

Breadsall Parish Council

Breadsall Neighbourhood Development Plan

A report to Erewash Borough Council of the Independent
Examination of the Breadsall Neighbourhood Development
Plan

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Summary of Main Findings

This is the report of the Independent Examination of the Breadsall Neighbourhood Development Plan. The plan area is the whole of the Parish of Breadsall being also the administrative area of Breadsall Parish Council within the Erewash Borough Council area. The plan period is 2019-2029. The Neighbourhood Plan includes policies relating to the development and use of land. The Neighbourhood Plan does not allocate land for development.

This report finds that subject to specified modifications the Neighbourhood Plan meets the Basic Conditions and other requirements. It is recommended the Neighbourhood Plan should proceed to a local referendum based on the plan area.

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 the power to develop a shared vision for their area.”*¹
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 Breadsall Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Breadsall Parish Council (the Parish Council). The draft plan has been submitted by the Parish Council, a qualifying body able to prepare a neighbourhood plan, in respect of the Breadsall Neighbourhood Area which was formally designated by Erewash Borough Council (the Borough Council) on 21 September 2016. The Neighbourhood Plan has been produced by the Neighbourhood Plan Advisory Group made up of volunteers.
4. The submission draft of the Neighbourhood Plan including the Basic Conditions Statement, along with the Consultation Statement, have been approved by the Parish Council for submission of the plan and accompanying documents to the Borough Council. The Borough Council arranged a period of publication between 9 April 2020 and 21 May 2020 and subsequently submitted the Neighbourhood Plan to me for independent examination.

Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan.² 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 Borough Council will decide what action to take in response to the recommendations in this report.

¹ Paragraph 29 National Planning Policy Framework (2019)

² Paragraph 10 Schedule 4B Town and Country Planning Act 1990

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. Once a neighbourhood plan has been independently examined, and a decision statement is issued by the Local Planning Authority outlining their intention to hold a neighbourhood plan referendum, it must be taken into account and can be given significant weight when determining a planning application, in so far as the plan is material to the application³.
7. Should the Neighbourhood Plan proceed to local referendum⁴ and achieve more than half of votes cast in favour, then the Neighbourhood Plan will form part of the Development Plan and be given full weight in the determination of planning applications and decisions on planning appeals in the plan area⁵ unless the Borough Council subsequently decide the Neighbourhood Plan should not be 'made'. The Housing and Planning Act 2016 requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan⁶. The Framework is very clear that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted⁷.
8. 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

³ Paragraph 48 of the National Planning Policy Framework 2019 explains full weight is not given at this stage. Also see Planning Practice Guidance paragraph: 107 Reference ID: 41-107-20200407 Revision date: 07 04 2020 for changes in response to the coronavirus (COVID-19) pandemic

⁴ The Local Government & Police & Crime Commissioner (Coronavirus) (Postponement of Elections & Referendums) (England & Wales) Regulations 2020 Regulation 13 states referendums that would have been held from 7 April 2020 up to 6 May 2021 will be held on 6 May 2021

⁵ Section 3 Neighbourhood Planning Act 2017

⁶ Section 156 Housing and Planning Act 2016

⁷ Paragraph 12 National Planning Policy Framework 2019

professional planning experience and have held national positions and local authority Chief Planning Officer posts.

9. 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.

10. I make my recommendation in this respect and in respect to any extension to the referendum area,⁸ 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.⁹

11. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.¹⁰ The Planning Practice Guidance (the Guidance) states *“it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.”*

12. The examiner has the ability to call a hearing for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. All parties have had the opportunity to state their case. The Regulation 16 responses clearly set out any representations relevant to my consideration whether or not the Neighbourhood Plan meets the Basic Conditions and other requirements. As I did not consider a hearing necessary, I proceeded on the basis of examination of the written representations and an unaccompanied visit to the Neighbourhood Plan area made during October 2020.

⁸ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁹ Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

¹⁰ Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

Basic Conditions and other Statutory Requirements

13. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.¹¹ 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 development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.¹²

14. As the final basic condition, on 28 December 2018, replaced a different basic condition that had previously been in place throughout much of the period of preparation of the Neighbourhood Plan there is a need to confirm the Neighbourhood Plan meets the new basic condition. I refer to this matter later in my report.

15. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention Rights.¹³ All of these matters are considered in the later sections of this report titled ‘The Neighbourhood Plan taken as a whole’¹⁴ and ‘The Neighbourhood Plan Policies’.

16. 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

¹¹ Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

¹² This Basic Condition arises from the coming into force, on 28 December 2018, of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 whereby the Neighbourhood Planning Regulations 2012 are amended. This basic condition replaced a basic condition “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”.

¹³ The Convention Rights has the same meaning as in the Human Rights Act 1998

¹⁴ Where I am required to consider the whole Neighbourhood Plan, I have borne it all in mind

and Compulsory Purchase Act 2004.¹⁵ 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 (the Regulations) which are made pursuant to the powers given in those sections.

17. The Neighbourhood Plan relates to the area that was designated by the Borough Council as a neighbourhood area on 21 September 2016. A map of the Neighbourhood Plan boundary is included as Figure 1 of the Submission Version Plan. The Neighbourhood Plan designated area is coterminous with the Parish of Breadsall boundaries, being also the administrative area of Breadsall Parish Council. The Neighbourhood Plan does not relate to more than one neighbourhood area,¹⁶ and no other neighbourhood development plan has been made for the neighbourhood area.¹⁷ All requirements relating to the plan area have been met.
18. 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;¹⁸ and the Neighbourhood Plan does not include provision about excluded development.¹⁹ I am able to confirm that I am satisfied that each of these requirements has been met.
19. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.²⁰ The front cover of the Submission Version Plan clearly states the plan period to be 2019 -2029.
20. 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.²¹ It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan, except where this arises as a result of my recommended modifications so that the Neighbourhood Plan meets

¹⁵ 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)).

¹⁶ Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

¹⁷ Section 38B (2) Planning and Compulsory Purchase Act 2004

¹⁸ Section 38A (2) Planning and Compulsory Purchase Act 2004

¹⁹ Principally minerals, waste disposal, development automatically requiring Environmental Impact assessment and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

²⁰ Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

²¹ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 35 of the National Planning Policy Framework 2019

the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention Rights, and the other statutory requirements.

21. 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.
22. 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 reflect 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.
23. 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.²² I refer to the matter of minor corrections and other adjustments of general text in the Annex to my report.

Documents

24. I have considered each of the following documents in so far as they have assisted me in determining whether the Neighbourhood Plan meets the Basic Conditions and other requirements:

- Breadsall Neighbourhood Plan 2019-2029 Submission Draft including Appendix A Basic Conditions Statement, and Appendices B to J.
- Breadsall Neighbourhood Plan Consultation Statement 1 May 2019 including Appendices [*In this report referred to as the Consultation Statement*]
- Breadsall Neighbourhood Plan Strategic Environmental Assessment and Habitats Regulations Assessment Screening Document
- Background information published on the Borough Council and Parish Council Neighbourhood Plan websites

²² See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

- Representations received during the Regulation 16 publicity period and the representation setting out the Borough Council Officer comments
- Correspondence between the Independent Examiner and the Borough and Parish Councils including: the initial letter of the Independent Examiner dated 6 October 2020; the Parish Council comments on Regulation 16 representations dated 14 October 2020; the letter of the Independent Examiner seeking clarification of various matters dated 22 October 2020; and the document I received on 6 November 2020 that includes the responses of the Parish Council and the Borough Council
- Erewash Core Strategy adopted March 2014
- Erewash Local Plan Saved Policies 2005 (amended 2014)
- National Planning Policy Framework (February 2019) and subsequently updated [*In this report referred to as the Framework*]
- Permitted development rights for householders' technical guidance MHCLG (10 September 2019) [*In this report referred to as the Permitted Development Guidance*]
- Planning Practice Guidance web-based resource MHCLG (first fully launched 6 March 2014 and subsequently updated) [*In this report referred to as the Guidance*]
- Town and Country Planning (Use Classes) Order 1987 (as amended)
- Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- 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)
- Equality Act 2010
- Localism Act 2011
- Housing and Planning Act 2016
- Neighbourhood Planning Act 2017 and Commencement Regulations 19 July 2017, 22 September 2017, and 15 January 2019
- Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations. References to Regulation 14, Regulation 16 etc in this report refer to these Regulations*]
- Neighbourhood Planning (General) (Amendment) Regulations 2015
- Neighbourhood Planning (General) incorporating Development Control Procedure (Amendment) Regulations 2016
- Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018
- Local Government & Police & Crime Commissioner (Coronavirus) (Postponement of Elections & Referendums) (England & Wales) Regulations 2020

Consultation

25. The submitted Neighbourhood Plan is accompanied by a 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 stages of consultation undertaken in order to illustrate the approach adopted.
26. Following a decision to proceed with preparation of a neighbourhood plan at a public meeting in March 2016 the Plan preparation process commenced in December 2016 with a questionnaire distributed to residents, businesses and landowners. Results were presented to a public meeting in March 2017 attended by more than 100 people. Important wildlife sites and heritage assets were identified by writing to all residents in May 2017. From a first draft in Summer 2017 the plan has been refined through circulation of further drafts and discussion at well attended public meetings. Publicity has been achieved through various channels including social media; posters and banners; and articles in the parish newsletter which is distributed to all households.
27. Pre-submission consultation in accordance with Regulation 14 was undertaken, concluding on 31 January 2019, during which period the draft Plan was made available for inspection. Publicity included use of the Parish Council website which was able to take responses on-line. An article and advertisements were also placed in the Breadsall Parish newsletter. Paper copies of the Plan and response forms were displayed in the village shop. Posters were displayed on the Parish notice boards. Statutory consultees were contacted. This consultation generated 8 responses. The representations arising from the consultation are summarised in Appendix 2 of the Consultation Statement (which links to Appendix J of the Neighbourhood Plan) and responses and amendments made to the Neighbourhood Plan, are set out. The suggestions have, where considered appropriate, been reflected in a number of changes to the Plan that was approved by the Parish Council, for submission to the Borough Council.
28. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 period of publication between 9 April 2020 and 21 May 2020. Representations from 10 different parties were submitted during the period of publication. I have been provided with

copies of each of these representations and the representation made by the Borough Council. In preparing this report I have taken into consideration all of the representations even though they may not be referred to in whole, or in part. Where representations relate to specific policies, I refer to these later in my report when considering the policy in question, particularly where they are relevant to the reasons for my recommendations.²³

29. The Coal Authority has no specific comments on the Neighbourhood Plan. Historic England has confirmed it has no further comments to add to those made at an earlier stage. Highways England do not expect there will be any material impact on the Strategic Road Network. National Grid has no record of high voltage electricity assets and high-pressure pipelines or similar transmission assets in the Plan area. Natural England offer general advice but no specific comments on the Neighbourhood Plan. Nottinghamshire County Council does not have any strategic policy comments.
30. The Environment Agency has commented on Policies HD 1; FR 1; and B & NC 1. I have taken those representations into consideration when addressing those policies later in my report. Severn Trent has provided general development advice and commented on flood risk; and identified a link between Policy HD 1 and Policy FR 1; and commented on the latter policy. I have taken those specific representations into consideration when addressing Policy FR 1 later in my report.
31. Derbyshire County Council state, Policies LV 1 and GS 1 seek to protect key views and green spaces however they do not seek to encourage developments outside those areas from having an impact or contributing positively to an improvement in landscape quality. The County Council suggest use of the publication "The Landscape Character of Derbyshire". The County Council also suggests inclusion of other matters relating to transport, and sustainable energy. I have taken these comments into consideration so far as they are relevant to meeting the Basic Conditions and other requirements that I have identified. It is beyond my remit to recommend additional issues are addressed or further emphasis is placed on particular matters where this is not necessary to meet the Basic Conditions. Where Derbyshire Council has commented on policies with respect to matters relevant to my consideration whether those policies meet the Basic Conditions, I have referred to those representations when considering the policies in

²³ Bewley Homes Plc v Waverley Borough Council [2017] EWHC 1776 (Admin) Lang J, 18 July 2017 and Town and Country Planning Act Schedule 4B paragraph 10(6)

question later in my report. Derbyshire County Council has also commented on Proposal GB A which relates to Green Belt and Proposal PT A relating to Public Transport. I refer to those comments when I consider the Proposals of the Neighbourhood Plan later in my report.

32. The Borough Council has set out detailed comments on the Neighbourhood Plan that are substantial in nature. These include an overview as follows *“Breadsall Neighbourhood Plan is the result of a significant amount of work by the Breadsall Neighbourhood Plan Advisory Group and Breadsall Parish Council, and has been subject to extensive engagement with the wider community of Breadsall. Professional input has also been provided by the Parish Council’s own neighbourhood planning consultant, and the independent advice of a neighbourhood planning consultancy procured by the Borough Council to satisfy the requirements of the duty to support neighbourhood planning set out in Section 3 of Schedule 4B of the Town and Country Planning Act 1990. Notwithstanding the advice available to them, Breadsall Neighbourhood Plan Advisory Group have held true to their clear vision for Breadsall, which is as a place to be protected. Of the 15 stated aims, 12 are concerned with how development can be restricted, with only the remaining three (Aims 3, 4 & 6) supporting development and only one (Aim 4) offering a vision of how development could benefit the Parish. It is not immediately clear how this approach is based on the purposes of the planning system as set out in Chapter 2 of the National Planning Policy Framework (NPPF), and in particular how they sit with the overriding presumption in favour of sustainable development set out there. It may well be that the Breadsall Neighbourhood Plan Advisory Group have considered that the development needs of the Parish are small, and therefore not in need of much promotion. However, it is equally valid to say that the development opportunities in Breadsall are also small, and that consequently the development needs of the Parish do need promotion in order to be achieved. In these comments the Local Planning Authority has attempted to identify how Breadsall Neighbourhood Plan can achieve general conformity with the NPPF. However, it is not the place of the Borough Council to set out Breadsall’s own vision, and therefore, in so far as that vision may fall short of general conformity with the NPPF, the Borough Council does not consider that it can amend the Neighbourhood Plan to meet the Basic Conditions.”* The Borough Council has expressed concern that, *“on balance, it is difficult to conclude that the Neighbourhood Plan is in general conformity with the presumption in favour of sustainable development set out in the*

NPPF.”

33. The Parish Council has commented on the Borough Council overview as follows *“The overview needs to start with a reality check. Breadsall is a rural village where there is physically very little scope for development within the village envelope and the remainder of the Parish lies almost entirely within the Green Belt. In these circumstances a “presumption in favour of development” is of limited relevance as there are so few opportunities to promote development, a point which the Borough Council appears to acknowledge. It is therefore quite natural that much of the Neighbourhood Plan should be devoted to the preservation of the Parish’s attractive character. At the same time the Neighbourhood Plan supports development where the opportunity exists and seeks to ensure that such development does not detract unreasonably from the acknowledged qualities of the parish. The PC made considerable efforts to create precise policies which could be used in conjunction with the Local Plan. The PC is therefore extremely disappointed at the highly negative nature of the Borough Council’s response which seeks to delete or truncate numerous policies to the extent that the influence of the Neighbourhood Plan would be minimal in many areas. The PC is quite happy to consider amendments to some of the policies and is again disappointed that the Borough Council’s default position is to request total deletion of much of the text. If the Borough Council’s position is in fact supported then it appears to the Parish Council that the whole premise of Neighbourhood Plans is undermined. In that case it is quite dishonourable for the government to encourage local communities to produce Neighbourhood Plans which are subsequently emasculated by the removal of much of their content.”*

34. I refer to these matters later in my report when considering whether the making of the Neighbourhood Plan will contribute to the achievement of sustainable development and also when considering relevant policies of the Neighbourhood Plan individually. I have taken into consideration both the Borough Council representations and the Parish Council response, regarding the need and opportunities for development when considering every policy, and I have given this matter particular attention when considering Policy HD 1: Housing Development and Policy E 1: Economy. The representation of the Borough Council also comments specifically on detailed policy issues in respect of Policies C 1; LV 1; B & NC 1; DS 1; EN 1; EN 2; HD 1; HD 2; HD 3; HD4; HD 5; E 1; and FR 1 of the Neighbourhood Plan. I have taken these comments into account when considering the

relevant policies. The Borough Council has also commented on Proposal GB A. I refer to this comment when I consider the Proposals of the Neighbourhood Plan later in my report.

