

Pebworth Parish Council

Pebworth Parish Neighbourhood Development Plan

A report to Wychavon District Council of the Independent
Examination of the Pebworth Parish Neighbourhood
Development Plan

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Overall Finding

This is the report of the Independent Examination of the Pebworth Parish Neighbourhood Development Plan. The plan area comprises the entire administrative area of Pebworth Parish Council within the Wychavon District Council area. The plan period is 2018-2030. The Neighbourhood Plan includes policies relating to the development and use of land. The Neighbourhood Plan allocates one hectare of land for residential development.

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

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”¹
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Pebworth Parish Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Pebworth Parish Council (the Parish Council). The draft plan has been submitted by the Parish Council, a qualifying body able to prepare a neighbourhood plan, in respect of the Pebworth Neighbourhood Area which was formally designated by Wychavon District Council (the District Council) on 10 April 2013. The Neighbourhood Plan has been produced by the Neighbourhood Plan Steering Group made up of Parish Councillors and other volunteers from the local community.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to the District Council. The District Council arranged a period of publication between 7 January 2019 and 18 February 2019 and subsequently submitted the Neighbourhood Plan to me for independent examination.

Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan.² The report makes recommendations to the District Council including a recommendation as to whether or not the

¹ Paragraph 183 National Planning Policy Framework (2012) (See paragraph 214 of the NPPF 2018 for an explanation why this Independent Examination is being undertaken in the context of the NPPF 2012)

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

Neighbourhood Plan should proceed to a local referendum. The District Council will decide what action to take in response to the recommendations in this report.

6. The District Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Once a neighbourhood plan has been independently examined, and the decision taken to put the plan to a referendum, it must be taken into account when determining a planning application, in so far as the policies in the plan are material to the application³.
7. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will form part of the Development Plan and be given full weight in the determination of planning applications and decisions on planning appeals in the plan area⁴ unless the District Council subsequently decide the Neighbourhood Plan should not be 'made'. The Housing and Planning Act 2016 requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan⁵. The Framework is very clear that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted⁶.
8. I have been appointed by the District Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and the District Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Independent Examiner of Neighbourhood Plans. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years

³ Paragraph 216 of the National Planning Policy Framework 2012 explains full weight is not given at this stage

⁴ Section 3 Neighbourhood Planning Act 2017

⁵ Section 156 Housing and Planning Act 2016

⁶ Paragraph 198 National Planning Policy Framework 2012

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

9. As independent examiner, I am required to produce this report and must recommend either:

- that the Neighbourhood Plan is submitted to a referendum, or
- that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
- that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.

10. I make my recommendation in this respect and in respect to any extension to the referendum area,⁷ in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.⁸

11. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.⁹ The Planning Practice Guidance (the Guidance) states *“it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.”*

12. The examiner has the ability to call a hearing for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary, I proceeded on the basis of written representations and an unaccompanied visit to the Neighbourhood Plan area.

Basic Conditions and other Statutory Requirements

13. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.¹⁰ A neighbourhood plan meets the Basic Conditions if:

⁷ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁸ Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

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

¹⁰ Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
- the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.¹¹

14. As the final basic condition, on 28 December 2018, replaced a different basic condition that had previously been in place throughout the period of preparation of the Neighbourhood Plan I asked the District and Parish Councils to jointly confirm the Neighbourhood Plan meets the new basic condition. I refer to the responses received later in my report when considering Habitats Regulations Assessment.

15. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention Rights.¹² All of these matters are considered in the later sections of this report titled 'The Neighbourhood Plan taken as a whole' and 'The Neighbourhood Plan Policies'.

16. In addition to the Basic Conditions and Convention Rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.¹³ I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 (the

¹¹ This Basic Condition arises from the coming into force, on 28 December 2018, of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 whereby the Neighbourhood Planning Regulations 2012 are amended. This basic condition replaced a basic condition "the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects".

¹² The Convention Rights has the same meaning as in the Human Rights Act 1998

¹³ In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

Regulations) which are made pursuant to the powers given in those sections.

17. The Neighbourhood Plan relates to the area that was designated by the District Council as a neighbourhood area on 10 April 2013. A map of the Neighbourhood Plan boundary is included as Figure 2 of the Submission Version Plan where the designation of the Neighbourhood Area is stated to be 23 April 2013. The District Council has confirmed the correct date is 10 April 2013. I have recommended a correction in this respect. The Neighbourhood Plan designated area is coterminous with the Pebworth Parish Council boundary. The Neighbourhood Plan does not relate to more than one neighbourhood area,¹⁴ and no other neighbourhood development plan has been made for the neighbourhood area.¹⁵ All requirements relating to the plan area have been met. The District Council has drawn attention to the fact the Neighbourhood Plan document uses both Pebworth Neighbourhood Plan and Pebworth Parish Neighbourhood Plan. The District Council designated the neighbourhood area as the Pebworth Neighbourhood Area. The Parish Council has confirmed the name of the Neighbourhood Plan is Pebworth Parish Neighbourhood Plan. The selection of name is not a matter for my consideration; however, the use of different descriptions is confusing. I recommend a modification so that the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

Recommended modification 1

Apply the name of the Neighbourhood Plan (Pebworth Parish Neighbourhood Plan) and the date of designation of the Neighbourhood Area (10 April 2013) consistently

18. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;¹⁶ and the Neighbourhood Plan does not include provision about excluded development.¹⁷ I am able to confirm that I am satisfied that each of these requirements has been met.

