

# **SWANWICK NEIGHBOURHOOD PLAN**

Swanwick Neighbourhood Plan Examination,  
A Report to Amber Valley Borough Council

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## **1. Introduction**

### The Neighbourhood Plan

This Report provides the findings of the examination into the Swanwick Neighbourhood Plan (referred to as the Neighbourhood Plan).

Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.

*“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.”*

(Paragraph 183, National Planning Policy Framework)

The Neighbourhood Plan was produced by a Working Group working on behalf of Swanwick Parish Council. Swanwick Parish Council is the *qualifying body* responsible for the production of this Neighbourhood Plan. This is in line with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012) and Planning Practice Guidance (2014).

This Examiner’s Report provides a recommendation as to whether or not the Neighbourhood Plan should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes in favour, then the Plan would be *made* by Amber Valley Borough Council. The Neighbourhood Plan would then be used to determine planning applications and guide planning decisions in the Swanwick Neighbourhood Area.

## Role of the Independent Examiner

I was appointed by Amber Valley Borough Council, with the consent of the qualifying body, to conduct an examination and provide this Report as an Independent Examiner. I am independent of the qualifying body and the local authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.

I am a chartered town planner and an experienced Independent Examiner of Neighbourhood Plans. I have extensive land, planning and development experience, gained across the public, private, partnership and community sectors.

As the Independent Examiner, I must make one of the following recommendations:

- a) that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
- b) that the Neighbourhood Plan, as modified, should proceed to Referendum;
- c) that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.

If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether or not the Referendum Area should extend beyond the Swanwick Neighbourhood Area to which the Plan relates.

In examining the Plan, I am also required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:

- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;
- the Neighbourhood Plan meets the requirements of Section 38B of the 2004 PCPA (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area);
- the Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted for examination by a qualifying body.

Subject to the contents of this Report, I am satisfied that all of the above points have been met.

## Neighbourhood Plan Period

A neighbourhood plan must specify the period during which it is to have effect. The front cover of the Neighbourhood Plan sets out the plan period, which runs from 2015 to 2028. In addition, the introductory section, on page 4 of the Neighbourhood Plan, states that it:

*“...sets out planning policies for the Plan Area from 2015 – end December 2028.”*

The plan period is also referred to in the Community Objectives section on page 12.

Given the above, the Neighbourhood Plan satisfies the relevant requirement in this regard.

## Public Hearing

According to the legislation, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.

However, the legislation establishes that it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.

Further to consideration of all of the relevant information, I confirmed to Amber Valley Borough Council that I was satisfied that the Swanwick Neighbourhood Plan could be examined without the need for a Public Hearing.

## **2. Basic Conditions and Development Plan Status**

### Basic Conditions

It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “basic conditions.” These were *set out in law*<sup>1</sup> following the Localism Act 2011. In order to meet the basic conditions, the Plan must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
- contribute to the achievement of sustainable development;
- be in general conformity with the strategic policies of the development plan for the area;
- be compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations.

I have examined the Neighbourhood Plan against the basic conditions.

A Basic Conditions Statement was submitted alongside the Neighbourhood Plan. This summarises the basic conditions in paragraph 1.3. I note that the wording of the basic conditions is the result of careful consideration and that summarising or paraphrasing them frequently results in mistakes. I note that, as a consequence of paraphrasing, there are some mistakes in paragraph 1.3 of the Basic Conditions. However, these are relatively minor and in any case, it is my role, as Independent Examiner, to assess the Neighbourhood Plan against the basic conditions.

The Basic Conditions Statement goes on to set out how, in the Parish Council’s opinion, the Neighbourhood Plan meets the basic conditions.

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<sup>1</sup> Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990

## European Convention on Human Rights (ECHR) Obligations

I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.

## European Union (EU) Obligations

There is no legal requirement for a neighbourhood plan to have a sustainability appraisal<sup>2</sup>. However, in some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment (SEA).

With the above in mind, draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects.

*“Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects.”* (Planning Practice Guidance<sup>3</sup>).

This process is referred to as a “screening” report, opinion or assessment. If the screening report identifies likely significant effects, then an environmental report must be prepared.

Amber Valley Borough Council has undertaken a Strategic Environmental Assessment Screening Report. This was submitted alongside the Neighbourhood Plan and considers whether or a Strategic Environmental Assessment and/or a Habitats Regulations Assessment is required.

The Screening Report concludes that:

*“As a result of the assessment, it is unlikely there will be any significant environmental effects arising from the Swanwick Neighbourhood Plan that were not covered in the Sustainability Appraisal of the Core Strategy.”*

I note that, at the time of the assessment, the Core Strategy was an emerging planning document at an advanced stage, but has since been withdrawn.

