

WEST LAVINGTON NEIGHBOURHOOD PLAN 2017-2026

West Lavington Neighbourhood Plan Examination,
A Report to Wiltshire Council

by Independent Examiner, Nigel McGurk BSc(Hons) MCD MBA MRTPI

November 2018



EST. 2011

Contents

1, Summary

2, Introduction

3, Basic Conditions and Development Plan Status

4, Background Documents and the West Lavington Neighbourhood Area

5, Public Consultation

6, The Neighbourhood Plan: Introductory Section

7, The Neighbourhood Plan: Policies

8, The Neighbourhood Plan: Other Matters

9, Referendum

1. Summary

- 1 Subject to the modifications recommended within this Report, made in respect of enabling the 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 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 West Lavington Neighbourhood Plan meets the basic conditions¹ and I recommend to Wiltshire Council that, subject to modifications, it should proceed to Referendum.

¹ It is confirmed in Chapter 3 of this Report that the West Lavington 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 West Lavington Neighbourhood Plan (referred to as the Neighbourhood Plan) prepared by the Neighbourhood Plan Steering Group on behalf of West Lavington 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 West Lavington 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 2 of the Basic Conditions Statement, submitted alongside the Neighbourhood Plan, West Lavington Parish Council is the *Qualifying Body*, ultimately responsible for the Neighbourhood Plan.
- 7 The Neighbourhood Plan relates only to the designated West Lavington Neighbourhood Area and there is no other neighbourhood plan in place in the West Lavington Neighbourhood Area. This is also confirmed in Paragraph 2 of the Basic Conditions Statement.
- 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 (2012²) and Planning Practice Guidance (2014).

² 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 25th 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 West Lavington 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 more than five 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 West Lavington 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 "2017-2026."

17 In addition to the above, Paragraph 3 of the Basic Conditions Statement states that:

"The document sets out the Period of the Neighbourhood plan which is from 2017 to 2026."

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 West Lavington 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*³ 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
 - 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.⁴
 - An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.⁵
- 23 In examining the Plan, I am also required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:
- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;

³ Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.

⁴ 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.

⁵ The Convention rights has the same meaning as in the Human Rights Act 1998.

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

- 24 Subject to the content of this Report, I am satisfied that these three points have been met.
- 25 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.

European Convention on Human Rights (ECHR) Obligations

- 26 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.
- 27 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

- 28 There is no legal requirement for a neighbourhood plan to have a sustainability appraisal⁶. However, in some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment (SEA).
- 29 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 Guidance⁷)
- 30 National advice then goes on to state⁸ that the draft plan:
- “...must be assessed (screened) at an early stage of the plan’s preparation...”*
- 31 This process is often referred to as a screening opinion, report or determination. If the screening report identifies likely significant effects, then an environmental report must be prepared.

⁶ Paragraph 026, Ref: 11-027-20150209, Planning Practice Guidance.

⁷ Paragraph 027, *ibid*.

⁸ Planning Practice Guidance Reference ID: 11-028-20150209.

- 32 An SEA screening opinion was produced by Wiltshire Council and published in 2017. This concluded that:

“Wiltshire Council considers that the proposed West Lavington Neighbourhood Plan is unlikely to have significant environmental effects and accordingly does not require a Strategic Environmental Assessment.”

- 33 The statutory consultees, Natural England, Historic England and the Environment Agency. Natural England and the Environment Agency agreed with the above conclusion. Historic England did not object to the above conclusion, but raised a question in respect of impact on heritage assets in respect of *“filling in some of the gaps in the evidence narrative with information already known.”*

- 34 Historic England highlighted that a Heritage Impact Assessment *“should not identify heritage issues of fundamental concern”* as this could result in identified objectives and outcomes being compromised. A Heritage Impact Assessment was produced in February 2018. This did not identify any heritage issues of fundamental concern and concluded that *“the historic environment would not be harmed and a positive view can be taken”* of the proposed residential allocation in the West Lavington Neighbourhood Plan.

- 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.

- 36 A Habitats Regulations Screening Assessment was produced in November 2017 and this concluded that the:

“...Neighbourhood Plan would have no likely significant effects upon the Natura network alone or in combination, and no appropriate assessment is currently considered necessary by Wiltshire Council as competent authority.”

- 37 The statutory bodies have been consulted and none have dissented from the above conclusion.

- 38 Further to all of the above, 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 Guidance⁹).

- 39 In carrying out all of 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.
- 40 Given all of the above, I conclude that the Neighbourhood Plan meets the basic conditions in respect of European obligations.

⁹ Planning Practice Guidance Reference ID: 11-031-20150209.