35. I provided the Parish Council with an opportunity to comment on the Regulation 16 representations of other parties. I placed no obligation on the Parish Council to offer any comments but such an opportunity can prove helpful where representations of other parties include matters that have not been raised earlier in the plan preparation process. The Parish Council submitted comments on the Borough Council representations. I requested the Borough Council to publish the Regulation 16 representations and the Parish Council comments on its website.
36. 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.²⁴
37. The Consultation Statement and appendices do include information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. In addition, sufficient regard has been paid to the advice regarding plan preparation and engagement contained within the Guidance. It is evident the Neighbourhood Plan Advisory Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.

The Neighbourhood Plan taken as a whole

38. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and Human Rights

²⁴ Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

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. In considering all of these matters I have referred to the submission, background, and supporting documents, and copies of the representations and other material provided to me.

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 development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017

39. I have considered the European Convention on Human Rights and in particular Article 6 (1) (fairness); Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).²⁵ Development Plans by their nature will include policies that relate differently to areas of land. Where the Neighbourhood Plan policies relate differently to areas of land this has been explained in terms of land use and development related issues. I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. I am satisfied the Neighbourhood Plan has been prepared in accordance with the obligations for Parish Councils under the Public Sector Equality Duty (PSED) in the Equality Act 2010. Whilst no Equality Impact Assessment has been undertaken in respect of the Neighbourhood Plan, from my own examination, the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics as identified in the Equality Act 2010.

40. The objective of EU Directive 2001/42²⁶ 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*

²⁵ 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.

²⁶ 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’²⁷ as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.²⁸

41. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council, as the Qualifying Body, to submit to Erewash 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.
42. A Strategic Environmental Assessment and Habitats Regulation Assessment Screening Document concludes *“Having taken all the policies in the Plan into account, in accordance with the topics cited in Annex 1(f) of the SEA Directive, this screening opinion has concluded that a full SEA is not required.”* The Screening Report includes as Appendices the responses to consultation with the Statutory Bodies, namely Historic England, Natural England, and the Environment Agency. I am satisfied the requirements regarding Strategic Environmental Assessment have been met.
43. The Strategic Environmental Assessment and Habitats Regulation Assessment Screening Report includes an assessment of likely environmental impacts on European Sites in respect of the Neighbourhood Plan and finds no likely significant effects. In-combination effects are considered. It is stated there are no European Designated sites, and no Natura 2000 sites, within 15 km of the Neighbourhood Area. The letter dated 20 September 2019 from Natural England included in the Appendices of the Screening Report confirms the statutory body were consulted and agrees with the conclusions of the report. The Screening Report concludes *“The HRA screening finds that no significant adverse effects are likely as a result of the implementation of the Neighbourhood Plan. It is not necessary to prepare an Appropriate Assessment, as part of the Breadsall Neighbourhood Plan preparation.”* I conclude the Neighbourhood Plan meets the requirements of the revised Basic Condition relating to Habitats Regulations.
44. 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.

²⁷ Defined in Article 2(a) of Directive 2001/42

²⁸ Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

45. I conclude that the Neighbourhood Plan is compatible with the Convention Rights, and does not breach, and is otherwise compatible with, EU obligations. I also conclude the making of the Neighbourhood Plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

46. The Guidance 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 Borough Council as local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations:

- 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).²⁹

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

47. 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 Plans³⁰ which requires plans to be “*consistent with national policy*”.

48. Lord Goldsmith has provided guidance³¹ 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

²⁹ Planning Practice Guidance paragraph 080 Reference ID: 41-080-20150209

³⁰ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 35 of the National Planning Policy Framework 2019

³¹ The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the House of Lords 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.*”

49. The most recent National Planning Policy Framework was published on 19 June 2019. The Planning Practice Guidance was most recently updated in respect of Neighbourhood Planning on 25 September 2020. As a point of clarification, I confirm I have undertaken the Independent Examination in the context of the most recent National Planning Policy Framework and Planning Practice Guidance.
50. I am satisfied the Basic Conditions Statement in Table A1 demonstrates how the Neighbourhood Plan has regard to relevant identified components of the Framework.
51. The Neighbourhood Plan includes a positive vision statement which establishes a context within which the policies of the Neighbourhood Plan will operate. The vision was developed from relevant aims of the Neighbourhood Plan that were identified through the initial stages of public consultation.
52. Sections 8 to 16 of the Neighbourhood Plan set out policies arranged by topic. A number of proposals are also presented. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on ways to improve a neighbourhood other than through the development and use of land. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The acknowledgement in the Neighbourhood Plan of issues raised in consultation processes that do not have a direct relevance to land use planning policy represents good practice. The Guidance states, “*Wider community aspirations than those relating to the development and use of land, if set out as part of the plan, would need to be clearly identifiable (for example, set out in a companion document or annex), and it should be made clear in the document that they will not form part of the statutory development plan*”.³² I am satisfied the approach adopted in the Neighbourhood Plan presenting the proposals in a different typeface and text colour and including the word “*Proposal*” in the title differentiates the community aspirations from the policies of the Plan and has sufficient regard for the Guidance.
53. Both the Borough Council and Derbyshire County Council have made specific comments in respect of Proposal GB A: Green Belt. The

³² Planning Practice Guidance *Paragraph: 004 Reference ID: 41-004-20190509 Revision 09 05 2019*

County Council state the proposal would be difficult to apply and implement in practice, not least because it would be unclear as to what weight, if any, could be applied to the approach as set out in the format used. The Borough Council state *“Though the Local Planning Authority notes the strong local support for retention of the Green Belt boundary, it does not appear appropriate for policies of the Neighbourhood Plan to seek to control future reviews of the Local Plan. Policy GB A should be deleted”*. The Borough Council has confirmed this is a reference to Proposal GB A.

54. The Parish Council has commented on the representations of the Borough Council as follows *“The Green Belt was one of the most frequently mentioned topics in the public consultation exercises and is clearly absolutely fundamental to planning policy in the Parish. If the Green Belt cannot even be mentioned in the Neighbourhood Plan then the PC is led to conclude yet again that Neighbourhood Plans are pointless. The text in the Neighbourhood Plan merely places on record the importance of the Green Belt and presents proposals about its protection. The PC considers this perfectly reasonable and objects strongly to the suggestion that the proposals should be deleted. In any case future reviews of the Local and Neighbourhood Plan are covered under GB A.3.”*
55. Paragraph 136 of the Framework states *“Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.”* Paragraphs 137 to 140 of the Framework set out the requirements and process for any possible change to Green Belt boundaries. It is inappropriate for the Neighbourhood Plan to include a proposal relating to any future Green Belt review and there is no basis for the identification of a Green buffer zone in Figure 11. I have recommended deletion of Proposal GB A Green Belt, and deletion of Figure 11. Consequential adjustment of supporting text in section 9.4 of the Neighbourhood Plan will be necessary.

Recommended modification 1:

- **delete Proposal GB: Green Belt and Figure 11**

- in Section 9.4 delete the text of the first paragraph after “Borough.”, and in the second paragraph delete the text after “Breadsall”

56. The County Council has also commented on Proposal PT A: Public transport as follows *“Given the nature of Breadsall and the rate of car ownership, the current economics of public transport are likely to remain for the foreseeable future. Consequently, DCC would suggest that the proposal should be amended to read: ‘The Parish Council will work with public transport operator(s) and Derbyshire County Council to continue to provide a viable bus service for residents of Breadsall’. Where development occurs, developer contributions should be sought to improve the public transport offer. This could include the support for any or all of the following options: Community Transport, Derbyshire Connect or similar bus services, Community Car Club, Car share and Wheels to Work.”* I refer to this matter in the Annex to my report

57. 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 the 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.”*

58. At the heart of the Framework is a presumption in favour of sustainable development³³ which should be applied in both plan-making and decision-taking³⁴. 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*

³³ Paragraph 10 National Planning Policy Framework 2019

³⁴ Paragraph 11 National Planning Policy Framework 2019

development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions”³⁵. I have earlier in my report referred to the representations of the Borough Council which state that it is not immediately clear how the general approach of the Neighbourhood Plan sits within the overriding presumption in favour of sustainable development set out in the Framework. The Borough Council has identified how the Neighbourhood Plan could overcome this difficulty and I have adopted several of the modifications suggested by the Borough Council in my recommendations.

59. 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 also no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.

60. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes at Table A1 a brief explanation of how identified Plan policies show regard to the Framework. The assessment identifies sustainability benefits arising from the Neighbourhood Plan. The assessment does not highlight any negative impacts on sustainability objectives.

61. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, when modified as I have recommended, will, contribute to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes will protect local distinctiveness; will serve economic needs; will protect and enhance social facilities; and will protect important environmental features. In particular, I consider the Neighbourhood Plan policies seek to:

- Conserve and enhance heritage assets;
- Protect key landscapes and vistas;
- Designate Local Green Spaces;
- Maintain and enrich biodiversity;

³⁵ Planning Practice Guidance Paragraph 072 Ref ID:41-072-20190509 Revision 09 05 2019

- Limit light pollution;
- Conditionally support renewable energy production;
- Support low-emission transport charging facilities;
- Conditionally support proposals for additional dwellings within the village housing development envelope;
- Establish design requirements for all developments;
- Conditionally support economic development proposals;
- Guard against unnecessary loss of community facilities; and
- Manage flood risk.

62. 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, will, when modified as I have recommended, contribute 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)

63. The Framework states neighbourhood plans should “*support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies*”.³⁶ Plans should make explicit which policies are strategic policies.³⁷ “*Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area*”³⁸. *Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine its strategic policies*”.³⁹

64. In this independent examination, I am required to consider 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). The Erewash Borough Council website confirms the Development Plan applying in the Breadsall Neighbourhood Area and relevant to the Neighbourhood Plan

³⁶ Paragraph 13 National Planning Policy Framework 2019

³⁷ Paragraph 21 National Planning Policy Framework 2019

³⁸ Footnote 16 National Planning Policy Framework 2019

³⁹ Paragraph 29 National Planning Policy Framework 2019

comprises the Erewash Core Strategy adopted in March 2014 and the Erewash Borough Local Plan Saved Policies 2005 (Amended 2014) document adopted in March 2014. Whilst saved policies of the Derby and Derbyshire Minerals Local Plan (adopted 2000 and amended in 2002) and saved policies of the Derby and Derbyshire Waste Local Plan (adopted 2005) also form part of the Development Plan applying in the Neighbourhood Area these policies are not relevant to the Independent Examination of the Neighbourhood Plan. 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.”*⁴⁰ Erewash Borough Council has advised me that all the policies of the Erewash Core Strategy, and no others, are regarded as strategic policies by the Local Planning Authority.

65. The Borough Council has informed me that the preparation of the Erewash Core Strategy Review is at a very early stage. The latest Local Development Scheme states the intended date of adoption is December 2021. The Neighbourhood Plan can proceed ahead of preparation of the Core Strategy Review. The Guidance states: *“Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan. A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:*

- *the emerging neighbourhood plan;*
- *the emerging Local Plan;*
- *the adopted development plan;*

⁴⁰ Planning Practice Guidance Paragraph 077 Reference ID: 41-077-20190509 Revision 09 05 2019

with appropriate regard to national policy and guidance. The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan. Neighbourhood plans should consider providing indicative delivery timetables and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new Local Plan.”⁴¹

66. I am mindful of the fact that should there ultimately be any conflict between the Neighbourhood Plan, and the Erewash Core Strategy Review when it is adopted; the matter will be resolved in favour of the plan most recently becoming part of the Development Plan; however, the Guidance is clear in that potential conflicts should be minimised.

67. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. The emerging Erewash Core Strategy Review 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. 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”*⁴². 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.

⁴¹ Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20160211

⁴² Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20190509 Revision 09 05 2019

68. 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.”⁴³ 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.

69. 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:

- *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.”*⁴⁴

My approach to the examination of the Neighbourhood Plan Policies has been in accordance with this guidance.

70. 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.

⁴³ Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P & CR 31

⁴⁴ Planning Practice Guidance Paragraph 074 ID ref: 41-074 20140306 Revision 06 03 2014

The Neighbourhood Plan Policies

71. The Neighbourhood Plan includes 17 policies as follows:

- Policy C 1: Development proposals in the conservation area
- Policy C 2: Development proposals affecting buildings of local heritage interest
- Policy LV 1: Key landscapes and vistas
- Policy GS 1: Landscapes and Local Green Spaces
- Policy B & NC 1: Biodiversity
- Policy DS 1: Dark skies
- Policy EN 1: Energy
- Policy EN 2: Low-emission transport
- Policy T & RS 1: Parking standards and vehicle charging
- Policy HD 1: Housing development
- Policy HD 2: New housing mix
- Policy HD 3: Housing density
- Policy HD 4: Design
- Policy HD 5: Contributions to new infrastructure and facilities
- Policy E 1: Economy
- Policy CF 1: Development proposals affecting community facilities
- Policy FR 1: Reducing flood risk

72. Paragraph 29 of the Framework states *“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies”*. Footnote 16 of the Framework states *“Neighbourhood plans must be in general conformity with the*

strategic policies contained in any development plan that covers their area.”

73. Paragraph 15 of the Framework states *“The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.”*

74. Paragraph 16 of the Framework states *“Plans should: a) be prepared with the objective of contributing to the achievement of sustainable development; b) be prepared positively, in a way that is aspirational but deliverable; c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees; d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals; e) be accessible through the use of digital tools to assist public involvement and policy presentation; and f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).”*

75. 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.”*⁴⁵

76. *“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”.*⁴⁶

77. A neighbourhood plan should contain policies for the development and use of land. *“This is because, if successful at examination and*

⁴⁵ Planning Practice Guidance Paragraph 041 Reference ID: 41-041-20140306 Revision 06 03 2014

⁴⁶ Planning Practice Guidance Paragraph 040 Reference ID: 41-040-20160211 Revision 11 02 2016

referendum (or where the neighbourhood plan is updated by way of making a material modification to the plan and completes the relevant process), the neighbourhood plan becomes part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004).⁴⁷

78. *“Neighbourhood plans are not obliged to contain policies addressing all types of development. However, where they do contain policies relevant to housing supply, these policies should take account of latest and up-to-date evidence of housing need.”⁴⁸ “A neighbourhood plan can allocate sites for development, including housing. A qualifying body should carry out an appraisal of options and an assessment of individual sites against clearly identified criteria. Guidance on assessing sites and on viability is available.”⁴⁹*

79. 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. I have considered any inter-relationships between policies where these are relevant to my remit.