¹⁴ Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

¹⁵ Section 38B (2) Planning and Compulsory Purchase Act 2004

¹⁶ Section 38A (2) Planning and Compulsory Purchase Act 2004

¹⁷ Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

19. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.¹⁸ Paragraph 1.10 of the Submission Version Plan clearly states the plan period to be 2018-2030.
20. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.¹⁹ It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan, except where this arises as a result of my recommended modifications so that the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention Rights, and the other Statutory Requirements.
21. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.
22. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans reflect thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.
23. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the Basic Conditions and the other requirements I have identified.²⁰

¹⁸ Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

¹⁹ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the National Planning Policy Framework 2012

²⁰ See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

Documents

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

- Pebworth Parish Neighbourhood Plan Submission Draft December 2018
- Pebworth Parish Neighbourhood Plan 2018-2030 Consultation Statement December 2018 [*In this report referred to as the Consultation Statement*]
- Pebworth Parish Neighbourhood Plan Basic Conditions Statement December 2018 [*In this report referred to as the Basic Conditions Statement*]
- Pebworth Parish Neighbourhood Plan - Evidence Base Housing Background Paper November 2018
- Pebworth Parish Neighbourhood Plan - Evidence Base Green Space Background Paper November 2018
- Pebworth Parish Neighbourhood plan - Evidence Base Assessment of Important Views in Pebworth Parish November 2018
- Fibrex Nurseries Pebworth Flood Risk Statement November 2018
- Pebworth Neighbourhood Plan Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Opinion August 2018 and responses to the Independent Examiner relating to the replacement Basic Condition dated 27 March 2019 and 1 April 2019
- Email from Wychavon District Council to Natural England regarding Habitats Regulation Assessment Screening Opinion – undated on the copy received by the Independent Examiner but understood to have been sent 15 March 2019
- Email exchange between Wychavon District Council and Natural England dated 8 April 2019 regarding Habitats Regulations Assessment
- Email from Wychavon District Council to Examiner dated 8 April 2019 regarding Habitats Regulations Assessment
- Pebworth Parish Neighbourhood Plan information available on the Pebworth Parish Council Neighbourhood Plan website
- Representations received during the Regulation 16 publicity period published on the District Council website
- Correspondence between the Independent Examiner and the District and Parish Councils, including the Parish Council response to the representations of other parties dated 27 March 2019
- South Worcestershire Development Plan Adopted February 2016
- South Worcestershire Council Strategic Policies for the Purposes of Neighbourhood Planning document
- South Worcestershire Development Plan Review Issues and Options Consultation November 2018

- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Permitted development rights for householders' technical guidance DCLG (June 2017) [*In this report referred to as the Permitted Development Guidance*]
- Planning Practice Guidance web-based resource MHCLG (first fully launched 6 March 2014 and subsequently updated) [*In this report referred to as the Guidance*]
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- The Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004 (as amended)
- The Localism Act 2011
- The Housing and Planning Act 2016
- The Neighbourhood Planning Act 2017 and Commencement Regulations 19 July 2017, 22 September 2017, and 15 January 2019
- The Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations. References to Regulation 14, Regulation 16 etc in this report refer to these Regulations*].
- The Neighbourhood Planning (General) (Amendment) Regulations 2015
- The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016.
- The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

Consultation

25. The submitted Neighbourhood Plan is accompanied by a Consultation Statement which outlines the process undertaken in the preparation of the plan. In addition to detailing who was consulted and by what methods, it also provides a summary of comments received from local community members, and other consultees, and how these have been addressed in the Submission Plan. I highlight here a number of key stages of consultation undertaken in order to illustrate the approach adopted.

26. The Neighbourhood Plan Steering Group comprising Parish Councillors and other local volunteers was set up in June 2016.

Following initial identification of key issues, a series of focus group meetings was held in September 2016 targeting different demographic groups in the community including parents of younger children, retired people, and working age people. During Spring 2017 a questionnaire was sent to every adult in the parish and a survey of teenagers was conducted through Facebook. Questionnaire results were published on the parish website; advertised in the Petrus newspaper; and discussed at a public meeting in July 2017. The results informed the development of a vision and objectives for the Neighbourhood Plan as well as policy themes. Consultation at the Pebworth 'Party in the Park' revealed strong community support.

27. The policy themes of housing; design; natural environment; community facilities; and local economy were developed through production of background papers, topic specific meetings, and site assessments. Owners of potential Local Green Space designations were consulted. A housing site options consultation was carried out between 21 May and 8 June 2018 through a survey delivered to every household with sufficient copies for every individual to respond. This survey resulted in 208 responses, which led to the identification of land at Fibrex Nurseries as the preferred option for housing development.
28. Pre-submission consultation in accordance with Regulation 14 was undertaken between 30 July 2018 and 21 September 2018. The consultation included a public event; features in the Petrus newsletter; information on the parish website; a flyer delivered to every household; a leaflet; availability of Plan documents through Parish Councillors; letters to more than 60 statutory consultees; and display of banners and posters. The representations arising from the consultation are summarised in Appendix 5 of the Consultation Statement where responses and changes made to the Neighbourhood Plan, are set out. The suggestions have, where considered appropriate, been reflected in a number of changes to the Plan that was approved by the Parish Council, for submission to the District Council.
29. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 period of publication between 7 January and 18 February 2019. Representations from 18 different parties were submitted during the period of publication. I have been provided with copies of each of these representations. In preparing this report I have taken into consideration all of the representations submitted during the Regulation 16 period that have been published on the District Council website even though they may not be referred to in whole, or in part.

Where representations relate to specific policies, I refer to these later in my report when considering the policy in question.

30. Worcestershire County Council states *“We are satisfied that the July 2018 consultation draft of the Pebworth Neighbourhood Plan is in general conformity with, and does not conflict with, the adopted Worcestershire Waste Core Strategy, the saved policies of the adopted County of Hereford and Worcester Minerals Local Plan, or the emerging Worcestershire Minerals Local Plan”*. Worcestershire County Council has also submitted comments, most of which it is stated were submitted at Regulation 14 consultation stage, relating to a variety of topics including flood management; education; sustainable energy; ultra-low emissions vehicles; water efficiency and waste; climate change; public health; and waste and minerals. The Parish Council has stated *“Unfortunately, the County Council’s representation to the Regulation 14 consultation, appended to the submission at Appendix A, was never received by the Parish Council. However, it is considered that the matters it raised have been satisfactorily addressed in the Submission Plan”*. I have referred to the Worcestershire County Council comments when relevant to particular policies of the Neighbourhood Plan. Some suggestions are made for additional elements of policy or general text in relation to water efficiency including water butts; compost bins; recyclable material storage; wider guttering; green roofs; permeable paving; healthy eating; and reducing binge drinking and alcohol consumption. It is beyond my remit to recommend modifications in these respects. Where comments relate to necessary corrections or updates, I have included them in the Annex to my report.
31. The District Council has submitted a substantial representation. This representation in large part relates to policies of the Neighbourhood Plan. I have taken the comments into account when considering the relevant policies, and refer to other matters raised in the Annex to my report. The Property Department of the District Council has objected to its site in Chapel Lane being excluded from the Plan as a prospective affordable housing site and does not agree to making the site available as a community orchard. I refer to this representation when considering Policy P1.
32. The submission of Natural England confirms no specific comments to make. The Environment Agency refer to content and availability of flood maps; the importance of robust confirmation that development is not impacted by flooding; and that there is sufficient waste water