4. Background Documents and the West Lavington Neighbourhood Area

Background Documents

- 41 In undertaking this examination, I have considered various information in addition to the West Lavington 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.
- 42 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 25th January 2019.
- 43 Taking this 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 (2015)
 - Kennet Local Plan 2011 (2004) (saved policies)
 - Basic Conditions Statement
 - Consultation Statement
 - Habitats Regulations Assessment Screening Report
 - Strategic Environmental Assessment Screening Determination
- Also:
- Representations received
- 44 In addition, I spent an unaccompanied day visiting the West Lavington Neighbourhood Area.

West Lavington Neighbourhood Area

- 45 The boundary of West Lavington Neighbourhood Area is shown on Map 2, on page 22 of the Neighbourhood Plan.
- 46 Wiltshire Council formally designated the West Lavington Neighbourhood Area on 17 July 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

- 47 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.
- 48 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.

West Lavington Neighbourhood Plan Consultation

- 49 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*¹⁰.
- 50 Taking the information provided into account, there is evidence to demonstrate that the Neighbourhood Plan comprises a "*shared vision*" for the West Lavington Neighbourhood Area, having regard to Paragraph 183 of the National Planning Policy Framework ("*the Framework*").
- 51 West Lavington Parish Council established a Neighbourhood Steering Group, made up of members of the local community, including Parish Councillors. The first meeting of the Steering Group was held in November 2011 and over the ensuing two years, various public consultation took place, including the distribution of leaflets, letters to schools, and consultation at the Annual Parish Meeting, Jubilee Celebration and Awareness Day and Parish Fete. Various "*focus surveys*" were also undertaken, including house-house surveys.

¹⁰ Neighbourhood Planning (General) Regulations 2012.

- 52 In February and March 2014, a questionnaire was distributed to every household and a public exhibition was held in the Village Hall. The resultant 339 "returns" were analysed and informed production of the first draft plan. An exhibition of the results of consultation was held at the Village Hall Fayre in April 2014 and a presentation given at the Annual Parish Meeting in May of that same year; followed by a further update at the following year's Annual Parish Meeting.
- 53 The first draft plan underwent public consultation between November 2015 and January 2016. This was supported by a public event, attended by 120 people and the door-door delivery of questionnaires.
- 54 At this stage, views were sought on a variety of matters, including housing site options. New volunteers then reinvigorated progress in 2017 and consultation on the Pre-Submission Draft Plan was undertaken between November 2016 and January 2017. This was supported by a two-page leaflet distributed throughout the Parish and four separate consultation drop-in sessions.
- 55 The Consultation Report provides evidence to demonstrate that public consultation formed an important part of the overall plan-making process, that matters raised were taken into account and that the reporting process was transparent.
- 56 Consultation was well-publicised. The Parish website was used to keep people informed of progress, with a dedicated sub-section devoted to the Neighbourhood Plan. Articles were published in the Parish Magazine and in the community news column of the local newspaper. As well as leaflet drops, letters, meetings, exhibitions and questionnaires and surveys, consultation was supported by posters and emails.
- 57 Taking all of the above into account, I am satisfied that the consultation process was robust.

6. The Neighbourhood Plan – Introductory Section

58 I make a comment earlier in this Report in respect of the publication of the replacement National Planning Policy Framework (referred to in this Report as “*the Framework*”) in July 2018. Paragraph 184 of the Framework states that:

“Neighbourhood plans and orders should not promote less development than set out in the Local Plan, or undermine its strategic policies.”

59 The Wiltshire Core Strategy 2015 (referred to in this Report as the “*Core Strategy*”) plans for Wiltshire’s sustainable growth, having regard to the national policy presumption in favour of sustainable development. Taking this and the basic conditions into account, I recommend:

- **Page 10, Para 1, change to “...area. *Neighbourhood Plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies. Neighbourhood Plan policies must be in general conformity with the strategic policies of the development plan. They must also have regard to national policy.*”**
- **Page 11, Para 8, line nine, change to “...for a Neighbourhood...” (typographical error)**

60 The introduction to the Neighbourhood Plan clearly establishes the link between the Neighbourhood Plan and other parts of the Development Plan. Given this, the information in paragraph 21 appears, in part, repetitious and unnecessary. It is also, in part, incorrect, as an emerging document does not form part of an adopted development plan. Similarly, paragraphs 25 and 26 appear repetitious and confusing. For precision, I recommend:

- **Pages 14 and 15, delete Paras 21, 25 and 26**

61 Paragraphs 27 to 29 are also unnecessary and confusing. They contain incorrect assertions and refer to information that is subject to significant change. For clarity and precision, I recommend:

- **Pages 15 and 16, delete Paras 27 to 29**

- 62 Paragraph 33 asserts that the Neighbourhood Plan includes a "*Housing Site Allocation Development Brief*." The document referred to is entitled "*Neighbourhood Plan Supplementary Document*." It does not form part of the Neighbourhood Plan and there is no information setting out how the Qualifying Body might legally seek to include a document that does not comprise part of the Neighbourhood Plan as part of the Neighbourhood Plan.
- 63 The supplementary document referred to is not an adopted planning document. It has not gone through the kind of process that, for example, a Local Plan Supplementary Planning Document would undergo. I note in this regard that the Qualifying Body has since stated that it did not intend the "*Neighbourhood Plan Supplementary Document*" to comprise a supplementary document, which is confusing, but notwithstanding this point, the document itself states that it "*forms part of the statutory development plan*." In the absence of any supporting information in respect of planning law, it is not clear upon what basis such an assertion can be made.
- 64 The Policies of a Neighbourhood Plan are contained within the Neighbourhood Plan and the making of a Neighbourhood Plan does not provide scope for the concurrent making of supplementary documents containing additional statutory planning policies.
- 65 However, in making the recommendations below, I note that the "*Neighbourhood Plan Supplementary Document*" contains information aimed at supporting good design. As such, it provides a useful basis for the consideration of design and related matters as they relate to the future development of the housing allocation, subject to the recommended changes to Policy H1, set out later in this Report.
- 66 Taking the above into account, I recommend:
- **Page 3, delete reference to "Housing Site Allocation Development Brief" from green box and create a new supporting document, in purple, under "Evidence Base" entitled "*Site Development Brief*"**
 - **End of Page 16, delete "Supplementary Document – Housing Site Allocation Development Brief"**
 - **Page 17, last sentence of Para 33, delete "Housing Site Allocation Development Brief and"**

- **Page 51, Para 7.23, line six, add new sentence “...terms. *The Parish Council has produced a Site Development Brief which can provide a basis for discussions with Wiltshire Council, the developer and the community on design matters. In addition...*”**

67 Paragraphs 50 to 52 have been overtaken by events and I recommend:

- **Delete Paras 50-52**

7. The Neighbourhood Plan – Neighbourhood Plan Policies

Built Environment

Policy BE1 – Settlement Boundary

- 68 Wiltshire Core Strategy 2015 (referred to in this Report as the “*Core Strategy*”) Core Policy 2 (“*Delivery Strategy*”) focuses development within “*defined limits of development.*”
- 69 Policy BE1 designates a settlement boundary around West Lavington, within which, development will generally be supported. The settlement boundary has emerged through the plan-making process, further to consultation and liaison with Wiltshire Council. It is in general conformity with Core Policy 2.
- 70 However, as set out, Policy BE1 appears as a negative policy, such that it seeks to limit any development outside the settlement boundary to development “*requiring a countryside location.*” Such an approach goes well beyond the requirements of national planning policy, which requires sustainable development to be pursued in a positive way and places at the heart of the National Planning Policy Framework (referred to in this Report as “*the Framework*”):
- “*...a presumption in favour of sustainable development.*”
(Ministerial Foreword, the Framework)
- 71 No substantive evidence has been presented to demonstrate that any development in the Neighbourhood Area outside the settlement boundary which does not require a countryside location necessarily fails to contribute to the achievement of sustainable development. Further, national policy, in Paragraph 55 of the Framework, supports, for example, various forms of residential development in isolated locations in the countryside – regardless of whether they “*need*” a countryside location. This part of Policy BE1 fails to have regard to national policy.

- 72 In addition to the above, rather than highlight that the settlement boundary supports sustainable development, the Policy reinforces its negative approach, by presenting it as simply a “*protective*” approach – to prevent “*encroachment*” and “*coalescence*.” This fails to have regard to the national policy presumption in favour of sustainable development.
- 73 Policy BE1 refers to “*granting*” planning permission. The Neighbourhood Plan has no powers in this respect. It cannot seek to pre-determine planning applications or direct the Local Planning Authority in respect of its decision-making powers.
- 74 Further to the above, this part of Policy BE1 appears vague and imprecise. It refers to “*small-scale*” development, without stating what this comprises. It uses the phrase “*do not adversely affect*,” which fails to provide for the balanced consideration of harm against benefits, and so runs the risk of placing a significant hurdle in the way of the achievement of sustainable development; and it refers to “*settlement geography*” which could relate to any number of things associated with time and space. Taking all of this into account, Policy BE1 does not have regard to national guidance¹¹, 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.”

- 75 Wiltshire Council has submitted a representation suggesting that Policy BE1 repeats the provisions of Core Strategy Core Policy 2 and Core Strategy 1 (“*Settlement strategy*”). Whilst it is unnecessary to do this within the Policy itself, as all of the policies of a development plan should be read together, I make a recommendation below which suggests incorporating this information into the supporting text.

¹¹ Planning Policy Guidance, Paragraph: 041 Reference ID: 41-042-20140306.