The Screening Report establishes that:

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<sup>2</sup> Paragraph 026, Ref: 11-027-20150209, Planning Practice Guidance

<sup>3</sup> Paragraph 027, ibid

*“The Neighbourhood Plan will not impact on the strategic location, nature, size and operating conditions of new development over and above that set by (the) current adopted Local Plan...”*

Further to the above, in establishing that a draft neighbourhood plan *“should be assessed”* to decide whether it might have significant environmental effects, Planning Practice Guidance refers to the need to consult environmental assessment consultation bodies. The statutory bodies, Natural England, English Heritage and the Environment Agency, have all been consulted and none has raised any concerns with regards to the conclusion of the Scoping Report, nor with regards to any other aspect of the Neighbourhood Plan’s compatibility, or otherwise, with EU obligations.

A Habitats Regulations Assessment (HRA) is required if the implementation of the Neighbourhood Plan may lead to likely negative significant effects on protected European sites. In this regard, the Scoping Report establishes that:

*“There are no European sites that occur within the neighbourhood area or Amber Valley Borough...”*

and that the Neighbourhood Plan does not require an Appropriate Assessment in this respect. This conclusion is supported by Natural England, which, further to consultation, has stated:

*“Natural England does not consider that this plan poses any likely significant risk to internationally or nationally designated nature conservation sites...”* (Natural England, 11 December 2015).

Further to all of the above, national guidance establishes that the ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations is placed on the local planning authority,

*“The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations.”* (Planning Practice Guidance<sup>4</sup>)

With regards this latter point, there is nothing before me to indicate that Amber Valley Borough Council has any concerns with regards the Neighbourhood Plan’s compatibility with EU obligations.

Taking everything into account, I am satisfied that the Neighbourhood Plan is compatible with EU obligations.

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<sup>4</sup> Paragraph 031, Reference: 11-031-20150209, Planning Practice Guidance



### **3. Background Documents and Swanwick Neighbourhood Area**

#### **Background Documents**

In undertaking this examination, I have considered various information in addition to the Swanwick Neighbourhood Plan. This has included:

- National Planning Policy Framework (The Framework) (2012)
- Planning Practice Guidance (2014)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- Amber Valley Local Plan (2006) (Local Plan)
- Basic Conditions Statement
- Consultation Statement
- Draft Strategic Environmental Assessment Screening Report
- Swanwick Parish Neighbourhood Plan Sustainability Grid

Also:

- Representations received

In addition, I spent an unaccompanied day visiting the Swanwick Neighbourhood Area.

## Swanwick Neighbourhood Area

A plan showing the boundary of the Swanwick Neighbourhood Area, which coincides with that of Swanwick Parish, is provided on page 4 of the Neighbourhood Plan.

Further to an application made by Swanwick Parish Council, Amber Valley Borough Council approved the designation of Swanwick as a Neighbourhood Area on 23<sup>rd</sup> May 2013.

This satisfies a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

## **4. Public Consultation**

### Introduction

As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.

Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

### Swanwick Neighbourhood Plan Consultation

Swanwick Parish Council submitted a Consultation Statement to Amber Valley Borough Council in line with legislative requirements. As required by the neighbourhood planning *regulations*<sup>5</sup>, this sets out who was consulted and how, together with the outcome of the consultation. The consultation process is also referred to on page 9 of the Neighbourhood Plan.

Prior to the designation of Swanwick as a Neighbourhood Area, a neighbourhood planning workshop, attended by 74 residents, was held in Swanwick in June 2012 and was followed by a drop-in consultation event, held in November 2012, in which around 60 people participated. These events were followed by a meeting to establish the Neighbourhood Plan Working Group in March 2013.

During 2014, in addition to various meetings, liaison with Amber Valley Borough Council and attendance at a Planning Aid workshop, the Working Group undertook a survey of local businesses. This was followed by further meetings and the production of a draft plan. An executive summary of the draft plan was produced and in March 2015, this was distributed to every household and business in Swanwick, together with a questionnaire.

The draft plan underwent consultation between the 26<sup>th</sup> March – 16<sup>th</sup> May 2015, over an extended period, due to Easter. All documents were uploaded to the Parish Council website and three separate drop-in sessions were held. On the last day of the consultation period, the draft plan was displayed at the Swanwick Well Dressing Fayre, where questionnaires and the executive summary were available.

Completed questionnaires, of which 89 were returned, were considered and a response report was published.

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<sup>5</sup>Neighbourhood Planning (General) Regulations 2012

The plan-making process was publicised and duly reported. In addition to the publication of newsletters, flyers and leaflets, notices were displayed in local shops, in the post office and on Parish notice boards. The dedicated page of the Parish website was regularly updated and notices were published in local newspapers.

The Consultation Statement demonstrates that the reporting process was transparent and there is evidence to show that the Neighbourhood Plan reflects the views of local people.

Taking everything into account, I am satisfied that the consultation process was comprehensive and robust.

## **5. The Neighbourhood Plan – Introductory Section**

**Where modifications are recommended, they are presented as bullet points and highlighted in bold print, with any proposed new wording in italics.**

The policies of the Neighbourhood Plan are considered against the basic conditions in Chapter 6 of this Examiner’s Report. I have also considered the Introductory Section of the Neighbourhood Plan and set out recommendations below that are aimed at making it a clear and user-friendly document.