capacity in place. The Environment Agency also state *“We would not in the absence of specific sites allocated within areas of fluvial flooding offer a bespoke comment at this time.”* Highways England has submitted general comments and state *“We note that the Housing Needs Assessment undertaken by Wychavon District Council in 2017 identified a need for 20 affordable homes in the parish. It is anticipated that much of this will be met by the new development permitted on the edge of the parish where approximately 133 affordable homes of differing tenures and sizes will be delivered as part of a scheme for 380 homes which fall into the Stratford upon Avon plan. Considering the level of growth proposed for Pebworth, we do not expect that there will be any impacts on the operation of the SRN.”* These comments do not necessitate modification of the Neighbourhood Plan.

33. Network Rail state *“there are several level crossings in the Plan area”* and *“any development of land which would result in a material increase or significant change in the character of traffic using a level crossing should be refused unless, in consultation with Network Rail, it can be demonstrated that the safety will not be compromised, or where safety is compromised serious mitigation measures would be incorporated to prevent any increased safety risk as a requirement of any permission”*. Network Rail set out a list of ways level crossings can be impacted by planning proposals. The representation does not raise a specific objection to any policy of the Neighbourhood Plan.

34. Historic England is supportive of the Neighbourhood Plan and repeats previous comments stating *“The emphasis on the conservation of local distinctiveness and variations in local character through good design and the protection of landscape character, along with the recognition afforded to historic farmsteads and archaeological remains is commendable. Overall the plan reads as a well-considered, concise and fit for purpose document which we consider takes a suitably proportionate approach to the historic environment of the Parish”*. Warwickshire County Council states *“reference is made to the pattern of education in this part of Worcestershire. Past evidence suggests that the primary/secondary pattern of education in Warwickshire is a popular choice and so growth in Pebworth could have an impact on schools in Quinton/ Meon Vale/ Long Marston”*. Warwickshire County Council also suggests a correction to general text that I refer to in the Annex to my report. These representations; the submission on behalf of National Grid; and general comments made by Sport England, and the Equality and Human Rights Commission do not necessitate any modification of the Plan to meet the Basic Conditions.

35. An individual has stated support for the Local Green Space designations in the centre of the village. I refer to this representation when considering Policy P4.
36. A representation on behalf of CALA Homes (Midlands) Limited, who have an interest in Fibrex Nurseries, sets out an interpretation of the Regulations and of the background and strategic policy context and states *“Our client supports the broad objectives of the Neighbourhood Plan and agrees that the development of land at Fibrex Nurseries would make a positive contribution to sustainable development and support the future vitality of Pebworth village, and Pebworth Parish as a whole. A larger allocation at Fibrex Nurseries would maximise the opportunities associated with the site and provide market and affordable housing for local people, without relying on other developments out with the Parish boundary. It would provide additional support for existing and proposed community facilities.”* I refer to this element of the representation when considering Policy P1, and where other elements of the representation are relevant to other policies, I have taken them into account when considering those other policies. A market appraisal report dated 4 December 2018 has been sent to me by the District Council with the Regulation 16 representation on behalf of CALA Homes (Midlands) Limited. The District Council has not published the market appraisal report on its website. The market appraisal report, which is not directly referred to in the representation on behalf of CALA Homes (Midlands) Limited, includes a reporting restriction. On the basis this Independent Examination must be open and transparent to all interested parties I have not taken the market appraisal report into consideration. The Neighbourhood Plan documents and written representations, including the substantial submission on behalf of CALA Homes (Midlands) Limited, have provided me with sufficient information to undertake this Independent Examination.
37. I provided the Parish Council with an opportunity to comment on the Regulation 16 representations of other parties. I placed no obligation on the Parish Council to offer any comments but such an opportunity can prove helpful where representations of other parties include matters that have not been raised earlier in the plan preparation process. On 27 March 2019 the Parish Council responded to the opportunity to comment by setting out a statement in respect of two of the Regulation 16 representations (Wychavon District Council Property Services and Worcestershire County Council). I have taken the Parish

Council response into account in preparing my report. I advised the District Council that the Regulation 16 representations and the Parish Council response should be posted on their website.

38. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which:
- a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
 - b) explains how they were consulted;
 - c) summarises the main issues and concerns raised by the persons consulted; and
 - d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.²¹
39. The Consultation Statement includes information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Working Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.

The Neighbourhood Plan taken as a whole

40. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and Human Rights requirements; has regard to national policies and advice contained in guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the development plan for the area. Each of the plan policies is considered in turn in the section of my report that follows this. In considering all of these matters I have referred to the submission, background, and supporting documents, and copies of the representations and other material provided to me.

²¹ Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

Consideration of Convention Rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017

41. *The Basic Conditions Statement states “The Neighbourhood Plan has regard to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and complies with the Human Rights Act.”* I have considered the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).²² I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. Whilst there is no indication an Equality Impact Assessment has been undertaken in respect of the Neighbourhood Plan, from my own examination the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics as identified in the Equality Act 2010.

42. The objective of EU Directive 2001/42²³ is *“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”* The Neighbourhood Plan falls within the definition of ‘plans and programmes’²⁴ as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.²⁵

43. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council, as the Qualifying Body, to submit to Wychavon District Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.

