

# **EXAMINER'S REPORT COMMUNITY RIGHT TO BUILD ORDER**

## **Cherhill New Village Hall**

A Report to Wiltshire Council of the Examination into the Cherhill New Village Hall Community Right to Build Order

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**Contents**

- 1. Introduction**
- 2. Community Right to Build Orders**
- 3. Role of the Independent Examiner**
- 4. Cherhill Village Hall Charitable Incorporated Organisation**
- 5. The Proposed Development**
- 6. Content of a Community Right to Build Order**
- 7. Background Documents**
- 8. Consultation**
- 9. Meeting the Basic Conditions**
- 10. Enfranchisement rights and retention of affordable housing in perpetuity**
- 11. Modifications to the Order**
- 12. Referendum**

## Introduction

- 1 This Report provides the findings of the examination into the Cherhill New Village Hall Community Right to Build Order (referred to as the Order).
- 2 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)
- 3 This Order was proposed by the Cherhill Village Hall Charitable Incorporated Organisation (referred to in this Report as the "CIO"). In line with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2018<sup>1</sup>) and national Planning Practice Guidance, the CIO is the designated *qualifying body* responsible for the preparation of the Order. The Cherhill Ward Neighbourhood Area was designated for the purposes of a Community Right to Build Order on the 8<sup>th</sup> June 2016. The purpose of the Order is to provide a new village hall to meet the needs of a growing population in Cherhill.
- 4 This Examiner's Report provides a recommendation as to whether or not the Order should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes in favour, then the Order would be *made*<sup>2</sup> by Wiltshire Council.

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<sup>1</sup> The National Planning Policy Framework 2018 replaces the original 2012 National Planning Policy Framework. Whilst the replacement version establishes that the policies of the previous Framework will apply for the purpose of examining Neighbourhood Plans, there is nothing to suggest that such an approach extends to Community Right to Build Orders. Consequently, the CRTBO has been considered against the 2018 Framework.

<sup>2</sup> Whereas a Local Plan is "*adopted*" and planning permission is "*granted*," a Community Right to Build Order is "*made*."

## **Community Right to Build Orders**

- 5 The Community Right to Build came into force on 6 April 2012. It forms part of the Neighbourhood Planning (General) Regulations contained within the Localism Act 2011.
- 6 A Neighbourhood Development Order grants planning permission for specific types of development in a specific neighbourhood area. It can apply to a specific site, sites, or wider geographical area.
- 7 A Community Right to Build Order is a form of Neighbourhood Development Order. It can be used to grant planning permission for small-scale development for community benefit on a specific site, or sites, in a neighbourhood area.
- 8 The Localism Act<sup>3</sup> establishes that a neighbourhood development order is a Community Right to Build Order if:
  - (a) *the order is made pursuant to a proposal made by a community organisation;*
  - (b) *the order grants planning permission for specified development in relation to a specified site in the specified neighbourhood area;*
  - (c) *the specified development does not exceed prescribed limits.<sup>4</sup>*
- 9 In respect of the above:
  - (a) the CIO, as a designated qualifying body, constitutes a community organisation.
  - (b) The specified development is set out in a Design Statement and accompanying plans. It comprises a new village hall, on a specified site within the designated Cherhill Ward Neighbourhood Area.

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<sup>3</sup> Ref: Localism Act 2011, Schedule 11 which inserted Schedule 4C to the Town and Country Planning Act 1991 and S.61Q.

<sup>4</sup> Ref: (2) Regulations under sub-paragraph (1)(c) may prescribe a limit by reference to—  
(a) the area in which the development is to take place; (b) the number or type of operations or uses of land constituting the development, or (c) any other factor.

(c) No substantive evidence has been submitted to suggest that the specified development exceeds prescribed limits.

10 Planning Practice Guidance<sup>5</sup> states that:

*“A Community Right to Build Order can be used for example to approve the building of homes, shops, businesses, affordable housing for rent or sale, community facilities or playgrounds. Where the community organisation wishes to develop the land itself (subject to acquiring the land if appropriate) then the resulting assets can only be disposed of, improved or developed in a manner which the organisation considers benefits the local community or a section of it.”*

11 In the light of the above, I note that the proposed development comprises a community facility.

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<sup>5</sup> Ref: Para 12 ID: 41-012-20140306.

