

# **SHERSTON NEIGHBOURHOOD PLAN 2006-2026**

Sherston Neighbourhood Plan Examination,  
A Report to Wiltshire Council

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## **1. Summary**

- 1 Subject to the recommendations within this Report, made in respect of enabling the Sherston Neighbourhood Plan to meet the basic conditions, I confirm that:
  - having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood 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, European Union (EU) obligations; and
  - the making of the neighbourhood plan is not likely to have a significant effect on a European site<sup>1</sup> or a European offshore marine site, either alone or in combination with other plans or projects.
  
- 2 Taking the above into account, I find that the Sherston Neighbourhood Plan meets the basic conditions<sup>2</sup> and I recommend to Wiltshire Council that, subject to modifications, it should proceed to Referendum.

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<sup>1</sup> See Paragraphs 38-41 of this Report.

<sup>2</sup> It is confirmed in Chapter 3 of this Report that the Sherston Neighbourhood Plan meets the requirements of Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990.

## 2. Introduction

### The Neighbourhood Plan

- 3 This Report provides the findings of the examination into the Sherston Neighbourhood Plan (referred to as the Neighbourhood Plan) prepared by the Neighbourhood Plan Steering Group on behalf of Sherston Parish Council.
- 4 As above, the Report recommends that the Neighbourhood Plan should go forward to a Referendum. Were a Referendum to be held and were more than 50% of votes to be in favour of the Neighbourhood Plan, then the Plan would be formally *made* by Wiltshire Council. The Neighbourhood Plan would then form part of the development plan and as such, it would be used to determine planning applications and guide planning decisions in the Sherston Neighbourhood Area.
- 5 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.  
  
*“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.”*  
(Paragraph 183, National Planning Policy Framework)
- 6 As confirmed in Paragraph 1.2 of the Basic Conditions Statement, submitted alongside the Neighbourhood Plan, Sherston Parish Council is the *Qualifying Body*, ultimately responsible for the Neighbourhood Plan.
- 7 The Neighbourhood Plan relates only to the designated Sherston Neighbourhood Area and there is no other neighbourhood plan in place in the Sherston Neighbourhood Area.
- 8 The above meets with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012<sup>3</sup>) and Planning Practice Guidance (2014).

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<sup>3</sup> A replacement National Planning Policy Framework was published in July 2018. Paragraph 214 of the replacement document establishes that the policies of the previous National Planning Policy Framework apply for the purpose of examining plans until the 25<sup>th</sup> January 2019.

Role of the Independent Examiner

- 9 I was appointed by Wiltshire Council, with the consent of the Qualifying Body, to conduct the examination of the Sherston Neighbourhood Plan and to provide this Report.
- 10 As an Independent Neighbourhood Plan Examiner, I am independent of the Qualifying Body and the Local Authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.
- 11 I am a chartered town planner and have seven years' direct experience as an Independent Examiner of Neighbourhood Plans. I also have more than twenty five years' land, planning and development experience, gained across the public, private, partnership and community sectors.
- 12 As the Independent Examiner, I must make one of the following recommendations:
  - that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
  - that the Neighbourhood Plan, as modified, should proceed to Referendum;
  - that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 13 If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether the Referendum Area should extend beyond the Sherston Neighbourhood Area to which the Plan relates.
- 14 Where modifications are recommended, they are presented as bullet points and highlighted in **bold print**, with any proposed new wording in *italics*.

Neighbourhood Plan Period

- 15 A neighbourhood plan must specify the period during which it is to have effect.
- 16 The front cover of the Neighbourhood Plan clearly sets out that the plan period comprises "2006-2026."
- 17 In addition to the above, Paragraph 1.3 of the Basic Conditions Statement states that:  
  
*"The SNP covers the period from 2006 to 2026. This period has been chosen to align with the dates of the Wiltshire Core Strategy."*
- 18 Taking the above into account, the Neighbourhood Plan specifies the plan period during which it is to have effect.

Public Hearing

- 19 According to the legislation, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.
- 20 However, the legislation establishes that it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.
- 21 Further to consideration of the information submitted, I confirmed to Wiltshire Council that I would not be holding a public hearing as part of the examination of the Sherston Neighbourhood Plan.

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

#### **Basic Conditions**

- 22 It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “basic conditions.” These were *set out in law*<sup>4</sup> following the Localism Act 2011. Effectively, the basic conditions provide the rock or foundation upon which neighbourhood plans are created. 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 neighbourhood 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, European Union (EU) obligations; and
  - prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.
- 23 Regulations 23 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to above. Of these, the following basic condition applies to neighbourhood plans:
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.<sup>5</sup>

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

<sup>5</sup> Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.



- 24 In examining the Plan, I am also required, as set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act), to check whether the neighbourhood plan:
- has been prepared and submitted for examination by a qualifying body;
  - has been prepared for an area that has been properly designated for such plan preparation (under Section 61G of the Localism Act);
  - meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one neighbourhood area and that:
  - its policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004.
- 25 An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.<sup>6</sup>
- 26 Subject to the content and recommendations of this Report, I am satisfied that these requirements have been met.
- 27 I note that, in line with legislative requirements, a Basic Conditions Statement was submitted alongside the Neighbourhood Plan. This sets out how, in the qualifying body's opinion, the Neighbourhood Plan meets the basic conditions.

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<sup>6</sup> The Convention rights has the same meaning as in the Human Rights Act 1998.

