7 criteria apply.”

Pages 84-85

Replace all the wording under C5 with, “*Developments should not harm a heritage asset, character of the village centre, or important space, key street scenes and views*”

Page 86, 1, row relating to T2 and T3, 3rd column

In each case add “*Oxfordshire County Council*”.

Recommended modification 25

Appendix F, page 129, column 3

Replace “*Reason for rejection under this Plan*” with “*Reason for non-allocation under this Plan*”.

Recommended modification 26

Appendix F, page 140, box

Delete the box and the text in it and replace it with “*Policy C1 is set out on page*” [AS MAY BE] “*above*”.

Recommended modification 27

Appendix F, page 143

Replace “*The intention of this policy (C1)*” with “*The hope of the community*”.

Replace “*The plan will retain*” with “*Unless needed for sustainable development the plan will retain*”.

Replace “*The proposal includes an option to set*” with “*The community’s aspirations might be met by setting up*”.

Page 144

Replace “*Policy C1 embodies the importance of securing this site for the wellbeing of current and future village residents and is strongly supported by the Parish Council*” with “*Policy C1 recognises the importance of this site and provides some protection for it*”.

Appendix B: Abbreviations

The following abbreviations are used in this report:

CDC	Cherwell District Council
CLP	Cherwell Local Plan 1996
CLPP1	Cherwell Local Plan Part 1 2011-2031
Convention	European Convention on Human Rights
Draft WNP	The Submission version of the Weston-on-the-Green Neighbourhood Plan 2018 - 2031
EU	European Union
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
LGS	Local Green Space
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework
OCC	Oxfordshire County Council
p	page
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)
WPC	Weston-on-the-Green Parish Council

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