### **3. Role of the Independent Examiner**

- 12 I was appointed by Wiltshire Council, with the consent of the qualifying body, to conduct an examination and provide this Report as an Independent Examiner.
- 13 I am independent of the qualifying body and the local authority. I do not have any interest in any land in the Neighbourhood Area and I possess appropriate qualifications and experience.
- 14 I am a chartered town planner with over 25 years relevant experience. I am an experienced Independent Examiner of Neighbourhood Plans and Community Right to Build Orders. I have extensive land, planning and development experience, gained across the public, private, partnership and community sectors.
- 15 As the Independent Examiner, I must make one of the following recommendations:
  - a) that the Order should proceed to Referendum, on the basis that it meets all legal requirements;
  - b) that the Order, as modified, should proceed to Referendum;
  - c) that the Order does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 16 With regards a Community Right to Build Order, the Examiner's Report is binding. If the Examiner's Report recommends that the draft order be refused, the local planning authority must refuse the proposal. If the Examiner's Report recommends that the draft order be submitted to a Referendum (either with or without modifications), then a Referendum must be held on the making of the Order by the local planning authority.
- 17 If recommending that the Order should go forward to Referendum, the Examiner must consider whether or not the Referendum Area should extend beyond the Neighbourhood Area to which the Plan relates.
- 18 Without prejudice to the recommendation of this Report, I note that whilst the Referendum Area could be extended to include parts of surrounding areas, there appears to be no need to do so. The site the subject of the Order is located at the edge of Cherhill village, wholly within the Cherhill Ward Neighbourhood Area designated by Wiltshire Council and as such, it forms a defined and logical area.

- 19 The Order must meet the Basic Conditions and other requirements set out in Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended). The Basic Conditions are:
- *having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order;*
  - *having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order;*
  - *having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order;*
  - *the making of the order contributes to the achievement of sustainable development;*
  - *the making of the order 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 order does not breach, and is otherwise compatible with, EU obligations;*
  - *prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.*
- 20 Regulations 32 and 33 of the Neighbourhood Planning Regulations (2012) as amended set out two further Basic Conditions. These are:
- *The making of the neighbourhood plan or order 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;*
  - *Having regard to all material considerations it is appropriate that the neighbourhood development order is made where the development described in an order proposal is Environmental Impact Assessment development.*

- 21 In carrying out the Examination, I have also had regard to the following requirements:
- *The order proposal is accompanied by a draft of the order and a statement that contains a summary of the proposals and sets out the reasons why an order should be made in the proposed terms and the order is made by a community organisation and grants planning permission for specified development in relation to a specified site in the specified neighbourhood area and the specified development does not exceed prescribed limits.*
  - *The order proposal may not provide for the granting of planning permission for development that is excluded development, where planning permission is already granted for that development, and may not relate to more than one neighbourhood area.*
  - *The order proposal complies with section 61L of Schedule 9 of the Town and Country Planning Act 1990 (as amended), which refers to permission granted by neighbourhood development orders and any conditions specified in the order and any time periods specified.*
  - *Whether the draft order is compatible with the Convention rights.*
- 22 The Order has been considered against the basic conditions and requirements set out above.



#### **4. Cherhill Village Hall Charitable Incorporated Organisation (CIO)**

- 23 Part 4 of the Neighbourhood Planning Regulations 2012 (as amended) makes provision in relation to additional prescribed conditions a community organisation must satisfy in order to be a Community Right to Build organisation. These include: allowing anyone from the area to be a member of the organisation; ensuring that such members have majority voting rights for the body; and prescribing the way profits must be used and assets distributed on a winding up (Regulation 13).
- 24 The Requirements of Regulation 13 are set out below and specific references to how the CIO addresses these are provided **in bold**.