### European Convention on Human Rights (ECHR) Obligations

- 28 I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.
- 29 In the above regard, I note that Information has been submitted to demonstrate that people were provided with a range of opportunities to engage with plan-making in different places and at different times. Representations have been made to the Plan, some of which have resulted in changes and the Consultation Statement submitted alongside the Neighbourhood Plan provides a summary of responses and shows the outcome of comments.

### European Union (EU) Obligations

- 30 There is no legal requirement for a neighbourhood plan to have a sustainability appraisal<sup>7</sup>. However, in some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment (SEA).
- 31 In this regard, national advice states:
- “Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects.”*  
(Planning Practice Guidance<sup>8</sup>)
- 32 The Basic Conditions Statement submitted alongside the Neighbourhood Plan confirms that Wiltshire Council advised at the outset that a Strategic Environmental Assessment (SEA) was likely to be required as the Neighbourhood Plan identifies land for development.

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<sup>7</sup> Paragraph 026, Ref: 11-027-20150209, Planning Practice Guidance.

<sup>8</sup> Paragraph 027, *ibid.*

- 33 A scoping report was prepared at the beginning of the plan-making process and was consulted upon during 2013. The statutory bodies, Historic England, Natural England and the Environment Agency, were consulted. The scoping report was amended to take into account comments received. A final scoping report was published in August 2018.
- 34 The SEA process took place alongside the development of the plan. As part of this process, an appraisal of the reasonable alternative development site options was undertaken. This was recorded in the Sherston Neighbourhood Plan Sustainability Appraisal (incorporating Strategic Environmental Assessment). A draft version of the Sustainability Appraisal was published alongside the pre-submission Neighbourhood Plan and the final version, submitted alongside the Neighbourhood Plan, took into account comments received during pre-submission consultation.
- 35 In addition to SEA, a Habitats Regulations Assessment (HRA) is required if the implementation of the Neighbourhood Plan may lead to likely significant effects on European sites. Wiltshire Council issued a HRA screening determination in March 2016. This was then reviewed and updated in July 2018. The screening determination concluded that:

*“The Sherston NP would have no likely significant effects upon the Natura 2000 network alone or in combination and no appropriate assessment is considered necessary by Wiltshire Council as competent authority.”*

- 36 The statutory bodies have all been consulted and none have raised any issues in respect of European obligations. Furthermore, national guidance establishes that the ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations lies with the local planning authority:

*“It is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a neighbourhood plan proposal submitted to it have been met in order for the proposal to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations” (Planning Practice Guidance<sup>9</sup>).*

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<sup>9</sup> Planning Practice Guidance Reference ID: 11-031-20150209.

- 37 In carrying out the work that it has and in reaching the conclusions that it has, Wiltshire Council has not raised any concerns in respect of the Neighbourhood Plan's compatibility with EU obligations.
- 38 Further to the all of the above, in April 2018, in the case *People Over Wind & Sweetman v Coillte Teoranta* ("People over Wind"), the Court of Justice of the European Union clarified that it is not appropriate to take account of mitigation measures when screening plans and projects for their effects on European protected habitats under the Habitats Directive. In practice this means if a likely significant effect is identified at the screening stage of a habitats assessment, an *Appropriate Assessment* of those effects must be undertaken.
- 39 In response to this judgement, the government made consequential changes to relevant regulations through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.
- 40 The changes to regulations allow neighbourhood plans and development orders in areas where there could be likely significant effects on a European protected site to be subject to an Appropriate Assessment to demonstrate how impacts will be mitigated, in the same way as would happen for a draft Local Plan or planning application.
- 41 These changes came into force on 28<sup>th</sup> December 2018. This post-dated the submission of the Neighbourhood Plan and the subsequent consultation period. However, as the regulations are now in force, it is important to ensure that, where necessary, an Appropriate Assessment has been undertaken. The recommendations in this Examiner's Report are therefore subject to this.

#### **4. Background Documents and the Sherston Neighbourhood Area**

##### Background Documents

- 42 In undertaking this examination, I have considered various information in addition to the Sherston Neighbourhood Plan and draw attention to the fact that a replacement version of the National Planning Policy Framework was published in July 2018, after the submission of the Neighbourhood Plan. The previous National Planning Policy Framework was published in 2012 and the replacement version differs from it in a number of ways.
- 43 However, as noted above, Paragraph 214 of the replacement document establishes that the policies of the previous National Planning Policy Framework apply for the purpose of examining plans until the 25<sup>th</sup> January 2019.
- 44 Taking the above into account, information considered as part of this examination has included (but is not limited to) the following main documents and information:
- National Planning Policy Framework (referred to in this Report as "*the Framework*") (2012)
  - Planning Practice Guidance (2014)
  - Town and Country Planning Act 1990 (as amended)
  - The Localism Act (2011)
  - The Neighbourhood Plan Regulations (2012) (as amended)
  - The Wiltshire Core Strategy Local Plan (2015)
  - Basic Conditions Statement
  - Consultation Statement
  - Sustainability Appraisal (Incorporating Strategic Environmental Assessment)

Also:

- Representations received
- 45 In addition, I spent an unaccompanied day visiting the Sherston Neighbourhood Area.