44. The Strategic Environmental Assessment Screening Opinion issued by the District Council in August 2018 states *“Based upon the initial*

²² The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

²³ Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

²⁴ Defined in Article 2(a) of Directive 2001/42

²⁵ Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

screening carried out against the criteria in Table 1 above, the draft Pebworth Neighbourhood Plan may have a significant effect on the environment. To explore these potential effects further, a case-by-case assessment has been conducted. The criteria used in the undertaking of such an assessment are drawn from Article 3.5 (Annex II) of the SEA directive, and the results are shown in Table 2” and “The SEA screening exercise featured in Section 2 concludes that the draft Pebworth Neighbourhood Plan may require a full Strategic Environmental Assessment to be undertaken. This is because the Neighbourhood Plan deviates from the land allocations for development made in the SWDP” and “Table 2 below provides the screening determination of the need to carry out a full Strategic Environmental Assessment for the draft Pebworth Neighbourhood Plan. This has been made in accordance with the Regulations and will be subject to consultation with the strategic environmental bodies before Wychavon District Council makes its determination on the necessity for a full Strategic Environmental Assessment.” Paragraphs 6.2 and 6.3 of the Basic Conditions Statement state: “A screening opinion consultation was undertaken by Wychavon District Council in August 2018 to identify whether the Plan required a Strategic Environmental assessment (SEA) and/or Habitats Regulations Assessment (HRA). The screening exercise involved consultation with the statutory environmental bodies: Historic England, Natural England and the Environment Agency. All three bodies have returned consultations which confirm they are in agreement that the Neighbourhood Plan does not require a Strategic Environmental Assessment (SEA) and/or Habitats Regulations Assessment (HRA). The Environment Agency had raised concerns over the need for further work to be undertaken on flood risk with regard to the watercourse adjacent to the allocated site; however, it has subsequently been agreed that this matter can be dealt with through a Flood Risk Statement submitted with the Plan and an enhanced policy.” I am satisfied the requirements regarding Strategic Environmental Assessment have been met.

45. The Screening Opinion issued by the District Council in August 2018 also relates to Habitats Regulations Assessment and states that in September 2017 the District Council issued a Habitats Regulations Assessment Screening Opinion which concludes “The HRA screening exercise featured in Section 3 concludes that the draft Pebworth Neighbourhood Plan does not require a full Habitats Regulation Assessment Appropriate Assessment to be undertaken. There are no internationally designated wildlife sites within the Pebworth

Neighbourhood Area, with only Bredon Hill SAC falling within a 20km radius. The impact on this site as a result of the land allocations contained within the SWDP has been assessed in the SWDP HRA AA, and although the draft Pebworth Neighbourhood Plan does deviate, the level of such allocations are considered small enough to conclude that it is unlikely to have a negative impact on any internationally designated wildlife sites and as such, the recommendation is made that a full AA is not required.” The Basic Conditions Statement states that Natural England concurs with this view.

46. The Draft Habitats Regulations Assessment Screening Opinion had been prepared by the District Council prior to the EU Court of Justice ruling in *People Over Wind and Sweetman v Coillte Teoranta*. (Judgement of the Court Seventh Chamber 12 April 2018). The Screening Opinion had also not taken account of the Court of Justice (Second Chamber) judgement of 25 July 2018 *Grace, Sweetman, and National Planning Appeals Board Ireland* (ECLI:EU:C2019:593). The second Judgement relates to how the conclusions of the Appropriate Assessment should be interpreted which in turn determines whether Article 6(3) or Article 6(4) of the Directive applies. The trigger point for the Judgement to apply is once the Screening Stage has concluded that Appropriate Assessment of a plan or project is required. Where an HRA Screening concludes that Appropriate Assessment of a Neighbourhood Plan is not required this second Judgement is not applicable.
47. The District Council has reviewed the HRA Screening Opinion in light of the ‘Sweetman’ rulings and considers that the HRA Screening Opinion for the Pebworth Parish Neighbourhood Plan remains valid and that an HRA Appropriate Assessment is not required. The District Council has stated the reasons for this are: The distance of the Neighbourhood Area from internationally designated wildlife sites (Lyppard Grange Ponds SAC and Bredon Hill SAC which are approximately 25km north west and 16km south west of the Pebworth Neighbourhood Area respectively); and the fact the HRA screening assessment does not seek to take account of any measures intended to reduce or avoid any harmful effects of the plan on any European designated site
48. I have earlier in my report referred to the replacement on 28 December 2018 of the Basic Condition relating to Habitats that had previously been in place throughout the period of preparation of the Neighbourhood Plan. On 15 March 2019 I wrote to request the District

Council and Parish Council confirm that the Neighbourhood Plan meets the revised Basic Condition. The Parish Council has on 27 March 2019 confirmed the Neighbourhood Plan meets the new basic condition in the following terms *“It is understood that the Neighbourhood Plan meets the Revised Basic Condition and no further action is required. Wychavon are awaiting confirmation from the HRA assessment ...which will feed into this response. Due to the distance of the Neighbourhood Area from European designated wildlife sites the Plan is not considered to have a significant effect on a European site, nor does it propose any mitigation measures as they are not required.”* The District Council wrote to Natural England on 15 March 2019 and on 1 April 2019 received the following reply: *“I can confirm that Natural England agrees with your conclusion that the Pebworth Neighbourhood Plan does not require an Appropriate Assessment. **The People over Wind judgement.** In April 2018, a judgment was handed down by the Court of Justice of the European Union (‘the CJEU’) which provides further authoritative interpretation of the Habitats Directive. People over Wind, Peter Sweetman v Coillte (Case C-323/17 People Over Wind v Coillte Teoranta). The CJEU’s judgment states that mitigation measures cannot be taken into account when deciding whether a plan or project is likely to have a significant effect on a European site. Rather, a competent authority must take account of measures intended to avoid or reduce the harmful effects of a plan or project as part of the appropriate assessment. Only then can a conclusion be drawn as to whether the plan or project will have an adverse effect on the integrity of the site. This is particularly pertinent with regard to Neighbourhood Plans, as there is a basic condition in the Neighbourhood Planning Regulations (2012) which states that the making of the neighbourhood plan is not likely to have a significant effect on a European site (paragraph 1, Schedule 2 of the Neighbourhood Planning (General) Regulations 2012). This means that Neighbourhood Plans cannot proceed to the appropriate assessment stage of the Habitat Regulations Assessment process. **Relevance of the People over Wind judgement to the Pebworth Neighbourhood Plan.** Natural England advises that we do not consider the People over Wind judgement to be relevant to the Pebworth Neighbourhood Plan. The Habitat Regulations Assessment Screening for the NDP does not rely on mitigation in order to reach its conclusion of no likely significant effects; therefore, the People over Wind judgement does not come into consideration. **Changes to the Neighbourhood Planning Regulations (2012) to allow Neighbourhood Plans to proceed to the Appropriate Assessment stage of the Habitat Regulations Assessment process.** For your*