- *Prescribed conditions for community right to build organisations 13.— (1) For the purposes of paragraph 3(1)(b) of Schedule 4C to the 1990 Act, the following additional conditions are prescribed for any community organisation which is not a parish council -*

*(a) individuals who live or work in the particular area for which the community organisation is established (**In this case the particular area for the Order is the Cherhill Ward Neighbourhood Area**) must be entitled to become voting members of the community organisation (whether or not others can also become voting members);*

**Clause 9.0 of the CIO's constitution meets this requirement.**

- *and (b) the constitution of the community organisation must— (i) provide that taken together the individuals who live in the particular area— (aa) hold the majority of the voting rights; and (bb) have the majority on the board of directors or governing body, of the community organisation.*

**Clause 15.0 of the CIO's constitution meets this requirement.**

- *(ii) include a statement— (aa) that the community organisation will carry on its activities for the benefit of the community in the particular area or a section of it and (bb) indicating how it is proposed the community organisation's activities will benefit the community in the particular area (or a section of it).*

Clause 3.0 of the CIO's constitution meets this requirement. Further, it states: ***"The objects of the CIO are to establish and run a village hall and to promote for the benefit of the inhabitants of the Parish of Cherhill (Cherhill ward ("area of benefit"))...in the interests of social welfare and with the objective of improving the conditions of life of the said inhabitants."***

- *(iii) provide that any assets of the community organisation may not be disposed of, improved or developed except in a manner which the community organisation consider benefits the community in the particular area or a section of it.*

Together, Clauses 5.0 and 27.0 of the CIO's constitution meet this requirement. Further, Clause 27.2.3 of the constitution states that, ***"...assets must be applied for charitable purposes the same as or similar to those of the CIO."***

- *and (iv) provide that any profits from its activities may only be used to benefit the community in the particular area or a section of it (the payment of profits directly to members or directors is not to be considered a benefit to the community in the particular area or a section of it). (v) provide that in the event of the winding up of the community organisation or in any other circumstances where the community organisation ceases to exist, its assets must be transferred to another. (vi) provide that the organisation has at least 10 members, living in different dwellings to each other, who live in the particular area. For the purposes of this regulation, "dwelling" has the meaning given in section 3 of the Local Government Finance Act 1992(a).*

Together, Clauses 5.0, 6.0, 9.0 and 27 of the CIO's constitution meet these requirements. In respect of part (vi) above, I note that the CIO has confirmed that ***"Cherhill Village Hall CIO currently has 11 Trustees all residents of the particular area with 10 living in different dwellings to each other. Each Trustee was elected by residents of the particular area at the..."*** CIO Annual General Meeting.

- 25 Further to the above, the CIO's constitution states that:

*"The objects of the CIO are to establish and run a village hall and to promote for the benefit of the inhabitants of the Parish of Cherhill (Cherhill Ward ("area of benefit")) without distinction of sex, sexual orientation, age, disability, nationality, race or political, religious or other opinions the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the conditions of life of the said inhabitants."*

- 26 The CIO community organisation is "a body corporate" that meets "membership requirements."
- 27 It satisfies the 1990 Planning Act (as amended), in respect of para. 3 (1) (a) relating to a 'body corporate' established for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live in a particular area, and which meets such other conditions in relation to its establishment or constitution as may be prescribed, and; para. 3 (2), where provisions relate to the distribution of profits by members, the distribution of assets of the body, the membership of the body and the control of the body.
- 28 The CIO also satisfies that part of the 1990 Planning Act (as amended) that states:

*"4 (1) A community organisation is authorised for the purposes of a community right to build order to act in relation to a neighbourhood area (whether or not any part of the neighbourhood area falls within the area of a parish council) if (a) the area mentioned in paragraph 3(1)(a) consists of or includes the neighbourhood area, and (b) at the time the proposal for the order is made more than half of the members of the organisation live in the neighbourhood area. (2) Accordingly, the community organisation is in that case to be regarded as a qualifying body for the purposes of section 61E."*

- 29 Taking everything into account, I am satisfied that the Cherhill Village Hall Charitable Incorporated Organisation meets the prescribed conditions required for community right to build organisations as set out in Part 4 of the Neighbourhood Planning Regulations 2012, as amended.

**The Proposed Development**

- 30 The proposed development is a new village hall, comprising:
- a single storey building with a green roof;
  - 49 car parking spaces and 7 cycle racks.
- 31 The Order and plans accompanying it show that the proposal would comprise a simple, modern village hall, with a "*pavilion*" character. The use of natural materials and the green roof would result in a natural appearance, assisting the assimilation of the building into its semi-rural surroundings.