Sherston Neighbourhood Area

- 46 The boundary of the Sherston Neighbourhood Area is shown on Map 1, on page 4 of the Neighbourhood Plan. It covers the same area as that of Sherston Parish.
- 47 Wiltshire Council formally designated the Sherston Neighbourhood Area on 28 February 2013. This satisfies a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

## 5. Public Consultation

### Introduction

- 48 As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.
- 49 Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

### Sherston Neighbourhood Plan Consultation

- 50 A Consultation Statement was submitted to Wiltshire Council alongside the Neighbourhood Plan. The information within it sets out who was consulted and how, together with the outcome of the consultation, as required by the neighbourhood planning *regulations*<sup>10</sup>.
- 51 Taking the information provided into account, there is evidence to demonstrate that the Neighbourhood Plan comprises a "*shared vision*" for the Sherston Neighbourhood Area, having regard to Paragraph 183 of the National Planning Policy Framework ("*the Framework*").
- 52 Sherston Parish Council established a Steering Group to prepare the Neighbourhood Plan. An open workshop was held in July 2012 to provide the local community with the opportunity to express their concerns and aspirations for Sherston. This was attended by around 50 local residents and supported by representatives of Wiltshire Council.
- 53 Following further consultations with various groups in early 2013, a second public workshop was held in March of that year. Around 75 people attended this workshop, where key issues were discussed, including the level of housing deemed appropriate for Sherston.

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<sup>10</sup> Neighbourhood Planning (General) Regulations 2012.

- 54 Following a call for sites, potential development sites were assessed during 2014. This included analysis by a consultancy, the results of which were considered at workshops during the Annual Parish Meeting. A public exhibition and presentation was then held in September 2014. Exactly 100 members of the public attended the exhibition, which provided detailed information relating to and sought views on, potential development sites. Completed questionnaires provided plan-makers with information to help draft policies.
- 55 In 2017, a public meeting attended by 144 people considered a proposal to allocate land in the local plan for mixed used development including a new GP surgery and up to 45 dwellings. The proposal was largely supported.
- 56 Regulation 14 Consultation took place between February and April 2018. It was supported by publicity in the local press and letters to landowners affected by proposals. Drop-in sessions were held at the Village Hall during the consultation period. Comments received were taken into account, resulting in changes to the draft plan.
- 57 The Consultation Report provides evidence to demonstrate that public consultation formed an important part of the overall plan-making process. It was well-publicised on a consistent basis, matters raised were considered in detail and that the reporting process was transparent.
- 58 Taking all of the above into account, I am satisfied that the consultation process complied with the neighbourhood planning regulations referred to above.



## 6. The Neighbourhood Plan – Introductory Section

- 59 As noted earlier, the Basic Conditions require neighbourhood plans to be in general conformity with the strategic policies of the relevant District-wide development plan. Whilst this does not extend to a requirement to *“be in conformity”* with the plan period of the development plan, doing so can provide for clarity, especially where a neighbourhood plan seeks to allocate land for development in order to meet housing needs.
- 60 Taking the above into account, I recommend:
- **Page 5, Para 2.2, change to *“The Sherston Neighbourhood Plan (SNP) covers the same plan period as the adopted Wiltshire Core Strategy, up to 2026.”***
- 61 Taking into account the passing of time and for clarity, I recommend:
- **Page 5, Para 2.5, change to *“The Steering Group first met in February 2012 and work progressed on the preparation of the Neighbourhood Plan until its submission for examination in 2018. The plan allocates development sites and seeks to complement the policies of the Wiltshire Core Strategy.”***
- 62 Paragraph 3.5 is unclear. *“Local”* requirements are not defined and as above, the statutory requirement is for neighbourhood plans to be in general conformity with the development plan, not *“adhere”* to it. I recommend:
- **Delete Para 3.5**
- 63 It is the responsibility of Wiltshire Council, rather than Sherston Parish Council, to manage development and I recommend:
- **Page 5, Para 3.6, change from first line to *“...Council has been to support development within and around the village that it considers to be appropriate in scale...community. Wherever...”***

64 For clarity, I recommend:

- **Page 6, Para 3.6, replace last three lines with “...affordable housing). *Whilst the Neighbourhood Plan does not seek to change the existing VDB, it is noted that Wiltshire Council is progressing a separate Housing Site Allocations Plan. This does not propose housing allocations in Sherston, but does propose changes to the settlement boundary.*”**

65 For clarity and to avoid confusion, I recommend:

- **Page 9, Para 6.1, add “A Neighbourhood Plan is a community-driven plan...”**

66 Sherston contains significant heritage assets. These are recognised by national policy as:

*“...an irreplaceable resource...”*

(Para 126, National Planning Policy Framework (referred to in this Report as “*the Framework*”))

67 Neighbourhood Plan Objective 2 simply refers to “*historic interest*” and Objective 7 refers only to “*the historic environment*” in the countryside. Sherston’s heritage assets are of national importance and are protected by statute. Taking this into account, I recommend:

- **Page 11, Objective 2, insert new bullet point to begin the list “*Conserves or enhances Sherston’s significant heritage assets.*”**

68 There is an error on page 13 and I recommend:

- **Page 13, Para 8.2, insert space after full stop on line 4**

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

### **Policy 1: Protection of community services, facilities and business premises**

- 69 In supporting a prosperous rural economy, Paragraph 28 of the Framework states that neighbourhood plans should support:

*“...the sustainable growth and expansion of all types of business and enterprise in rural areas...”*

- 70 It goes on to require planning policies to provide for the retention and development of community facilities, including shops, meeting places, cultural buildings, places of worship and pubs.

- 71 In addition, to ensure the provision of the facilities that a community needs, Paragraph 70 of the Framework requires planning policies to:

*“...guard against the unnecessary loss of valued facilities...ensure that established shops, facilities and services are able to develop and modernise...and retained for the benefit of the community...”*

- 72 The aims of Policy 1 are clear. In recognition of the community's concerns for the future of local services, facilities and businesses, the Policy seeks to protect them from unnecessary loss. Consequently, the aims of the Policy have regard to national policy.