information, the Ministry of Housing, Communities and Local Government has amended the Planning Regulations to allow Neighbourhood Plans to progress to the Appropriate Assessment stage of the Habitat Regulations Assessment, if necessary. You can view the legislation here. This legislation amends certain sections of the Habitats Regulations, the Neighbourhood Planning Regulations, Permission in Principle Regulations and Brownfield Registers Regulations. Details and links can be seen on the opening page of the legislation. I understand that MHCLG will be updating Planning Practice Guidance to provide further detail on the implications of the People over Wind Judgement, but so far as I know this hasn't been done yet. I trust that this confirms our advice.” As the District Council enquiry had included a factual error stating the Neighbourhood Plan did not include any allocation Natural England subsequently confirmed that the advice given remains the same in the context of an understanding the Neighbourhood Plan includes a housing allocation in Policy P1.

49. I have received confirmation that the District Council is of the opinion the Neighbourhood Plan does meet the new revised Basic Condition regarding Habitats. I am satisfied with this response. I conclude the Neighbourhood Plan meets the requirements of the revised Basic Condition relating to Habitats Regulations.
50. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.
51. I conclude that the Neighbourhood Plan is compatible with the Convention Rights, and does not breach, and is otherwise compatible with, EU obligations. I also conclude the making of the Neighbourhood Plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.
52. The Guidance states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The District Council as local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations:
- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and

- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).²⁶

Consideration whether having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan; and whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development

53. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans²⁷ which requires plans to be “*consistent with national policy*”.

54. Lord Goldsmith has provided guidance²⁸ that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”

55. The Basic Conditions Statement includes in Table 1 identification of sections of the Framework that the Neighbourhood Plan has regard to. Table 2 of the Basic Conditions Statement sets out a comprehensive statement how the Neighbourhood Plan policies “*conform*” to components of the Framework (both 2012 and 2018 versions). Whilst conformity is not the necessary test, I am satisfied the Basic Conditions Statement demonstrates how the Neighbourhood Plan has regard to relevant identified components of the Framework.

²⁶ Planning Practice Guidance paragraph 080 Reference ID: 41-080-20150209

²⁷ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the National Planning Policy Framework 2012

²⁸ The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the House of Lords Grand Committee on 6 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

56. The revised National Planning Policy Framework was published on 24 July 2018 and sets out the government's planning policies for England and how these are expected to be applied. This revised Framework replaces the previous National Planning Policy Framework published in March 2012. Paragraph 214 of the revised Framework states *"The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted²⁹ on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned."* I have undertaken this Independent Examination of the Neighbourhood Plan in the context of the Framework published in March 2012.
57. The Neighbourhood Plan includes a positive vision for Pebworth Parish that includes economic dimensions and social components whilst also referring to environmental considerations. The vision is underpinned by five objectives relating to: the local natural environment; the built environment; local distinctiveness; a sense of local community; and a thriving rural economy. It is stated the objectives link back to the issues identified. A diagram in paragraph 7.1 of the Neighbourhood Plan demonstrates how the objectives of the Neighbourhood Plan *"provide a framework for the policies that have been developed"*.
58. The Neighbourhood Plan includes, between paragraphs 8.2 and 8.4, a *"non-binding indication of local priorities for investment should development result in the availability of New Homes Bonus, Section 106 and the neighbourhood proportion of CIL in the future."* It is appropriate for the Neighbourhood Plan to serve as a mechanism for a community to identify priorities for use of future development related funding that may arise in the future.
59. Paragraphs 8.6 to 8.10 of the Neighbourhood Plan identify *"areas of concern/actions"* raised by residents relating to matters *"that cannot be addressed through planning policy"*. Worcestershire County Council has stated *"Community support is crucial to the longevity and sustainability of small rural schools; we are therefore pleased to see the ongoing prioritisation of the school for community and development funding and support."* The Neighbourhood Plan preparation process is

²⁹ Footnote 69 of the Revised Framework states that *"for neighbourhood plans, 'submission' in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012."*

a convenient mechanism to surface and test local opinion on matters considered important in the local community. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The Guidance states, *“Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements.”* The acknowledgement in the Neighbourhood Plan of issues, raised in consultation processes, that do not have a direct relevance to land use planning is consistent with this guidance and represents good practice. The Guidance states, *“Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”* I am satisfied the approach adopted in the Neighbourhood Plan presenting the *“areas of concern/actions”* in the plan implementation section adequately differentiates the community actions from the policies of the Plan and has sufficient regard for the Guidance.

60. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that the need to *‘have regard to’* national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition *“having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.”*

61. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking.³⁰ The Guidance states, *“This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to*

³⁰ Paragraph 14 National Planning Policy Framework 2012

how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions”³¹.

62. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.

63. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes a statement demonstrating how the objectives of the Neighbourhood Plan simultaneously contribute to the social, economic and environmental dimensions of sustainable development, and includes Table 4 which presents the findings of an appraisal that identifies sustainability benefits arising from every policy of the Neighbourhood Plan. The appraisal does not highlight any negative impacts.

64. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes are of an appropriate quality; will serve economic needs; will protect and enhance social facilities; and will protect important environmental features. In particular, I consider the Neighbourhood Plan seeks to:

- Allocate a site for residential development;
- Ensure the mix of housing development meets local needs;
- Establish design criteria for new development and alterations;
- Designate three areas as Local Green Space;
- Protect locally important views;
- Support enhancement of active travel routes;
- Protect and enhance community facilities;

³¹ Planning Practice Guidance (Ref ID:41-072-20140306)

- Support employment use of existing rural buildings; and
- Support expansion of businesses and protect against loss of business uses.

65. Subject to my recommended modifications of the Submission Plan including those relating to specific policies, as set out later in this report, I find it is appropriate that the Neighbourhood Plan should be made having regard to national policies and advice contained in guidance issued by the Secretary of State. I have also found the Neighbourhood Plan contributes to the achievement of sustainable development.