The presentation of the Neighbourhood Plan is clear, with Policies being easily distinguishable from the main body of the text.

The opening paragraph of the introductory section, on page 4, summarises the role of the Neighbourhood Plan. For clarity, I recommend:

- **Second sentence, change to “...(AVBC) *it will form part of the development plan. As such, it will be used by*”**
- **Change b) to “...*applications...*”**

Part of section 2 on page 4 reads as though it were a Policy requirement, which it is not and I recommend:

- **Section 2, second paragraph, change to “...amongst local *people. It is therefore considered to be important that new large scale housing development also provides local facilities to support the social and economic well-being of the community.*”**

The Map on page 7 refers to “*Local Green Space*” in the Key. The Local Plan does not designate Local Green Space. It also refers to “*Cycle Network Proposed*” which is not a Local Plan designation and should not therefore be considered “*spatial planning policies in place at Borough level that apply to the Swanwick Parish.*” I also note that whilst “*Proposed Employment*” is included in the Key, there are no such designations shown on the Map.

For clarity, I recommend:

- **Map on page 7, delete “Local Green Space” (in Key and on Map)**
- **Also, delete “Cycle Network Proposed” and “Proposed Employment” (in Key and on Map)**

I acknowledge the reference on page 8 to collaborative working between Swanwick Parish Council and Amber Valley Borough Council.

Planning Guidance<sup>6</sup> requires local planning authorities to be proactive in providing information to communities about neighbourhood planning and to constructively engage with the community throughout the process. Collaborative working enables a neighbourhood plan to benefit from shared knowledge, skills and experience, helping to provide strong foundations for policy making.

I note that Amber Valley Borough Council has acted in a positive and proactive manner, with full regard to national advice.

Page 8 of the Neighbourhood Plan refers to “*land previously protected by AVBC Saved Policy EN5.*” As a saved policy of the Local Plan, Policy EN5 is an extant land use planning policy. I recommend:

- **Page 8, part e), delete “...previously...”**

This same section also refers to Neighbourhood Plan policies “*ensuring*” that any brownfield land in the village centre “*will be considered in the context of what is best for the whole village.*” There is no Policy in the Neighbourhood Plan that achieves this. Further, there is no evidence to support the contention that either national policy or local strategic policy requires brownfield development to meet such a requirement. I recommend:

- **Page 8, delete part b)**

Further to the above, parts of page 8 are worded in a way that pre-supposes outcomes. For clarity, I recommend:

- **Page 8, third paragraph, last sentence, change to “...are intended to achieve the following:”**
- **Page 8, six lines up from bottom of page, change to “The Plan seeks to minimise the negative impacts of growth during the plan period and sets out policies that aim to ensure that planning gains benefit the wider community.”**

Section 3 includes a small typographical error. I recommend:

- **Page 8, four lines up, add “...Saved Policies of the Local...”**

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<sup>6</sup> Paragraph 022, Reference 41-022-20150209

The Consultation section is a little unclear in parts and I recommend the following minor changes:

- **Page 9, section 4, line one, change to “...recognised...”**
- **Line 6, change to “...Plan was reported in the Parish newsletter, delivered to...Articles encouraged participation and provided updates on progress.”**
- **Line 8, change to “...events was collated and...Each one provided a full...The key events were summarised in the Consultation...”**

Whilst the Vision provides a link between the views of the community and the Policies that follow, the Community Aim reads as though it were a Policy requirement, which it is not. Further, the Aim itself goes well beyond the requirements of national or local policy. There is no substantive evidence to demonstrate that the Community Aim is deliverable, realistic or is put into effect by the Policies that follow.

I recommend:

- **Delete section 7, “Community Aim”**

Further to the above, the Community Objectives are worded as though they comprise Policies, which they do not. I find that, as presented, the Objectives raise expectations considerably beyond what the Neighbourhood Plan can achieve. As set out, rather than general Objectives from which the Neighbourhood Plan’s Policies have emerged, the Objectives appear as shortened – and to some degree, more onerous - versions of Policies.

Taking the above into account, I recommend:

- **Delete section 8, “Community Objectives”**

The text in Section 9 repeats information set out earlier in the Neighbourhood Plan. Also, it would help the presentation of the Neighbourhood Plan if the Policy section began on a new page. I recommend:

- **Delete text under section 9, “Neighbourhood Plan Policies.” Move heading “Neighbourhood Plan Policies” to the top of a new page. As a heading, this title does not need to be numbered, but this is purely a presentational matter and no recommendation is made in this regard.**

## **6. The Neighbourhood Plan – Neighbourhood Plan Policies**

### **Sustainable Development Principles**

#### **Policy 1: Sustainable Development Principles**

The Framework establishes that the purpose of the planning system is to contribute to the achievement of sustainable development. Further, Local Plan Policy LS1 supports development to take account of “*sustainability criteria*.”

The opening text to the Policy section, on page 13, provides a good summary of the importance of promoting sustainable development in Swanwick.