76 I recommend:

- **Change Policy BE1 to “*The settlement boundary of West Lavington and Littleton Panell, within which development will be supported subject to it respecting local character, residential amenity and highway safety, is shown on Map 3.*” (delete rest of Policy)**
- **Supporting text, delete Para 2.3, which has been overtaken by events**
- **Para 2.4, change to “*Information pertaining to the settlement boundary established in this Neighbourhood Plan is contained in background evidence to the Neighbourhood Plan, in a document entitled “Settlement Boundary Methodology.” The methodology was drawn from principles established by Wiltshire Council in the emerging “Wiltshire Housing Site Allocations Plan.” The settlement boundary designated in Policy BE1 allows for the allocation of land made in this Neighbourhood Plan. It also excludes the historic core part of West Lavington, which has been excluded from the settlement boundary in successive plans over many years.*”**
- **Delete Para 2.5 and replace with “*Land outside the settlement boundary comprises countryside, where development will be carefully managed in accordance with a combination of Wiltshire Core Strategy Core Policies 1 and 2, by “exception” Policies referred to in paragraph 4.25 of the Wiltshire Core Strategy and by the provisions of the National Planning Policy Framework (NPPF), which provides for sustainable development in rural areas.*”**

Policy BE2 – Design of New Development and Local Distinctiveness

- 77 National planning policy dedicates a Chapter of the Framework to good design, Chapter 7 “*Requiring good design.*” Within this Chapter, Paragraphs 56 and 58 state that:

“Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

...plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area.”

- 78 In addition to the above, Core Strategy Core Policy 57 (“*Ensuring high quality design and place shaping*”) requires all development in Wiltshire to achieve a high quality of design and help to create a strong sense of place by drawing on local context and being complementary to its surroundings.

- 79 Generally, Policy BE2 seeks to ensure good quality design and the reinforcement of local distinctiveness. In so doing, the Policy has regard to national policy and is in general conformity with the Core Strategy.

- 80 However, the second part of the Policy appears imprecise and fails to contribute to the achievement of sustainable development. There is no indication of which development proposals might, or might not, “*have the potential*” to “*impact negatively*” on positive boundary treatments and open frontages that contribute to local character. These are ambiguous phrases which, taken together, fail 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.”

- 81 The Policy then goes on to require any development to demonstrate how it will contribute to *“high quality streets, pavements and other accessible areas...”* This comprises a requirement that could relate to a broad range of places. It is imprecise and there is no substantive evidence to demonstrate that it would, in any case, be relevant, material or necessary to every planning application, having regard to Paragraph 193 of the Framework, which states that:

“Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.”

- 82 I recommend:

- **Policy BE2, change first line to “All new development *should* demonstrate...”**
- **Policy BE2, delete second paragraph (“Development...Panell)**

Policy BE3 – Highway Impact

- 83 Policy BE3 begins by requiring all development that “*negatively impacts on the highway network*” to mitigate any such impacts by improvements to the highway or by contributions towards mitigation.
- 84 Such an approach goes way beyond national planning policy, as set out in Chapter 4 of the Framework, “*Promoting sustainable transport,*” which states that:
- “Development should only be prevented or refused on transport ground where the residual cumulative impacts of development are severe.”*
(Paragraph 32, the Framework)
- 85 The first part of Policy BE3 does not have regard to national policy in this respect. Rather, it simply requires any development that has any negative impact to mitigate that impact. In terms of mitigation, there is no substantive evidence to demonstrate that the requirements of Policy BE3 have regard to Paragraph 204 of the Framework, which requires that planning obligations must only be sought where they meet all of the following tests:
- “...a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.”*
- 86 In making recommendations in respect of the above, I am mindful that Core Strategy Core Policy 62 provides for highway improvements and mitigation measures.
- 87 The second part of the Policy refers to when planning permission will, or will not be granted. The Neighbourhood Plan cannot direct the Local Planning Authority in this regard.
- 88 Policy BE3 goes on to set out car parking standards. This is largely drawn from Local Transport Plan (“LTP3”) Car Parking Strategy (2015), but also provides clarity and local detail in respect of the requirement for visitor parking in the Neighbourhood Area. As such, this part of the Policy contributes to the achievement of sustainable development.

- 89 The final part of Policy BE3 again seeks to direct the Local Planning Authority, but this aside, the Policy provides relevant detail in respect of refuse bins, which serves to protect residential amenity and local character, in general conformity with Core Strategy Core Policy 57, referred to earlier in this Report.
- 90 Taking all of the above into account, I recommend:
- **Policy BE3, delete first paragraph and change wording of the remainder of the Policy to “*Development should incorporate adequate on-site provision for parking. The parking...will not be supported. New development should incorporate adequate on-site provision for storage and collection of refuse bins. Refuse collection storage...point.*”**
 - **Para 4.10, delete from “Where new development...” to the end of the paragraph. This reads as a Policy requirement, which it is not.**
 - **Delete Para 4.12, which reads as though it is setting a requirement for Local Planning Authorities**

