

Hazelwood Parish Council

# Hazelwood Parish Neighbourhood Development Plan

A Report to Amber Valley Borough Council of the Independent  
Examination of the Hazelwood Parish Neighbourhood  
Development Plan

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# Contents

## Page

<b>Overall Finding</b>	<b>3</b>
<b>Neighbourhood Planning</b>	<b>4</b>
<b>Independent Examination</b>	<b>4</b>
<b>Basic Conditions and other statutory requirements</b>	<b>6</b>
<b>Documents</b>	<b>8</b>
<b>Consultation</b>	<b>9</b>
<b>The Neighbourhood Plan taken as a whole</b>	<b>11</b>
<b>The Neighbourhood Plan policies</b>	<b>19</b>
Policy NP1: Support appropriate new build	
Policy NP2: Design principles for development	
Policy NP3: Housing mix for new development	
Policy NP4: The conversion of redundant farm buildings	
Policy NP5: Maintaining and enhancing the Parish's biodiversity	
Policy NP6: Protection of landscape character across the Plan area	
Policy NP7: Use of buildings for employment purposes	
Policy NP8: Support the expansion or creation of local businesses	
Policy NP9: Improving the provision of broadband	
Policy NP10: Enhancing the provision of community facilities	
<b>Summary and Referendum</b>	<b>38</b>
<b>Annex: Minor corrections to the Neighbourhood Plan</b>	<b>41</b>

## Overall Finding

This is the report of the Independent Examination of the Hazelwood Parish Neighbourhood Development Plan. The plan area is the entire Hazelwood Parish area. The Plan period is 2016 to 2031. The Neighbourhood Plan includes policies relating to the development and use of land.

The report finds that subject to specified modifications the Neighbourhood Plan meets the basic conditions and other requirements to proceed to a local referendum within the Parish.

## Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”<sup>1</sup>
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Hazelwood Parish Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Hazelwood Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the Hazelwood Neighbourhood Area which was formally designated by Amber Valley Borough Council (the Borough Council) on 10 February 2014. Plan preparation has been progressed through the Hazelwood Parish Neighbourhood Plan Steering Group (the Steering Group) that includes Parish Councillors and other residents of the Parish.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to the Borough Council. The Borough Council has, on 23 June 2016, submitted the Neighbourhood Plan to me for independent examination.

## Independent Examination

5. This report sets out the findings of the independent examination into the Neighbourhood Plan.<sup>2</sup> The report makes recommendations to the Borough Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. The

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<sup>1</sup> Paragraph 183 National Planning Policy Framework (2012)

<sup>2</sup> Paragraph 10 Schedule 4B Town and Country Planning Act 1990

Borough Council will decide what action to take in response to the recommendations in this report.

6. The Borough Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will be 'made' by the Borough Council. If 'made' the Neighbourhood Plan will come into force and subsequently be used in the determination of planning applications and decisions on planning appeals in the plan area.
7. I have been appointed by the Borough Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and the Borough Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Independent Examiner of Neighbourhood Plans. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.
8. As independent examiner I am required to produce this report and must recommend either:
  - that the Neighbourhood Plan is submitted to a referendum, or
  - that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
  - that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.
9. I make my recommendation in this respect and in respect to any extension to the referendum area,<sup>3</sup> in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.<sup>4</sup>

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<sup>3</sup> Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

<sup>4</sup> Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

10. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.<sup>5</sup> The Guidance states “it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.”
11. The examiner has the ability to call a hearing for the purposes of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary I proceeded on the basis of written representations.

## **Basic conditions and other statutory requirements**

12. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.<sup>6</sup> A neighbourhood plan meets the basic conditions if:
- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,
  - the making of the neighbourhood plan contributes to the achievement of sustainable development,
  - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
  - the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations, and
  - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.<sup>7</sup>
13. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.<sup>8</sup> All of these matters are considered in the later sections of this report titled

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<sup>5</sup> Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

<sup>6</sup> Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

<sup>7</sup> Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

<sup>8</sup> The Convention rights has the same meaning as in the Human Rights Act 1998

‘The Neighbourhood Plan taken as a whole’ and ‘The Neighbourhood Plan policies’.

14. In addition to the basic conditions and Convention rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.<sup>9</sup> I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 which are made pursuant to the powers given in those sections.
15. The Neighbourhood Plan relates to the whole of the Parish of Hazelwood. That area was designated by the Borough Council as a neighbourhood area on 10 February 2014. A map of the Hazelwood Neighbourhood Plan Area is included as Map 1 of the Submission Version Plan. The Neighbourhood Plan does not relate to more than one neighbourhood area,<sup>10</sup> and no other neighbourhood development plan has been made for the neighbourhood area.<sup>11</sup> All requirements relating to the plan area have been met.
16. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;<sup>12</sup> and the Neighbourhood Plan does not include provision about excluded development.<sup>13</sup> I am able to confirm that I am satisfied that each of these requirements has been met.
17. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.<sup>14</sup> The front cover of the Submission Version clearly shows the plan period to be 2016 – 2031.
18. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.<sup>15</sup> It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan. I have been appointed to examine whether the

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<sup>9</sup> In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

<sup>10</sup> Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

<sup>11</sup> Section 38B (2) Planning and Compulsory Purchase Act 2004

<sup>12</sup> Section 38A (2) Planning and Compulsory Purchase Act 2004

<sup>13</sup> Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

<sup>14</sup> Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

<sup>15</sup> Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

submitted Neighbourhood Plan meets the basic conditions and Convention rights, and the other statutory requirements.

19. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.
20. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans are a reflection of thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.
21. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the basic conditions and the other requirements I have identified.<sup>16</sup>

## Documents

22. I have given consideration to each of the following documents in so far as they have assisted me in considering whether the Neighbourhood Plan meets the basic conditions and other requirements:

- Hazelwood Parish Neighbourhood Plan 2016-2031 Submission Version
- Hazelwood Parish Neighbourhood Plan 2016-2031 Basic Conditions Statement
- Hazelwood Parish Neighbourhood Plan 2016-2031 Consultation Summary [*In this report referred to as the Consultation Statement*]
- Reports and supplementary documents presented at [www.hazelwoodpc.org.uk/npreports.html](http://www.hazelwoodpc.org.uk/npreports.html)
- Representations received during the Regulation 16 publicity period
- Adopted Amber Valley Borough Local Plan 2006
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]

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<sup>16</sup> See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

- Department for Communities and Local Government Permitted development for householders' technical guidance (April 2016) [*In this report referred to as the Permitted Development Guidance*]
- Department for Communities and Local Government Planning Practice Guidance web-based resource (first fully launched 6 March 2014) [*In this report referred to as the Guidance*]
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004 (as amended)
- Localism Act 2011
- Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations*]

## Consultation

23. The submitted Neighbourhood Plan is accompanied by a comprehensive Consultation Statement which outlines the process undertaken in the preparation of the plan. In addition to detailing who was consulted and by what methods, it also provides a summary of comments received from local community members and other consultees and how these have been addressed in the submission plan. I highlight here a number of key components of consultation undertaken in order to illustrate the approach adopted.
24. Consultation during plan preparation has included five 'Open Evenings', and staffing of a stand at village fetes in 2014 and 2015. Two surveys have been delivered to every household in the Plan area by the Steering Group, and a third survey was mailed to all households by Midlands Rural Housing. In addition, Steering Group meetings have been open to all parishioners; information has been made available on a website; and publicity has been achieved through electronic mailings, newsletters, display of posters, and advertising and editorial in the Parish magazine.
25. Pre-submission consultation in accordance with Regulation 14 was undertaken in the six-week period 1 October 2015 to 16 November 2015. This consultation included placing copies of the Plan in several locations, use of the local press, a newsletter distributed door to door, posters, and four drop-in sessions. Responses resulted in adjustment of the Draft Neighbourhood Plan prior to approval by the Parish

Council and submission to the Borough Council in April 2016.

26. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 publicity period between 9 May 2016 to 20 June 2016. A total of 8 representations were submitted during the publicity period which I have taken into consideration in preparing this report, even though they may not be referred to in whole, or in part.
27. Historic England, the Environment Agency, the Coal Authority, Ashfield District Council, and Highways England have confirmed they have no comments to make in respect of the Submission Plan. Representations including comments have been submitted by Mr N Straw; by Pegasus Planning Group Limited on behalf of Mr R Grogan; and by Amber Valley Borough Council. I have considered representations relating to sustainable development in the next section of my report titled 'The Neighbourhood Plan taken as a whole', and where relevant, also when considering individual policies later in my report. Where representations relate to specific policies only I have considered the matters raised when examining the policies in question later in my report.
28. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which –
- a) Contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
  - b) Explains how they were consulted;
  - c) Summarises the main issues and concerns raised by the persons consulted; and
  - d) Describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.<sup>17</sup>
29. The Consultation Summary document which I have referred to as the Consultation Statement in my report includes information in respect of each of the requirements set out in the Regulations. On this basis I am satisfied the requirements have been met.

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<sup>17</sup> Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

## The Neighbourhood Plan taken as a whole

30. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and human rights requirements; has regard to national policies and advice contained in guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the development plan for the area. Each of the plan policies is considered in turn in the section of my report that follows this.

Consideration of Convention rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and the making of the Neighbourhood Plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects

31. The Basic Conditions Statement states *“The Neighbourhood Plan has regard to and is compatible with the fundamental rights and freedoms guaranteed under the European Convention on Human Rights.”* I have given consideration to the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).<sup>18</sup> I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. Although no equalities impact assessment has been undertaken the submission draft of the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics. The Basic Conditions Statement confirms that *“great care has been taken throughout the preparation and drafting of this Plan to ensure that the views of the whole community were embraced to avoid any unintentional negative impacts on particular groups.”*

32. The objective of EU Directive 2001/42<sup>19</sup> is *“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the*

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<sup>18</sup> The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

<sup>19</sup> Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

*environment.*” The Neighbourhood Plan falls within the definition of ‘plans and programmes’<sup>20</sup> as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.<sup>21</sup>

33. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council to submit to the Borough Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required. The Borough Council issued a Screening Opinion on 28 January 2016 that had been prepared on its behalf by consultants concluding that the Neighbourhood Plan “*will have no likely significant effects (either positive or negative) and therefore a SEA is not required*”. It is confirmed that the Consultation Bodies agreed with the Screening conclusions. I am satisfied that the requirements in respect of Strategic Environmental Assessment have been met.

34. The Basic Condition Statement states “*The nearest European site lies to the north west of the parish, some 8 km distant (Gang Mine Special Area for Conservation). Slightly further to the North West are the Bees Nest & Green Clay Pits (SAC) and the Peak District Dales (SAC). Given the distance from the parish boundary, the nature of the designation and the contents of the plan it is concluded that there are no likely significant effects on European sites.*” Consultants engaged by the Borough Council have stated “*It is also concluded that the plan will have no likely significant effects on European sites and therefore an HRA is not required.*” I conclude the requirements of the EU Habitats Regulations have been met. I have not seen anything that suggests the Neighbourhood Plan will have a significant effect on a European offshore marine site.

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

36. I conclude that the Neighbourhood Plan:

- is compatible with the Convention rights
- does not breach, and is otherwise compatible with, EU obligations

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<sup>20</sup> Defined in Article 2(a) of Directive 2001/42

<sup>21</sup> Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

- is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects

37. The Guidance<sup>22</sup> states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations (including obligations under the Strategic Environmental Assessment Directive):

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

Consideration whether having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan; and whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development

38. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans<sup>23</sup> which requires plans to be “*consistent with national policy*”.