However, there is no evidence to demonstrate that Policy 1 itself is deliverable, that it has regard to national policy, that it is in general conformity with the strategic policies of the Local Plan, or that it would contribute to the achievement of sustainable development.

Rather, the first part of the Policy states that planning permission “*will be granted*” for a very specific development that delivers: housing, including affordable housing and housing to meet the needs of an ageing population; which improves the village centre; which provides additional car parking; which provides extended community facilities to meet the needs of a growing population; and which provides “*opportunities to maintain and extend open spaces...*”

Not only does the above approach, through use of the phrase “*will be granted,*” run the risk of pre-determining an application without taking relevant factors into account, it is unclear why sustainable development principles should only relate to this very specific kind of development proposal. Further, without any evidence to demonstrate that it would be possible for a development to deliver all of the outcomes listed in the Policy, there is uncertainty over whether the requirements imposed are deliverable.

The second part of the Policy makes an unnecessary reference to the need to take the Neighbourhood Plan into account. If the Neighbourhood Plan were to be made, its Policies would form part of the development plan and would therefore need to be taken into account as a matter of course. For clarity, it is the Policies of the Neighbourhood Plan that would form part of the development plan. Further, Policy 1 makes a reference to “*principles and advice*” and it is unclear what this actually relates to.



Policy 1 then goes on to require all development “*to be located*” so that there is no “*material harm*” to residential amenity, local character or to the “*social, built, historic, cultural and natural assets of the parish.*” This latter category is undefined and wide-ranging and in this regard, the Policy fails to provide a decision maker with a clear indication of how to respond to a development proposal.

Further to the above, the planning system supports sustainable growth. It is almost inevitable that sustainable development will lead to some sort of change. Consequently, planning policies allow for a balanced approach, whereby the benefits of development are weighed against possible harm. This does not mean that wherever any material harm arises, then a development proposal should be refused, but that the scale of such harm should be considered and that any benefits arising from the proposed development should also be taken into account when reaching a decision.

Policy 1 sets out an approach that fails to take the above into account. Consequently, it could prevent appropriate, sustainable development from coming forward and there is no evidence before me to demonstrate that this is not the case.

Taking all of the above into account, Policy 1 does not contribute to the achievement of sustainable development. It fails to meet the basic conditions. I recommend:

- **Delete Policy 1**

As noted above, the supporting text provides a good introduction to the Policy section. Further to the recommendation above, I recommend:

- **Page 13, delete “Justification” and delete the final two paragraphs of the supporting text**

## Landscape and Environment

### Policy 2: Protected Open Land

Local Plan Policy EN5 protects the area between Alfreton, Somercotes and Swanwick from built development, to ensure that the separate identities of the three settlements are maintained.

Policy 2 seeks to designate an area of land, divided into three sites (A, B and C) as “*protected open land*.” No detail is provided with regards precisely how the land would be “*protected*” under the terms of the Policy.

I note above that the land the subject of Policy 2 is already protected by the Local Plan. Local Plan Policy EN5 provides decision makers with a clear indication of how to respond to a development proposal, in accord with Paragraph 154 of the Framework. However, Policy 2 effectively repeats a designation, but does so in a much more ambiguous manner – as it simply states that land will be “*protected*” without providing a clear indication of what this means in practice. I find that such an approach would not be in general conformity with Policy EN5, as it would fail to provide clarity and would, in my view, lead to confusion.

I acknowledge that there is evidence to demonstrate that the local community considers the continued separation of Swanwick from other settlements as being extremely important. However, I note above that existing land use planning policy is already in place to achieve this.

In addition to the above, I am conscious that the Framework enables local communities to identify, for special protection, green areas of particular importance to them. Paragraph 76 states that

*“By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.”*

Local Green Space is a restrictive and significant policy designation. The Framework requires the managing of development within Local Green Space to be consistent with policy for Green Belts. Effectively, Local Green Spaces, once designated, provide protection that is comparable to that for Green Belt land. Notably, the Framework is explicit in stating that

*“The Local Green Space designation will not be appropriate for most green areas or open space.”* (Para 77)

Taking the above into account, if designating Local Green Space, plan-makers need to demonstrate that the requirements for its designation are met in full. These requirements are that the green space is in reasonably close proximity to the community it serves; it is demonstrably special to a local community and holds a particular local significance; and it is local in character and is not an extensive tract of land. Furthermore, identifying Local Green Space must be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

I note that the areas of land the subject of Policy 2 are in close proximity to Swanwick, that they are local in character and that each area is not an extensive tract of land. There is also some evidence showing that the areas of land are demonstrably special to the local community.

However, whilst the Neighbourhood Plan states that the sites have an “*intrinsic value*,” this is based on them providing for separation and preventing coalescence. There is no substantive evidence to demonstrate that the areas of land hold a particular local significance, for example for reasons of beauty, historic significance, recreational value, tranquillity or richness of wildlife. Furthermore and fundamentally, I am especially mindful that sites A, B and C in Policy 2, have not been proposed as Local Green Space.