Consideration whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

66. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.³² “*Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies*”.³³

67. The Guidance states, “*A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.*”³⁴

68. In this independent examination, I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). Wychavon District Council has informed me that the Development Plan applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan comprises the South Worcestershire Development Plan adopted

³² Paragraph 16 National Planning Policy Framework 2012

³³ Paragraph 184 National Planning Policy Framework 2012

³⁴ Planning Practice Guidance Paragraph 077 Reference ID: 41-077-20140306

February 2016. The District Council has provided me with a document that identifies what are regarded by the Local Planning Authority as strategic policies for the purposes of neighbourhood planning.

69. I agree that the policies identified by the District Council as strategic are indeed strategic but I regard Policy SWDP25 Landscape Character to also be strategic as this requires all development proposals to be appropriate and integrate with the character of their landscape setting. I have proceeded with my independent examination of the Neighbourhood Plan on the basis that the Development Plan strategic policies relevant to the Neighbourhood Plan are:

- SWDP1 Overarching Sustainable Development Principles
- SWDP2 Development Strategy and Settlement Hierarchy
- SWDP3 Employment, Housing and Retail Provision Requirement and Delivery
- SWDP4 Moving Around South Worcestershire
- SWDP5 Green Infrastructure
- SWDP6 Historic Environment
- SWDP7 Infrastructure
- SWDP8 Providing the Right Land and Buildings for Jobs
- SWDP9 Creating and Sustaining Vibrant Centres
- SWDP10 Protection and Promotion of Centres and Local Shops
- SWDP12 Employment in Rural Areas
- SWDP13 Effective Use of Land
- SWDP14 Market Housing Mix
- SWDP15 Meeting Affordable Housing Needs
- SWDP17 Travellers and Travelling Showpeople
- SWDP21 Design
- SWDP22 Biodiversity and Geodiversity
- SWDP23 The Cotswolds and Wychavon Areas of Outstanding Natural Beauty (AONB)
- SWDP25 Landscape Character
- SWDP27 Renewable and Low Carbon Energy
- SWDP28 Management of Flood Risk
- SWDP59 New Housing for Villages

70. Wychavon District Council is working with Worcester City Council and Malvern Hills District Council to prepare a South Worcestershire Development Plan Review. This work has proceeded to the stage where an Issues and Options Consultation document has been prepared in November 2018.

71. The Neighbourhood Plan can proceed ahead of preparation of the South Worcestershire Development Plan Review. The Guidance states: *“A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:*

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

with appropriate regard to national policy and guidance. The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan. Neighbourhood plans should consider providing indicative delivery timetables and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new Local Plan.”³⁵

72. I am mindful of the fact that should there ultimately be any conflict between the Neighbourhood Plan, and the emerging South Worcestershire Development Plan Review when it is adopted; the matter will be resolved in favour of the plan most recently becoming

³⁵ Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20160211

part of the Development Plan; however, the Guidance is clear in that potential conflicts should be minimised.

73. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. The emerging South Worcestershire Development Plan Review is not part of the Development Plan and this requirement does not apply in respect of that. Emerging planning policy is subject to change as plan preparation work proceeds. The Guidance states *“Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood areas. They can be developed before or at the same time as the local planning authority is producing its Local Plan”*. In *BDW Trading Limited, Wainholmes Developments Ltd v Cheshire West & Chester BC* [2014] EWHC1470 (Admin) it was held that the only statutory requirement imposed by basic condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted development plan as a whole.

74. In considering a now-repealed provision that *“a local plan shall be in general conformity with the structure plan”* the Court of Appeal stated *“the adjective ‘general’ is there to introduce a degree of flexibility.”*³⁶ The use of ‘general’ allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

75. The Guidance states, *“When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:*

- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;*
- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;*
- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy;*

³⁶ *Persimmon Homes v. Stevenage BC* the Court of Appeal [2006] 1 P &CR 31

- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.*³⁷

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

76. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole and each of the plan policies below. This consideration has been informed by Table 3 of the Basic Conditions Statement which sets out comments how each of *“the Neighbourhood Plan policies conform to the Local Development Plan”*. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

The Neighbourhood Plan Policies

77. The Neighbourhood Plan includes 9 policies as follows:

Policy P1 Site Allocation Policy – Land at Fibrex Nurseries

Policy P2 Housing Mix Policy

Policy P3 Design Policy

Policy P4 Local Green Space Policy

Policy P5 Protect Locally Important Views

Policy P6 Footpaths

Policy P7 Protect Community Facilities

Policy P8 Rural Employment – Existing Buildings

Policy P9 Retaining Existing Employment Opportunities

78. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood*

³⁷ Planning Practice Guidance (ID ref: 41-074 201 40306)

should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.” “Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”³⁸

79. The Guidance states *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”³⁹*

80. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.*⁴⁰

81. *“A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004).”⁴¹*

82. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is ‘made’ they will be utilised in the determination of planning applications and appeals, I have examined each policy individually in turn. I have considered any inter-relationships between policies where these are relevant to my remit.