Policy C 1: Development proposals in the conservation area

80. This policy seeks to establish that development proposals within the Breadsall Conservation Area and its setting will be supported provided they are in accordance with other policies and in accordance with stated development principles.

81. In a representation the Borough Council states *“Criteria 1b requires development to “sustain existing vistas”. This could be interpreted as saying that the appearance of the conservation area should not change, which is not in general conformity with heritage policy in Chapter 16 of the NPPF, which requires the relative harm to a heritage asset to be weighed against other factors. Policy C1 criteria 1b should be deleted. Criteria 1c requires applications to be accompanied by an assessment of the impact of proposals on the vistas identified in*

⁴⁷ Planning Practice Guidance Paragraph 004 Reference ID: 41-004-20190509 Revision 09 05 2019

⁴⁸ Planning Practice Guidance Paragraph 040 Reference ID 41-040-20160211 Revision 11 02 2016

⁴⁹ Planning Practice Guidance Paragraph 042 Reference ID 41-042-20170728 Revision 28 07 2017

criteria 1b. As indicated above, the policy of “sustaining existing vistas” is problematic in its own right. In addition, the policy would have the effect of introducing an additional validation criterion over and above the Local Planning Authority’s current requirements. Requiring additional supporting information that is not relevant, necessary or material would be contrary to NPPF paragraph Policy C1 criteria 1c should be deleted. Criteria 2b requires relevant building to plot ratios to be respected. As the Breadsall Conservation area is mostly divided into existing plots, this could be interpreted as saying that no additional development should occur, which would not be in general conformity with heritage policy in Chapter 16 of the NPPF. Policy C1 criteria 2b should be deleted. Criteria 3 requires green space to be protected from development that would have an adverse impact on the special character of the (conservation) area. This does not appear to be in general conformity with heritage policy in Chapter 16 of the NPPF, which requires the relative harm to a heritage asset to be weighed against other factors. Policy C1 criteria 3 should be deleted”.

82. The Parish Council has commented on the Borough Council representations as follows “C1 1b - The PC is not suggesting that the appearance of the conservation area must not change at all. Indeed, Policy C1 2 goes on to describe types of development that would be acceptable in the conservation area. Policy C1 1b should be retained in order to ensure that protection of existing vistas remains a factor in the determination of planning applications related to the conservation area. The PC would be prepared to amend the wording to say “substantially sustain”. C1 1c - As stated above policy C1 1b should remain and in that case, it is quite reasonable to request supporting evidence in policy C1 2. We do not regard this as contrary to paragraph 44 of the NPPF. Nor is it relevant that this may require an increase in validation by EBC. If EBC is stating that Neighbourhood Plans must simply reproduce existing Borough Council policies and information requirements then there is no point in having Neighbourhood Plans at all. C1 2b - This is not intended to prevent all development but the principle of preventing over-intensive development is a key factor in judging applications in the Conservation Area. The policy should not therefore be deleted. The PC would be happy to re word the policy to say “be sited so as to be in harmony with the existing density of development”. C1 3 - The principle of this clause is perfectly sound and it should not be deleted but the PC would be prepared to delete “would have an adverse impact” and substitute “would cause substantial harm” to match more closely the wording of the NPPF.”

83. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The 'Guidance on Information Requirements and Validation' document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include *'information to accompany the application as specified by the local planning authority on their local list of information requirements'*. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain *'relevant, necessary and material'*. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The policy is seeking to establish information requirements that are outside the statutory framework relating to local lists of information to be submitted in support of planning applications.
84. Paragraph 125 of the Framework states neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development. The application of the policy to proposals within the setting of the Conservation Area has sufficient regard for national policy set out in paragraph 190 of the Framework which recognises development can affect the setting of a heritage asset.
85. The term *"other statutory, local and Neighbourhood Plan policies"* is not sufficiently precise to guide the preparation and determination of development proposals. Paragraph 16 of the Framework states plans should avoid unnecessary duplication of policies. It is unnecessary and confusing for one policy to refer to other policies as the Development Plan and the Neighbourhood Plan should be read as a whole. The terms *"protected from"* and *"follow historic precedent"* do not have sufficient regard for national policy set out in the Framework which seeks to conserve the significance of heritage assets in the context of a balanced judgement. The terms *"existing vistas that contribute to the*

character and appearance of the conservation area” and *“relevant building to plot ratios”* are imprecise and do not provide a basis for the determination of development proposals. The requirement for an assessment in respect of all development affecting views would be contrary to the Guidance on Information Requirements and Validation, and in respect of proposals that are small in scale would represent a disproportionate and unacceptable burden. In response to my request for clarification the Parish Council has stated the reference to existing vistas is to those listed in Table 3 and that the ones specifically related to the Conservation Area are C9, C13-17 inclusive, and C19. The Borough Council has stated the vistas *“appear to be of views of things (a tree, a field) rather than views from key locations, which would appear to be a more appropriate approach if reference to vistas is sought.”* The policy in part unnecessarily duplicates Policy LV 1 which relates to key landscapes and views. Paragraph 16 f) of the Framework states plans should avoid unnecessary duplication of policies. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and *“is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”* as required by paragraph 16d) of the Framework.

86. In response to my request for clarification how the imprecise term *“existing green space”* referred to in part 3 of the policy is defined the Parish Council has stated *“Existing green space within this policy is undeveloped space within the Conservation Area as shown in Fig 8, which is also outside the village envelope shown in Fig 15.”* The Borough Council has stated *“land inside the Conservation Area but outside the village boundary is Green Belt, which is already subject to national policy controls.”* Whilst this land is subject to Green Belt policy, I am satisfied Part 3 of Policy C1 introduces an additional criterion for the assessment of proposals. I have recommended a modification so that the policy *“is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”* as required by paragraph 16d) of the Framework.
87. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
88. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable

development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with conserving and enhancing the historic environment, the policy is appropriate to be included in a 'made' neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 2:

In Policy C 1

- **delete “other statutory, local and Neighbourhood Plan policies and”**
- **delete criteria 1b, 1c, and 2b**
- **in part 2c replace “follow historic precedent as to” with “respect”**
- **in part 3 replace “green space” with “undeveloped green space within the Conservation Area which is also outside the village housing development envelope identified in Figure 15”**

Policy C 2: Development proposals affecting buildings of local heritage interest

89. This policy identifies buildings of local heritage interest, listed in Table 2, and requires development proposals at or near those buildings to avoid harming their setting or detracting from their contribution to the heritage and character of the parish, unless it can be shown that the scale of harm or loss can be justified by the benefits of the development.

90. The Guidance refers to advice on local lists published on Historic England's website.⁵⁰ *Historic England Advice Note 11 Neighbourhood Planning and the Historic Environment (Published 16 October 2018)* states “Preparing a list of locally-valued heritage assets. Independent (at least initially) of any local list endorsed or developed by a local planning authority, neighbourhood planning groups may wish to consider if any buildings and spaces of heritage interest are worthy of protection through preparing a list of locally-valued heritage assets that is referenced in neighbourhood plan policy. The use of selection criteria helps to provide the processes and procedures against which assets can be nominated and their suitability for addition to the local

⁵⁰ Planning Practice Guidance Paragraph: 040 Reference ID: 18a-040-20190723 Revision date: 23 07 2019

planning authority's heritage list assessed. A list of locally-valued heritage assets can inform or be integrated within a local list maintained by the local authority, subject to discussion with them." The relationship of the buildings of local heritage interest listed in Table 2 and the List of Buildings of Local Interest held by the Borough Council identified in Appendix B is explained in section 8.2 of the Neighbourhood Plan. There is no indication that the former will be nominated by the Parish Council for inclusion in the List of Buildings of Local Interest held by the Borough Council.

91. Paragraph 197 of the Framework states "*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.*" Whilst the text at the base of page 14 of the Neighbourhood Plan clarifies the buildings identified in Table 2 are not locally listed, I have recommended a modification so that the approach to the identified buildings should have regard to national policy regarding non-designated heritage assets, rather than as currently worded which is based on the approach relevant to designated heritage assets.
92. Local Plan Saved Policy EV7 Buildings of Local Interest seeks to protect locally significant buildings. Core Strategy Policy 11 The Historic Environment supports the identification of heritage assets worthy of designation locally. The Borough Council has in January 2011 adopted Criteria for Local Heritage Designations and issued associated Guidance Notes. Based on the criteria, the Borough Council adopted a List of Buildings of Local Interest in October 2012. The Borough Council website states "*The Council may revise the Local List periodically as new evidence is brought to our attention.*" It is appropriate for a community to use the neighbourhood plan preparation process to identify buildings and structures of local interest, and to include policies to require particular consideration of identified assets in the determination of planning applications.
93. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
94. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their

community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with conserving and enhancing the historic environment, the policy is appropriate to be included in a 'made' neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 3:

Replace Policy C 2 with “Development proposals affecting a building of local heritage interest identified in Table 2, or its setting, will be assessed having regard to the scale of any harm and the significance of the heritage asset.”

Policy LV 1: Key landscapes and vistas

95. This policy seeks to require planning applications to be determined in a manner that protects the key landscapes and vistas listed in Table 3.
96. In a representation the Borough Council states *“Though it is appreciated that the vistas photographed in Appendix C are attractive, the 23 different viewpoints identified command wide views over indeterminate parts of the Parish such that it would be difficult to apply Policy LV1 without individually checking each application against each of the 23 viewpoints. This may not be practical, and as a consequence the policy may not be capable of being implemented. Policy LV1 should be deleted.”*
97. The Parish Council has commented on the representations of the Borough Council as follows *“There is no point in listing and photographing the vistas unless they are protected by some kind of enforcement mechanism. It is quite unacceptable to state that the policy must be deleted because the enforcement of the policy may involve the Borough Council in extra scrutiny. This echoes the point made above that Neighbourhood Plans are pointless if their requirements are limited to those already operated by the Borough Council. Again, it’s a matter of degree, substantiation should be required for any harm, weighed against public benefits.”*
98. Derbyshire County Council states *“Policies LV 1: Key landscapes and vistas, and GS 1: Landscapes and Local Green Spaces, seek to protect key views and green spaces, listing these in a table. However, they do not seek to encourage developments outside those areas from*

having an impact or contributing positively to an improvement in landscape quality. DCC would suggest that the publication 'The Landscape Character of Derbyshire' should be used/referenced in order to identify the various landscape characteristics that should be encouraged in design and boundary treatments of developments. This would help to conserve and enhance the parish landscape and setting." It is not necessary for the Neighbourhood Plan to include policies relating to additional areas in order to meet the Basic Conditions.

99. Paragraph 170 of the Framework includes *"Planning policies ... should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes ... b) recognising the intrinsic character and beauty of the countryside..."*. I am satisfied the approach adopted in Policy LV 1 has sufficient regard for national policy in this respect. The details set out in Table 3 when combined with the map and grid referenced photographs in Appendix C provide a basis for the identification of each view, although I have recommended the addition of direction of view notations to each view location on Figure C1 to achieve the necessary degree of clarity. I have also recommended view location 7 is mapped. I have made these recommendations of modification so that the policy provides sufficient clarity for decision makers as required by paragraph 16d of the Framework.
100. The policy is reliant on a third party for realisation. It is inappropriate to restrict the discretion of decision makers who must determine planning applications in accordance with the development plan unless material considerations indicate otherwise, in accordance with paragraph 2 of the Framework. The term *"in the parish"* is unnecessary and confusing as all the policies of the Neighbourhood Plan apply throughout the plan area unless a lesser area is specified. The term *"in a manner that protects the key landscapes and vistas"* is imprecise. Planning policy must operate in the public interest. The requirement for an assessment in respect of all development affecting views would be contrary to the Guidance on Information Requirements and Validation, and in respect of proposals that are small in scale would represent a disproportionate and unacceptable burden. I have recommended the policy should apply to new buildings that significantly affect the views identified. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and *"is clearly written and unambiguous, so it is*

evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

101. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
102. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with conserving and enhancing the natural environment, in particular the protection and enhancement of valued landscapes, the policy is appropriate to be included in a ‘made’ neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 4:

- **replace Policy LV 1 with “To be supported development proposals for new buildings significantly affecting the key landscapes and vistas identified in Table 3 and Appendix C must be sited, designed and landscaped so that they will not have an adverse visual impact when viewed from the identified publicly accessible locations.”**
- **add a direction of view notation to each view location identified on Figure C1**
- **identify view location 7 on a map**

Policy GS 1: Landscapes and Local Green Spaces

103. This policy seeks to designate Local Green Spaces.
104. Derbyshire County Council states *“Policies LV 1: Key landscapes and vistas, and GS 1: Landscapes and Local Green Spaces, seek to protect key views and green spaces, listing these in a table. However, they do not seek to encourage developments outside those areas from having an impact or contributing positively to an improvement in landscape quality. DCC would suggest that the publication ‘The Landscape Character of Derbyshire’ should be used/referenced in order to identify the various landscape characteristics that should be encouraged in design and boundary*

treatments of developments. This would help to conserve and enhance the parish landscape and setting.” It is not necessary for the Neighbourhood Plan to include policies relating to additional areas in order to meet the Basic Conditions.

105. Designation of Local Green Space can only follow identification of the land concerned. For a designation with important implications relating to development potential it is essential that precise definition is achieved. The proposed Local Green Spaces are presented on Figure 9 of the Neighbourhood Plan. Even with the information included in Table 4, and the photographs of some sites included in Figure 10 the precise boundaries are uncertain. I have recommended Figure 9 is supplemented with a series of Maps within the Neighbourhood Plan document presented at a scale that is sufficient to identify the precise boundaries of each designated Local Green Space. I have recommended a modification in this respect so that the policy *“is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”* as required by paragraph 16d) of the Framework.

106. Decision makers must rely on paragraph 101 of the Framework that states *“Policies for managing development within a Local Green Space should be consistent with those for Green Belts”* and the part of the Framework that relates to ‘Protecting Green Belt land’, in particular paragraphs 143 to 147. That part of the Framework sets out statements regarding the types of development that are not inappropriate in Green Belt areas.⁵¹ The policy has sufficient regard for national policy and does not seek to introduce more restrictive policies than apply in Green Belt.

107. Paragraph 99 of the Framework states *“The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.”*

⁵¹ *R on the Application of Lochailort Investments Limited v Mendip District Council. Case Number: C1/2020/0812*

108. In respect of all of the areas proposed for designation as Local Green Space I find the Local Green Space designations are being made when a neighbourhood plan is being prepared, and I have seen nothing to suggest the designations are not capable of enduring beyond the end of the plan period. The intended Local Green Space designations have regard to the local planning of sustainable development contributing to the promotion of healthy communities, and conserving and enhancing the natural environment, as set out in the Framework.

109. Paragraph 100 of the Framework states *“The Local Green Space designation should only be used where the green space is: a) in reasonably close proximity to the community it serves; b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and c) local in character and is not an extensive tract of land.”*

110. I find that in respect of each of the intended Local Green Spaces the designation relates to green space that is in reasonably close proximity to the community it serves, is local in character, and is not an extensive tract of land. In reaching the latter conclusion I have taken into account the fact that some of the areas of land proposed for designation as Local Green Space are adjacent to, or in close proximity to, one another.

111. The Guidance states the Qualifying Body (Parish Council) *“should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan.”*⁵² The areas proposed for designation as Local Green Space have been subject to extensive consultation with the local community.