Taking all of the above into account, I find that part 2.1 of Policy 2 does not meet the basic conditions.

Although it is not entirely clear in the wording of the Policy itself, my reading of Policy 2 and the supporting text together leads me to consider that Policy 2.2 applies to the areas of land proposed as open space. On this basis, Policy 2.2 states that opportunities to conserve, enhance and/or restore the biodiversity of these sites will be a priority.

There is no clarity with regards how such opportunities might come about, or what they will be prioritised over. Further, it is not clear what would be preserved, what would be enhanced and/or what would be restored, by whom and how. In addition, it is unclear what a biodiversity-related opportunity “*consistent with the predominantly open and undeveloped character*” of areas A, B or C might comprise.

Part 2.2 of Policy 2 is confusing and does not provide decision makers with a clear indication of how to respond to a development proposal.

I recommend:

- **Delete Policy 2**
- **Delete supporting text on pages 14 and 15; and delete Map 3 on page 16**

I acknowledge that the recommended deletion of Policy 2 will be particularly disappointing for plan-makers and the local community. However, I note above that Local Plan Policy EN5 affords protection to open space. Further, the replacement Local Plan will, as it emerges, afford opportunities, through the consultation process, for Swanwick Parish Council and/or the local community to engage in the consideration of how to protect important spaces into the future.

### **Policy 3: Creation of additional open space for Community Use**

Policy 3 relates to Lily Street Farm. This comprises a large area of land currently within the open countryside, but which has been identified as a potential strategic site for mixed use development.

As worded, Policy 3 is unclear. It states that major development within an identified area should include “*additional open space.*” No clarity is provided in respect of how much additional open space should be provided, or what this open space will be additional to.

Further, it is not clear what major development “*should include*” additional open space. Major development can comprise the development of ten or more dwellings. There is no indication as to whether any, or all, major development within the large area of land shown on Map 4 would need to provide “*additional*” open space.

The Policy fails to provide a decision maker with a clear indication of how to react to a development proposal.

Policy 3 goes on to refer to “*the community open space,*” as opposed to “*additional open space.*” It states that the community open space must act as a landscape buffer between any housing development and the proposed employment area, as well improve access to open space and contribute to biodiversity. No indication is provided with regards how community open space can provide a buffer for “*any housing development,*” nor whether it can do so, or why, in all circumstances, it should need to do so. Also, no substantive evidence is provided to demonstrate how, or whether, a community open space can also comprise a landscape buffer that can achieve the requirements set out in part 3.2 of Policy 3.

Further to the above, there is no evidence to demonstrate that the requirements of Policy 3 have regard to Paragraph 204 of the Framework, which requires planning obligations to be necessary to make development acceptable in planning terms, to be directly related to development, and to be fairly and reasonably related in scale to development.

Having regard to the supporting text and the aspirations of the community, I acknowledge that there is support for the creation of a community park, or similar, in the area of Lily Street Farm, were strategic development to come forward in that location. Part 3.3 of Policy 3 provides some reference to this, although it does so via reliance upon another strategy outside the control of the Neighbourhood Plan. I take this into account in my recommendations below.

Taking all of the above into account, Policy 3 fails to meet the basic conditions. I recommend:

- **Policy 3, delete parts 3.1 and 3.2**

- Policy 3, replace part 3.3 with *“The provision of a community park or naturalised open space within any strategic development that comes forward at Lily Street Farm, will be supported.”*
- Change title of Policy 3 to *“Open Space for Community Use”*
- Page 17, delete from the second paragraph “Swanwick residents are...” to the end of the fourth paragraph “...of the village.”
- Page 17, delete from the sixth paragraph “It is a requirement...” to the end of the penultimate paragraph “...as amended.”

## Improve and extend parks, open spaces and green corridors

### Policy 4: Improve and extend parks, open spaces and green corridors

Policy 4 requires all major development to protect and enhance “*green infrastructure assets*” affected by development and to improve linkages between green corridors. However, neither green infrastructure assets, nor green corridors are defined and there is no evidence to demonstrate that all green infrastructure assets are capable of being enhanced, or that a requirement to do so has regard to national policy. Also, there is nothing to demonstrate that the requirements of Policy 4 would have regard to Paragraph 204 of the Framework, referred to earlier in this Report.

However, I am mindful that Chapter 11 of the Framework, “*Conserving and enhancing the natural environment*,” requires the planning system to contribute to and enhance the natural and local environment. In addition, Paragraph 73 of the Framework supports the provision of access to high quality open spaces and opportunities for sport and recreation. I take these factors into account in making my recommendations below.

The second part of Policy 4 refers to planning obligations and conditions. These are not matters controlled by the Neighbourhood Plan. I note that the Policy provides no detail or clarity in this regard.

The final part of the Policy is unclear. It simply comprises a statement, setting out a general list of what might possibly comprise “*Green infrastructure enhancements*.” This list does not form a land use planning policy.