39. Lord Goldsmith has provided guidance<sup>24</sup> that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a

<sup>22</sup> National Planning Policy Guidance paragraph 031 reference ID:11-031-20150209

<sup>23</sup> Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

<sup>24</sup> The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the Lord’s Grand Committee on 6 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”

40. The Basic Conditions Statement seeks to demonstrate that the Neighbourhood Plan has been prepared with regard to national policies as set out in the Framework. A statement is made referring to paragraphs 183-185 of the Framework; a table links the objectives of the Neighbourhood Plan to relevant goals of the Framework; and a further table presents commentary linking each Neighbourhood Plan policy with paragraphs of the Framework.
41. The Neighbourhood Plan includes a positive Vision seeking in 15 years’ time to have the characteristic of being a welcoming community that will grow slowly providing a high quality environment in which to live, work and visit. The Vision is supported by eight community objectives. The community objectives of the Neighbourhood Plan are consistent with the core planning principles of the Framework. The Neighbourhood Plan taken as a whole seeks to shape and direct development. This is precisely the role national policy envisages for a neighbourhood plan.
42. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that need to ‘have regard to’ national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.*”
43. A representation states “*It is noted that HNP’s sustainable development principles are stated outside of any policies of the HNP and therefore do not embed the principles of sustainable development and the presumption in favour of sustainable development within the policies of the plan. This approach may well be considered sound as the plan should be read in its entirety, but this is not without risk of the plan being misinterpreted and the overall vision of the plan be irreversibly harmed*”. The representation proposes “*A new policy can be added to the plan to specifically clarify that the HNP only supports sustainable development in accordance with the defined principles.*”

44. Another representation states “The presumption in favour of development in the National Planning Policy Framework (NPPF) is based on sustainability. The limbs of sustainability are clearly set out in NPPF and via Appeal Decisions since 2012 a body of evidence has been built as to their interpretation and application. It is an important and well established principle at national level and is applied by AVBC in the determination of planning applications where saved policies are deemed ‘out of date’. The need to anticipate that the new Local Plan (of which the Neighbourhood Plan will form a subset) will also embrace sustainability means that the Neighbourhood Plan Policies should do so too. There is an acknowledgement in section 8 of the need for new development to be sustainable but section 8 is not one with its own attendant Policy and nowhere in any of the Policies in other sections is the need for sustainability called for either. It is suggested therefore that this important issue be addressed by moving NP1 to section 8 and adapting it so that: a) It makes a clear statement that **all** new development must be sustainable by reference to the principles set out in NPPF and b) It ceases to be a housing Policy and becomes instead an overarching Policy for **all** new development. (It is difficult to see what NP1 as currently drafted is seeking to achieve as a housing Policy which NP3 isn’t given that both relate to new housing development only and that they are distinguished merely by the fact that NP1.2 deals with the number of dwellings and NP3 the mix, which could easily be covered within a single Policy ie NP3). The above change would mean that NP1 sits in a section with more appropriate narrative (which may need some refinement to reflect NP1’s new overarching ‘status’) rather than as now sitting in section 9 which is actually about design and which has a design policy (NP2) in it as well as wholly design narrative.”

45. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision-taking.<sup>25</sup> The Guidance states, “This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate

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<sup>25</sup> Paragraph 14 National Planning Policy Framework 2012

*evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions*<sup>26</sup>.

46. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is no requirement to consider whether some alternative plan would make a greater contribution to sustainable development. There is also no requirement for a neighbourhood plan to include, as suggested in representations, a general policy requiring all new development to be sustainable. I have however recommended a modification of Policy NP1 where I consider there is a particular need to refer to sustainable development.
47. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes a section that seeks to demonstrate the economic, social and environmental attributes of the Neighbourhood Plan. The Submission Plan includes at Section 8 a statement of sustainable development principles embodied in the Neighbourhood Plan.
48. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by conditionally supporting additional homes, and seeking to preserve and enhance public and private sector community and commercial facilities, whilst seeking to safeguard aspects of the built and natural environment that are highly valued by residents to the area. In particular, I consider the Neighbourhood Plan contributes to the achievement of sustainable development in that it seeks to:
- Conditionally support development of new dwellings;
  - Ensure development reflects local design characteristics;
  - Support development of house types that meet local needs;
  - Conditionally support conversion of redundant farm buildings for residential use;
  - Maintain and enhance biodiversity;
  - Prevent harm to the landscape character;
  - Conditionally support alternative employment use of farm buildings;

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<sup>26</sup>National Planning Policy Guidance (Ref ID:41-072-20140306)

- Conditionally support expansion or creation of local businesses;
- Support improvement of broadband provision; and
- Enhance provision of community facilities.

49. I note the Neighbourhood Plan includes a Monitoring and Review section which states an implementation report will be published annually and that it is an expectation of the Neighbourhood Plan Group and the Parish Council that there will be a complete review of the Neighbourhood Plan five years after it has been made. This commitment to monitoring and review represents good practice.

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

Consideration whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

51. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.<sup>27</sup> “*Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies*”.<sup>28</sup>

52. The Guidance states, “*A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.*”<sup>29</sup> In this independent examination I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies

<sup>27</sup> Paragraph 16 National Planning Policy Framework 2012

<sup>28</sup> Paragraph 184 National Planning Policy Framework 2012

<sup>29</sup> National Planning Policy Guidance (ID: 41-04720 140306)

contained in the development plan for the area of the authority (or any part of that area). The Borough Council has informed me that the Development Plan applying in the Hazelwood neighbourhood area and relevant to the Neighbourhood Plan is the Adopted Amber Valley Borough Local Plan 2006.

53. As the Adopted Local Plan predates the Framework, the Framework takes precedence where there is a conflict. There is no requirement for a neighbourhood plan to include particular types of development and land use policies, nor is there any requirement for a neighbourhood plan to deal with any particular development and land use issues.

54. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. Whilst the Borough Council is currently preparing a Local Plan the emerging Local Plan is not part of the Development Plan and this requirement does not apply in respect of that. Emerging planning policy is subject to change as plan preparation work proceeds.<sup>30</sup> The Guidance states *“Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood areas. They can be developed before or at the same time as the local planning authority is producing its Local Plan”*. In *BDW Trading Limited, Wainholmes Developments Ltd v Cheshire West & Chester BC* [2014] EWHC1470 (Admin) it was held that the only statutory requirement imposed by basic condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted development plan as a whole.

55. In considering a now repealed provision that *“a local plan shall be in general conformity with the structure plan”* the Court of Appeal stated *“the adjective ‘general’ is there, “to introduce a degree of flexibility.”*<sup>31</sup> The use of *‘general’* allows for the possibility of conflict. Obviously there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

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

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<sup>30</sup> The Borough Council has work underway to prepare a new Local Plan that is programmed to be adopted in 2018.