112. The submission Neighbourhood Plan includes in Table 4 statements that seek to justify the proposed designations as Local Green Space. Numbered reasons for inclusion are stated in respect of each site and additional reasoning is stated. Although brief in nature Table 4 sets out a justification for each proposed designation including relevant matters referred to in the Framework. Table 4 provides sufficient evidence for me to conclude that each of the areas proposed

⁵² Planning Practice Guidance Paragraph: 019 Reference ID:37-019-20140306 Revision date 06 03 2014

for designation as Local Green Space is demonstrably special to a local community and holds a particular local significance. Whilst Figure 10 includes photographs these only relate to 8 of the areas proposed for designation and do no more than illustrate the range of types of areas proposed for designation.

113. Those areas proposed for designation as Local Green Space that are outside the village envelope are designated Green Belt. Paragraph 133 of the Framework states *“the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence”*. Planning Practice Guidance states *“If land is already protected by Green Belt policy...then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space. One potential benefit in areas where protection from development is the norm (eg villages included in the green belt) but where there could be exceptions is that the Local Green Space designation could help to identify areas that are of particular importance to the local community.”*⁵³

114. Section 9.3 of the Neighbourhood Plan states *“several specific areas of green space both within and outside the Green Belt have been identified as having special value to the community which is above and beyond the standard Green Belt function of preventing the spread and coalescence of urban development”*. Nine types of areas are then identified. I am satisfied these statements confirm awareness of the need to question the additional local benefit when proposing Local Green Space designations in Green Belt.

115. Although a number of the proposed Local Green Spaces lie within or partly within Green Belt. I am satisfied their designation is appropriate given the nature and number of those areas and their spatial context in relation to the built form of Breadsall village. The proposed areas for designation are clearly a resource of particular importance to the local community, and particularly in some cases, for example the Greenway that forms part of the National Cycle Network, to wider communities.

116. I find that the areas proposed as Local Green Space are suitable for designation and have regard for paragraphs 99 to 101 of

⁵³ Planning Practice Guidance Paragraph: 010 Reference ID:37-010-20140306 Revision date 06 03 2014

the Framework concerned with the identification and designation of Local Green Space.

117. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
118. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with promoting healthy communities, and conserving and enhancing the natural environment, the policy is appropriate to be included in a 'made' neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 5:

Supplement Figure 9 with a series of Maps within the Neighbourhood Plan document at sufficient scale to clearly identify the boundaries of each Local Green Space.

Policy B & NC 1: Biodiversity

119. This policy seeks to establish criteria for support of development proposals with respect to the conservation and enhancement of biodiversity.
120. In a representation the Borough Council states "*Section 9.5 appears to have been written separately from section 9.3, with the effect that both sections claim to designate overlapping areas of Local Green Space. Section 9.3 is more effective at this, as section 9.5 does not adequately depict most of the areas it refers to, or to allocate them in the form of a policy. However, the Neighbourhood Plan as written lacks sufficient clarity, which could most easily be restored by selective deletions. Section 9.5: The text of sites 1 through 10 and figure 12 should be deleted. NPPF paragraph 170 requires planning decisions to enhance the local environment by, amongst other things, minimising impacts on and providing net gains for biodiversity, and the Environment Bill announced in the last 2019 Queens Speech intends*

to put this requirement into law. Nevertheless, there are a number of practical issues which have to be taken into account. Policy B & NC1 applies to all planning applications. That would include proposals that have no impact on biodiversity e.g. changes of use, applications for vehicle crossings etc. It would also include all domestic extensions, for whom the requirements, even if revised as advised below, could prove unduly onerous. It would be more practical to apply the requirements to developments of one house or more, and to new commercial floorspace. Policy B & NC1: add “major and minor” after “all”. Criteria 1a requires the conservation of existing biodiversity to the maximum possible extent. That could be interpreted as not supporting the developing on any greenspace, which itself would not be in general conformity with the NPPF. It is suggested that biodiversity should be maintained where practical instead. Policy B & NC1 criteria 1a: replace “to the maximum extent possible” with “where practical”. Criteria 1a also seeks to prevent hedgerow netting. As planning permission is not required to do this, the policy can have no effect. Policy B & NC1 criteria 1a; delete “Wildlife deflecting measures such as the use of hedgerow netting to discourage nesting birds will not be permitted.” Criteria 1b seeks to require any loss in biodiversity from development to be compensated for by enhancement on other nearby land. However, for minor and other development where there is no scope to use s106 agreements in accordance with the NPPF, there is no planning mechanism to secure such improvements. The policy could only be implemented in respect to major development, where the s106 mechanism is available. Even then, the onus would be on the Local Planning Authority to identify the opportunity for biodiversity enhancement, and not on the developer. Though the Neighbourhood Plan provides generic advice about biodiversity enhancement, it does not contain any proposals on identified parcels of land that a developer could contribute to. Consequently, as no means to deliver the policy have been provided, it does not appear appropriate. Policy B & NC1 criteria 1b should be deleted. Criteria 2 aims to protect priority habitats and species as identified in the Lowland Derbyshire Biodiversity Action Plan. However, nowhere in the Neighbourhood Plan are those priority habitats or species, or their locations, identified. Consequently, the policy as worded is imprecise and so unlikely to be effective. Policy B & NC1 criteria 2 should be deleted. Criteria 3 attempts to control the felling of trees not protected by Tree Preservation Orders or by location within the Conservation Area. Such felling does not require consent, and as such the policy can have no effect. Policy B & NC1 criteria 3 should be deleted. Criteria 4 requires the use of native species in all landscaping where possible. To restrict all landscaping,

including in domestic gardens, to native species only appears unreasonable and ignores the significant wildlife benefits of many non-native species e.g. evergreen laurels for nesting birds, the buddleia bush for butterflies etc. the criteria should be changed to “where appropriate”. Policy B & NC1 criteria 4: delete “all”, change “possible” to “appropriate”. Criteria 6 aims to protect hedgerows. In most cases hedgerows do not require consent to be removed, and even where Hedgerow Consent is required consideration is limited to a narrow range of criteria. Planning policy has no control over the exercise of agriculture, intensive or otherwise. Policy B & NC1 criteria 6 should be deleted.”

121. The Parish Council has commented on the representations of the Borough Council as follows *“Section 9.5 introductory text - It is agreed that the list of sites duplicates the list in Section 9.3 and could be omitted. There should however be a cross reference to Section 9.3 in Section 9.5. It is also necessary to retain the text related to wildlife corridors. It is therefore suggested that the text of the “Wildlife in Breadsall” section should be deleted after the first sentence of paragraph three and a new sentence should be added to paragraph three as follows. “These sites are included in the schedule in Section 9.3” A new final paragraph to this section is then needed to deal with wildlife corridors as follows: “Finally, it is necessary to protect wildlife corridors which overcome habitat fragmentation by providing links between clusters of key wildlife habitats. The principal wildlife corridors are shown with a dotted red line on the attached plan. Other wildlife corridors include hedges, scrub, ditches, wildflower margins and unmown grass strips.” We propose that Figure 12 should be revised to show just the wildlife corridors, or alternatively the necessary detail added to Fig 9. and Fig 12 omitted. B&NC1 -The PC agrees to add the words “major and minor”. B&NC 1 1a - The PC believes that the words “where practical” alone are insufficient and suggests “to the maximum extent practical” as a compromise. The PC agrees to the deletion of the last sentence. B&NC 1 1b -The appropriate alternative sites for biodiversity compensation would vary according to the location of the application site, the nature of the development and the time when the application is made. No specific alternative sites can therefore be nominated in the Neighbourhood Plan but the PC would be happy to suggest appropriate sites to the Borough Council on a case by case basis. The absence of advance nomination of alternative sites is therefore not a reason to abandon the policy altogether. The PC would be happy to clarify that the policy should apply only where it can be achieved through the Section 106 mechanism. B&NC 1 2 -The*

Lowland Derbyshire Biodiversity Action Plan is a published document which can be viewed on line. It is not considered that it is necessary to reproduce the document within the Neighbourhood Plan and this is certainly no reason to delete the policy. B&NC 1 3 - Criteria 3 attempts to control the felling of trees without appropriate replacement as part of any planning application, not to limit the normal course of events where a planning application is not required. The PC would be happy to adjust this criterion accordingly rather than delete it. B&NC 1.4 -The PC agrees to these amendments. B&NC 1.6 - As certain hedgerows are protected under this document: <https://www.gov.uk/guidance/countryside-hedgerows-regulation-and-management> The PC appreciates that while the majority of hedgerows falling under planning applications may not fit the criteria for protection, some will, so feel B&NC1.6 should not be deleted. Example: properties edging agricultural land with hedging used as a boundary. Where protection can be given and is appropriate, it should be given.”

122. The first sentence of the policy, that relates to the six points that follow it, is without consequence. It is confusing and inappropriate for the policy to apply to proposals with no impact on biodiversity. Conserving biodiversity “*to the maximum extent possible*” does not have sufficient regard for national policy. It is unnecessary to state “*in the parish*” as all the policies of the Neighbourhood Plan relate to the entire neighbourhood area unless a smaller area is specified. The final sentence of point 1 is confusing in that it states support of the Parish Council however the Neighbourhood Plan sets out policies that form part of the Development Plan. The final sentence of point 1 also states “*subject to the other policies and proposals in the Neighbourhood Plan*”. This is unnecessary and confusing as the Neighbourhood Plan should be read as a whole. The requirement for off-site additional habitat does not have sufficient regard for national policy. Reference to another plan document does not provide a practical decision-making mechanism as required by paragraph 16 of the Framework. The policy includes the terms “*permitted*” and “*refused*”. These terms are inappropriate as it is necessary to take account of material considerations that may not be known until the time of decision making. The policy does not have sufficient regard for national policy relating to trees as set out in paragraph 175 of the Framework. The third sentence of point 3 is a statement and does not include policy content. Wildlife deflecting methods are not a matter for planning land use policy. The approach in point 4 has not been sufficiently justified. National policy does not authorise developments. It is unnecessary and confusing to refer to TPO’s and conservation area status. The final

sentence of point 6 has not been sufficiently justified and seeks to influence intensive agriculture which it may not. The general text in section 9.5 listing sites 1 to 10 and Figure 12 are confusing and do not correspond to Local Green Space designations in Policy GS 1. The requirement relating to wildlife corridors does not have sufficient regard for national policy. The policy must not be reliant on agreement of a third party. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and so that the policy *“is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”* as required by paragraph 16d) of the Framework.

123. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Core Strategy Policy 17 Biodiversity.

124. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with conserving and enhancing the natural environment, the policy is appropriate to be included in a ‘made’ neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 6:

In Policy B & NC 1

- **replace the first sentence with “To be supported all major and minor development proposals must meet the following criteria:”**
- **replace “to the maximum extent possible” with “where practical”**
- **delete the final sentence of point 1**
- **delete the final sentence of point 1a, and all of point 1b**
- **delete point 2**
- **in point 3 delete “In addition to the protection provided by Tree Preservation Orders and conservation area status,”**

- in point 3 replace “shall not be permitted unless diseased” with “will not be supported unless there are wholly exceptional reasons, in accordance with national policy”
- in point 3 delete the third sentence
- in point 3 replace “by the Parish Council” with “in writing by the Local Planning Authority”
- in point 4 delete “all” and replace “shall where possible” with “must where appropriate”
- in point 6 after “preserved” insert “where possible” and delete the final sentence

In general text Section 9.5 delete the text of the paragraph containing sites 1 to 10, and delete Figure 12 and text introducing it.

Policy DS 1: Dark skies

125. This policy seeks to limit the impact of light pollution arising from development and from additional lighting.

126. Derbyshire County Council welcomes the inclusion of this policy in the Neighbourhood Plan. The Borough Council states *“The policy seeks to resist lighting in all areas of the Parish that are currently dark at night. Though the intention of helping to preserve dark skies is supported, the effect is quite extreme and has little regard to the need for domestic or commercial security. It also risks being unduly prejudicial to new development, which would inevitably introduce lighting into previously dark areas. Policy DS1: second sentence should be deleted.”* The Parish Council has commented on the representations of the Borough Council as follows *“This policy is based on wording recommended by the County Council. If the Borough Council disagrees could the two councils please liaise to produce a clear policy position which can be used in Neighbourhood Plans. In any event the PC sees no reason to delete the second sentence since this would not prevent appropriate lighting of new development.”*

127. The policy does not have sufficient regard for paragraph 180c) of the Framework and is not sufficiently justified. The terms *“limit”*, *“excessive”* and *“unintentional”* are imprecise. I have recommended a modification in these respects so that the policy *“is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”* as required by paragraph 16d) of the Framework.

128. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

129. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with conserving and enhancing the natural environment, the policy is appropriate to be included in a 'made' neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 7:

Replace Policy DS 1 with "To be supported planning proposals must: (a) only include external lighting that is essential for safety or security reasons; and (b) include measures to avoid light spillage beyond the application site."

Policy EN 1: Energy

130. This policy seeks to establish criteria for support of planning applications related to renewable energy.

131. Derbyshire County Council has suggested additional matters that could be included in the policy stating *"In response to its comments on the Pre-Submission version of the Plan, DCC welcomes the inclusion of this section on sustainable energy and climate change. In addition to the issue of climate change, the section recognises the need for renewable energy as a contribution to mitigation, and calls for new developments to include high levels of energy efficiency. However, Policy 'EN 1: Energy', does not include the above requirements, nor does it require new buildings to incorporate low carbon/renewable energy infrastructure. These issues are touched upon in Policy HD 4: Design, '7 using innovative design that is sustainable in its design, construction and operation' but this wording is open to interpretation and should be more descriptive, stating specifically that high energy efficiency is required and that new buildings should include, where appropriate, renewable energy generation capacity."* It is not necessary for the Neighbourhood Plan to

include policies relating to the stated matters in order to meet the Basic Conditions.

132. The Borough Council states “this policy as worded conflicts with NPPF paragraph 151 by not providing a positive strategy for renewable energy. This might be rectified by removing the restrictive criteria. Retain first sentence only.”
133. The Parish Council has commented on the representations of the Borough Council as follows *“The text after the first sentence merely elaborates on the implications of the first sentence. There is therefore no reason to omit the rest of the text. The PC does not think this policy conflicts with the NPPF.”*
134. Paragraph 109 of the Framework states *“development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”*. It is unnecessary and confusing to state *“where their impact does not conflict with one or more policies of the Neighbourhood Plan”* as the Neighbourhood Plan should be read as a whole. I have recommended modification so that the policy has sufficient regard for paragraphs 109, 151 and 154 of the Framework.
135. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Core Strategy Policy 14 Managing Travel Demand.
136. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with meeting the challenge of climate change and promoting sustainable transport, the policy is appropriate to be included in a ‘made’ neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 8:

Replace Policy EN 1 with “Development proposals for renewable energy generation will be supported where there is no significant

adverse landscape; visual; highway safety; and wildlife and biodiversity impact”

Policy EN 2: Low-emission transport

137. This policy seeks to establish a requirement for commercial or community development proposals to include provision of ultra-low-emission vehicle and e-bike charging points available for both the public and staff. The policy also requires new residential development to provide either off-road charging facilities for ultra-low-emission vehicles or provide for future provision of such facilities.
138. Derbyshire County Council welcomes the inclusion of this policy in the Neighbourhood Plan. The County Council also states *“Walking and cycling are also classified as ‘low emission transport’, and DCC would suggest that these modes of travel should be recognised and added to the policy. DCC would suggest the addition of the word ‘appropriate’ to the second part of the policy: New residential development shall either provide off-road charging facilities for ultra-low-emission vehicles or incorporate appropriate electrical infrastructure to enable the future addition of such facilities. DCC would suggest the provision of proper cycle storage within commercial and residential developments as identified in the Cambridge City Council’s guidelines: <https://www.cambridge.gov.uk/media/6771/cycle-parking-guide-for-new-residential-developments.pdf>. In addition, DCC would suggest that all new development (both residential and commercial) should provide safe pedestrian and cycle connectivity that links into existing infrastructure, including pedestrian walkways and cycle routes, as appropriate”*. These suggested modifications are not necessary to meet the Basic Conditions.
139. The Borough Council states *“It does not appear reasonable to require community and commercial development to provide charging facilities, either for private or public use. Provision could be encouraged instead. As not all residential development will have off-road parking, it is not possible to require all residential development to have off-road charging facilities. Provision here should only be where appropriate. Policy EN2 first sentence, insert “be encouraged to provide” after “shall”. Policy EN2 second sentence, add “where appropriate” to end.”*
140. The Parish Council has commented on the representations of the Borough Council as follows *“As with dark skies this policy is based*

on wording recommended by the County Council. Again, if the two councils disagree could they please produce a clear policy position for insertion in the Neighbourhood Plan. The PC has no objection to the proposed revision to the wording if both councils agree.”