## **6. Content of a Community Right to Build Order**

- 32 According to Section 22 of the Neighbourhood Planning (General) Regulations 2012, a Community Right to Build Order submitted to a local planning authority must include:

*a) A map identifying the land to which the order relates.*

**This has been provided in the form of a map in the Order and Drawing Number A200, as submitted to Wiltshire Council.**

*b) A consultation statement which includes a) details of those bodies and persons who were consulted, b) explains how they were consulted, c) summarises the main issues and concerns raised by those consulted and d) describes how those issues and concerns have been considered and addressed in the proposed order.*

**This has been provided in the form of the Consultation Statement and accompanying Appendices, submitted to Wiltshire Council.**

*c) The proposed Order.*

**This has been provided in the form of the proposed Order submitted to Wiltshire Council for examination.**

*d) An archaeology statement if the qualifying body considers it to be appropriate after consultation with English Heritage. When one is submitted this should confirm that information contained in the historic environment record has a) been reviewed, b) sets out the findings from that review and c) explains how the findings have been taken into account in preparing the order proposal. Where no findings of relevance are identified the statement need only a) confirm the review has taken place and b) explain there are no relevant findings.*

**This has been provided in the form of the Archaeology Statement submitted to Wiltshire Council.**

*e) A statement that explains how the order meets the Basic Conditions.*

**This has been provided in the form of the Basic Conditions Statement submitted to Wiltshire Council.**

*f) Details of any enfranchisement rights and the properties or types of properties to which the qualifying body proposes are not exercisable.*

**The submitted Order does not set out any enfranchisement rights.**

- 33 Taking all of the above into account, I am satisfied that the requirements of Section 22 of the Neighbourhood Planning (General) Regulations 2012, a Community Right to Build Order have been met.
- 34 I am satisfied that the Order is made by a *qualifying body* and seeks to grant planning permission for a specified development on a specified site in a specified neighbourhood area. The Order does not grant permission for development that already has planning permission and does not relate to more than one neighbourhood area.
- 35 The Order proposal contains a draft of the Order, statement of the proposal and reasons why the Order should be made.

## **7. Background Documents**

36 In undertaking this examination I have considered various information in addition to the Order. This has included, but is not limited to, the following:

- National Planning Policy Framework (referred to in this Report as "*the Framework*") (2018)
- Planning Practice Guidance (2014) (as updated)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- Wiltshire Core Strategy Development Plan Document (2015)
- Basic Conditions Statement
- Consultation Statement
- Archaeology Statement
- EIA Screening Decision
- Habitats Regulations Screening Assessment
- Habitat Report
- Heritage Statement
- Transport Statement

Also:

- Representations received

37 In addition, I undertook an unaccompanied visit to the site the subject of the Order.

Public Hearing

38 According to the legislation:

*"It is expected that the examination of a draft neighbourhood plan or Order will not include a public hearing. Rather the examiner should reach a view by considering written representations."*  
(Planning Practice Guidance<sup>6</sup>)

39 However, legislation also establishes that, *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.

40 Further to consideration of all of the relevant information, I determined that there was no requirement for a public hearing in respect of the Order.

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<sup>6</sup> Ref: Paragraph 056, Reference ID: 41-056-20140306.



## **8. Consultation**

- 41 Successful public consultation can help to provide for a Community Right to Build Order to reflect the needs, views and priorities of the local community. It can add to a sense of public ownership, lead to community consensus and provide the foundations for a “Yes” vote at Referendum. Also, as the making of a Community Right to Build Order replaces the need for a traditional planning application, public consultation provides for important community engagement.
- 42 The community organisation submitted a Consultation Statement alongside the Order. This addresses the requirements of the Neighbourhood Planning (General) Regulations 2012, Part 6, Regulation 21, which relate to:
- publicity, community awareness and participation in the drafting of the Order;
  - consultation with affected parties, including local infrastructure service providers, statutory bodies and landowners;
  - copying proposals to the local planning authority.
- 43 In line with the Regulations, the Consultation Statement sets out who was consulted and how. It summarises the main issues and concerns raised by those consulted, and it describes how these issues and concerns were considered.
- 44 Having regard to the information before me, I am satisfied that the Consultation Statement submitted demonstrates that public consultation undertaken in association with the Order was both appropriate and fundamental to the production of the Order.