Policy BE4 – Heritage Assets

- 91 The nation's heritage assets are an irreplaceable resource. The protection of heritage assets is an important matter of law. Chapter 12 of the Framework "*Conserving and enhancing the historic environment*" sets out the national planning policy approach to ensuring that heritage assets are conserved in a manner appropriate to their significance.
- 92 In line with national policy, Core Strategy Core Policy 58 ("*Ensuring the conservation of the historic environment*") requires development to protect, conserve and where possible enhance the historic environment.
- 93 However, Policy BE4 does not have regard to national planning policy and is not in general conformity with the Core Strategy. Rather, it sets out an entirely different approach to heritage assets by requiring development to demonstrate "*compatibility*" with "*the fabric, setting and significance*" of the asset. "*Compatibility*" is not defined and there is no detailed information setting out how it might be measured, or of who would measure it and on what basis. This results in an imprecise and ambiguous Policy.
- 94 Policy BE4 goes on to require all development proposals to take account of the Conservation Area's open spaces, local character and natural features and "*reflect this in their layout, design, form, scale, mass, use of materials and detailing.*" In the absence of substantive evidence, it is not clear why such an approach would, in every instance, be necessary, relevant or material, having regard to Paragraph 193 of the Framework; nor why it would necessarily conserve a heritage asset in a manner appropriate to its significance. This part of the Policy does not have regard to national policy.
- 95 Further, the Policy's approach to archaeology includes vague statements – "*should take account...an appropriate...where necessary...*" - and ends with a vague, and far less nuanced and detailed approach than that set out in national policy, "*permission will not normally be granted...*"
- 96 The penultimate paragraph of Policy BE4 sets out requirements that are ambiguous and beyond those of national policy, for example "*should utilise...methods of construction*" and includes a confusing and unclear sentence in respect of development proposals and decision-making.

- 97 All development affecting heritage assets must be assessed under relevant policy. It is not clear, in the absence of any detailed information, why the last part of the Policy seeks to identify demolition as requiring special attention.
- 98 Taken as a whole, Policy BE4 is a confusing and imprecise Policy. It does not have regard to national policy and it does not contribute to the achievement of sustainable development.
- 99 I recommend:
- **Delete wording of Policy BE4 and replace with *“The Neighbourhood Area’s heritage assets will be conserved in a manner appropriate to their significance.”***
 - **Supporting text, Para 5.5, delete last two sentences *“This document is now...and materials.”***
 - **Add *“The Old Manor, 9 All Saints Road, West Lavington”* to the list of Grade II Listed Buildings on page 36**

Housing

Policy H1 - Housing

100 The Framework states that:

“Neighbourhood plans and orders should not promote less development than that set out in the Local Plan, or undermine its strategic policies.”
(Paragraph 184, the Framework)

101 West Lavington/Littleton Panell is identified in Core Strategy Core Policy 12 (“*Spatial Strategy: Devizes Community Area*”) as a “*Large Village*.” Core Strategy Core Policy 2 (“*Delivery Strategy*”) sets out a presumption in favour of sustainable development within Large Villages. Neighbourhood Plan Policy BE1 is in general conformity with this and taking into account the recommendations in this Report, there is no need for Policy H1 to effectively repeat the provisions of Policy BE1.

102 Core Strategy Core Policy 2 sets out Wiltshire’s minimum housing requirement for the plan period. Wiltshire Council has confirmed that, as of April 2017, the remaining indicative requirement across the whole of the Devizes Community Area was 81 dwellings, being a slightly lower figure than the 102 dwellings referred to in the supporting text to the Policy (although I note that measuring housing land supply is a dynamic process).

103 Whilst there is no requirement for a neighbourhood plan to allocate land for development, Policy H1 allocates a site for up to 50 dwellings. The supporting text to the Policy provides evidence to support this allocation. The allocation has emerged through an open and transparent site selection process and has received community endorsement. It takes into account a rural housing needs survey, which identified needs for new affordable housing and housing for younger people.

104 The allocation is incorporated into the settlement boundary designated in the Neighbourhood Plan and taken together, Policies BE1 and H1 are therefore in general conformity with Core Strategy Policies 2 and 12, referred to above. Notwithstanding this point, I am also mindful that paragraph 4.17 of the Core Strategy states:

“...housing growth...outside the defined limits of development will not be supported unless they arise through community-led planning documents, such as neighbourhood plans, which are endorsed by the local community...”

105 In this respect, Policy H1 provides a good example of the various elements of the development plan working together and I concur with Wiltshire Council's stated view that, in this respect, the Policy is in general conformity with the Core Strategy.

106 As worded, the Policy seeks to direct the Local Planning Authority in respect of the determination of planning applications and in so doing, also runs the risk of pre-determination. In the same paragraph, the Policy also makes a reference to “backland” development, which is undefined and therefore appears as vague and open to wide and subjective interpretation.

107 The Policy goes on to set out a number of prescriptive requirements. These include requirements relating to access and movement which Wiltshire Council considers would be better addressed at the application stage, when up-to-date technical information at that time can be considered alongside relevant detailed information relating to the development proposals.