- 73 However, as set out, Policy 1 appears confusing and unclear. It mixes up use categories and in doing so, seeks to apply the same controls to different types of land use, regardless of whether it is relevant or appropriate to do so. Further, the Policy fails to have regard to the fact that some changes of use may comprise permitted development – development that does not require planning permission.

- 74 In addition to the above, some of the language used in the Policy appears ambiguous and is not supported by any definition. It is unclear, for example, how a decision maker should treat the terms “*last resort*” or “*exhausted*,” or why such terms are appropriate when the purpose of planning, as set out in the Framework:

*“...is to achieve sustainable development.”*

- 75 Taking all of this into account, Policy 1 does not have regard to national guidance<sup>11</sup>, which states that:

*“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.”*

- 76 Further to the above, there is no substantive evidence to demonstrate that any change of use other than to a community facility, community service or business use would necessarily fail to be sustainable, or bring about benefits that outweigh the harm arising from loss. Consequently, as set out, the Policy might place a significant hurdle in the way of enabling sustainable development to come forward.

- 77 Whilst, as above, national policy seeks to resist the loss of important local facilities, it is important that evidence requirements are clear and directly related to the relevant planning application. As set out, Policy 1 would require “*any application*” to be supported by an onerous and not necessarily relevant “*marketing plan*.” Planning applications might be for all sorts of things, including for example, extensions, and there is no information to justify the requirements of Policy 1 which fail to have regard to Paragraph 193 of the Framework which requires that:

*“...information (requirements)...should be proportionate to the nature and scale of development proposals.”*

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<sup>11</sup> Planning Policy Guidance, Paragraph: 041 Reference ID: 41-042-20140306.

78 Further to the above, it is not clear how some of the detailed requirements of Policy 1 might be controlled, who by and on what basis. For example, no indication is provided of what might comprise a “restrictive” rent review or tenancy condition, or who might be the arbiter of this. Similarly, there is no evidence of “onerous conditions previously set out” and it is therefore unclear as to what such an onerous condition might be and who would decide this.

79 Taking the above into account, the Policy fails to provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework, which states that:

*“Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.”*

80 The Policy refers to Maps 1A and 1B, which are not in the Neighbourhood Plan.

81 I recommend:

- **Policy 1, change the Policy text to “Facilities, services, shops and local businesses recognised as important to the local community are shown on Maps 5A and 5B and listed below. The loss of community facilities or services, or the change of use of businesses to non-business or non-community uses, will be resisted.**

***Where a change of use that would result in the loss of a community asset or service, or the change of use of a business to a non-business or non-community use is proposed, this should demonstrate why the benefits arising from the proposal outweighs the harm to the community in respect of the loss of a local asset and must be supported by evidence to demonstrate that the existing use of the asset is no longer viable, including at least six months active marketing for an alternative community or business use, taking full account of local market conditions. (LIST OF ASSETS HERE).”***

- **Page 13, first bullet point in yellow box, add “...in and around the village...”**
- **NB, the Neighbourhood Plan refers to both “Proposals Maps” and “Maps.” For consistency, I recommend that all Maps are simply entitled “Map X” (“X” being the relevant number)**

**Policy 2: Protection of open spaces and open areas**

- 82 Local communities can identify areas of green space of particular importance to them for special protection. Paragraph 76 of the Framework states that:

*“Local communities...should be able to identify for special protection green areas of particular importance to them. By designating land as local Green Space local communities will be able to rule out new development other than in very special circumstances.”*

- 83 The Framework requires policies for managing development within a Local Green Space to be consistent with those for Green Belts (Paragraph 78, the Framework). A Local Green Space designation therefore provides protection that is comparable to that for Green Belt land. Consequently, Local Green Space comprises a restrictive and significant policy designation.
- 84 The designation of land for Local Green Space must meet the tests set out in Paragraph 77 of the Framework. These are that the green space is in reasonably close proximity to the community it serves; that it is 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 that it is local in character and is not an extensive tract of land.
- 85 In addition to the above, Paragraph 76 of the Framework requires that the designation of 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.
- 86 As set out, the Neighbourhood Plan does not designate Local Green Space. This results in a rather vague and ambiguous policy which would fail to achieve the purpose of protecting all of the named sites, but would instead, allow for development, subject to it not eroding character or *“integrity.”*
- 87 In addition, through use of the phrase *“will not be permitted,”* the Policy runs the risk of pre-determining the planning application process such that harm can be weighed against benefits and thus fails to contribute to the achievement of sustainable development.

- 88 However, the aims of Policy 2 – which effectively seeks to afford protection to sites recognised as special to the community for their local significance - concur with the purpose of Local Green Space. Furthermore, the evidence base, including the consultation and sustainability process, demonstrates that three of the six sites meet the national policy tests for Local Green Space.
- 89 The allotments, recreation ground and village hall field all provide locally recognised assets with recreational/community significance; all are local in character, are in close proximity to the community served; and are not extensive tranches of land.
- 90 Whilst the remaining spaces do not meet the required tests, they do make a positive contribution to local character. Setting aside the Policy reference to “*integrity*” which, being undefined, appears as a vague and ambiguous term, Policy 2 seeks to afford protection to the character of these areas of land and this is taken into account in the recommendations below.
- 91 I recommend:
- **Change Policy 2 to “*The Village Hall field, the Recreation Ground and the Allotments, shown on the plan below, are designated as Local Green Space, where new development is ruled out other than in very special circumstances.*”**
  - ***Development must respect the character and appearance of the land identified on Map 6, at Avon river valleys, Manor Farm and Grove Wood.”***
  - **Change Map 6, removing the areas designated as Local Green Space**
  - **Provide a new plan, showing the three areas of Local Green Space at a scale such that all boundaries are clearly identifiable (removing any scope for confusion)**