## **9. Whether the Order Meets the Basic Conditions**

- 45 In order for the Order to proceed to Referendum, it is a legal requirement for it to meet the Basic Conditions and the other requirements set out in Paragraph 8 of Section 4B of the Town and Country Planning Act (as amended).
- 46 This section of the Examiner's Report considers the Order against each of the Basic Conditions (which are identified in **bold**).
- 47 The two basic conditions that require the Order to have regard to national policy and guidance, and to be in general conformity with the strategic policies of the development plan, are considered together in the first part of this Section, below.

**Basic Condition:** Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Order;

*and*

**Basic Condition:** The making of the Order 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).

48 The National Planning Policy Framework (2018) (the Framework) and Planning Practice Guidance (2014, as amended) set out national planning policies and advice. The relevant development plan comprises the Wiltshire Core Strategy Development Plan Document (2015) (referred to below as the “Core Strategy”).

49 National policy establishes that:

*“The purpose of the planning system is to contribute to the achievement of sustainable development...”*  
(Paragraph 7, the Framework)

50 Chapter 2 of the Framework, “Achieving Sustainable Development,” sets out the planning system’s three overarching objectives: economic; social; and environmental. It requires planning decisions to play an active role in guiding development towards sustainable solutions whilst taking local circumstances into account, to reflect the needs and opportunities of each area.

51 To ensure that sustainable development is pursued in a positive way, at the heart of the Framework is:

*“...a presumption in favour of sustainable development.”*  
(Paragraph 10, the Framework)

- 52 The Framework purposefully recognises that the application of this presumption in favour of sustainable development will have direct implications for how communities engage in neighbourhood planning. Specifically, it recognises that communities:

*"...can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. These require the support of the local community through a referendum..."*  
(Paragraph 52, the Framework)

- 53 The Order seeks to grant planning permission for a new village hall and in doing so, it aims to provide a new community facility to meet the needs of the Neighbourhood Area. As such, the Order has regard to Chapter 8 of the Framework, "*Promoting healthy and safe communities,*" which states that planning policies and decisions should:

*"...aim to achieve healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between people...enable and support healthy lifestyles...provide the social, recreational and cultural facilities the community needs..."*  
(Paragraphs 91 and 92, the Framework)

- 54 Chapter 8 of the Framework goes on to require positive planning for the provision and use of shared spaces and community facilities.

- 55 In addition to the above, the Order has regard to Paragraph 83 of the Framework, which, in order to support a prosperous rural economy, requires planning policies and decisions to enable the:

*"...development of...community facilities, such as...meeting places...cultural buildings..."*

- 56 The Order has regard to national policy in the above respects.

- 57 In line with the Framework, Core Strategy Core Policy 1, "*Spatial strategy,*" supports the development of new facilities in villages and Core Policy 2, "*Delivery strategy,*" supports development in small villages that meet services and facilities, so long as such development respects local character, does not elongate villages and does not impose development in sensitive landscape areas.

58 As noted earlier, the proposal has been sensitively designed to assimilate well with its surroundings. Its proposed form, green roof and use of natural materials serves to ensure that the proposal would not “impose” itself, but would, rather, nestle into its semi-rural surroundings. Furthermore, supporting evidence demonstrates that the proposal would fit into the existing pattern of development without impacting on Cherhill’s wider landscape setting.

59 Taking the above into account, I find the proposal to comprise a carefully designed building and that as such, the Order is in general conformity with Core Strategy Core Policies 1 and 2.

60 The Framework dedicates a Chapter to good design, Chapter 12 “Achieving well designed places.” This establishes that:

*“The creation of high quality buildings...is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development...and helps make development acceptable to communities...”*

(Paragraph 124, the Framework)

61 The Chapter goes on to afford great weight to:

*“...outstanding or innovative designs which promote high levels of sustainability...so long as they fit in with the overall form and layout of their surroundings.”*

(Paragraph 131, the Framework)

62 In addition to the above, Core Strategy Core Policy 57, “Ensuring high quality design and place shaping,” requires a high standard of design, to ensure that development enhances local distinctiveness, relates positively to its surroundings and maximises opportunities for sustainability. Further, Core Strategy Core Policy 41, “Sustainable construction and low-carbon energy,” promotes sustainable construction techniques.