108 Whilst there is no suggestion that the site is not deliverable, Wiltshire Council, as Local Planning Authority, has raised concerns over how, for example, it should best be accessed and whilst evidence has been provided in support of the proposed access, I concur with Wiltshire Council's consideration that this is a matter most appropriately addressed at the application stage, rather than at the pre-application stage/prior to the provision of a detailed masterplan), which would seem to be premature.

109 Taking the recommendations below into account, Policy H1 allocates a housing site and sets out development principles, whilst relevant detailed information specific to the whole of the development proposed, including for example, that relating to viability and to the tenure and type of housing proposed, can appropriately be considered through the planning application process.

110 Comments are set out earlier in this Report (Paragraphs 63 to 66) in respect of the development brief document referred to in Policy H1. Policy H1 itself goes on to refer to a number of development principles. Wiltshire Council has also made a number of suggestions in this respect and taking these and all of the above into account, I recommend:

- **Policy H1, change title to “Policy H1 – Site Allocation”**
- **Policy H1, change wording to “Land South of Lavington Lane, West Lavington, identified below, is allocated for up to 50 dwellings. Proposals for the development of the site must be accompanied by a masterplan and demonstrate that the following principles have been taken into account:**
 - i) The proposal must demonstrate high quality design and make a positive contribution to local character and distinctiveness.*
 - ii) Landscaping – the layout to be landscape-led, demonstrating: respect for the sites setting, including Manor House Woods and the river corridor; the creation of landscape buffers along the northern part of the site, including to the ancient woodland and its eastern edge to the river corridor; conservation and where possible, enhancement of heritage assets.*
 - iii) Housing – Provide a mixed development of small/medium family houses and smaller accommodation for downsizing, including bungalow and other types of accommodation capable of providing for elderly and disabled people in an open, well-designed layout.*
 - iv) Parking – Provide off street parking to serve the new housing and to supplement provision at the Primary School*
 - v) Lighting – demonstrate that there would be no increase in lux levels impacting on Manor House Woods and the Semington Brook corridor and that ambient light, particularly upward spill above the site, is managed in order to minimise impact on bats.*
 - vi) Flooding – the area has high groundwater and a Flood Risk Assessment and drainage strategy must be submitted. Runoff rates should reflect or improve upon existing greenfield rates.*
 - vii) Movement – provide for connectivity across the site and with the local footpath network. Provide a safe crossing opportunity across Lavington Lane.*
- **Provide a new Map after the Policy, clearly showing the boundary of the allocation**

- **Paras 7.8 and 7.17, remove references to H1(A)**
- **Taking into account recommended changes to Policy: Para 7.22, delete from “This additional community benefit...” to the end of the para; and Para 7.23, delete from “The community benefits from the site allocation include...” to the end of the para (delete bullet points)**

Economy

Policy E1 – Retention of Existing Employment Land and Buildings

111 National policy states that:

“...significant weight should be placed on the need to support economic growth through the planning system.”

(Paragraph 19, the Framework)

112 It goes on to require planning policies to:

“...be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances.”

(Paragraph 21, the Framework)

113 Generally, Policy E1 seeks to protect employment space in the Neighbourhood Area, whilst, through the provisions of the Policy, allowing appropriate flexibility for changes of use. This approach has regard to national policy.

114 The first sentence of Policy E1 is superfluous and conflicts with the above and the final sentence introduces a “*preference*” without any detailed information setting out how such an approach might operate in practice. Consequently, the final sentence of the Policy is vague 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.

115 I recommend:

- **Policy E1, delete first sentence (“Existing...uses.”) and last sentence (“Where...D2).”)**
- **Supporting text, Para 9.3, change last sentence to “*The Parish Council would prefer a change of use to recreation...local employment as this will...villages.*”**
- **Para 9.4, delete “...or any subsequent amendment to that Policy.”) It is inappropriate for the Neighbourhood Plan to seek to include a proviso based on something that does not exist.”**

Policy E2 – Employment Development

116 Paragraph 28 of the Framework states that:

“Planning policies should support...the sustainable growth and expansion of all types of business and enterprise in rural areas...the development and diversification of agricultural and other land-based rural businesses...”

117 However, rather than have regard to this, Policy E2 only supports employment development within the settlement boundary. Policy BE1 already provides such a positive framework for development.

118 Notwithstanding the above, the Policy seeks to limit its impacts through, for example, reference to *“no negative impacts on the local environment,”* such an approach fails to provide for a balanced consideration of benefits against harm and therefore runs the risk of failing to contribute to the achievement of sustainable development. This part of the Policy also includes vague references, for example to *“visual amenity”* and *“undue”* – both of which are broad terms that could be interpreted in many different ways. The Policy also refers to *“adjacent residents.”* This fails to allow for occupiers in general, or for people who may occupy land or buildings that are very close by, but not adjacent.