<sup>31</sup> *Persimmon Homes v. Stevenage BC* the Court of Appeal [2006] 1 P & CR 31

- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with*
- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy*
- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy*
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.*<sup>32</sup>

57. My approach to the examination of the Neighbourhood Plan policies has been in accordance with this guidance. If there were to be a conflict between a policy in a neighbourhood plan and a policy in a local plan the conflict must be resolved in favour of the policy contained in the last of those plans to become part of the Development Plan.<sup>33</sup> The Neighbourhood Plan cannot therefore prejudice the emerging Local Plan in this respect.<sup>34</sup> I conclude the Neighbourhood Plan can proceed to being 'made' in advance of the emerging Local Plan being adopted.

58. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole and each of the plan policies below. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

## **The Neighbourhood Plan policies**

59. The Neighbourhood Plan includes 10 policies:

Policy NP1: Support appropriate new build

Policy NP2: Design principles for development

<sup>32</sup> National Planning Policy Guidance (ID ref: 41-074 201 40306)

<sup>33</sup> Section 38(5) Planning and Compulsory Purchase Act 2004

<sup>34</sup> See paragraph 103 of the Judgement in *BDW Trading Limited, Wainholmes Developments Ltd v Cheshire West & Chester BC* [2014] EWHC 1470 (Admin)

- Policy NP3: Housing mix for new development
- Policy NP4: The conversion of redundant farm buildings
- Policy NP5: Maintaining and enhancing the Parish's biodiversity
- Policy NP6: Protection of landscape character across the Plan area
- Policy NP7: Use of buildings for employment purposes
- Policy NP8: Support the expansion or creation of local businesses
- Policy NP9: Improving the provision of broadband
- Policy NP10: Enhancing the provision of community facilities

60. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.”* *“Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”*<sup>35</sup>
61. The Guidance states *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”*
62. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.*
63. *“A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning*

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<sup>35</sup> Paragraphs 184 and 185 National Planning Policy Framework 2012

*authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.”<sup>36</sup>*

64. If to any extent a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is made they will be utilised in the determination of planning applications and appeals, I have examined each policy individually in turn.
65. The Neighbourhood Plan includes at Section 15 two aspiration policies. The Framework states, Local Planning Authorities should “*where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community before submitting their applications*”. The Framework is silent as to the role of parish councils in this respect. It is however the Borough Council who are empowered to make the Neighbourhood Plan. It would seem illogical to decide that a matter included in the Framework as national planning policy cannot be part of a statutory Neighbourhood Plan. I therefore do not propose to recommend a modification in respect of Aspiration Policy 1.
66. The matters included in Aspiration Policy 2 do not relate to the development and use of land and as such cannot serve a role in the determination of planning applications. I consider Aspiration Policy 2 does not form part of the Neighbourhood Development Plan and as such has not been considered as part of this independent examination. Aspiration Policy 2 would not be the subject of any referendum and would not become part of the Development Plan for the area. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. However, the Guidance states, “*Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.*” Speeding vehicles and provision of bus services to Derby are not matters relating directly to the development and use of land. I recommend a modification in accordance with this Guidance.

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<sup>36</sup> See section 38(6) of the Planning and Compulsory Purchase Act 2004.

### **Recommended modification 1:**

#### **Transfer Aspiration Policy 2 ‘Road safety and transport’ to a non-statutory annex to the Neighbourhood Plan**

67. Policies 1, 2, 4, 6, 7, and 8 of the Neighbourhood Plan refer to the Village Design Statement (VDS) in a variety of ways including “*guidelines*”, “*design characteristics*”, and “*principles*”. I have dealt with this issue of inconsistent referencing in respect of my consideration of individual policies. The preparation of the Village Design Statement represents good practice in informing the Neighbourhood Plan as issues of design and context of development are important considerations in several policies included in the Plan. The VDS has been carefully prepared and clearly reflects a thorough understanding of the built and natural environments in the Parish, and the relationship between them. The Regulations require submission of the proposed Neighbourhood Development Plan to the local planning authority. The Submission Plan states at paragraph 96 “*The VDS is part of the Neighbourhood Plan and is intended to guide and inform the application of Neighbourhood Plan policies*”. The VDS itself states it is part of the Neighbourhood Plan and acts as guidance to inform the application of plan policies. The Borough Council has in a representation stated “*It should also be noted that the Village Design Statement has not been adopted by the Borough Council and although referred to does not appear to be part of the Neighbourhood Plan*”.
68. Regulation 15 sets out what should be submitted by the Qualifying Body to the Local Planning Authority, and Regulation 16 sets out the requirements in respect of the Local Planning Authority publicising the plan proposal. Regulation 17 sets out the documents that the Local Planning Authority must send to the independent examiner which include “*the plan proposal*” and “*the documents referred to in Regulation 15(1) and any other documents submitted to the local planning authority by the qualifying body in relation to the plan proposal*”. The Local Planning Authority has stated awareness of reports on the Parish website and provided an electronic link to me. This link, <http://www.hazelwoodpc.org.uk/npreports.html> , leads to a list of 20 “*reports and supplementary documents*” which include the Village Design Statement. The Neighbourhood Plan includes footnote 11 that states the Village Design Statement is available on the Parish Council website<sup>37</sup>. The VDS is one of several documents freely available for inspection on the Parish Council website forming the evidence base

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<sup>37</sup> I read the addition of the word “plan” at the end of footnote 11 as a typographical error.

supporting the Neighbourhood Plan. I am satisfied interested parties will have been aware of, and able to access, the VDS.

69. On this basis I have proceeded with this independent examination on the understanding that the Key Principles of the VDS set out in paragraph 99 of the Neighbourhood Plan are clearly part of the Neighbourhood Plan, and that the VDS itself is part of the evidence base of the Neighbourhood Plan. Given the significance of the VDS to the Neighbourhood Plan, not least being specifically referred to in several policies, I consider the VDS should be included as an annex to the Neighbourhood Plan. Consequential adjustments to text in the Neighbourhood Plan and in the VDS will be necessary to clarify this relationship.