³⁸ Paragraphs 184 and 185 National Planning Policy Framework 2012

³⁹ Planning Practice Guidance Paragraph 041 Reference ID: 41-041-20140306

⁴⁰ Planning Practice Guidance Paragraph 040 Reference ID: 41-040-20160211

⁴¹ Planning Practice Guidance Paragraph 004 Reference ID: 41-004-20140306

Policy P1 Site Allocation Policy – Land at Fibrex Nurseries

83. This policy seeks to allocate a one-hectare site at Fibrex Nurseries for housing, subject to stated development principles.
84. In a representation Worcestershire County Council states the policy *“said that an attenuation pond should be constructed to handle surface water and reduce flood risk. Whilst this may indeed be concluded to be the best option for surface water attenuation, it would be better here to suggest extensive use of SuDS with multiple benefits. An attenuation pond may not be the ideal form of storage once the site and all other factors are considered.”*
85. In a representation the District Council states *“a larger map showing extent of allocation would be useful for clarity. Agree that, given the gateway location of the site, it will require high quality design and delivery at a low density is central to that, however approximately 10-12 dwellings is still considered too low. The requirement for a footpath to be provided to link up with village raises a potential land ownership issue? Also, would this requirement for a footpath to be provided come as part of the planning application?”*
86. The Property Services of the District Council object to the Council’s site at Chapel Lane being excluded from the Plan as a prospective affordable housing site, and states Officers would not recommend to Council that the site is made available as a community orchard. The representation refers to previous planning applications and states with minor adjustment to the settlement line would be an infill site potentially for approximately 12 dwellings. This representation also states the nursery site has issues to overcome before it can be delivered stating it requires extending the development boundary significantly, and that the indicated density is under that recommended in SWDP13. In response to an opportunity I gave for the Parish Council to respond to the representations of other parties the Parish Council has, on 27 March 2019, stated *“The site known as Land to the west of Chapel Road has been fully considered in the Plan making process. It was assessed as part of the process for allocating sites. All the details with regard to the assessment are contained within the Housing Background Paper. A summary is provided at paragraph 8.15 and Appendix 1 page 28 SHLAA ref 69.11; the full assessment can be found in Appendix 2 on page 54 – 58 where the previous refused applications are referred to and the reasons for not allocating the site are stated. The Parish Council are unable to find anywhere within the*

submitted documentation that refers to the land being used as a community orchard as referred to in this representation.”

87. Another representation on behalf of two individuals' states *“The allocation of this site for housing purposes will not result in a sustainable form of development. The site is poorly related to the existing settlement pattern and would result in the loss of an employment site contrary to the policies of the SWDP, NPPF, and Policy P9 of the draft PPNDP. The proposal would not meet the housing needs identified in the background papers to the PPNDP, or provide a suitable housing mix. The draft PPNDP does not fulfil the basic condition”*.
88. The representation on behalf of two individuals also states *“The draft PPNDP does not meet the basic conditions by virtue of its failure to identify land at Bank Farm for a small-scale housing scheme. A sensitive scheme at Bank Farm would represent a sustainable form of development, making effective use of existing damaged land which is well-related to the existing settlement pattern. The site at Bank Farm is particularly well-suited to the provision of a small number of bungalows to meet the housing needs identified in the background papers to the draft PPNDP. Redevelopment of the site would enhance the setting of the designated conservation area, and the wider setting of the village. A satisfactory vehicular access to the site can be achieved on land within the Bank Farm ownership and the adopted public highway. The existing buildings at Bank Farm are not suited to modern farming operations, and there are no other more suitable uses for the site. A positive approach to the future of the site is called for, in accordance with the NPPF, and the draft PPNDP presently misses an important opportunity to improve the local environment and the amenities of local residents, while at the same time helping meet identified local housing needs. Objections have been made to the allocation of the Fibrex nurseries site but the site at Bank Farm could come forward as an additional allocation without conflicting with the strategic policies of the SWDP. See attached drawing Nos 8092-100C – Location plan 8092-201B – Illustrative site layout plan.”*
89. A representation on behalf of CALA Homes (Midlands) Limited who have an interest in Fibrex Nurseries states *“The proposed allocation of land at Fibrex Nurseries is both welcomed and supported and our client confirms that the extent of the draft allocation is immediately available for residential development. The site can contribute to housing supply in Pebworth and help Wychavon District Council to deliver its portion of the overall south Worcestershire target housing*

figure. Fibrex Nurseries immediately adjoins recent residential development at Pebworth and is a sustainable location for additional residential development. Annex D to Policy SWDP 2 (Development Strategy and Settlement Hierarchy) identifies Pebworth as a Category 3 village and a suitable location to accommodate market and affordable housing needs. The site is within walking and cycling distance of the existing community facilities including Pebworth Primary School, the Village Hall, St Peter's Church and the Mason's Arms Public House. Public transport is also within walking distance of the site. Residential development will provide additional demand for these services, helping them to remain viable and available to the whole community. The nearest bus stop is within 200m and offers direct access to facilities in Honeybourne, Evesham and beyond. Rail services operate from Honeybourne approximately 2km to the south west of the site. The draft Policy does not propose to allocate all of the available land at Fibrex Nurseries for development and excludes land at the rear of the site. This land is also available for immediate residential development. Subject to detailed technical studies it could, in conjunction with the proposed allocation, deliver circa 43 dwellings, partly on brownfield land. A larger allocation would make effective use of the available land and provide additional benefits to the local community, in terms of the supply of market and affordable homes and support to community facilities, as outlined below.

90. *Affordable Housing. The Parish Council's Housing Needs Survey (published 2017) identifies a need for up to 20 affordable homes in the Parish whereas, in combination with draft Policy 2, the draft Policy seeks to restrict development at the site to bungalows and affordable market housing only. This means that the Neighbourhood Plan does not make any provision for affordable housing in Pebworth or, indeed, within the Parish boundary. The Neighbourhood Plan envisages that more 'immediate need' will instead be met by new development permitted on the edge of the Parish, where approximately 133 affordable homes of differing tenures and sizes have been approved as part of a large scheme for 380 homes. The permission relied upon is on land adjacent to Sims Metals UK at Long Marston Pebworth (scheme granted at appeal in July 2014, Reference W/13/00132), which is to the north east of Pebworth and outside the Neighbourhood Plan boundary. However, there are ongoing concerns as to the delivery of the Long Marston scheme, as noted in the Council's July 2017 'Five Year Housing Land Supply' calculation. Reserved matters applications W/16/01618/RM and W/16/00222/RM remain undetermined. Indeed, Wychavon District Council has chosen to*

discount the whole site (380 dwellings) from the 2017 5YHLS calculation and have done the same in the July 2018 calculation. This includes the 133 affordable homes that the development was due to provide. The proposed allocation at Fibrex Nurseries, and an expanded allocation to include all of the available land at the site, would help to meet affordable housing need within the Parish boundary. The absence of development constraints and the availability of the land for immediate development provides greater certainty in meeting the affordable housing needs in a sustainable location, within the Parish boundary. It should also be noted that the National Planning Policy Framework states that developments of under 10 units are not required to provide an Affordable Housing contribution. By allocating only part of the Fibrex Nurseries site for 10-12 units, the site is unable to contribute to the Affordable Housing need in the Village.