119 I note that most home working does not require planning permission and it is unclear, in the absence of detail, what is meant by *“small scale.”* No indication is provided of how, in practice *“particular support”* would be different to *“support.”*

120 The Policy does not have regard to national policy. It is imprecise and ambiguous and does not contribute to the achievement of sustainable development.

121 I recommend:

- **Delete Policy E2 and supporting text**

Community Facilities

Policy CF1 – Community Facilities

- 122 In order to support a prosperous rural economy, Paragraph 28 of the Framework requires planning policies to provide for the retention and development of community facilities, including shops, meeting places, cultural buildings, places of worship and pubs.
- 123 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...”*
- 124 The first part of Policy CF1 seeks to protect existing community facilities and has regard to national policy. However, the Policy then introduces a series of bullet points containing ambiguous language. The terms *“unacceptable,” “traffic congestion,” “adversely affect”* and *“satisfactorily provided”* are not defined and are open to wide interpretation. The bullet points are imprecise and do 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.
- 125 The penultimate paragraph of the Policy uses the phrase *“will be permitted.”* It is the role of the Local Planning Authority to determine planning applications and the term runs the risk of pre-determining the planning application and decision-making process.
- 126 I recommend:
- **Policy CF1, end first sentence “....facilities will be supported, subject to their respecting local character, the amenity of neighbouring occupiers and highway safety.” Delete the three bullet points**

- **Policy CF1, change penultimate paragraph to “...for community activities *will be supported.*”**
- **Policy CF1, change last sentence to “...Hall) *will not be supported unless...*”**
- **Para 12.5, change fifth line to “*Therefore, the Parish Council supports the provision of appropriate car parking for the school associated with the housing allocation (Policy H1). This would help to alleviate...use of the village hall.*”**

Policy CF2 – Educational Facilities

127 National policy requires a proactive, positive and collaborative approach to ensuring that a sufficient choice of school places is available to meet the needs of communities and gives:

“...great weight to the need to create, expand or alter schools...”
(Paragraph 72, the Framework)

128 Policy CF2 supports expansion of existing school facilities and whilst framed negatively, supports the appropriate development of community facilities.

129 Whilst the supporting text refers to playing fields, the community's intention of protecting such is not made clear in the Policy. National policy affords protection to playing fields in Paragraph 74 of the Framework and I make a recommendation in this respect below.

130 Like some previous Policies, Policy CF2 includes ambiguous references and I recommend:

- ***Policy CF2, change to “Proposals for the expansion or alteration of educational facilities or community facilities at Dauntsey’s School and Dauntsey Academy Primary School will be supported. Playing fields in the Neighbourhood Area should not be built on unless replaced by equivalent or better provision in terms of quality, quantity and location; or the proposal is for alternative sports and recreation provision, the benefits of which clearly outweigh the loss of the current or former use.”***

Natural Environment

Policy NE1 – Local Green Space

- 131 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.”

- 132 The Framework requires policies for managing of 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.
- 133 The designation of land for Local Green Space must meet the tests set out in Paragraph 77 of the Framework.
- 134 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.
- 135 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.
- 136 Policy NE1 seeks to designate eight areas of Local Green Space. An appendix to the Neighbourhood Plan, extracted from the more detailed document *“Local Green Space Evidence,”* which forms part of the Neighbourhood Plan's evidence base, sets out how each of the areas of Local Green Space meet the relevant national policy tests.

- 137 Whilst the appendix shows the areas of Local Green Space, the Neighbourhood Plan does not contain any plans to clearly identify the boundaries of each Local Green Space. Given the importance of the designation, it is appropriate that areas of Local Green Space are clearly identified in the Neighbourhood Plan itself and I make a recommendation in this regard, below.
- 138 The Policy wording does not have regard to national policy, but rather, sets out a different approach and refers to land that does not comprise Local Green Space. Taking this and the above into account, I recommend:
- **Policy NE1, after the list of sites, change to “*The sites listed above and shown on the plans below are designated as areas of Local Green Space, which will be protected in a manner consistent with the protection of land within Green Belts.*”**
 - **Provide plans after the Policy that clearly identify the boundaries (so that there can be no confusion – for example, the Policies Map is insufficient for this purpose) of each area of Local Green Space**
 - **Supporting text, delete the second sentence of Para 15.1, which is incorrect (“Once...designated.”)**
 - **Para 15.3, penultimate line on page 65, change to “...set out in Appendix 1. *More* detail is also...Plan.”**

Policy NE2 – Setting of West Lavington Parish

139 Subject to recommendations in respect of ensuring that the Policy achieves its aims, the first part of Policy NE2 is a supportive Policy which seeks to protect and enhance important natural features. It has regard to Paragraph 58 of the Framework, which requires development to:

“...respond to local character and history ...while not preventing or discouraging appropriate innovation...”