63 The proposal the subject of the Order comprises an innovative building, sensitively designed to assimilate into its surroundings. I find that together, the building proposed and the proposed landscaping around it, would conserve the natural beauty of the North Wessex Downs Area of Outstanding Natural Beauty (AONB), and to some degree, enhance the AONB, through the provision of a development that serves to “soften” the urban edge of Cherhill in this location.

- 64 Taking the above into account, I find that the Order is in general conformity with Core Strategy Core Policy 8, "*Calne Community Area*," which requires development to conserve the AONB.
- 65 The proposal incorporates significant sustainable design. In addition to the green roof, which would aid drainage and support biodiversity, the proposal provides for solar control, high performance insulation, natural ventilation, underfloor heating by air source heat pump, orientation and large windows providing for plenty of natural light, and use of LED lighting.
- 66 The Order and its supporting documents demonstrate that the proposal has regard to the Framework and is in general conformity with the Core Strategy in respect of design.
- 67 The Order demonstrates that it will not disturb sensitive wildlife species or habitats. Proposed landscaping seeks to incorporate and where possible, enhance biodiversity. Consequently, the Order has regard to Paragraph 174 of the Framework, which requires development to conserve habitats and:
- "...pursue opportunities for securing measurable net gains for biodiversity."*
- 68 Paragraph 108 of the Framework requires development to provide for safe and suitable access and goes on to establish that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 69 In addition, Core Strategy Core Policy 60, "*Sustainable Transport*," promotes development in accessible locations; and Core Strategy Core Policy 61, "*Transport and new development*," requires development to be located and designed to reduce the need to travel, particularly by private car.
- 70 The Order provides for development within less than one thousand metres of the majority of all dwellings in Cherhill. The proposal is within reasonable walking and cycling distance for village residents and the Order is in general conformity with the Core Strategy.
- 71 The Order provides for safe and secure access, considered and supported by the Highways Authority. The Order also provides for car parking and thus allows for a range of opportunities for access. There is no substantive evidence to demonstrate that the proposal would result in an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe. The Order has regard to national policy in this respect.

- 72 Taking all of the above into account, I am satisfied that the Order satisfies these basic conditions.

**Basic Condition: Having regard to the desirability of preserving any Listed Building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the Order.**

73 Paragraph 189 of the Framework requires:

*“...an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.”*

74 A Heritage Statement has been submitted alongside the Order and this considers the significance of any heritage assets affected, including any contribution made by their settings.

75 The site the subject of the Order is located outside but adjacent to Cherhill Conservation Area, and there are glimpsed views of a listed building, Tudor Cottage, to the north and to Bell House, a non-designated heritage asset, to the west.

76 Cherhill is located within the North Wessex Downs Area of Outstanding Natural Beauty (AONB) at the foot of Cherhill Down, part of a prominent escarpment of chalk downland which is important for its chalkland archaeology, including substantial earthwork remains, notably Oldbury Camp and the Cross Dyke, both of which are Scheduled Ancient Monuments. The Down also contains the Grade II\* Listed Lansdowne Monument and the prominent and well-known White Horse (a non-designated heritage asset).

77 The Heritage Statement provides evidence to demonstrate that the site the subject of the Order is largely screened from Tudor Cottage by mature planting; and is concealed from Bell House by mature trees, hedgerow planting and housing. The Heritage Statement concludes that the proposal will only have minor impacts on the setting and significance of these assets and that even these minor impacts will be largely addressed when the mature landscaping matures.

78 The Heritage Statement recognises that the proposal comprises a sensitive and carefully considered development which *“respects its visually and historically sensitive context.”* It finds that the proposal will not obscure views towards the White Horse and Lansdowne Monument.



- 79 The Heritage Statement considers that the proposal will have a neutral effect on the settings of the designated heritage assets on Cherhill Down. Overall, it concludes that the slight harm to significance arising from the proposal is less than substantial and will be more than offset by the public benefit arising from the provision of the village hall as a high quality community asset.
- 80 The above takes into account the requirements of Paragraph 195 of the Framework, which states that:
- “Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.”*
- 81 Historic England was consulted and has not expressed any concerns with the proposal.
- 82 Taking everything into account, I find that the proposed development has been designed to respect the Listed Buildings, their settings and any other features of architectural or historic interest. The Order would result in a development that has regard to the desirability of preserving the setting of these.
- 83 Taking all of the above into account, I am satisfied that the Order satisfies this basic condition.