**Policy 3: High Speed Broadband**

- 92 National planning policy, in Chapter 5 of the Framework, "*Supporting high quality communications infrastructure*," recognises the provision of advanced, high quality communications infrastructure as essential for sustainable economic growth.
- 93 Generally, Policy 3 promotes the provision of high quality telecommunications and has regard to national policy. However, as worded, the Policy appears unduly onerous and introduces requirements that appear, without justification, to go well beyond those established in national policy.
- 94 It is not clear, for example, why all development proposals should demonstrate how they will contribute to, or be compatible with, local fibre or internet connectivity. Planning applications are made for all different kinds of development and there is no evidence to demonstrate that the requirements of Policy 3 in this respect would be appropriate in all cases, having regard to Paragraph 193 of the Framework, referred to earlier in this Report.
- 95 Much of Policy 3 reads as though it comprises supporting text, rather than a Policy requirement. For example, it states that the provision of information "*could be through a Connectivity Statement*" and goes on to set out what such a statement might consider. As set out, this comprises general background information rather than a land use planning policy requirement.
- 96 The final paragraph of the Policy comprises an onerous requirement for the provision of "*additional works*." In the absence of any detailed justification, it is not clear precisely what additional works would be required, why, or on what basis. This part of the Policy fails to have regard to Paragraph 204 of the Framework which states that:

*"Planning obligations should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development."*



97 Taking all of the above into account, I recommend:

- **Policy 3, change to “New development should, where appropriate, demonstrate how it will contribute to and be compatible with high quality communications including local fibre and internet connectivity. Where no internet provider...local access network; or a justified alternative location. The provision of additional ducting that contributes to a local access network for the wider community will be supported.”**
- **Add new supporting text Para 8.4.8, “Demonstration of compatibility could be through a Connectivity Statement, to include consideration of such matters as: the intended land use and the anticipated connectivity requirements of the development; known nearby data networks and their anticipated speed (fixed copper, 3G, 4G, 5G, fibre, satellite, microwave, etc); realistic assessments of connection potential or contribution to any such networks.”**
- **Para 8.4.6, last line, delete “all”**

**Policy 4: Land off Sopworth Lane**

- 98 National planning policy provides communities with direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. In doing so, it provides communities with the power to allocate land for sustainable development whilst requiring that neighbourhood plans do not:

*"...promote less development than set out in the Local Plan or undermine its strategic policies.."*

- 99 Wiltshire Council considers the Neighbourhood Plan to be in conformity with the overall strategy set out in the Wiltshire Core Strategy and draws particular attention to:

*"...the positive approach that has been taken in regards to the identification of housing."*

- 100 Policy 4 of the Neighbourhood Plan supports the delivery of up to 45 dwellings at Land off Sopworth Lane and Neighbourhood Plan Policies 5, 6 and 7 also allocate land for residential development. These allocations are in general conformity with Wiltshire Core Strategy Policy 1, which identifies Sherston as a Large Village. Wiltshire Core Strategy Policy 2 goes on to support development in Large Villages that would:

*"...help meet the housing needs of settlements and...improve employment opportunities, services and facilities."*

- 101 In addition, the supporting text to Wiltshire Core Strategy Policy 2 sets out a flexible approach which allows for neighbourhood plans to:

*"...respond positively to opportunities without being inhibited by an overly prescriptive, rigid approach which might prevent sustainable development proposals that can contribute to maintaining a deliverable five year housing land supply and delivering the strategic objectives of the plan. Neighbourhood Plans should not be constrained by the specific housing requirements within the Core Strategy..."*

- 102 Whilst there is no requirement for the Neighbourhood Plan to allocate land for housing, evidence has been provided to demonstrate that the local community is supportive of housing-led mixed use development that would enable the provision of a new purpose-designed GP surgery and land for school expansion and provision of a new pre-school facility.
- 103 In the above regard, the Neighbourhood Plan evidence base is supported by viability information which demonstrates that the proposed Land off Sopworth Lane can meet these community aspirations, subject to it also providing for the development of up to 45 dwellings.
- 104 Policy 4 thus allocates a mixed use development site which is in general conformity with the Wiltshire Core Strategy and which has regard to national policy.
- 105 As the development plan should be read as a whole, there is no need to include cross-references to other development plan Policies, which can result in Policies appearing long, confusing and cumbersome. Taking this into account, Policy 4 does not need to refer to affordable housing policy or archaeological requirements in the Wiltshire Core Strategy and this is a matter addressed in the recommendations below.
- 106 The site lies within the setting of significant heritage assets. It is a statutory requirement that heritage assets are conserved in a manner appropriate to their significance and it is therefore appropriate for Policy 4 to be explicit in this regard.
- 107 It is not the purpose of Policy 4 to “*propose development*” but to allocate a site for development and this is taken into account in the recommendations below.
- 108 In the absence of any substantive evidence, it is not apparent that the development of Land off Sopworth Lane can achieve less than greenfield rates of run-off and decrease flood risk. Further, it is not clear why such an onerous requirement is necessary. National policy, as set out in Chapter 10 of the Framework, “*Meeting the challenge of climate change, flooding and coastal change,*” requires that flood risk is not increased elsewhere. As set out, the requirements of Policy 4 could serve to prevent a contribution to the achievement of sustainable development.