Taking the above into account, I recommend:

- **Delete all of the text in Policy 4 and replace with “*The provision, protection and/or enhancement of green infrastructure, which includes linkages between existing green corridors, parks and open spaces, will be supported.*”**
- **Delete second paragraph of supporting text on page 20, which reads as though it were a Policy, which it is not**

## Create a network of pedestrian and cycle connections

### Policy 5: Create a network of pedestrian and cycle connections

The Framework requires planning policies to protect and enhance public rights of way and access (Paragraph 75) and requires development to be located and designed where practical to give priority to pedestrian and cycle movements (Paragraph 35).

As worded, Policy 5 provides little more detail than national policy and further, it sets out requirements without any indication of their being deliverable. For example, there is no evidence to demonstrate that developments can connect to cycling and pedestrian routes outside the Parish, or provide safe and direct routes to the village centre.

In addition, there is no evidence to demonstrate that the requirements of Policy 5 are necessary, directly related to development, or fairly and reasonably related in scale to development. Furthermore, the requirements set out are themselves ambiguous. For example, it is not clear how a development proposal can “*enhance the attractiveness*” of walking and cycling.

Consequently, the Policy fails to meet the basic conditions. However, in the light of those parts of the Framework highlighted above, I recommend:

- **Policy 5, delete all text and replace with “*The provision of new and/or the enhancement of existing footpaths and cycle routes will be supported, especially where these connect to the existing network of such routes.*”**



## Design Principles for New Development

### Policy 6: Design Principles for New Development

Good design is recognised by national policy as comprising

*“a key aspect of sustainable development...indivisible from good planning”*  
(Paragraph 56, The Framework)

In addition, national policy requires good design to contribute positively to making places better for people (Chapter 7, The Framework) and Local Plan Policy LS3 requires development to reflect the principles of good design.

Policy 6, as worded, could result in support for inappropriate development. For example, it would support any type of development whatsoever, so long as it integrates with the village and takes local character into account.

I make a recommendation below aimed at preventing inadvertent support for inappropriate development, whilst retaining those aims of Policy 6, which have regard to national policy and are in general conformity with the Local Plan.

I note that, subject to detailed wording, the second part of Policy 6 encourages reference to Building for Life 12 or its equivalent, during the design process. Such an approach would help to ensure that good design is built into proposals from an early stage and would make a contribution to the achievement of sustainable development. Further, I note that the careful drafting of Policy 6 takes account of the fact that design standards such as Building for Life 12 are advisory rather than mandatory.

The final part of Policy 6 seeks to impose a requirement for new homes to be capable of adaptation for home working. However, whilst it is desirable to provide for flexibility, having regard to Paragraph 21 of the Framework, no evidence is provided to justify a requirement for every dwelling to be capable of being adapted for home working and there is nothing before me to demonstrate that such an approach would have regard to national policy, or be in general conformity with the strategic policies of the Local Plan. I address this in the recommendations below.

I recommend:

- **Policy 6, change first sentence to *“Where appropriate, development should take into account the following:”***
- **Policy 6, delete 6.3 and replace with *“The provision of adaptable or flexible space, to allow for home working, is encouraged.”***

- Page 21, supporting text, delete first sentence and “However,” which is unnecessary.
- Page 21, second sentence, change to “...to do this it *should, where possible* open...”
- Page 21, second paragraph, change fourth line to “...village *are encouraged. Similar...housing are also...*”
- Page 22, first paragraph, delete second sentence, which is out of date
- Page 22, delete second paragraph, which is overly prescriptive and fails to reflect the recommendation above
- Page 22, third paragraph, line two, change to “Proposals for major development *are encouraged* to reflect this variety of housing...”
- Page 22, third paragraph, delete third sentence, which reads as though it were a Policy, but is not
- Page 22, penultimate paragraph, delete third sentence, which is in direct conflict with the appropriate wording set out in Policy 6

## Consulting the Community

### Policy 7: Pre Application Community Consultation on Major Development

Public consultation and community engagement is strongly endorsed by national policy and advice. Paragraph 188 of the Framework states:

*“Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.”*

Policy 7 encourages pre-application discussions. In so doing, it has regard to national policy and contributes to the achievement of sustainable development.

The first part of the Policy is well-constructed. It is not possible for a land use planning policy to require applicants submitting major development proposals to engage in pre-application discussions with the community. This would go beyond legislation pertaining to planning applications. However, through use of the phrase *“are encouraged,”* the Policy provides a clear direction to potential applicants. The Policy would encourage any applicant wishing to bring forward a genuinely sustainable development, in line with the Framework, to build community engagement into the application process.

Best practice, by its very nature, is dynamic. Consequently, the second part of Policy 2 runs the risk of being overtaken by events. This in mind, I set out the recommendation below:

- **Policy 2, change second part to “...with the community *applicants are encouraged* to follow the guidelines set out in Appendix C as appropriate.”**

## Protecting the Historic Centre

### Policy 8: Protecting the Historic Centre

The Framework recognises that heritage assets are an irreplaceable resource and that they should be conserved in a manner appropriate to their significance (Paragraph 126). It goes on to state that:

*“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”* (Paragraph 135)

Policy 8 seeks to afford protection to non-designated heritage assets and consequently, it has regard to national policy. The first part of Policy 8, however, is simply a statement, rather than a land use planning policy.