**Recommended modification 2:**

**The Village Design Statement should be included as an annex to the Neighbourhood Plan and consequential adjustments to text should be made to clarify this**

**Policy NP1: Support appropriate new build**

70. This policy seeks to establish that development of single dwellings may be permitted on sites within or on the edge of the main settlements of the Plan area subject to four criteria. The policy also seeks to establish that proposals for more than one dwelling will only be considered where there is an exceptional and demonstrable need and which conforms with the first part of the policy.
71. A representation states the policy only relates to the provision of housing and therefore the policy title is misleading. The Policy relates to proposals for new dwellings. I recommend a modification so that the policy title is adjusted to reflect the content in order to achieve a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
72. The representation also states the wording at point 2 makes no sense *“and it is assumed that the intention here is for proposals of more than one dwelling to be subject to the same criteria (a-d) as a single dwelling would be”*. I agree with this representation and have recommended an appropriate modification. I have earlier in my report referred to the need to refer to the Village Design Statement in a consistent way and have made a recommendation of modification in this respect also.

73. The first part of the policy includes the term “*may be permitted*”. Use of the words “may be” does not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. The second part of the policy states proposals “*will only be considered where...*”. This is not acceptable as properly submitted proposals must be considered by the local planning authority. With regard to the issue of decision making the Framework states “*the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise*”. The material considerations at the time of determination of a future planning application are unknown and therefore cannot be dismissed through a policy that states development will be permitted or not permitted. Policies should use the term “will be supported” or “not be supported” in recognition that the basis of decision making is the development plan unless material considerations indicate otherwise. I have recommended a modification of both parts of Policy NP1 so that the basis of decision making on planning applications should be clarified.

74. I have, earlier in my report, referred to a representation that states “*There is an acknowledgement in section 8 of the need for new development to be sustainable but section 8 is not one with its own attendant Policy and nowhere in any of the Policies in other sections is the need for sustainability called for either*”. The Borough Council states “*The wording of this policy would appear to allow development at a scale (particularly considering the areas identified on Map 5) that would be unsuitable given the range of facilities and employment opportunities in the area, and as such would not constitute sustainable development. It should be noted that only part of the area lies within an area designated as a Special Landscape Area or the Green Belt.*” The Framework states “*all plans should be based upon and reflect the presumption in favour of sustainable development*”<sup>38</sup>. Given the particular nature of the Policy and in light of the representation of the Borough Council with which I agree, I have recommended a modification of the Policy requiring development proposals to demonstrate they satisfy the principles of sustainable development set out in the Framework.

75. The support of the Policy for development on the edge of settlements is not in conformity with the strategic policies of the Development Plan

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<sup>38</sup> Paragraph 15 National Planning Policy Framework 2012

and could lead to unsuitable, and indeed multiple repeat, extensions of the settlement boundaries. The representation of settlements on Map 5 is imprecise and does not provide a clear framework for decision making on development proposals as required by paragraph 17 of the Framework. I recommend the policy should refer to sites within and well-integrated with the groups of continuous buildings forming settlements at Hazelwood Hill, Firestone, Hob Hill, Nether Lane, Shottlegate, and Over Lane, as existing on the date the Neighbourhood Plan is made in order to provide a clear framework for decision making.

76. Two representations refer to the lack of clarity regarding the meaning of the term “*exceptional and demonstrable need*” one of which also states there should be a Parish-borne constraint to need. I agree with these representations and have recommended an appropriate modification.

77. I consider the policy is not to be regarded as a policy relevant to the supply of housing in that it does not place any cap on the amount of development that can occur, but seeks to influence the location and nature of development that will proceed.

78. Subject to the recommended modification the policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. Subject to recognition of the Derwent Valley Mills World Heritage Site Buffer Zone, which extends to include part of the Plan area, the policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the basic conditions.

### **Recommended modification 3:**

#### **In Policy NP1**

- **add “homes” as a final word to the policy title**
- **in 1. Replace the first paragraph with “Development proposals for single dwellings, that can be demonstrated to satisfy the principles of sustainable development set out in the Framework, will be supported on sites within and well-integrated with the groups of continuous buildings forming settlements at Hazelwood Hill, Firestone, Hob Hill, Nether**

Lane, Shottlegate, and Over Lane, as existing on the date the Neighbourhood Plan is made, subject to the following criteria:"

- in b. delete "guidelines"
- in d. after "Belt" insert "and World Heritage Site Buffer Zone"
- replace 2. with "Development proposals for more than one dwelling will be supported where, in addition to the sustainability and locational requirements and criteria stated in part 1 of this policy being met, it can also be demonstrated that it is necessary to meet the exceptional and demonstrable local housing needs of residents within the Parish."

### **Policy NP2: Design principles for development**

79. This policy seeks to establish design principles for development. The Borough Council states "*The policy does not provide clarity in relation to the attributes that make Hazelwood unique*". The Policy includes reference to "*key features such as mellow brick, stone, slate roofs, and hedgerows will be strongly encouraged*." It is not clear whether these are the attributes in question, and if so it is not clear how these make Hazelwood unique. When all characteristics are considered every place is unique. I consider a policy approach that focuses on those special attributes and characteristics that make the Parish locally distinctive would more suitably provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. I have recommended a modification on this basis. It is inappropriate to anticipate updates of the Village Design Statement the contents of which are clearly unknown. I have recommended a modification on this basis also.

80. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the basic conditions.

#### **Recommended modification 4:**

##### **In Policy NP2**

**Replace the text with “To be supported development proposals must demonstrate how they reflect, preserve, and enhance the locally distinctive design attributes and characteristics of the Parish detailed in the Village Design Statement, and in respect of new homes or extensions, the Housing Character Survey. In particular, the retention and reinstatement of existing key features such as mellow bricks, stone, slate roofs, and hedgerows will be strongly supported”**

#### **Policy NP3: Housing mix for new development**

81. This policy seeks to establish support for proposals for smaller (maximum 3 bedroom) homes and establish that proposals for larger dwellings will only be supported where it can be demonstrated that it is necessary to meet the needs of residents who have lived in the Parish for 5 years or more.
82. A representation states the policy should limit development to single dwellings. The Policy refers to criteria in Policy NP1. All the policies of the Neighbourhood Plan apply throughout the Plan area. It is not necessary for policies to refer to other policies. I note every page of the Neighbourhood Plan includes a footnote confirming “*No Neighbourhood Plan policy will be applied in isolation; account will be taken of all relevant policies.*” I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
83. A representation states the term “*local need*” is open to different interpretations; and support for smaller dwellings should only apply whilst the requirement is considered to be unmet. I agree the term “*local need*” is imprecise. I also agree application of the policy should be linked to changing market conditions and need over time in order to remain relevant. I therefore recommend a modification so that the policy takes account of the needs of the residential community and provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. I have also recommended modification of the policy to more clearly explain the particular type of local housing needs that may warrant support of a proposal for a home with more than 3 bedrooms, again to provide a practical framework within which

decisions on planning applications can be made as required by paragraph 17 of the Framework.