- 109 Also, in the absence of any information in respect of what being “consistent with the AONB” means in practice, Policy 4 appears vague. National policy in paragraph 115 of the Framework, requires great weight to be given to conserving landscape and scenic beauty in AONBs, which have the highest status of protection in relation to such things. As set out, the Policy fails to have regard to this.
- 110 The Policy goes on to require a Masterplan to be approved prior to the submission of a planning application. It is not clear under what legislation such a requirement might be imposed, as effectively, it would require a pre-approval for an application. This part of the Policy does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.
- 111 The Policy also requires all development to be in accordance with a “Design Brief” provided in an Appendix to the Neighbourhood Plan. By definition, information appended to the Neighbourhood Plan does not form part of the document, but is appended to it. Further, the content of the relevant Appendix provides references to a wide range of things that might be considered, alongside various general informatives and occasional wording that reads as though it comprises a Policy requirement – but is not, as it forms information appended to a Neighbourhood Plan.
- 112 This results in an ambiguous approach which, again, fails to provide a decision maker with a clear indication of how to react to a development proposal. Further, it presents a confusing approach in respect of development requirements – some things are set out as recommendations, some as considerations, some as informatives and others as apparent non-Policy requirements.
- 113 The Policy refers to a “Design Brief” when the Appendices actually contain both a Development Brief and a Design Brief.
- 114 However, in general, the “Development Brief” and the “Design Brief” contain useful information to help inform a development proposal. As such, much of its content could helpfully provide supporting text to Policy 4.
- 115 There are a number of typographical errors and these are highlighted in the recommendations below.

116 Taking all of the above into account, I recommend:

- **Policy 4, change first line to “...Map 7, is allocated for mixed use development...”**
- **Policy 4, third bullet point, delete “(as required by Core Strategy Policy 43”) and change text to “...needs of which 40% *should comprise affordable housing.*”**
- **Policy 4, add a new bullet point after the fourth bullet point, “*Development of the site should conserve and/or enhance heritage assets in a manner appropriate to their significance.*”**
- **Policy 4, change bullet point 1. to “*Development must not increase the risk of flooding elsewhere.*”**
- **Policy 4, change bullet point 3. to “...of the settlement *and conserves the landscape and scenic beauty of the AONB.*”**
- **Policy 4, delete last paragraph (“All aspects...”) and replace with “*Development proposals should be supported by a masterplan taking account of the “Development Brief” and the “Design Brief” information set out in the supporting text.*”**
- **Correct typographical errors: Para 8.4.9 line 4; Para 8.4.10 (“Proposal” to “Policy”); Para 4.21, line 5; Para 8.4.26, line 1; and Para 8.4.30, line 1**
- **Change Para 8.4.28 to “A “*Development Brief*” and a “*Design Brief*” are set out below each of the land allocation Policies. This sets out key issues that should be taken into account when considering how best to develop each site, along with recommendations in respect of design and layout.”**
- **Move the content of Appendix 1 to below Policy 4 as paragraphs of supporting text**
- **Change the content of Appendix 1 as follows:**
  - **The spacing of text, particularly after full stops appears as a typographical error in a number of places and should be corrected**

- **1 Landscape, second bullet point, line 5, change to “...the site. This may entail heavily landscaping the western edge with additional...massing.”**
- **2 Ecology, second bullet point, delete and replace with “Opportunities for biodiversity enhancement may include:”**
- **3. Heritage Matters, fourth bullet point, delete “This is not considered...proposal site.”**
- **The fifth bullet point pre-determines how “no harm” might be achieved. Notwithstanding this, national policy does not require that “no harm” is achieved. This bullet point is confusing and fails to have regard to national policy. Delete all of the fifth bullet point under Heritage Matters**
- **4 Transport Issues, fourth bullet point, change to “...and *should* be retained.”**
- **5. Other Matters, third bullet point, delete first sentence “There is...elsewhere.”**
- **Last bullet point under Other Matters, change to “The new GP surgery and other forms of development on site should have access to advanced...”**
- **Delete “Development Proposals” section, including title, intro and four bullet points**
- **Design Brief, delete bullet point I**

### **Policy 5: The Vicarage Site**

- 117 Policy 5 allocates the Vicarage Site for around three dwellings, including a new vicarage and additional burial space. Subject to meeting the Policy provisions, development of the site can provide for the achievement of sustainable development by making effective use of brownfield land, having regard to Paragraph 17 of the Framework.
- 118 The site is located in a very sensitive location – within the village Conservation Area and within the setting of a Grade I Listed Building, as well as that of other heritage assets. The site also contains a Grade II Listed structure. It is essential that any development meets statutory requirements in respect of conserving heritage assets in a manner appropriate to their significance.
- 119 In the absence of any information, it is not clear why the allocations in Policies 4 and 6 refer to the AONB whilst that in Policy 5 does not. The site is within the AONB. Also, it is not the purpose of Policy 5 to propose development, but to allocate land for development. These are matters that are taken into account in the recommendations below.
- 120 In respect of the appended Development and Design Briefs, the same comments apply as to Policy 4.
- 121 I recommend:
- **Policy 5, change to “*Land at Site 2 (the Vicarage Site), as identified on Proposals Map 8, is allocated for mixed use development, to include:*”**
  - **Policy 5, change bullet point 2 to “*Development should conserve or enhance heritage assets, including the Sherston Conservation Area and the setting of the Grade I Listed church.*”**
  - **Policy 5, insert new bullet point “*3. Development should conserve the landscape and scenic beauty of the AONB.*”**
  - **Policy 5, delete last paragraph and replace with “*Development proposals should be supported by a masterplan taking account of the “Development Brief” and the “Design Brief” information set out in the supporting text.*”**