The second part of Policy 8 is confusing and does not properly reflect, and consequently does not have regard to, Paragraph 135 of the Framework.

The final part of Policy 8 encourages the redevelopment of *“the elevation of streets”* without providing justification or detailed evidence to warrant the encouragement of such significant development.

Taking the above into account, I recommend:

- **Policy 8, delete parts 8.1 and 8.2 and replace with *“Development proposals affecting the non-designated heritage assets in the Neighbourhood Area (listed in Appendix D) should set out what the effect on the significance of the non-designated heritage asset would be. This should include reference to any harm or loss.”***
- **Policy 8, change to *“Proposals to sympathetically redevelop shop fronts in the Village...”***
- **Supporting text, page 25, second paragraph, second line, move comma to *“...a Conservation Area, aside from the Listed Buildings there is limited...”***
- **Page 25, final sentence, change to *“...village centre is encouraged to look to both...”***

## Enhancing facilities in the village centre

### Policy 9: Enhancing facilities in the village centre

Chapter 2 of the Framework, “*Ensuring the vitality of town centres*,” recognises town centres as the heart of communities and supports policies to enhance their vitality and viability. Local Plan Policy TC6 supports retail development in local centres.

Policy 9 is a positive planning policy. It supports the provision of shops and services in Swanwick’s village centre and thus contributes to the achievement of sustainable development. The first part of Policy 9.1 refers to commercial services related to local shops and it is unclear what this means. Taken as read, it may be unduly restrictive, having regard to Paragraph 70 of the Framework, which requires planning policies to plan positively for the provision of local services. A more positive reference to local services would address this matter and I take this into account in my recommendation below.

There is no evidence to demonstrate that it would be possible for all development in the village centre to include provision for off-street parking. Further, there is nothing to indicate why such a requirement would be necessary, or fairly and reasonably related in scale and kind to all development. As an example, there is nothing before me to demonstrate that it would be reasonable for a shopkeeper to have to provide off-street parking as part of a proposal to change the signage on a shop-front.

The reference in Policy 9 to a new community building has regard to Paragraph 70 of the Framework, which requires positive planning for the provision of community facilities. However, it is not clear what “*particularly encouraged*” means, in terms of how this would work in practice. I make a recommendation in this regard below.

The final part of Policy 9 could have unforeseen circumstances. It supports any kind of development, so long as it includes a community building and ancillary uses suitable in a village centre. This could result in Policy support for development of an inappropriate scale or form. In making recommendations below, I note that the preceding part of the Policy already provides a supportive context for a community building.

I recommend:

**Policy 9, change first part to “...range of local shops *and services* for the local...”**

**Policy 9, delete part 9.2**

**Policy 9, change third part to “...will *be supported*.”**

**Policy 9, delete part 9.4**

## Provision of a mix of housing types

### Policy 10: Provision of a mix of housing types

The Framework supports the delivery of a wide choice of high quality homes (Chapter 6) Policy 6 has regard to this and to the need to:

*“identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand...”* (Paragraph 50).

Whilst the Neighbourhood Plan does not allocate land, Policy 10 sets out a list of requirements to be met by residential development within the Neighbourhood Area. As worded, it requires all residential development to provide a mix of housing types and tenures. However, a residential development of one dwelling, for example, could not achieve such a requirement. Further, there is no evidence to demonstrate that it would be viable or appropriate in all cases for all residential developments of more than one dwelling to achieve the requirements of Policy 10.

In addition to the above, the first part of Policy 10 does not set out what a mix of housing types and tenures should comprise and consequently, it fails to provide appropriate clarity in this regard. Whilst the second part of the Policy refers to *“key findings,”* it does not state what these are and this reference to a document outside the control of the Neighbourhood Plan fails to add any clarity for prospective developers, or for decision makers. I note that Policy 10.2 seeks to link provision to need and I address this and the previous points in the recommendations below.

The final part of Policy 10 is clear and has regard to Paragraph 50 of the Framework. It contributes to the achievement of sustainable development.

In the supporting text, it is unclear what the first sentence of the last paragraph on page 29 actually means and the sentence following it reads as though it were a Policy, which it is not.