140 However, the Policy then seeks to prevent any development that *“adversely affects”* various views and linkages. Such an approach fails to provide for the balanced consideration of harm against benefits, and in the absence of a clear definition, the phrase *“adversely affect,”* is vague and open to wide interpretation. Further, this part of the Policy simply identifies areas as being *“important to setting”* but does not provide any land use planning policy controls in respect of such areas. Consequently, the last paragraph of text and four bullet points on page 69 (and first bullet point on page 70) appear ambiguous and fail 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.

141 The ensuing paragraph of Policy NE2 is also vague. Alongside *“adversely affect,”* it refers to *“devaluing the structure, diversity or views of the streetscene.”* Again, this appears vague and open to wide interpretation and also fails to provide for varying degrees of harm or benefits arising from development proposals. Further, in the absence of any substantive evidence, it is not apparent that it would be deliverable or viable for all development to include green buffers and trees, having regard to Paragraph 173 of the Framework, which requires careful attention to viability in plan-making.

142 Policy NE2 goes on to state that any proposals that have any adverse impact, no matter how significant and regardless of any benefits, will not be permitted. This part of the Policy is ambiguous, fails to contribute to the achievement of sustainable development and runs the risk of pre-determining the planning application process.

143 I note that Sites of Special Scientific Importance (SSSIs) are, by their very designation, protected from inappropriate development and these, along with local sites and ancient woodland are protected by the Framework and Core Strategy Policy 50 (*“Biodiversity and geodiversity”*).

- 144 Policy NE2 refers to areas of Green Infrastructure. Whilst indicated on the Policies Map, the boundaries of these areas appear vague and open to interpretation. Notwithstanding this, Policy NE2 would prevent any development in these general areas, unless it *“relates to supporting their ongoing role as green infrastructure.”*
- 145 This appears as an ambiguous requirement. No information is provided in respect of what this precise role is, what would *“relate to supporting it,”* or of who would judge this and on what basis. This part of the Policy is imprecise, could prevent sustainable development from coming forward and 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.
- 146 It is not clear, in the absence of any detail, how Policy NE2 will *“encourage”* the provision of landscaping and planting around playing fields and new developments and no indication of what a *“suitable landscaped buffer”* might comprise is provided.
- 147 Notwithstanding all of the above, I note that, in addition to requiring development to respect local character, national policy, in Chapter 11 of the Framework (*“Conserving and enhancing the natural environment”*) strongly supports the protection and enhancement of biodiversity and the aims of Policy NE2 have regard to this.
- 148 Taking all of the above into account, whilst Policy NE2 aims to protect and enhance natural features, much of the Policy appears ambiguous and fails to have regard to national policy. I recommend:
- **Policy NE2, change first sentence and bullet points to: *“The Neighbourhood Plan will support proposals to protect and enhance the natural features...populations, including: a)...tree cover and hedgerows; b) Proposals...habitat connectivity; c)...of woodland.”***
 - **Policy NE2, change remainder of Policy to *“Development should respect views into and out of the two villages and be designed to integrate well with its surroundings. Development should retain visual separation between West Lavington/Littleton Panell and the settlements of Little Cheverell and Market Lavington.***

- ***The provision of new and the enhancement of existing, green infrastructure will be supported. Development should protect existing biodiversity and pursue opportunities to secure net gains for biodiversity.***
- ***Delete Paras 16.9, 16.10 and appendix 2***

8. The Neighbourhood Plan: Other Matters

149 As presented, the Policies Map does not appear in the Neighbourhood Plan, but is appended to it. Also, the changes recommended above will require subsequent changes to the Policies Map and there is no need for "Policies Map B," as the Neighbourhood Plan already contains a plan showing the Settlement Boundary.

150 I recommend:

- **Include the Policies Map within the Neighbourhood Plan itself (rather than appended to it).**
- **The Policies Map and Key should show the settlement boundary, the housing allocation, and the areas of Local Green Space (numbered on the Map and named in the Key). References to educational facilities, areas important to setting and areas of important green infrastructure should be deleted.**
- **NB, there should only be one Policies Map, which indicates the housing allocation and Local Green Space designations in context**

151 The recommendations made in this Report will also have a subsequent impact on Contents, Policy, paragraph and page numbering.

152 I recommend:

- **Update the Contents, Policy, paragraph and page numbering, taking into account the recommendations contained in this Report.**

9. Referendum

153 I recommend to Wiltshire Council that, subject to the modifications proposed, **the West Lavington Neighbourhood Plan should proceed to a Referendum.**

Referendum Area

154 I am required to consider whether the Referendum Area should be extended beyond the West Lavington Neighbourhood Area.

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

156 Consequently, I recommend that the Plan should proceed to a Referendum based on the West Lavington Neighbourhood Area approved by Wiltshire Council and confirmed by public notice on the 17 July 2013.

Nigel McGurk, November 2018
Erimax – Land, Planning and Communities



EST. 2011