84. The 5-year residential requirement of the Policy has not been sufficiently justified in the Neighbourhood Plan. The Guidance states *“Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”*. I recommend that the 5-year residential requirement is deleted from the policy.
85. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 5:**

**In Policy NP3**

**Replace the text with “Proposals for new homes will only be supported if they include a maximum of 3 bedrooms, unless the latest assessment of housing need in the Parish demonstrates such homes are no longer required. Otherwise proposals for new homes with more than 3 bedrooms will only exceptionally be supported to meet particular housing needs of local residents for example, to enable their caring for dependent or elderly relatives, or to cater for a large family.”**

**Policy NP4: The conversion of redundant farm buildings**

86. This policy seeks to establish conditional support for proposals to convert redundant farm buildings to residential uses.
87. The Borough Council states it is not clear what is meant by Criterion F. Another representation states the policy would not support conversion of a building too small to be subdivided even though it increased the supply of smaller quality homes. I agree with both these representations and recommend a modification so that the policy aligns with the intention of the Framework to deliver a wide choice of quality homes, and provides a practical framework within which

decisions on planning applications can be made as required by paragraph 17 of the Framework.

88. Use of the term “*undue*” when referring to impact on the road network implies excessive or disproportionate use. The Framework states “*Development should only be prevented or refused on transport grounds where the residual impacts of development are severe.*” I recommend a modification of the Policy so that it is more clearly focussed on the qualitative issues of tranquillity and rural character rather than the volume of traffic flow.
89. The term “*where applicable*” in the second part of the Policy introduces uncertainty. I recommend this should be deleted so that the policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
90. A representation states the term “*will be supported*” is needlessly permissive and ought to be replaced with the term “may be supported”. Use of the term “*will be supported*” is acceptable as it is consistent with the basis of decision making being the development plan unless material considerations indicate otherwise. Use of the term “may be supported” is not acceptable as it leaves uncertainty and does not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
91. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes; requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the basic conditions.

#### **Recommended modification 6:**

##### **In Policy NP4**

- **replace criterion f. with “does not create any dwelling with more than 3 bedrooms.”**
- **in b. delete “have an undue impact on” and insert “adversely affect the tranquillity and rural character of”**

- delete “, where applicable”

### **Policy NP5: Maintaining and enhancing the Parish’s biodiversity**

92. This policy seeks to establish that development should seek to conserve or enhance the biodiversity value of the Plan area, and establish that proposals must demonstrate how they have used native hedgerows on site boundaries instead of hard/physical structure wherever possible.
93. The Policy includes provision relating to hedgerows. The Hedgerows Regulations 1997 establish a balanced regime to protect hedgerows in specified locations. It is however appropriate for the Neighbourhood Plan to seek to introduce an additional regime of protection to apply in the context of development proposals.
94. The Borough Council states *“Part 2 of the policy would benefit from rewording to avoid unintended consequences. Dry stone walls are features that contribute to the character of the area and do have benefits for biodiversity. There may be instances where these would be more appropriate forms of boundary treatments but would be precluded by this policy”*. I recommend a modification so that biodiversity benefits are properly assessed should an alternative to native hedgerows be proposed for boundary treatment in development schemes. In this way the policy will provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
95. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment in particular planning for biodiversity at a landscape-scale. Subject to the recommended modification this policy meets the basic conditions.

#### **Recommended modification 7:**

##### **In Policy NP5**

**Replace 2. with “Development proposals must include native hedgerows on site boundaries unless the biodiversity benefits of an alternative boundary treatment can be demonstrated.”**

## **Policy NP6: Protection of landscape character across the Plan area**

96. This policy seeks to establish three conditions for support of development proposals in order to protect the landscape character of the Plan area.
97. A representation states the term “*should be supported*” is needlessly permissive and ought to be replaced with the term “may be supported”. Use of the term “should be supported” or indeed “may be supported” is not acceptable as they leave uncertainty and do not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. Use of the term “will be supported” is acceptable as it is consistent with the basis of decision making being the development plan unless material considerations indicate otherwise. I have recommended a modification in this respect.
98. As Planning Policy must serve the public interest I recommend a modification to clarify the identified view corridors highlighted in Map 7 and Appendix D are restricted to those visible from locations that are freely accessible to the general public.
99. The Policy includes an unnecessarily confusing number 1. I therefore recommend a modification so that the policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
100. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with requiring good design and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the basic conditions.

### **Recommended modification 8: In Policy NP6**

- **delete the number “1”**
- **delete “should” and insert “will”**
- **after “corridors” insert “that are visible from locations that are freely accessible to the general public”**

## **Policy NP7: Use of buildings for employment purposes**

101. This policy seeks to establish conditional support for the re-use or redevelopment of farm buildings and rural buildings outside the settlements for defined employment uses.
102. A representation states the term “*will be supported*” is needlessly permissive and ought to be replaced with the term “may be supported”. Use of the term “will be supported” is acceptable as it is consistent with the basis of decision making being the development plan unless material considerations indicate otherwise. Use of the term “may be supported” is not acceptable as it leaves uncertainty and does not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
103. The representation proposes an alternative structuring of the Plan policies. It is not within my role to restructure the Neighbourhood Plan where this is not necessary to meet the basic conditions or other requirements. The representation also states there is no need to require conformity with other policies. I agree with this latter proposition. All the policies of the Neighbourhood Plan apply throughout the Plan area. I note every page of the Neighbourhood Plan includes a footnote confirming “*No Neighbourhood Plan policy will be applied in isolation; account will be taken of all relevant policies.*” I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.
104. Use of the term “*undue*” when referring to impact on the road network implies excessive or disproportionate use. The Framework states “*Development should only be prevented or refused on transport grounds where the residual impacts of development are severe.*” I recommend a modification of the Policy so that it is more clearly focussed on the qualitative issues of tranquillity and rural character rather than the volume of traffic flow.
105. Condition e. requires demonstration that a re-use or redevelopment for a specified use should demonstrate it is in keeping with the distinctive character of adjoining buildings “*or*” their wider setting. This condition would lead to support for proposals that are not in keeping with the distinctive character of adjoining buildings or not in keeping with their wider setting. I recommend a modification requiring proposals to be in keeping with both these elements of setting. I also

recommend a modification to reflect the current categories of the Use Classes Order<sup>39</sup>.

106. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with building a strong competitive economy; supporting a prosperous rural economy; promoting sustainable transport; requiring good design; promoting healthy communities conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 9:**

**In Policy NP7**

- **delete “light industry” insert “business”**
- **delete “and policies NP2, NP4 NP5”**
- **in b. delete “have an undue impact on” and insert “adversely affect the tranquillity and rural character of”**
- **in e. replace “or” with “and”**

**Policy NP8: Support the expansion or creation of local businesses**

107. This policy seeks to establish support for the expansion and creation of new businesses where three specified circumstances are met. The Policy also seeks to establish conditional support for the expansion of business facilities at The Knowle.

108. The Borough Council states the policy would benefit from criterion c) being linked to the other criteria. I agree with this representation and recommend an appropriate modification.

109. A representation states the policy does not apply to existing businesses other than at The Knowle and that the policy does not capture key measures of sustainability relating to reducing commuting times and enhancing quality of life. There is no requirement for a Neighbourhood Plan to include policies to relate to any particular land uses or topics. The Policy relates to new businesses on land already in employment use, and existing business facilities at the Knowle. There is no requirement for the Policy to include additional elements. The

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<sup>39</sup> The Town and Country Planning (Use Classes) Order 1987 (as amended)

Knowle is a locally significant employment site. I find the policy heading satisfactory in assisting a reader to locate a relevant policy.

110. The representation also refers to the inconsistent use of the terms “*will be supported*” and “*may be supported*”. Use of the term “will be supported” is acceptable as it is consistent with the basis of decision making being the development plan unless material considerations indicate otherwise. Use of the term “may be supported” is not acceptable as it leaves uncertainty and does not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework. I have recommended a modification on this basis.
111. The representation also states “*There are two further apparent shortcomings in relation to business development: Section 18 of the Village Design Statement (VDS) is headed “New agricultural, equestrian and business buildings design guidelines”. However, part of this section relates to existing agricultural buildings and the rest seems to relate to new agricultural buildings. It is certainly silent on the subject of new business buildings design. This heading implies that in referring to “businesses”, NP8 does not in fact include agricultural or equestrian enterprises. There therefore needs to be an explicit statement in NP8 that this Policy covers agricultural and equestrian enterprises.*” I am satisfied the first part of the policy is clearly stated to relate to the expansion and creation of new businesses on land already in employment use.
112. Use of the term “*unacceptable*” when referring to impacts on the local road network is imprecise. The Framework states “*Development should only be prevented or refused on transport grounds where the residual impacts of development are severe.*” I recommend a modification of the Policy so that it is more clearly focussed on the qualitative issues of tranquillity and rural character rather than the volume of traffic flow.
113. The second part of the policy requires development to be in accordance with this Neighbourhood Plan. All the policies of the Neighbourhood Plan apply throughout the Plan area. I note every page of the Neighbourhood Plan includes a footnote confirming “*No Neighbourhood Plan policy will be applied in isolation; account will be taken of all relevant policies.*” I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

114. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with building a strong competitive economy; supporting a prosperous rural economy; promoting sustainable transport; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 10:**

**In Policy NP8**

- in b. delete “would not have unacceptable impacts on the local road network.” and insert “would not adversely affect the tranquillity and rural character of the local road network and”
- delete “may” and insert “will”
- delete “this Neighbourhood Plan and its attendant” and insert “the”

**Policy NP9: Improving the provision of broadband**

115. This policy seeks to establish support for proposals that provide access to superfast broadband to serve properties and business developments. The policy also seeks to establish that new development, where viable and practicable, should provide the necessary means for residents to access the superfast broadband network when it becomes available, and if possible contribute to improvements in the service for existing residents and businesses.

116. A representation states the term “*will be supported*” is needlessly permissive and ought to be replaced with the term “may be supported”. Use of the term “will be supported” is acceptable as it is consistent with the basis of decision making being the development plan unless material considerations indicate otherwise. Use of the term “may be supported” is not acceptable as it leaves uncertainty and does not provide a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

117. The Policy refers to “*properties and business developments*”. This phrase is ambiguous. I therefore recommend a modification so that the policy provides a practical framework within which decisions

on planning applications can be made as required by paragraph 17 of the Framework.

118. The policy refers to contributions to improvements in the service for existing residents and businesses. Although the provision is presented in terms of “*if possible*” I recommend a modification to delete these words as they could not form the basis of a valid planning condition, or Section 106 agreement, nor comply with the Community Infrastructure Regulations. This community aspiration could however be included in a clearly identifiable annex to the Neighbourhood Plan not forming part of the Development Plan for the area.
119. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with supporting high quality communications infrastructure; Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 11:**

**In Policy NP9 delete “and, if possible, contribute to improvements in the service for existing residents and businesses”**

**Policy NP10: Enhancing the provision of community facilities**

120. This policy seeks to establish conditional support for the improvement or extension of community facilities and opposition to redevelopment of such facilities for non-community uses unless it can be demonstrated the operation of the facility is no longer financially viable, or no longer necessary, or is to be replaced by an equivalent facility.
121. A representation states a preference for an earlier draft of this policy and refers to requirements of the policy being greater than in respect of other types of development referred to in other policies of the Neighbourhood Plan. I have earlier in my report explained my role is to examine whether or not the Submission Plan meets the basic conditions and other requirements. This examination does not extend to consideration of earlier drafts of the Plan. It is also not within my role to decide whether requirements for support of one type of

development proposal should be mirrored or varied in respect of any other type of development proposal.