Taking the above into account, I recommend:

- **Policy 10, delete parts 1 and 2 and replace with *“Where possible, residential development should provide a housing mix that reflects local need.”***
- **Supporting text, page 29, delete penultimate sentence *“The type of houses...village centre.”***
- **Final sentence on page 29, change to *“The Parish Council will seek to encourage developers to give attention to the needs...”***

## Affordable Housing

### Policy 11: The Allocation of Affordable Housing

Policy 11 sets out matters beyond the control of the Policies of the Neighbourhood Plan. There is no evidence before me to the contrary. I also note in this regard that Amber Valley Borough Council, in its representation to the submitted Neighbourhood Plan, stated, with regards to Policy 11:

*“This is not a land use policy that shapes or directs development and could not be required through the planning process.”*

I recommend:

- **Delete Policy 11**

I recognise that the provision of affordable housing is an important local concern and acknowledge that the supporting text on page 32 provides relevant information in this regard. Taking this into account, so as not to lose sight of this issue, I recommend:

- **Create a new *“Community Action: Affordable Housing. The Parish Council will seek to encourage the allocation of affordable housing on the basis of local connections. The aim of this will be for people with a strong local connection to the Parish and whose needs are not met by the open market to be the first to be offered the tenancy or shared ownership of a home in the Neighbourhood Area. The Parish Council will seek to work with other bodies in order to achieve this.”***
- **For clarity, the above is not a Neighbourhood Plan Policy, but it sets out an aspiration of the Parish Council.**
- **Supporting text, delete final paragraph on page 32**
- **Supporting text, delete all supporting text (relating to Policy 11) on page 33**

## Supporting Local Business

### Policy 12: Supporting Local Business

Chapter 1 of the Framework supports the building of a strong, competitive economy. Local Plan Policy ER5 supports appropriate development related to the expansion of existing businesses. Policy 12 is a supportive planning policy. Generally, it has regard to national policy and is in general conformity with the Local Plan.

The final two categories of Policy 12.1 (categories d) and e)) are unduly onerous and no substantive evidence has been presented to justify an approach that goes well beyond the requirements of either national policy or local strategic policy. Taken together, the two categories fail to allow for the balanced consideration of a proposal for development.

As set out, the Policy would fail to support a development that was, on balance, sustainable – whereby the benefits of the proposal outweighed the totality of any harm – and could thus prevent sustainable development from coming forward. I provide recommendations in this regard below.

The second part of Policy 12 states that, subject to three criteria, “*permission will be granted*” for small-scale home businesses. Such an approach runs the risk of pre-determining an application without taking relevant factors into account. Further, no definition of “*small-scale businesses*” is provided in the Policy, or supporting text. Consequently, the Policy is unclear. It fails to provide decision makers with a clear indication of how to respond to a development proposal. In making the recommendations below, I note that many forms of home-working do not require planning permission.

I note that the final paragraph of the justification for Policy 12 does not fully reflect the Policy itself and I make a recommendation in this regard below.

I recommend:

- **Policy 12, delete 12.1 d) and 12.1 e) and replace with “*d) the proposal has regard to residential amenity and highway safety.*”**
- **Delete Policy 12.2**
- **Supporting text, final paragraph, page 34, change to “... residential areas. Support for the expansion of business space, as set out in Policy 12, will encourage the creation...”**



## Supporting High Quality Communications Infrastructure

### Policy 13: Supporting High Quality Communications Infrastructure

The Framework recognises the provision of advanced, high quality communications infrastructure as being essential for sustainable economic growth. Policy 13 has regard to this and contributes to the achievement of sustainable development.

Policy 13 uses the phrase “*particularly encouraged*” but nowhere in the Neighbourhood Plan is any distinction drawn between what this means when compared to “*encouraged*” and I address this in the recommendations below.

I note that the supporting text makes reference to the fact that the provision of good internet access is not, in itself, a land use planning matter. For clarity, in this regard, I propose that a reference to “*development*” be included before “*proposals*” within the text of Policy 13.

I recommend:

- **Policy 13, change to “*Development proposals which provide...*”**
- **Policy 13, delete “*particularly*”**
- **Supporting text, page 35, change first line of second paragraph to “*Internet access is not of itself a land use...all developers consider the development-related connectivity requirements of their...*”**

## **The Neighbourhood Plan: Other Matters**

Taking the recommendations above into account, I recommend:

- **Update the Contents page, to take into account recommended changes**

## **8. Summary**

I have recommended a number of modifications further to consideration of the Swanwick Neighbourhood Plan against the basic conditions.

Subject to these modifications, the Swanwick Neighbourhood Plan

- has regard to national policies and advice contained in guidance issued by the Secretary of State;
- contributes to the achievement of sustainable development;
- is in general conformity with the strategic policies of the development plan for the area;
- does not breach, and is compatible with European Union obligations and the European Convention of Human Rights.

Taking the above into account, I find that the Swanwick Neighbourhood Plan meets the basic conditions. I have already noted above that the Plan meets paragraph 8(1) requirements.

## **9. Referendum**

I recommend to Amber Valley Borough Council that, subject to the modifications proposed, the **Swanwick Neighbourhood Plan should proceed to a Referendum.**

### **Referendum Area**

Neighbourhood Plan Area - I am required to consider whether the Referendum Area should be extended beyond the Swanwick Neighbourhood Area.

I consider the Neighbourhood Area to be appropriate and there is no substantive evidence to demonstrate that this is not the case. Consequently, I recommend that the Plan should proceed to a Referendum based on the Swanwick Neighbourhood Area approved by Amber Valley Borough Council on 23<sup>rd</sup> May 2013.

**Nigel McGurk, April 2016**  
**Erimax – Land, Planning and Communities**

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