- Move the content of Appendix 2 to below Policy 5
- Change the content of Appendix 2 as follows:
  - 1 Landscape. During my site visit I noted that the site is not “*virtually invisible*” from its surroundings and views of the Church are not “*virtually invisible.*” It is not clear why the Development Brief appears to suggest that landscape issues are not a constraint – given the sensitivities of the site, landscaping is an essential consideration. It is noted that the content of this section appears to suggest that Leylandii trees “*hide*” the site, whilst the next section recognises trees as being species poor and they are recommended for removal in the supporting information. Such removal would have a significant impact in respect of opening up the site. Delete second, third, fourth and last bullet points.
  - Much of the Heritage Section appears as a subjectively worded summary of a heritage appraisal and to some degree, also appears to pre-determine a detailed development proposal. Some of the commentary reads as though it comprises a supporting statement for a planning application, which would not be appropriate for inclusion in the Neighbourhood Plan. I recommend that, following the third bullet point, a new bullet point be added, “*A heritage appraisal has been undertaken by Border Archaeology and this can be made available by the Parish Council.*” Delete bullet points four, five, six, seven, eight, nine, ten and eleven (“The Heritage...this boundary.”)
  - Delete last sentence of twelfth bullet point (“It should be noted...designation.”) as it confuses characteristics with “designations”
  - Fourteenth bullet point, change fourth line, change to “...of this property *is considered to appear more in...*”



- **Delete last bullet point in the Heritage section, which appears prescriptive**
- **Delete Development Proposals section**
- **Change part I of Design Brief to “1. *The development should conserve and where possible, enhance heritage assets. Given this, consideration should be given to the following:*”**

## **Policy 6: The Elms**

122 Policy 6 allocates the land at The Elms for around four dwellings. Subject to meeting the Policy provisions, development of the site can provide for the achievement of sustainable development by making effective use of brownfield land, having regard to Paragraph 17 of the Framework.

123 The site is located within the setting of the village Conservation Area. It is not clear what "*being consistent*" with the Conservation Area might entail and there is no information to demonstrate that such an approach would have regard to the statutory requirement to conserve heritage assets in a manner appropriate to their significance.

124 Similarly, the Policy requires "*consistency*" with the AONB and again, this appears as an ambiguous term without explanation.

125 Further, it is land use planning policy purpose of Policy 6 to allocate land for development rather than propose development and this is taken into account in the recommendations below.

126 In respect of the appended development and design briefs, the same comments apply as to Policies 4 and 5.

127 I recommend:

- **Policy 6, change wording to "*Site 3 (Green Lane/Sandpits Junction), as identified on Proposals Map 9, is allocated for the development of around 4 dwellings. Development should conserve or enhance any heritage assets affected, including the setting of the Sherston Conservation Area. Development should also conserve the landscape and scenic beauty of the AONB.*"**
- **Policy 6, delete last paragraph and replace with "*Development proposals should be supported by a masterplan taking account of the "Development Brief" and the "Design Brief" information set out in the supporting text.*"**
- **Move the content of Appendix 3 to below Policy 6**

- **Change the content of Appendix 3 as follows:**
  - **Delete last bullet point in the Landscape section**
  - **Delete penultimate bullet point in the Heritage section, which appears to pre-determine the impact of a proposal which has not yet been designed**
  - **Delete last bullet point in the Heritage section which appears to comprise a subjective assumption**
  - **Delete the two Development Proposals sections, one of which refers to another Policy and delete the Other Matters section (which does not provide any clarity, but which refers to the responsibility of the Local Planning Authority)**
  - **Change the first part of part I of Design Brief to “I. *The development should conserve and where possible, enhance heritage assets. Given this, consideration should be given to the following:* TWO BULLET POINTS HERE”**

**Policy 7: Anthony Close**

128 Effectively, Policy 7 supports the upgrading or replacement of sheltered accommodation at Anthony Close. This has regard to Paragraph 50 of the Framework, which supports the provision of a wide choice of high quality homes and the creation of sustainable, inclusive mixed communities, including homes for older people.

129 To improve the clarity of the wording of the Policy, in the context of land use planning, I recommend:

- **Policy 7, change wording to “*Proposals to upgrade or replace the existing sheltered accommodation on Anthony Close with a purpose-built care or close care facility will be supported.*”**
- **Correct typo in title to “Anthony Close”**

**Policy 8: Highway Matters**

- 130 Chapter 4 of the Framework, "*Promoting sustainable transport,*" recognises the important role that transport policies have to play in facilitating sustainable development and contributing to wider health and sustainability objectives.
- 131 Policy 8 supports the enhancement of access and crossings to encourage non-vehicular movement and this has regard to national policy.
- 132 As set out, Policy 8 refers to "*Places for Walking*" without providing any background information in the Neighbourhood Plan and as such, the reference appears ambiguous.
- 133 The supporting text to the Policy refers to the use of Community Infrastructure Levy (CIL) to bring about the improvements sought by Policy 8. In this respect, I concur with Wiltshire Council's view that a more explicit reference to the use of CIL would help to clarify the Parish Council's aspirations.
- 134 Taking this and the above into account, I recommend:
- **Policy 8, change to "*The enhancement of inclusive access and crossings...residential areas will be supported, so as to encourage all modes of non-vehicular access to these facilities.*"**
  - **Para 8.4.33, line 6, change to "...other means. *The Parish Council considers this to comprise a local priority infrastructure project for the use of CIL receipts received by the Parish Council.*"**