**Basic Condition: Having regard to the desirability of preserving or enhancing the character or appearance of any Conservation Area, it is appropriate to make the Order.**

- 84 As noted above, the site the subject of the Order lies outside, but adjacent to, the Cherhill Conservation Area.
- 85 As such, the proposal is located within the Conservation Area's setting. The submitted Heritage Statement considered the effect of the proposal on the Conservation Area and its setting.
- 86 It concluded that the proposal would cause minor harm to the setting and significance of the Cherhill Conservation Area as a result of the widened access into the site, which would diminish the sense of enclosure along the lane adjacent to the site; and open up views into part of the site, in the foreground of which would be views of car parking.
- 87 However, the Heritage Assessment noted that this harm would be mitigated as a result of the sensitive landscaping proposed; and that the impacts arising would be minimal when the building is not in use and "*only minor*" when in use. The Heritage Statement also found that additional minor harm would arise from increased traffic associated with use of the hall, although it recognised that the impact of this would be mitigated by the amount of widening required, by planting, and by proposed detailing to the pavement edge.
- 88 The Heritage Statement concludes that the minor harm to significance identified would be less than substantial and would be outweighed by the public benefit arising. There is no detailed, substantive evidence, in the form of a Heritage Assessment, to the contrary. Neither Wiltshire Council nor Historic England have raised any concerns with the conclusions of the Heritage Statement.
- 89 Taking the above into account, I find that the proposal has regard to the desirability of preserving the character and appearance of the Cherhill Conservation Area.
- 90 The Order meets this basic condition.

**Basic Condition: The making of the Order contributes to the achievement of sustainable development.**

91 As noted above, National policy establishes that:

*“The purpose of the planning system is to contribute to the achievement of sustainable development...”*  
(Paragraph 7, the Framework)

and that there is:

*“...a presumption in favour of sustainable development.”*  
(Paragraph 10, the Framework)

- 92 The proposal would bring about clear sustainability benefits that would meet the economic, social and environmental objectives of sustainable development identified earlier.
- 93 It would provide a modern new community facility, meeting social objectives. It would also provide for economic and environmental benefits, bringing significant investment in the form of a new 21<sup>st</sup> Century village hall and through the provision of a highly efficient building.
- 94 In the above ways, the Order, together with the information submitted alongside it, provides evidence to demonstrate that it will contribute to the achievement of sustainable development.
- 95 I also note, earlier in this Report, that the proposal meets the basic conditions in respect of national and local policy, all of which is founded upon the planning system's purpose of contributing to the achievement of sustainable development.
- 96 The Order meets the basic conditions in this regard.

**Basic Condition: The making of the Order does not breach, and is otherwise compatible with, EU obligations.**

97 I am satisfied that the Order has regard to fundamental rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.

98 In respect of environmental obligations, the Wiltshire Council issued an Environmental Impact Assessment (EIA) Screening Opinion and a Habitats Regulations Assessment (HRA) Screening Opinion.

99 The EIA Screening Opinion concluded that:

*“...the development is not considered to be of more than local importance to the surrounding area. The site is not in a particularly sensitive area...is not an unusually complex development with any significantly potentially hazardous effects. Taking the above into account, the Council concludes that assessed against the criteria set out in the EIA Regulations an Environmental Impact Assessment is not required for the proposed Community Right to Build Project.”*

100 In respect of the HRA Screening Opinion, Wiltshire Council concluded that:

*“...the proposed site is not in a particularly sensitive area, relative to the Natura 2000 network of protected sites. The scale of development is small, with no potential mechanism for effects to occur at any distance from the site likely to result in adverse impact on the conservation objectives of any Natura 2000 site. It is therefore concluded that the plan would not have any likely significant effects upon any European designations and as such an appropriate assessment is not required.”*

101 In addition to the above, all of the statutory consultees have been consulted and none of them has stated that the making of the Order would breach, or would not otherwise be compatible with, EU obligations.

102 Taking the above into account, I am satisfied that the Order satisfies this basic condition.

**Basic condition: Prescribed conditions are met in relation to the Order and prescribed matters have been complied with in connection with the proposal for the Order.**

103 Subject to the contents of this Report and its Recommendation, the Order meets prescribed conditions and prescribed matters.