141. Encouragement would not provide a basis for decision making in respect of development proposals. Paragraph 110 of the Framework seeks development designs that enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. I have recommended a modification to make it clear requirements only apply where proposals include off-road parking facilities. I have recommended a modification in this respect so that the policy *“is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”* as required by paragraph 16d) of the Framework.
142. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
143. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with meeting the challenge of climate change, the policy is appropriate to be included in a ‘made’ neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 9:

In Policy EN 2 replace “New residential development shall” with “Where new residential development includes off-road parking spaces the proposal must”

Policy T & RS 1: Parking standards and vehicle charging

144. This policy seeks to establish car parking requirements for development schemes.
145. The Borough Council states *“By title this policy overlaps with Policy EN2, though in practice it is silent on vehicle charging. Vehicle*

charging could be removed from the title to avoid confusion. The policy is driven by the views of residents that on-street parking in Breadsall impedes the flow of traffic and obstructs pavements for pedestrians. However, the former point appears to be contradicted by concerns about rat-running and speeding traffic raised in previous paragraphs. It seems likely that rat-running and speeding traffic would be worse if there were less on-street parking to slow it down and discourage it. This point also appears to overlook the fact that on-street parking is entirely legal, and where it is dangerous it can be controlled by the Highway Authority through traffic regulation orders, or indeed by the police if an obstruction is being caused. It is not considered that the planning system should be used to make good perceived shortcomings in the discharge of the duties of those authorities. In light of the above discussion, the policy proposed to prevent more on-street parking appears unduly restrictive. The level of parking required, at one or more space per bedroom, appears excessive and would result in an inefficient use of land contrary to NPPF paragraphs 122 and 123. The proposal to apply the same standards to the extension of existing dwellings, many of which may not meet the proposed standards even before extension, may also be unreasonable, as may the requirement for commercial and school development to accommodate all parking requirements off-street, whatever that level of provision may be. In addition, the policy as proposed could effectively preclude most of the limited development opportunities available to Breadsall. This would not be in general conformity with the NPPF. Policy TR & RS1 should be deleted.”

146. *The Borough Council also states “Though a few dwellings may come forward over the plan period in the Green Belt as agricultural workers dwellings or barn conversions, the majority of supply would most likely have to be provided within the settlement boundary of Breadsall Village, through infill, sub-division and redevelopment. All of those routes will result in an increase in density, and consequently policies that aim to prevent an increase in density in the village may militate against the necessary delivery of new homes. Policies TR & RS 1, HD 1 and HD 3 all attempt to do just this, and therefore may run contrary to the presumption in favour of sustainable development. It is also notable that Aim 4 of the plan seeks a significant portion of new development to be smaller dwellings, which by definition will require smaller plot sizes and therefore increase density. Policies TR & RS 1, HD 1 and HD 3 may therefore also be contrary to the aims of the Neighbourhood Plan.”*

147. The Parish Council has commented on the representations of the Borough Council as follows *“It is agreed that the reference to vehicle charging should be deleted as it is covered in the previous section. The PC is indeed concerned about the volume and sometimes the speed of through traffic passing through the village but does not propose to remedy this by increasing the level of dangerous on-street parking. Although almost all dwellings in Breadsall have off-street parking there is still a fair level of on-street parking, especially on Brookside Road and Moor Road, caused mainly by external visitors. There is no justification for a deliberate policy of making on-street parking even worse as the Borough Council appears to suggest. The recent opening of the Damsons café with no off-street parking (despite representations from the PC) provides a good illustration of the issue, as the adjoining stretch of Rectory Lane is now subject to intensive parking causing obstruction to pavements and blocking of visibility for vehicles emerging from adjoining dwellings. The PC is fully aware that direct control of on-street parking is a matter for the highway authority (stated clearly in the Neighbourhood Plan) but this makes it all the more important to have a policy for compulsory provision of off-site parking. The PC is prepared to discuss the precise details of policy TR & RS 1 but remains of the view that Neighbourhood Plan must contain such a policy.”*

148. Derbyshire County Council state *“Evidence shows that at present approximately 55% of pupils in Derbyshire are taken to school by car. Consequently, for every 100 pupils, this policy would imply that 55 car park spaces should be provided for the morning and afternoon school ‘run’. Such a facility would remain unused at other times. The phenomenon of ‘induced demand’ is a recognised one, especially in relation to the provision of car-based infrastructure. Put simply, the more that is provided, the more car-based journeys will occur. Where ‘drop off’ facilities have been provided at other schools in Derbyshire, these have become management and organisational headaches for the schools concerned. A more appropriate policy would be to ensure that the school should be designed with sustainable travel in mind, i.e. the layout and design should facilitate safe and simple pedestrian and cycle access to neighbouring residential areas, thus making these modes the simplest option. This would be in addition to the provision of cycle / scooter storage for pupils, and cycle storage and changing facilities for staff. The school should also engage with the Modeshift STARS <https://www.modeshiftstars.org> process to achieve Silver accreditation. For details and support with Modeshift STARS, contact: sustainable.travel@derbyshire.gov.uk. Consequently, DCC would*

suggest that the phrase, 'including school drop-off traffic' should be removed from the policy." The requirement of Policy T & RS 1 relating to school drop-off traffic has not been sufficiently justified. The remaining content of part 6 of the policy is not sufficiently precise to provide a basis for the determination of development proposals. I have recommended part 6 of the policy is deleted.

149. The term "*within the parish*" is unnecessary and confusing as all the policies of the Neighbourhood Plan apply throughout the plan area unless a smaller area is specified. The policy title includes "*and vehicle charging*" but the policy does not relate to that topic. Paragraph 105 of the Framework sets out the factors that should be taken into account if policies seek to set local parking standards. In response to my request for clarification in this respect the Parish Council state "*Generally, the accessibility of any development (105 a) within this primarily rural parish is by car, as the availability of public transport (105 c) is extremely limited. (105 d) Local car ownership levels are high (see OCSI report. Section 18 sources of supporting evidence). (105 b) Non-residential development is encouraged as specified in Section 13/E1, and housing mix as per Section 12. (105 e) Adequate provision for low emission transport is covered by Policy EN2. The Neighbourhood Plan therefore takes into account the criteria stated in para 105 of the NPPF. In particular the proposed parking standards reflect "the availability of and opportunities for public transport" (ie. very limited) and "local car ownership levels" (ie. very high). A further key reason, not explicitly stated in para 105 is the need to control on-street parking to promote road safety. This is mentioned in para 106 of the NPPF which refers to "managing the local road network", though this would appear to relate to more urban areas and curiously the setting of maximum parking standards.*" The Borough Council maintains it does not consider the evidence offered to sufficiently justify the policy as proposed. Parts 1 to 5 of the policy seek to introduce specific levels of parking provision with respect to the number of bedrooms in dwellings. These elements of the policy have not been sufficiently justified and should be deleted.

150. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

151. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable

development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with promoting sustainable transport, the policy is appropriate to be included in a 'made' neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 10:

Replace Policy T & RS 1 with “Development proposals will be supported where they will not result in additional on-street parking that would adversely affect highway safety.”

Delete “and vehicle charging” from the policy title

Policy HD 1: Housing development

152. This policy seeks to establish conditional support for development of small infill, windfall and redevelopment sites, accommodating no more than 10 dwellings per site within the village housing envelope.
153. In considering whether the Neighbourhood Plan respects the presumption in favour of sustainable development the Borough Council states *“Section 12.1 prays in aid Core Strategy Policy 2, which proposes that only 300 homes are required in the rural areas of the Borough over 2011-2028. The Neighbourhood Plan goes on to consider that the Parish has already made a sufficient contribution to this total. Unfortunately, that text overlooks the fact that the Erewash Core Strategy was adopted in March 2014, and consequently in accordance with regulation 10A of the Town & Country Planning (Local Planning) (England) Regulations 2012 (as amended) has been due for review since March 2019. Furthermore, the Borough is currently failing to meet the Government’s Housing Delivery Test and does not have a 5-year land supply. As a consequence, the strategic housing policies of the Core Strategy can no longer be relied upon in respect to housing delivery and the Government’s standard housing need methodology should be applied instead. These points are all acknowledged in the Borough Council’s Options for Growth consultation that was launched in Jan 2020. The standard methodology sets the housing development needs of the Borough at 393 dwellings per year. As Breadsall Parish forms 0.69% of the*

Borough (2011 Census populations of 773 out of 112,081), that equates to a housing need of 2.7 dwellings per year, which is 27 homes over the 2019-2029 period of the Plan. Though a few dwellings may come forward over the plan period in the Green Belt as agricultural workers dwellings or barn conversions, the majority of supply would most likely have to be provided within the settlement boundary of Breadsall Village, through infill, sub-division and redevelopment. All of those routes will result in an increase in density, and consequently policies that aim to prevent an increase in density in the village may militate against the necessary delivery of new homes.”

154. The Borough Council also states *“The introductory text supports small scale infill, windfall and redevelopment, but makes no mention of conversion or sub-division. Given the need to deliver development outside the Green Belt (and therefore inside the village) and the aim of the plan to deliver more small homes, these appear significant omissions. Policy HD1: add “and from the conversion and subdivision of existing buildings” after “sites”. Criteria 1 allows development that infills small gaps in the built-up frontage that are closely surrounded by buildings, but by omission does not support development in larger gaps, on sites not in the built-up frontage, and on sites not surrounded by development. Furthermore, despite the initial text of the plan supporting windfall and redevelopment sites, neither Criteria 1 nor any other criteria appear to do so. Were these other opportunities suitably supported by their own criteria, it might be possible to amend Criteria 1. In their absence, it is difficult to support its retention. Policy HD1 criteria 1 should be deleted. Criteria 2 appears to duplicate the controls of Saved Local Plan Policy H3. As such it is unnecessary. Policy HD1 criteria 2 should be deleted. Criteria 3 rules out development on backland plots. Given the limited opportunities for development in Breadsall Village, such a restriction ought to require significant justification, but little is provided. The criterion also seeks to prevent a reduction in privacy. In practice, development within the village envelope will nearly always result in some reduction in privacy. A more useful test is may be not to reduce privacy unreasonably. Policy HD1 criteria 3: delete “backland or” and insert “unreasonably” before “reduces”. Criteria 4 seeks to place a limit of 10 housing units on any development. No justification for this threshold is offered, making it appear arbitrary. Policy HD1 criteria 4 should be deleted. Criteria 5 & 6 cross reference the controls of separate policies. Such cross-referencing is unnecessary. Policy HD1 criteria 5 & 6 should be deleted. The final text seeks to prevent any development that does not confirm to Policy HD1. This would not be an appropriate approach to*

non-housing development and in any case gives. Policy HD1 undue prominence, as applications should be assessed against the criteria of the whole development plan and not just one particular policy. Policy HD1: delete “Only development that meets these criteria shall be permitted.””

155. The Parish Council has commented on these Borough Council representations as follows *“At the time the Neighbourhood Plan was written the Core Strategy stated that most new housing development would take place on urban and brownfield sites and that only 300 new dwellings were required during the plan period in the rural areas. It is assumed that the same principle will continue although the exact figures might change. It is therefore misleading for the Borough Council to quote a new housing target for Breadsall (27) based on a simple pro rata allocation across the whole Borough. The Neighbourhood Plan policies seek to ensure that new development is of appropriate types and does not adversely affect the character of the parish but, as explained later, this certainly does not prevent any increase in the overall density of development in the village. The precise capacity for new dwellings within the village will emerge only when future planning applications are made and considered but it would be quite wrong to approve inappropriate development merely to meet an arbitrary target”* and *“HD1 Introductory sentence - The suggested amendment is acceptable to the PC. HD1 1 - The PC proposes the use of the word “adjoined” to replace “surrounded” in criteria 1. The clause should remain. HD1 2 - It is welcome to hear that this policy is consistent with the Local Plan, but this is no reason to omit it from the Neighbourhood Plan. HD1 3 - The policy merely seeks to prevent development of backland “that requires unsuitable access” and does not rule out development on all backland plots. This provision should be retained. It is quite acceptable to add the “unreasonably” before “reduces”. HD1 4 - There are no individual sites in the village envelope which could reasonably accommodate more than 10 housing units. It is therefore reasonable to restrict individual sites to this number to avoid amalgamation of adjoining sites which could lead to larger “estates” which would be out of character with the norm of relatively small-scale infill. The intention is to promote development by smaller developers. HD1 5/6 - These policies should be retained in this section to give a complete picture of housing - related policies. The cross referencing of these policies to other sections of the Neighbourhood Plan is perfectly clear in the text. HD1 penultimate sentence - Policy HD1 relates only to housing development. The sentence “Only development that meets these*

criteria shall be permitted” is therefore valid and should be retained. This should be clear from the heading but the sentence could be altered to begin “Only housing development...” to remove any ambiguity.””