**Policy 9: Protection of existing open air sports facilities**

- 135 In recognition of the important role that the planning system can play in facilitating social interaction and creating healthy, inclusive communities Chapter 8 of the Framework, "*Promoting healthy communities,*" requires policies to plan positively for the provision of shared space and community facilities, including locations for sport.
- 136 The Framework goes on to recognise that access to opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Further, Paragraph 74 of the Framework states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless the land is clearly surplus to requirements, the loss would be replaced by equivalent or better provision in a suitable location, or the development is for alternative sports and recreation provision, the needs for which clearly outweigh the loss.
- 137 Generally, Policy 9 seeks to protect Sherston's sports facilities and in so doing, has regard to the Framework. However, as set out, the Policy combines the provision of land for sport and recreation with that of open space in general. In doing so, the Policy refers to "*important green space.*" Policy 2 of the Neighbourhood Plan, taking into account the recommendations of this Report, already serves to protect Local Green Space.
- 138 Further to the above, neither the Neighbourhood Plan nor the Parish Council has the power to determine whether or not planning permission will be granted and Policy 9 cannot direct the local planning authority, Wiltshire Council, in this regard.
- 139 Also, the reference to "*open air sports facilities*" is not defined. The supporting text to Policy 9 refers to a wide range of facilities for sport and recreation and these are not limited to those in the "*open air.*" The Policy reference to open air sports facilities appears ambiguous and does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework, referred to earlier in this Report.

140 Taking the above into account, the detailed wording of Policy 9 conflicts with and fails to have regard to national policy. Taking this into account, I recommend:

- **Policy 9, change wording to “*The loss of existing open space, sports and recreational buildings and land, including playing fields, will be resisted unless it can be clearly demonstrated that the open space, buildings or land is surplus to requirements; or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quality and quantity in a suitable location; or the development is for alternative sports and recreation provision, the need for which clearly outweighs the loss.*”**
- **Change title of Policy 9 to “*Protection of sports facilities*”**

**Policy 10: Land safeguarded for future recreational use**

141 Neighbourhood Plan Policy 10 identifies land adjacent to existing sports facilities for potential expansion. This comprises positive planning for the provision of community sports facilities, having regard to Paragraph 70 of the Framework. Policy 10 also has regard to Paragraph 73 of the Framework, which states that:

*“Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.”*

142 However, as set out, the Policy “safeguards” land for a use which has not been demonstrated to be viable or deliverable.

143 Paragraph 173 of the Framework requires plans to be deliverable and states that sustainable development:

*“...requires careful attention to viability and costs in plan-making...”*

144 As worded, Policy 10 could result in land being set aside for a use which may never come about and given the absence of any evidence to the contrary, this could prevent the achievement of sustainable development.

145 Taking this and the above into account, I recommend:

- **Policy 10, change to “The development of Site 4 adjoining the Football Field, as shown on Map 10, for the expansion of existing sports facilities, will be supported.”**



**Policy 11: Erection of new or replacement sports facilities**

146 Having regard to national policy support for the provision of community facilities and the promotion of healthy communities, as set out in Chapter 8 of the Framework, Policy 11 supports the provision of new/replacement football club facilities at the Football Field.

147 As worded, Policy 11 includes a vague reference to "*related sports facilities*." This could refer to a wide range of things and in the absence of further information, it is not clear why, in all circumstances, such related facilities would comprise sustainable development. The supporting text to Policy 11 provides a clearer reference to "*club facilities*" and this is taken into account in the recommendation below.

148 I recommend:

- **Policy 11, change to "*The development of new/replacement changing rooms and club facilities at the Football Field will be supported.*"**

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

149 The Neighbourhood Plan cannot impose a CIL requirement on the Local Planning Authority and I recommend:

- **Page 29, Table, change Comment to *“The Parish Council will prioritise such works when determining how to utilise CIL payments received.”***
- **Para 8.4.46, change to *“...determining how any CIL receipts received by the Parish Council should be utilised.”***

150 It is recommended earlier in the Report that the content of the Appendices should be moved in order to form part of the Neighbourhood Plan and not be appended to it. This will mean that the Neighbourhood Plan will not contain any Appendices, but I note that this will not have any impact on the table of Contents at the start of the Neighbourhood Plan, which does not, in any case, refer to the Appendices.

## 9. Referendum

151 I recommend to Wiltshire Council that, subject to the recommended modifications<sup>12</sup>, **the Sherston Neighbourhood Plan should proceed to a Referendum.**

### Referendum Area

152 I am required to consider whether the Referendum Area should be extended beyond the Sherston Neighbourhood Area.

153 I consider the Neighbourhood Area to be appropriate and there is no substantive evidence to demonstrate that this is not the case.

154 Consequently, I recommend that the Plan should proceed to a Referendum based on the Sherston Neighbourhood Area approved by Wiltshire Council on the 28<sup>th</sup> February 2013.

**Nigel McGurk, January 2019**  
**Erimax – Land, Planning and Communities**



EST. 2011

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<sup>12</sup> Which include Wiltshire Council being satisfied that the Neighbourhood Plan is compatible with European obligations having regard to Planning Practice Guidance (Reference ID: 11-031-20150209) and the Sweetman judgement.