122. The representation also refers to the requirement to conform to policies NP1 and NP4 “*neither of which could reasonably be deemed to be relevant.*” I agree with this proposition. All the policies of the Neighbourhood Plan apply throughout the Plan area. I note every page of the Neighbourhood Plan includes a footnote confirming “*No Neighbourhood Plan policy will be applied in isolation; account will be taken of all relevant policies.*” I recommend a modification so that the Policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

123. The Policy refers to community facilities. Whilst the supporting text refers to the Memorial Hall and the playing field facilities it is not clear whether the Policy relates to these facilities only. I recommend a modification so that the Policy states the facilities to which it relates. I recommend this modification so that the policy provides a practical framework within which decisions on planning applications can be made as required by paragraph 17 of the Framework.

124. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy is in general conformity with the strategic policies contained in the Development Plan, the Adopted Amber Valley Borough Local Plan 2006. The policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the recommended modification this policy meets the basic conditions.

**Recommended modification 12:**

**In Policy NP10**

- **the community facilities should be specified**
- **delete provision e)**

## Summary and Referendum

125. I have recommended the following modifications to the Submission Version Plan:

### **Recommended modification 1:**

**Transfer Aspiration Policy 2 ‘Road safety and transport’ to a non-statutory annex to the Neighbourhood Plan**

### **Recommended modification 2:**

**The Village Design Statement should be included as an annex to the Neighbourhood Plan and consequential adjustments to text should be made to clarify this**

### **Recommended modification 3:**

#### **In Policy NP1**

- **add “homes” as a final word to the policy title**
- **in 1. Replace the first paragraph with “Development proposals for single dwellings, that can be demonstrated to satisfy the principles of sustainable development set out in the Framework, will be supported on sites within and well-integrated with the groups of continuous buildings forming settlements at Hazelwood Hill, Firestone, Hob Hill, Nether Lane, Shottlegate, and Over Lane, as existing on the date the Neighbourhood Plan is made, subject to the following criteria:”**
- **in b. delete “guidelines”**
- **in d. after “Belt” insert “and World Heritage Site Buffer Zone”**
- **replace 2. with “Development proposals for more than one dwelling will be supported where, in addition to the sustainability and locational requirements and criteria stated in part 1 of this policy being met, it can also be demonstrated that it is necessary to meet the exceptional and demonstrable local housing needs of residents within the Parish.”**

### **Recommended modification 4:**

#### **In Policy NP2**

**Replace the text with “To be supported development proposals must demonstrate how they reflect, preserve, and enhance the locally distinctive design attributes and characteristics of the Parish detailed in the Village Design Statement, and in respect of new homes or extensions, the Housing Character Survey. In**

particular, the retention and reinstatement of existing key features such as mellow bricks, stone, slate roofs, and hedgerows will be strongly supported”

**Recommended modification 5:**

**In Policy NP3**

Replace the text with “Proposals for new homes will only be supported if they include a maximum of 3 bedrooms, unless the latest assessment of housing need in the Parish demonstrates such homes are no longer required. Otherwise proposals for new homes with more than 3 bedrooms will only exceptionally be supported to meet particular housing needs of local residents for example, to enable their caring for dependent or elderly relatives, or to cater for a large family.”

**Recommended modification 6:**

**In Policy NP4**

- replace criterion f. with “does not create any dwelling with more than 3 bedrooms.”
- in b. delete “have an undue impact on” and insert “adversely affect the tranquillity and rural character of”
- delete “, where applicable”

**Recommended modification 7:**

**In Policy NP5**

Replace 2. with “Development proposals must include native hedgerows on site boundaries unless the biodiversity benefits of an alternative boundary treatment can be demonstrated.”

**Recommended modification 8:**

**In Policy NP6**

- delete the number “1”
- delete “should” and insert “will”
- after “corridors” insert “that are visible from locations that are freely accessible to the general public”

**Recommended modification 9:**

**In Policy NP7**

- delete “light industry” insert “business”
- delete “and policies NP2, NP4 NP5”
- in b. delete “have an undue impact on” and insert “adversely affect the tranquillity and rural character of”
- in e. replace “or” with “and”

**Recommended modification 10:**

**In Policy NP8**

- in b. delete “would not have unacceptable impacts on the local road network.” and insert “would not adversely affect the tranquillity and rural character of the local road network and”
- delete “may” and insert “will”
- delete “this Neighbourhood Plan and its attendant” and insert “the”

**Recommended modification 11:**

**In Policy NP9 delete “and, if possible, contribute to improvements in the service for existing residents and businesses”**

**Recommended modification 12:**

**In Policy NP10**

- the community facilities should be specified
- delete provision e)

126. I have also made a recommendation for modification of the Neighbourhood Plan in the Annex below.

127. I am satisfied that the Neighbourhood Plan<sup>40</sup>:

- is compatible with the Convention rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the statutory requirements set out in paragraph 8(1) of schedule 4B of the Town and Country Planning Act 1990 and meets the basic conditions:
  - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
  - the making of the neighbourhood plan contributes to the achievement of sustainable development;
  - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);

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<sup>40</sup> The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

- does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.<sup>41</sup>

**I recommend to Amber Valley Borough Council that the Hazelwood Parish Neighbourhood Development Plan for the plan period up to 2031 should, subject to the modifications I have put forward, be submitted to referendum.**

128. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.<sup>42</sup> I have seen nothing to suggest the referendum area should be extended beyond the designated Neighbourhood Area.

**I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by the Borough Council as a Neighbourhood Area on 10 February 2014.**

### Annex: Minor Corrections to the Neighbourhood Plan

I am able to recommend modification of the Neighbourhood Plan in order to correct errors.<sup>43</sup> The Neighbourhood Plan includes a number of errors that are typographical in nature or arising from updates. I recommend these are corrected as follows:

The Village Design Statement is typed with different combinations of upper and lower case, for example differently in policies NP1 and NP6 and with the addition of a date in NP2. I recommend a consistent approach.

A number of consequential modifications to the general text of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies.

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<sup>41</sup> Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

<sup>42</sup> Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

<sup>43</sup> Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990

**Recommended modification 13:  
Identified errors that are typographical in nature or arising from updates should be corrected. Modification of general text will be necessary to achieve consistency with the modified policies**

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8 July 2016  
REPORT ENDS