156. Derbyshire County Council states *“It is welcomed that DCC’s comments on the Pre-Submission Version of the Plan have been addressed in respect of the need for clarification in this section and Policy HD1 of the basis for the definition of the village housing development envelope defined in Figure 15. It is also welcomed that DCC’s comments on criterion 4 of Policy HD1 have been addressed in respect of clarification of the restriction on the number of dwellings that would be acceptable in the village envelope to no more than ‘10 per site’ rather than 10 for the whole of the village envelope as set out in the previous iteration of the policy, which was considered to be contrary to the principles of the National Planning Policy Framework (NPPF).”*

157. The Guidance states *“The National Planning Policy Framework expects most strategic policy-making authorities to set housing requirement figures for designated neighbourhood areas as part of their strategic policies. While there is no set method for doing this, the general policy making process already undertaken by local authorities can continue to be used to direct development requirements and balance needs and protections by taking into consideration relevant policies such as the spatial strategy, evidence such as the Housing and economic land availability assessment, and the characteristics of the neighbourhood area, including its population and role in providing services. In setting requirements for housing in designated neighbourhood areas, plan-making authorities should consider the areas or assets of particular importance (as set out in paragraph 11, footnote 6), which may restrict the scale, type or distribution of development in a neighbourhood plan area.”*⁵⁴

158. *“Neighbourhood plans are not obliged to contain policies addressing all types of development. However, where they do contain policies relevant to housing supply, these policies should take account of latest and up-to-date evidence of housing need. In particular, where a qualifying body is attempting to identify and meet housing need, a local planning authority should share relevant evidence on housing need gathered to support its own plan-making.”*⁵⁵

⁵⁴Planning Practice Guidance Paragraph: 101 Reference ID: 41-101-20190509 Revision date: 09 05 2019

⁵⁵ Planning Practice Guidance Paragraph: 040 Reference ID: 41-040-20160211 Revision date: 11 02 2016

159. *“Where neighbourhood planning bodies have decided to make provision for housing in their plan, the housing requirement figure and its origin are expected to be set out in the neighbourhood plan as a basis for their housing policies and any allocations that they wish to make. Neighbourhood planning bodies are encouraged to plan to meet their housing requirement, and where possible to exceed it. A sustainable choice of sites to accommodate housing will provide flexibility if circumstances change, and allows plans to remain up to date over a longer time scale. Where neighbourhood planning bodies intend to exceed their housing requirement figure, proactive engagement with their local planning authority can help to assess whether the scale of additional housing numbers is considered to be in general conformity with the strategic policies. For example, whether the scale of proposed increase has a detrimental impact on the strategic spatial strategy, or whether sufficient infrastructure is proposed to support the scale of development and whether it has a realistic prospect of being delivered in accordance with development plan policies on viability. Any neighbourhood plan policies on the size or type of housing required will need to be informed by the evidence prepared to support relevant strategic policies, supplemented where necessary by locally-produced information.”*⁵⁶

160. *“The scope of neighbourhood plans is up to the neighbourhood planning body. Where strategic policies set out a housing requirement figure for a designated neighbourhood area, the neighbourhood planning body does not have to make specific provision for housing, or seek to allocate sites to accommodate the requirement (which may have already been done through the strategic policies or through non-strategic policies produced by the local planning authority). The strategic policies will, however, have established the scale of housing expected to take place in the neighbourhood area. Housing requirement figures for neighbourhood plan areas are not binding as neighbourhood planning groups are not required to plan for housing. However, there is an expectation that housing requirement figures will be set in strategic policies, or an indicative figure provided on request. Where the figure is set in strategic policies, this figure will not need retesting at examination of the neighbourhood plan. Where it is set as an indicative figure, it will need to be tested at examination.”*⁵⁷

161. *“Where an indicative housing requirement figure is requested by a neighbourhood planning body, the local planning authority can follow*

⁵⁶ Planning Practice Guidance Paragraph: 103 Reference ID: 41-103-20190509 Revision date: 09 05 2019

⁵⁷ Planning Practice Guidance Paragraph: 104 Reference ID: 41-104-20190509 Revision date: 09 05 2019

a similar process to that for providing a housing requirement figure. They can use the authority's local housing need as a starting point, taking into consideration relevant policies such as an existing or emerging spatial strategy, alongside the characteristics of the neighbourhood plan area. Proactive engagement with neighbourhood plan-making bodies is important as part of this process, in order for them to understand how the figures are reached. This is important to avoid disagreements at neighbourhood plan or local plan examinations, and minimise the risk of neighbourhood plan figures being superseded when new strategic policies are adopted".⁵⁸

162. *"Where strategic policies do not already set out a requirement figure, the National Planning Policy Framework expects an indicative figure to be provided to neighbourhood planning bodies on request. However, if a local planning authority is unable to do this, then the neighbourhood planning body may exceptionally need to determine a housing requirement figure themselves, taking account of relevant policies, the existing and emerging spatial strategy, and characteristics of the neighbourhood area. The neighbourhood planning toolkit on housing needs assessment may be used for this purpose. Neighbourhood planning bodies will need to work proactively with the local planning authority through this process, and the figure will need to be tested at examination of the neighbourhood plan, as neighbourhood plans must be in general conformity with strategic policies of the development plan to meet the basic conditions."⁵⁹*

163. *"If a local planning authority is also intending to allocate sites in the same neighbourhood area the local planning authority should avoid duplicating planning processes that will apply to the neighbourhood area. It should work constructively with a qualifying body to enable a neighbourhood plan to make timely progress. A local planning authority should share evidence with those preparing the neighbourhood plan, in order for example, that every effort can be made to meet identified local need through the neighbourhood planning process."⁶⁰*

164. *"Although a draft neighbourhood plan or Order is not tested against the policies in an emerging local plan the reasoning and evidence informing the local plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood*

⁵⁸ Planning Practice Guidance Paragraph: 102 Reference ID: 41-102-20190509 Revision date: 09 05 2019

⁵⁹ Planning Practice Guidance Paragraph: 105 Reference ID: 41-105-20190509 Revision date: 09 05 2019

⁶⁰ Planning Practice Guidance Paragraph: 043 Reference ID: 41-043-20140306 Revision date: 06 03 2014

plan is tested. For example, up-to-date housing need evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date local plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

the emerging neighbourhood plan

the emerging local plan (or spatial development strategy)

the adopted development plan

with appropriate regard to national policy and guidance.”

165. *“The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. The local planning authority should work with the qualifying body so that complementary neighbourhood and local plan policies are produced. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging local plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan. Strategic policies should set out a housing requirement figure for designated neighbourhood areas from their overall housing requirement (paragraph 65 of the revised National Planning Policy Framework). Where this is not possible the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body, which will need to be tested at the neighbourhood plan examination. Neighbourhood plans should consider providing indicative delivery timetables, and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new local plan.”⁶¹*

166. *“A neighbourhood plan can allocate additional sites to those identified in an adopted plan so long as the neighbourhood plan meets the basic conditions.”⁶² and “A neighbourhood plan can allocate additional sites to those in a local plan (or spatial development*

⁶¹ Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20190509 Revision date: 09 05 2019

⁶² Planning Practice Guidance Paragraph: 009 Reference ID: 67-009-20190722 Revision date: 22 07 2019

strategy) where this is supported by evidence to demonstrate need above that identified in the local plan or spatial development strategy. Neighbourhood plans should not re-allocate sites that are already allocated through these strategic plans. A neighbourhood plan can also propose allocating alternative sites to those in a local plan (or spatial development strategy), where alternative proposals for inclusion in the neighbourhood plan are not strategic, but a qualifying body should discuss with the local planning authority why it considers the allocations set out in the strategic policies are no longer appropriate. The resulting draft neighbourhood plan must meet the basic conditions if it is to proceed. National planning policy states that it should support the strategic development needs set out in strategic policies for the area, plan positively to support local development and should not promote less development than set out in the strategic policies (see paragraph 13 and paragraph 29 of the National Planning Policy Framework). Nor should it be used to constrain the delivery of a strategic site allocated for development in the local plan or spatial development strategy. Should there be a conflict between a policy in a neighbourhood plan and a policy in a local plan or spatial development strategy, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.”⁶³

167. Whilst it is not within my role to test the soundness of the Neighbourhood Plan it is necessary to consider whether the Plan meets the Basic Conditions in so far as it will not promote less development than set out in the strategic policies for the area, or undermine those strategic policies, as required by paragraph 29 of the Framework; and meets the requirements set out in the Guidance.

168. I note supporting text in section 12.1 refers to Core Strategy Policy 2 paragraph 3c and states *“It is considered by the Parish Council that the number of dwellings planned or already constructed in Breadsall represents a sufficient contribution to this total.”* In response to my request for clarification regarding evidence that supports the view expressed the Parish Council stated *“At the time the neighbourhood plan was submitted the Local Plan Core Strategy stated that most new housing development would take place on urban and brownfield sites, leaving 300 new dwellings required in the rural areas during the plan period (2011-2028). Housing constructed or*

⁶³ Planning Practice Guidance Paragraph: 044 Reference ID: 41-044-20190509 Revision date: 09 05 2019

given permission since 2011 now stands at a current total of 23 within Breadsall village alone and there are further developments within the parish. Given this, the PC believes that Breadsall has already made a healthy contribution to the 300 total and clearly it is expected that a limited number of extra dwellings will be constructed during the remainder of the plan period. The Borough Council has since revisited the calculations of housing supply in accordance with new guidance in the 2019 NPPF and issued a new Strategic Housing Land Availability Assessment (SHLAA) dated December 2019. The new SHLAA calculation shows a revised borough-wide requirement for 393 new dwellings per annum and the Borough Council suggests in its response to the neighbourhood plan that Breadsall Parish should meet a pro rata share of this, amounting to 27 further dwellings between 2019 and 2029. This calculation is highly dubious for three reasons 1 The calculation ignores the relatively high number of new dwellings constructed in Breadsall during the years immediately preceding 2019 and also ignores the severe limitation on potential locations for further new dwellings in the parish. 2 The new SHLAA states that there is already a “deliverable supply” of 1366 dwellings in the pipeline and an expectation of a further 255 “windfall” dwellings. The shortfall in new dwellings is therefore much less than 393 per annum. 3 Whatever the shortfall we are not aware of any policy to deal with it by means of a simple pro rata allocation across all parts of the borough. Indeed the “Draft Options for Growth” consultation paper issued by the Borough Council in January 2020 does not take this approach at all and generally seeks to protect existing villages and adjoining green belt. In the western part of the borough the paper actually proposes a new 200 dwelling allocation west of Acorn Way The position therefore appears to be that elements of the Core Strategy have been abandoned but not yet replaced by a new strategy. Although the previous 300 dwelling target for dwellings in rural areas may no longer apply there is nothing in subsequent calculations and proposals on housing supply to suggest that the housing policies in the Neighbourhood Plan should be changed.” The Borough Council states “that the houses built to date evidence demand for new housing in Breadsall, and that as windfall sites they made a modest but important contribution to housing delivery. They also indicate the potential for Breadsall to continue to contribute to housing delivery through windfall development.”

169. The Borough Council has not provided a formal housing target at neighbourhood area level and the Parish Council have not requested an indicative housing requirement figure. The revisions to the Guidance relating to these matters were published in May 2019

when the Neighbourhood Plan was at an advanced stage of preparation. The Neighbourhood Plan anticipates small scale additional provision of dwellings in the plan period but is silent regarding any likely number. The Neighbourhood Plan places no cap or limit on the number of homes that can be provided within the village housing village housing development envelope identified in the Local Plan and presented in Figure 15 of the Neighbourhood Plan where it meets stated criteria. It is possible there will also be an increase in dwelling numbers beyond the village housing village housing development envelope where the proposal is accepted in terms of Development Plan and national planning policy. In this policy context it is reasonable to assume there will be some windfall supply during the Plan period up to 2029 which will boost the supply of homes in the Neighbourhood Plan area, for example, through rural exception policy. I am satisfied the approach adopted to address the quantity of housing need in the Neighbourhood Area is appropriate for the purpose of neighbourhood plan preparation for Breadsall parish and provides the necessary justification that those policies (after recommended modification or deletion) that are relevant to housing supply will result in local housing needs being met. The Neighbourhood Plan meets the Basic Conditions in so far as it will not promote less development than set out in the strategic policies for the area, and will not undermine those strategic policies.

170. Paragraph 77 to 79 of the Framework state *“In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply: a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside; b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling*

development to secure the future of heritage assets; c) the development would re-use redundant or disused buildings and enhance its immediate setting; d) the development would involve the subdivision of an existing residential dwelling; or e) the design is of exceptional quality, in that it: - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.”

171. Paragraph 126 of the Framework states *“To provide maximum clarity about design expectations at an early stage, plans or supplementary planning documents should use visual tools such as design guides and codes. These provide a framework for creating distinctive places, with a consistent and high-quality standard of design. However, their level of detail and degree of prescription should be tailored to the circumstances in each place, and should allow a suitable degree of variety where this would be justified”*. Paragraph 127 of the Framework states *“Planning policies and decisions should ensure that developments: a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”* I am satisfied the approach adopted in the Neighbourhood Plan, as recommended to be modified, in these respects has sufficient regard for national policy.

172. A village housing development envelope can represent the dividing line between built areas and open countryside, and can follow clearly defined features such as walls, hedgerows or water courses.

Extant planning permissions and allocations can be included within the village housing development envelope. The definition of the envelope however does not have to relate to some observable land use difference or dividing feature. A village housing development envelope does not have to include the full extent of a settlement, and a village housing development envelope does not have to reflect land ownership boundaries or the precise curtilages of properties. Development boundaries can be used to identify the limits to future development of a settlement. One approach is to exclude curtilages of properties which have the capacity to extend the built form of a settlement in areas where this is not considered desirable. Such areas could include whole properties or parts of large residential gardens. It is evident from the title of Figure 15 the Neighbourhood Plan the village housing development envelope has been determined in accordance with the Erewash Local Plan.

173. The village housing development envelope referred to in Policy HD 1 has been subject to community engagement and consultation during the Plan preparation process. Whilst the envelope reflects the current development form of the settlement, the village housing development envelope does not define the built-up area of Breadsall village as it excludes some adjacent buildings. I am satisfied the village housing development envelope indicates a physical limit to development within which infill development will be conditionally supported over the plan period, unless otherwise provided for in the Neighbourhood Plan or in strategic policies. Policy HD 1 uses the village housing development envelope as a mechanism to define the area within which proposals for housing development will be conditionally supported, and will guide development to sustainable solutions. It is beyond my role to consider whether any alternative alignment of the village housing development envelope would offer a more sustainable solution. It is beyond my role to recommend modification of the Neighbourhood Plan where this is not necessary to meet the Basic Conditions or other requirements that I have identified. The village housing development envelope is clearly defined. In this context the imprecise term *“will not involve the outward extension of the built up area of the village”* is unnecessary and confusing. I have recommended that phrase is deleted.

174. Core Strategy Policy 2 The Spatial Strategy concentrates growth in the Ilkeston and Long Eaton urban areas and restricts development in the rural areas to within existing settlement boundaries to preserve the openness of the Green Belt which is protected by Core Strategy

Policy 3 Green Belt. In response to my request for clarification regarding evidence that supports the limit of 10 dwellings per site the Parish Council stated *“The policy limiting any one site to a maximum of 10 dwellings is based on: a) No site currently within the village housing envelope is capable of accepting more dwellings if they are to be built to an acceptable standard and density. b) The intention is to promote the use of smaller local developers/builders who should be able to build more sympathetically, and to discourage national housebuilders whose normal requirement is for larger sites. This will encourage greater diversity and reduce the possibility of incongruous oversized development should any larger development area become available. c) Developments in excess of 10 units will clearly place a greater strain on local facilities and infrastructure and it may be impractical to expand capacity or to recoup costs through Section 106 or CIL payments. Therefore, a limit of 10 is considered to be both practical and desirable to comply with our stated aims.”* The Borough Council has stated it has no evidence to support the 10-dwelling limit. The points set out by the Parish Council do not justify the limit on scale of development. The policy will apply throughout the plan period and is not limited to sites currently identified. The preference for smaller/local developers/builders and the assertion regarding strain on local facilities and infrastructure have not been sufficiently justified. As recommended to be modified Policy HD 1 is positively worded and does not promote less development than set out in strategic policies as required by paragraph 29 of the Framework. In the context of the characteristics of the Neighbourhood Area Policy HD 1, as recommended to be modified will significantly boost the supply of housing.