104 Further to all of the above, Regulations 32 and 33 of the Neighbourhood Planning Regulations (2012) as amended set out two further Basic Conditions:

- *The making of the neighbourhood plan or order 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.*

105 Taking the above into account, I find that the Order complies with this and note that there is no substantive evidence to the contrary.

- *Having regard to all material considerations it is appropriate that the neighbourhood development order is made where the development described in an order proposal is Environmental Impact Assessment development.*

106 As above, Wiltshire Council has undertaken a screening assessment and confirmed that EIA is not required for the development proposed in the Order.

107 For completeness, as identified earlier in this Report, the Examiner is required to consider whether:

- *The order proposal is accompanied by a draft of the order and a statement which contains a summary of the proposals and sets out the reasons why an order should be made in the proposed terms and the order is made by a community organisation and grants planning permission for specified development in relation to a specified site in the specified neighbourhood area and the specified development does not exceed prescribed limits.*

108 This information has been provided and therefore, the Order complies.

- *The order proposal may not provide for the granting of planning permission for development which is excluded development, where planning permission is already granted for that development, and may not relate to more than one neighbourhood area.*

109 Further to consideration of information relating to the Order, I find that the Order complies with the above.

- *The order proposal complies with section 61L of Schedule 9 of the Town and Country Planning Act 1990 (as amended) which refers to permission granted by neighbourhood development orders and any conditions specified in the order and any time periods specified.*

110 The Order complies.

- *Whether the draft order is compatible with the European Convention on Human Rights.*

111 The Order complies.

Basic Conditions - Summary

112 To conclude this Chapter of the Examiner's Report, I find that, subject to the recommendations set out at the end of this Report, the Order meets the basic conditions.

113 I also note that Wiltshire Council provided written comments during the Regulation 23 Consultation Stage and in so doing, stated that:

*"It is considered that the Order...is in general conformity with the strategic policies contained in the development plan..."*

**10. Enfranchisement rights and retention of affordable housing in perpetuity**

- 114 The legislation provides a mechanism that enables housing developed using a Community Right to Build Order to be retained as housing that is affordable in perpetuity. This is achieved by dis-applying certain statutory rights of tenants of long leases to buy their freehold and the statutory right given to qualifying tenants to acquire social housing as per the provisions of the Town and Country Planning Act 1990 (as amended) (paras. 11 and 12 of Schedule 4C) and the Neighbourhood Planning (General) Regulations 2012 (as amended), Part 7.
- 115 The Order does not propose the development of any housing and does not set out any enfranchisement rights.



## **11. Modifications to the Order**

### **Section 2.0 Conditions**

116 I have considered all of the Conditions in the Order against the relevant tests set out in Paragraph 55 of the Framework:

*“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”*

117 The conditions set out in section 2.0 of the Order all appear to meet the six tests and in this regard, the Order meets the basic conditions.

118 I note that a representation has been made by Wiltshire Council's Environmental Health Department in respect of noise and lighting. There is no information demonstrating that it is necessary, relevant, enforceable, precise and reasonable to impose a condition in respect of *“the management proposals for amplified music.”* This appears to be a matter that can be appropriately dealt with through licencing requirements.

119 A condition is set out to minimise the impact of lighting on neighbouring properties. Cherhill comprises a village with street lighting and the imposition of a condition requiring lighting to comply with that for intrinsically dark areas would be inappropriate.

120 No changes are proposed in respect of the conditions set out in the Order.

## **12. Referendum**

**121 I recommend to Wiltshire Council that the Cherhill Community Right to Build Order should proceed to a Referendum.**

### **Referendum Area**

122 Further to the above recommendation, I am required to consider whether the Referendum Area should be extended beyond the Cherhill Ward Neighbourhood Area.

123 As set out above, the site of the Order is located on the edge of Cherhill village, wholly within Cherhill Ward Neighbourhood Area, which forms a logical and known boundary. No changes are recommended in this regard.

**124 Taking all of the above into account, I recommend that the Order should proceed to a Referendum based on the Cherhill Ward Neighbourhood Area, approved by Wiltshire Council on 8<sup>th</sup> June 2016.**

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

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