175. The Parish and Borough Councils are in agreement that the provision relating to reduction of privacy of adjoining properties should include the word “unreasonable”. I agree this limitation is necessary for the policy to provide a basis for the determination of proposals. It is unnecessary and confusing for a policy to refer to other policies of the Neighbourhood Plan and the core strategy as the development plan should be read as a whole. The policy includes reference to matters covered by other policies of the Neighbourhood Plan including impact on landscape and vistas, design, and access. A policy must avoid unnecessary duplication of policies that apply in a particular area as required by paragraph 16f) of the Framework. The terms *“relevant requirements”*; *“small”*; *restricted gap*; *“closely”*; *“backland”*; *“unneighbourly”*; *“unsuitable”*; and *“inconsistent”* are imprecise and do not provide a basis for the determination of planning proposals. The

term “*Only development that meets these criteria shall be permitted*” is at variance to the opening statement of the policy. The term “*permitted*” is inappropriate as paragraph 2 of the Framework requires development proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. The final paragraph of the policy relates to process matters and not land use policy. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and “*is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals*” as required by paragraph 16d) of the Framework.

176. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

177. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with delivering a sufficient supply of homes, the policy is appropriate to be included in a ‘made’ neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 11:

Replace Policy HD 1 with “Within the village housing development envelope, identified in Figure 15, development proposals that will result in additional dwellings will be supported where this will not unreasonably reduce the privacy of adjoining residential properties.”

Policy HD 2: New housing mix

178. This policy seeks to establish that proposals for new housing development will be required to meet stated local housing needs.

179. In a representation the Borough Council states “*The aims of this policy are supported, as it seeks to provide the type of housing needed in the Parish. However, it is undermined by its construction and lack of underpinning evidence. The attempt to make a policy for a mix of*

housing binding on all development, including single plots, is a practical impossibility. Policy HD2: delete “all” from first sentence. Criteria 1 seeks a mixture of housing types and sizes to meet identified local needs. However, as the Neighbourhood Plan does not identify what those needs are, the policy cannot be implemented. Policy HD2 Criteria 1 should be deleted.”

180. The Parish Council has commented on the representations of the Borough Council as follows *“The PC agrees to omit “all” from the first sentence. The statistical analysis of house types in the parish shows a mix of house types with a preponderance of large detached and semi-detached dwellings. This shows evidence of a lack of smaller dwellings which the PC seeks to address. The Borough Council appears to agree with this position by stating that the Neighbourhood Plan “seeks to provide the type of housing needed in the parish”. The PC does not therefore agree that Policy HD2 1 should be deleted (It is assumed that the Borough Council statement refers to HD 1.1 in error).”*

181. Core Strategy Policy 8 Housing Size, Mix and Choice recognises the role of local evidence of housing need and demand, and refers to area character as a factor in determining appropriate housing mix. In response to my requests for clarification regarding several aspects of Policy HD2 the Borough Council and Parish Council have confirmed that no housing needs assessment has been undertaken. Whilst the Parish Council has referred to the OCSI report and public consultation response these do not sufficiently justify the policy. Paragraph 61 of the Framework states *“the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies”*. The policy is not underpinned by relevant and up-to-date evidence as required by paragraph 31 of the Framework. Whilst the Parish Council state the term *“priority shall be given to”* is intended to provide guidance for developers and the local planning authority, it does not provide a basis for the determination of planning applications. I have recommended the Policy is modified so that it accommodates any assessment of local housing need that may be undertaken during the plan period.

182. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

183. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with delivering a sufficient supply of homes, as recommended to be modified the policy is appropriate to be included in a 'made' neighbourhood plan. Having regard to the Guidance the policy as recommended to be modified is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 12:

Replace Policy HD 2 with “Development proposals for residential development, greater in scale than a single dwelling, will be considered against the latest assessment of local housing need that has been approved by the Local Planning Authority, in particular with respect to accommodation suitable for young families and older people.”

Policy HD 3: Housing density

184. This policy seeks to establish that new development shall be similar in density, footprint, separation, scale and bulk to that of buildings in the surrounding area generally and of neighbouring properties in the same or adjacent zone, unless it can be demonstrated that the proposed development would not harm local character.

185. In a representation the Borough Council states *“By seeking to ensure the density, footprint, separation, scale and bulk of all development is similar to its neighbours, this policy could effectively exclude the possibility of development in Breadsall Village, and so would not be in general conformity with the NPPF. Policy HD3 should be deleted.”*

186. The Borough Council also states *“Though a few dwellings may come forward over the plan period in the Green Belt as agricultural workers dwellings or barn conversions, the majority of supply would most likely have to be provided within the settlement boundary of Breadsall Village, through infill, sub-division and redevelopment. All of those routes will result in an increase in density, and consequently policies that aim to prevent an increase in density in the village may*

militate against the necessary delivery of new homes. Policies TR & RS 1, HD 1 and HD 3 all attempt to do just this, and therefore may run contrary to the presumption in favour of sustainable development. It is also notable that Aim 4 of the plan seeks a significant portion of new development to be smaller dwellings, which by definition will require smaller plot sizes and therefore increase density. Policies TR & RS 1, HD 1 and HD 3 may therefore also be contrary to the aims of the Neighbourhood Plan.”

187. The Parish Council has commented on the representations of the Borough Council as follows *“Policy HD3 emphatically does not prevent all new development. It is written with sufficient flexibility to allow new development which does not clash with the density and character of the existing development in that part of the village. This is consistent with the NPPF and the policy should not be deleted.”*

188. I have noted the Parish Council response to my request for clarification of the requirements of the policy and the statement of the Borough Council that the requirements are not clear. The policy is not clearly written and does not meet the requirement of paragraph 16d) of the Framework that it must be evident how a decision maker should react to development proposals. Paragraph 17 of the Framework states planning policies should ensure that developments *“are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).”* Paragraphs 122 and 123 of the Framework set out policy in respect of achieving appropriate densities. Paragraph 122 states planning policies and decisions should support development that makes efficient use of land and identifies factors that should be taken into account. I have noted the response of the Parish Council to my request for clarification in this respect and concluded Policy HD 3 is not sufficiently evidenced in the necessary terms. I have noted the Borough Council has stated it has no evidence to support the policy. The policy does not have sufficient regard for national policy and does not meet the Basic Conditions. I have recommended the policy is deleted.

**Recommended modification 13:
Delete Policy HD 3**

Policy HD 4: Design

189. This policy seeks to establish that all new development shall demonstrate good quality design and respect and enhance local character. The policy seeks to establish design criteria.
190. Derbyshire County Council has expressed support for the policy, particularly the references to sustainable drainage.
191. The Borough Council states *“The policy purports to apply to all development, but will be inapplicable to many. Policy HD4; replace “All” with “Relevant”. Criteria 1 cross references Policy HD3. Cross referencing is unnecessary, and Policy HD3 is considered inappropriate in any case. The specific wording of Criteria 1, requiring new development to comply with established density and plot widths, could effectively exclude the possibility of development in Breadsall Village, and so may not be in general conformity with the NPPF. Policy HD4 Criteria 1 should be deleted. Criteria 8, 9 & 11 cross-reference to other policies of the Neighbourhood Plan. This is not necessary. Policy HD4 criteria 8, 9 & 11 should be deleted.”*
192. The Parish Council has commented on the representations of the Borough Council as follows *“It is accepted that “development” in a planning context may refer to change of use or very minor works and the term needs to be more specific. The PC suggests “built development other than minor alterations. The PC disagrees with the Borough Council that cross referencing is unnecessary. It is quite natural that some topics in the Neighbourhood Plan overlap with others and the cross referencing helps the reader to understand where these overlaps occur. The current wording is in each case perfectly clear. As stated earlier the PC does not agree that policy HD 3 should be deleted. As a result, Policy HD 4 1 should remain.”*
193. It is unnecessary and confusing for a policy to refer to other policies, or matters dealt with in other policies of the Neighbourhood Plan, as the plan should be read as a whole. Paragraph 16f) states plans should avoid unnecessary duplication of policies that apply in a particular area. I have recommended modification so that the policy has sufficient regard for national policy and *“is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”* as required by paragraph 16d) of the Framework.
194. Paragraphs 124 to 132 of the Framework set out a clear statement of national policy for achieving well-designed places.

Paragraph 125 of the Framework states “*Neighbourhood Plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development.*” The Guidance regarding design process and tools was updated on 1 October 2019. The Guidance states “*Neighbourhood plan-making is one of the key ways in which local character and design objectives can be understood and set out, and with the benefit of being a community-led process.*” The National Design Guide, which is to be read alongside the Guidance, sets out under ten headings, the characteristics of well-designed places and demonstrates what good design means in practice. As recommended to be modified Policy HD 4 has regard for national policy in that it seeks to promote or reinforce local distinctiveness without unnecessary prescription. The policy is supported by a satisfactory evidence base. Subject to my recommended modifications the policy functions in the way that paragraph 127 of the Framework envisages it should.

195. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Core Strategy Policy 10 Design and Enhancing Local Identity.
196. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with achieving well-designed places, conserving and enhancing the natural environment, and conserving and enhancing the historic environment the policy is appropriate to be included in a ‘made’ neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 14:

In Policy HD 4 delete criteria 1, 8, 9,10 and 11

Policy HD 5: Contributions to new infrastructure and facilities

197. This policy seeks to establish that developer contributions will, where permitted, be required to fund facilities and/or infrastructure in

accordance with local priorities to be determined by the Parish Council.

198. The Borough Council states *“Policy HD5 requires financial contributions towards Parish Council priorities that are to be determined on a case by case basis by consultation with the Parish Council. A policy seeking financial contributions towards unspecified projects appears to be contrary to the legal requirements of regulation 122 of the Community Infrastructure Regulations 2010 for contributions to be necessary to make development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Policy HD5 should be deleted”*.

199. The Parish Council has commented on the representations of the Borough Council as follows *“This policy is intended to have two effects. The Borough Council will request Section 106 or CIL payments where it is legally able to. The purpose of the payments will be determined at the time of the application through mutual agreement between the parish and borough councils. In each case the developer would therefore be asked to make a payment for specific purposes to be determined on a case by case basis at the time of the application. This would not therefore involve requests for contributions to “unspecified projects” and would not be contrary to law. This policy should therefore be retained.”*

200. In a representation Derbyshire County Council state *“It would be for the Highway Authority as their statutory duty to determine the impact of a new development on the network and any mitigation required, whether in kind or through developer contributions.”* The policy fails to recognise this situation.

201. In response to my request for clarification how this policy provides an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Core Strategy Policy 19 Developer Contributions the Parish Council has stated *“CS Policy 19 is non-specific to area and refers to cumulative impacts of development. In view of our deficiencies in various aspects of infrastructure, this policy is intended to ensure that Section 106 agreements directly address the needs of the parish. In the absence of this policy the Borough Council might not require developer contributions even when it legally could do so, or might seek contributions for purposes which ignore the wishes of the local community.”* The Borough Council stated it has already expressed the concern that the policy may not be legally

compliant. The policy seeks to fetter the discretion of the relevant decision-making bodies where it is not able to do so. The policy fails to provide an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Core Strategy Policy 19 Developer Contributions. This policy does not meet the Basic Conditions.

Recommended modification 15

Delete Policy HD 5

Policy E 1: Economy

202. This policy seeks to conditionally encourage conditional support for development that safeguards or enhances businesses and educational establishments.

203. In considering whether the Neighbourhood Plan respects the presumption in favour of sustainable development the Borough Council states *“Aim 6 of the Plan is to support small-scale employment opportunities. Chapter 13 discusses employment, and concludes that the parish is not suitable for large scale employment development, but that limited forms of sustainable economic growth that are appropriate to the area will be supported. However, the following Policy E1 only encourages limited development at existing businesses, with no support being offered to new businesses. Policy E1 further rules out any form of B2 or B8 business. There are no measures to support the leisure industry despite that forming the majority of employment in the Parish as identified in Chapter 13, no measures to address the limited range of services in Breadsall Village, and no consideration of the balance between employment type and the housing stock available.”* The Borough Council also states *“Criteria 1 is actually the main policy, and so does not need to be numbered. Policy E1 criteria 1 should not be numbered. The remaining criteria should be renumbered. Criteria 2 supports the opening of a new café or tearoom. However, as this has been achieved through conversion of the village shop, the criteria is no longer necessary. Policy E1 criteria 2 should be deleted. Criteria 3 restricts employment use to within the village boundary, an existing employment site on the edge of the Parish, and farm diversification. This would preclude the commercial use of redundant buildings in the countryside or change of use of land to open space commercial uses, which could be contrary to Green Belt policy in the NPPF. Policy E1 criteria 3 should be deleted. Criteria 4 limits business uses to those in use class B1 only, except for one existing employment site. This*

blanket exclusion of all B2 and B8 uses would apply from ale brewing to yeast storage and a great deal in between. Traditional village crafts like blacksmiths would be banned, along with less prosaic but relevant uses such as car repairs and click and collect points. Rural enterprise would also be stymied, with most food manufacture prevented. It is difficult to see how this restriction is in general conformity with Chapter 6 of the NPPF. Policy E1 criteria 4 should be deleted. Criteria 5 welcomes farm diversification schemes, but not where they create noise or traffic that is considered to harm rural character. It is noted that agriculture, which by definition is rural in character, has significant noise and traffic impacts and that rural locations can provide the best locations for noisy operations and those involving heavy goods vehicles and plant due to their distance from residential neighbours. In that context criteria 5 may not be appropriate. Policy E1 criteria 5: delete “and are subject to controls preventing adverse physical effects such as excessive noise and traffic generation which may harm the rural character of the Green Belt.” Criteria 6 supports working from home, except, among other things, where it would harm the rural character of the Green Belt. It is unclear how working from home could cause such harm, and therefore why this criterion is necessary. Policy E1 criteria 6: delete “or harm the rural character of the Green Belt”. Criteria 7 requires all new development to be served by 100 Mbps broadband. This can only be achieved by FTTP (connecting the optical fibre network to the premises). Breadsall Village currently has FTTC (fibre connections to the cabinet), but BT Openreach have no current plans to upgrade the Village to FTTP. Consequently, the criteria may be unreasonable. Policy E1 criteria 7 should be deleted. Criteria 8 cross references to other policies of the Neighbourhood Plan, which is not necessary. Policy E1 criteria 8 should be deleted.”

204. The Parish Council has commented on the Borough Council representations as follows *“With regard to employment uses the Borough Council’s objective appears to be to remove or weaken every single policy in the Neighbourhood Plan, leaving a general encouragement for employment uses with no controls whatsoever in many areas (eg use classes, working from home, farm diversification). The PC would be happy to discuss amendments to some of the employment policies but strongly resists the Borough Council’s scorched earth approach to the Neighbourhood Plan” and “It is agreed that Policy E1.1 should become a heading and the remaining policies should be renumbered. E1 2 - The PC does not agree that this clause is unnecessary because a cafe/tearoom has been established, uses change and the criteria continue to be valid. E1 3 - The deletion of this*

policy would remove any control whatsoever on the location of employment uses. Some version of this clause must therefore remain. The PC is prepared to discuss the precise wording and would be happy to include existing buildings in the countryside on the description of acceptable locations. E1 4 - The intention of this policy is to prevent unsuitable heavy industry, major distribution or storage facilities. It is a question of how to describe this. The two key use classes B2 (general industry) and B8 (storage, distribution) cover a huge range of different types of activity and we need to find a way to describe what is and is not acceptable. A further point of concern is that there is normally an automatic right to switch from one type of B2 or B8 use to another. A blacksmith business could thus normally be changed into something much more unpleasant. We are willing to accept advice on the rewording of this clause to achieve our aims. E1 5 - The proposed deletion of the second part of Policy E1 5 would place no restriction whatsoever on farm diversification schemes. Is this seriously suggested? The PC believes that there must be a restriction on excessive traffic and noise generation which would still leave scope for most types of diversification schemes. E1 6 - Under Policy E1 6 a typical home worker using a computer would clearly not cause any problem but working from home is not necessarily confined to unobtrusive office-based activity. It might involve, say, a garage mechanic repairing vehicles. Some restriction on working from home is therefore required and the policy should remain. E1 7 - This policy was again suggested by the County Council. It is understood that the purpose of the provision is to ensure that new developments have the necessary IT infrastructure to connect to 100Mbps whenever it comes available. As such the policy should be retained, possibly with the addition of the words "where possible". E1 8 - This policy is necessary to show that other policies in the Neighbourhood Plan may take priority and the policy should remain."

205. In response to my request for clarification of evidence that justifies the limitations introduced in parts 1,2,3,4 and 5 of the policy the Parish Council state "The PC believes that there is no case for any additional allocation of land for employment uses outside the village boundary because a) the land is entirely in the green belt and mostly of a rural character b) the parish is very close to a major conurbation where employment land is available. The PC does encourage the growth and expansion of employment uses on existing sites and through farm diversifications in the rural areas but there must be limitations on the nature of such employment uses to prevent undue harm to the rural character of the area where such uses would be

incompatible. As stated in its reply to the Borough Council's comments the PC is ready to discuss precisely how these limitations should be worded." I have also noted the Borough Council has stated it has no evidence to support Policy E1.

206. The Framework states *"planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas"* and *"Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements."* The limitations introduced in parts 1, 2, 3, and 4 of the policy have not been sufficiently justified. Part 1 of the policy describes the following parts of the policy as stipulations but part 2 of the policy is not a stipulation. The Framework states planning policies should enable the development and diversification of agriculture and other land based rural businesses. The limitations on support introduced by part 5 of the policy have not been sufficiently justified. The term *"in the Parish"* is unnecessary and confusing as all the policies of the Neighbourhood Plan relate to the neighbourhood area unless a smaller area is specified. It is unnecessary for a policy to refer to other policies as the Neighbourhood Plan should be read as a whole. It is unnecessary to state *"where not already permitted by existing planning regulations"* as all the policies of the Neighbourhood Plan only apply to development requiring planning permission. The term *"permitted"* is inappropriate as the Framework states applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Material considerations will not be known until the time of determination. The terms *"excessive noise and traffic generation"* and *"significant traffic flows"* are imprecise. The Framework states *"development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."* The specification of a required broadband speed has not been sufficiently justified. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and *"is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals"* as required by paragraph 16d) of the Framework.

207. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

208. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with building a strong, competitive economy, the policy is appropriate to be included in a 'made' neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 16:

Replace Policy E 1 with “Development proposals for business growth through conversion of existing buildings and well-designed new buildings, or through farm diversification schemes, will be supported. Development proposals relating to operation of a business from residential premises, and development of café/tearooms will be supported. Business-related development proposals will only be supported where there will be no significant adverse residential or visual amenity impacts. All new development must incorporate access to superfast broadband infrastructure.”

Policy CF 1: Development proposals affecting community facilities

209. This policy seeks to guard against unnecessary loss of community facilities.

210. The Borough Council states *“Policy CF1 aims to protect community facilities from loss or impairment. The former is understood, but the latter is imprecise, and therefore may be inappropriate. Policy CF1: delete “or significant impairment” Policy CF1 also intends to protect both specific identified and “similar” facilities. That approach is imprecise and therefore may be inappropriate. Policy CF1: delete “or any similar facilities”*”.

211. The Parish Council has commented on the representations of the borough Council as follows *“It is ironic that the Borough Council, having consistently requested the removal of specific provisions from earlier policies now complains that the wording of this policy is too imprecise! The PC believes that the words “impairment” and “similar” have perfectly understandable meanings in the English language and*

the policy should remain as drafted. An example of impairment might be the partial obstruction of a footpath and a similar replacement would be a diversion to a clearer route.”

212. Paragraph 92 of the Framework states planning policies should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs. The requirement that alternative facilities must be provided *“by the developer”* has not been sufficiently justified. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and *“is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”* as required by paragraph 16d) of the Framework. The Great Northern Greenway has been designated as National Cycle Network route 672 by Sustrans. This route and the public footpaths in the neighbourhood area are subject to separate legislation regarding their diversion or closure. It is, however, appropriate for the Neighbourhood Plan to seek to protect those routes through planning policy.

213. The policy is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Core Strategy Policy 12 Local Services and Healthy Lifestyles.

214. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with promoting healthy and safe communities, the policy is appropriate to be included in a ‘made’ neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 17:

Replace Policy CF 1 with “Development proposals that will result in loss of all or part of the following community facilities will not be supported unless:

- a) an equivalent replacement facility of similar quality in no less convenient a location for users is provided; or**

b) it can be demonstrated that the existing facility is no longer used by the local community.

- 1. Village shop**
- 2. Memorial Hall and playing fields together with parking, pavilions and event facilities**
- 3. Church of All Saints**
- 4. Breadsall Priory Hotel and Country Club and Golf Course**
- 5. Windmill Inn public house**
- 6. Public footpaths, and**
- 7. Great Northern Greenway”**

Policy FR 1: Reducing flood risk

215. This policy seeks to direct and shape development to prevent increased flood risk.

216. Severn Trent has commented *“We are supportive of this policy however we feel it could be enhanced by specifically mentioning the importance of new development adhering to a drainage hierarchy with regards to surface water management. Whilst the policy does push the use of Sustainable Urban Drainage Systems and points towards the governments Surface Water Management Plan Technical Guidance, we feel this policy could go further in pushing the drainage hierarchy whereby surface water should be disposed of in the following order of preference;*

- 1. To soil/ground via infiltration*
- 2. To a nearby watercourse or ditch-course*
- 3. To a designated public surface water sewerage system*
- 4. To the public combined sewerage system (strongly discouraged)*

A discharge into the combined sewerage system (or foul) will often require some form of infrastructure upgrade so that hydraulic sewer flood risk to the local area is not increased.” It is not necessary for the policy to include additional elements in order to meet the Basic Conditions.

217. The Borough Council states *“Flooding is known to be a major concern of Breadsall Parish, and with good reason due to the level of flood risk as defined by the Environment Agency. However, it is noted that the text of Chapter 15 and Policy FR1 have not been supported by*

any additional evidence. This is a missed opportunity, as an appropriate Flood Risk Assessment could have identified practical measures to alleviate flood risk. As it stands, the causes of flood risk identified in the supporting text, though intuitive, are unproven and do not form sufficient grounds to impose additional requirements on development. Criteria 1 aims to prevent any new development in the area defined by the Environment Agency as having a high surface run-off flood risk. The mapping provided is not precise enough to apply in practice, and so the policy cannot be implemented. In any case, national policy does not simply prevent development in areas of high flood risk, but instead applies a complex range of tools including the sequential test, flood risk compatibility matrix, and exception test. None of this appears to have been taken into account in drafting the policy. Policy FR1 criteria 1 should be deleted. Criteria 2 puts the onus on developers in the medium surface water run-off risk area to demonstrate that they will not impact on drainage infrastructure or contribute to surface run-off. As suggested for Criteria 1 above, Criteria 2 is also supported by imprecise mapping and does not take into consideration national flooding policy controls. It also appears to contravene the Water Industry Act 1991, which gives all new development the right to connect to the public sewer network. Finally, the approach taken does not appear to take into account the requirements of the Building Act 1984, which makes the control of drainage from new development a building control matter, not a planning one. Policy FR1 criteria 2 should be deleted. Criteria 3 requires all new development to have drainage infrastructure that does not increase flood risk. As suggested for Criteria 2 above, this appears to be subject to other legislation, in which case it would be unreasonable to attempt to put additional controls in place through the planning system. Policy FR1 criteria 3 should be deleted. Criteria 4 requires all new development to be served by sustainable drainage infrastructure. The NPPF already requires all major development and development in flood risk areas to be served by sustainable drainage systems unless there is clear evidence that this would be inappropriate. Despite the history of flooding, no evidence has been provided to justify a more stringent regime in Breadsall. Criteria 4 should be deleted”.

218. The Parish Council has commented on the representations of the Borough Council as follows “The Borough Council acknowledges that flooding is a major concern “with good reason” but then suggests that virtually every policy should be deleted! This is unfortunately typical of its negative approach to the Neighbourhood Plan. Given that

flood risk is a major issue the Neighbourhood Plan should obviously include policies to address the subject. It should be noted that the Neighbourhood Plan policy is supported by the two other consultees (Environment Agency and Severn Trent Water) whose expertise in the subject may well be greater than the Borough Council's. If the Neighbourhood Plan is to have any purpose at all it must contain policies related to flood risk. The PC is, however, happy to consider amendments to the current text of the policies which would be in accord with our stated aim 7.9. In the meantime, the PC wishes to make the following points: 1 As far as the PC is aware the Environment Agency plans are the only source of information about the flood risk in specific locations and must therefore be the main point of reference. It is agreed that the versions of the plans produced in the Neighbourhood Plan are not of high quality but potential developers do not have to use these versions. The Neighbourhood Plan contains references to the Environment Agency website where the same plans at a larger scale can be viewed. It also agreed that the Neighbourhood Plan policies should relate equally to any future revisions of these plans. 2 Policy 155 of the NPPF states that inappropriate development in flood risk areas should be avoided by "directing development away from areas at highest risk". Given that Breadsall can only ever make a tiny contribution to housing supply the PC sees no justification for development on sites of high flood risk. The PC also cannot conceive of any situation where the "exception test" described in paragraph 160 of the NPPF could be met in Breadsall. 3 In other cases it seems eminently reasonable to the PC that new development should not make existing flood risks any worse. Is the Borough Council seriously suggesting that an increase in flood risks is acceptable? This provision may be covered by other national and local policies but this does not mean that it cannot be stated in the Neighbourhood Plan. 4 The comments made by the Borough Council under Policy 2 appear to miss the point. As far as the PC is aware the right to connect to public sewers under Water Industry Act does not apply to new development unless planning permission is granted for that development. Is it not the role of the planning authority to refuse planning permission where that would place undue strain on the public sewers? It should be noted that the current system running through Breadsall village is a combined surface/foul water system and the PC is currently discussing with STW the problems caused by this. 5 The PC is happy to elaborate on the application of sustainable drainage criteria. This could include quoting the four-stage "order of preference" recommended in Severn Trent's response to the Neighbourhood Plan. The current technical guidance is already referred to in Section 18."

219. In response to my request for clarification how parts 1, 2, 3, and 4 of the policy introduce a local approach to a specific part of the neighbourhood that is distinct from policy set out in paragraphs 155 and 156 of the Framework the Parish Council state *“Flood risk was a frequently raised topic in the public consultations and the Neighbourhood Plan goes into some detail on the nature of these risks It is entirely appropriate that the Neighbourhood Plan should contain a set of policies to address these risks and ensure that development does not increase them either on the development site or elsewhere. These policies are consistent with the NPPF but are more precise and apply specifically to the situation in Breadsall, with known flood risks (for example by linking them to the Environment Agency’s plan for the area). As suggested by the Borough Council the PC may expand on the application of sustainable drainage techniques in policy 4.”* I have noted the Borough Council state *“The LPA has already expressed the view that Policy FR1 does not take account of national planning policy relating to flood risk.”*
220. Paragraphs 155 to 165 of the Framework set out a clear statement of planning policy in relation to flood risk. Paragraph 164 of the Framework states *“Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 50.”* It is inappropriate for a Neighbourhood Plan to include policies that either duplicate or seek to vary national or strategic policy. Part 5 of the policy does introduce a distinct local approach to a specific part of the neighbourhood area. I agree with the points raised by the Borough Council and have recommended the introductory text and parts 1; 2; 3; and 4 of the policy are replaced for the reasons stated.
221. The policy as recommended to be modified is in general conformity with the strategic policies included in the Erewash Core Strategy adopted in March 2014 and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies,
222. The policy as recommended to be modified seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the introduction; achieving sustainable development; plan-making; and decision-making sections of the Framework, and the components of the Framework concerned with meeting the challenge of climate change and flooding, the policy is appropriate to be included in a

‘made’ neighbourhood plan. Having regard to the Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 18:

Replace Policy FR 1 before “To avoid” with “Development proposals will only be supported where they will not significantly increase the risk of flooding from watercourses, or from surface run-off.”

Conclusion and Referendum

223. I have recommended 18 modifications to the Submission Version Plan. I have also made a recommendation of modification in the Annex below.

224. I am satisfied that the Neighbourhood Plan⁶⁴:

- 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 Parish 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);
 - does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise

⁶⁴ The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

compatible with EU obligations if modified in accordance with my recommendations; and

- the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.⁶⁵

I recommend to Erewash Borough Council that the Breadsall Neighbourhood Development Plan for the plan period up to 2029 should, subject to the modifications I have put forward, be submitted to referendum.

225. 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.⁶⁶ I have seen nothing to suggest that the policies of the Plan will have “*a substantial, direct and demonstrable impact beyond the neighbourhood area*”⁶⁷. I conclude the referendum area should not 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 Erewash Borough Council as a Neighbourhood Area on 21 September 2016.

Annex: Minor Corrections to the Neighbourhood Plan

226. A number of consequential modifications to the general text, and in particular the ‘reasoned justification’ and other general text of policies sections, of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies. Reasoned justification and other supporting text must not introduce any element of policy that is not contained within the Neighbourhood Plan policies.

227. I am also able to recommend modification of the Neighbourhood Plan in order to correct errors.⁶⁸ I recommend minor change only in so far as it is necessary to correct an error, or where it is necessary so that the Neighbourhood Plan provides a practical framework which

⁶⁵ This basic condition arises from the coming into force, on 28 December 2018, of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 whereby the Neighbourhood Planning Regulations 2012 (5) are amended

⁶⁶ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁶⁷ Planning Practice Guidance Reference ID: 41-059-20140306

⁶⁸ Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990

makes it evident how a decision maker should react to development proposals as required by paragraph 16 of the Framework.

Recommended modification 19:

Modify general text, figures or images to achieve consistency with the modified policies, and to correct identified errors

228. Derbyshire County Council has commented that paragraph 6.2 should be updated to state there are 111 pupils on roll at Breadsall Church of England Primary School in the 2019/2020 academic year. The County Council has also commented on Proposal PT A: Public transport as follows *“Given the nature of Breadsall and the rate of car ownership, the current economics of public transport are likely to remain for the foreseeable future. Consequently, DCC would suggest that the proposal should be amended to read: ‘The Parish Council will work with public transport operator(s) and Derbyshire County Council to continue to provide a viable bus service for residents of Breadsall’. Where development occurs, developer contributions should be sought to improve the public transport offer. This could include the support for any or all of the following options: Community Transport, Derbyshire Connect or similar bus services, Community Car Club, Car share and Wheels to Work.”* These suggestions for change are not necessary to meet the Basic Conditions or Convention Rights, nor necessary to correct errors. I would have no objection to the changes being made, however, I cannot recommend modifications of the Neighbourhood Plan in these respects as this would be beyond my remit.

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REPORT ENDS