91. *Flood Risk. The Submission NDP Flood Risk Statement shows that the Fibrex Nurseries site is within Flood Zone 1 where there is a less than a 1 in 1000 annual probability of river or sea flooding. Whilst a risk of surface water flooding along Honeybourne Road and in adjacent fields is identified, the Statement confirms that the associated flood risk extents do not affect the site and would not impact on development within it. The southern access to the site is in area of low flood risk. The Statement identifies the existing watercourse near to the eastern site boundary as the possible source of surface water flood risk, and the draft policy seeks to ensure that it is modelled as part of a site-specific flood risk assessment. The draft NDP policy goes on to require that an attenuation pond be provided to address both on and off-site surface water flooding issues. This absolute obligation appears to go beyond the requirement of Policy SWDP 28 (Management of Flood Risk), which requires development proposals only to explore opportunities to reduce flood risk overall. The provision of an attenuation pond to address off-site flood risk can provide benefits to the local community in terms of reduced flood risk. This can be as investigated at the planning application stage, although it is noted that the area of surface water flood risk extends well the Fibrex Nurseries site. The policy should be clear that the site is not required to fully resolve the flood risk issue, but instead explore opportunities to provide betterment, which could include additional attenuation. Any betterment can be weighed positively in the planning balance. The construction and maintenance of further attenuation, and so the creation of betterment, would need to be funded through the capital receipts from any development. As such, the policy should therefore make clear that the requirement is subject to viability testing. The*

specific requirement for surface water attenuation should also be revised, given that surface water attenuation will reduce the net developable area, and the ability to generate the required capital receipts. Alternative approaches should be considered. In addition, utilising the full extent of the available land at the Fibrex Nurseries provides a greater opportunity to fund a flood mitigation scheme and to secure community benefits associated with reduced surface water flood risk.

92. *Loss of 'Employment Land'. Some responses to the Parish Council's Regulation 14 consultation have asked if the proposed site allocation would result in the potential loss of employment land. However, the site is currently occupied by a nursery business and principally comprises a number of glass houses and polytunnels, with some brick buildings also present. The nursery business grows a variety of plants and comprises a horticulture activity, with an element of sales to the visiting public. Whilst the existing business is employment generating, the lawful use is considered to be a mixed sui generis. On this basis, the existing use falls beyond the scope of SWDP Policy 12 (Protection of Existing Employment Sites), the relevant employment protection policy in view of Pebworth being a Category 3 village within the SEDP settlement hierarchy (Policy SWDP 2, Annex D confirms). SWDP Policy 12 provides protection for sites in rural areas that are currently or were last used for B1, B2, B8, leisure and / or recreation related purposes. There is, therefore, no requirement to demonstrate that the site is no longer viable for an employment generating use in the case of a proposed change to a non-employment generating use such as residential. The SWDP strategic approach to encourage economic growth is, in any case, to locate new employment development at strategic allocated sites, or alternatively on existing employment sites through the conversion of existing buildings. In this particular case, it is considered unlikely that another business would be able to occupy the Fibrex Nurseries site, given that the specialist nature of the existing glass houses and poly tunnels which mean they are not capable of conversion to an alternative use. The redevelopment of the Fibrex Nurseries site for residential use provides an opportunity create a high-quality environment that is more appropriate to the edge of village location than an employment use. The residential development can be sensitively designed to respect the character of the location, as required by draft NDP Policy P1 (Site Allocation – Land at Fibrex Nurseries) and Policy P.3 (Design Policy).*

93. *Effective Use of Land. The draft Neighbourhood Plan appears to have used a line for the proposed allocation that does not include all of the existing structures on the site. The Housing Background Paper to the draft Neighbourhood Plan suggests that the extent of the allocation is not based on firm evidence, but rather the preferences of those responding to consultations on earlier versions of the draft Plan. A residential development and associated land take at the front of the site, as proposed in the current draft Plan, is likely to make the remainder of the Fibrex nurseries site unviable, and the Neighbourhood Plan's proposal with regards to the future use of the remaining land and associated buildings at the site is unclear. The extent of the proposed allocation will artificially constrain the site's ability to accommodate further housing and does not appear to align with the commitment of SWDP Policy 13 that '...housing development in south Worcestershire will make the most effective and efficient use of land'. Our client seeks an amendment to Policy 1, and the allocation of the full Fibrex Nurseries site to realise the potential of the land to contribute to a sustainable pattern of development. In amending this Policy, the Fibrex Nurseries site could better contribute to achieving a suitable housing mix, bungalows and affordable housing provision, identified within other policies of the Draft NDP."*

94. The Guidance states "How should a neighbourhood plan allocate sites for development? Where a neighbourhood plan-making body intends to allocate sites for development, the neighbourhood plan-making body will need to carry out an appraisal of options and an assessment of individual sites against clearly identified criteria. Guidance on general principles for assessing sites and on viability can provide the framework for the assessment of sites. The neighbourhood planning toolkit on site assessments may also be used. A strategic environmental assessment may be required if the plan is likely to have a significant effect on the environment. A neighbourhood planning body is strongly encouraged to consider the environmental implications of its proposals at an early stage, and to seek the advice of the local planning authority. The site being allocated should be shown on the policies map with a clear site boundary drawn on an Ordnance Survey base map. A policy in the plan will need to set out the proposed land uses on the site, an indication of the quantum of development appropriate for the site and any appropriate design principles that the community wishes to establish."⁴²

⁴² Planning Policy Guidance Paragraph: 098 Reference ID: 41-098-20180913 Revision date: 13 09 2018

95. The South Worcestershire Development Plan through Policy SWDP 2 seeks to establish a development strategy and settlement hierarchy. New housing development is to be focussed on Worcester City and the other urban areas. Housing provision 2006-2030 in Wychavon District (outside the Wider Worcester area) is planned to amount to 10,600 dwellings. Pebworth is identified as a Category 3 village. Category 1, 2 and 3 villages are stated to have a role predominately aimed at meeting locally identified housing and employment needs and are suited to accommodate market and affordable housing needs alongside limited employment for local needs. The SWDP does not specify a number of houses to be delivered in Pebworth.
96. As a point of clarification, I asked the District Council to provide me with an update regarding the site that is stated in the Neighbourhood Plan to deliver 380 dwellings on the edge of the Parish. The District Council responded *“Following grant of outline planning permission ref. no. 13/00132 by Sec of State, RM details relating to the employment element of the scheme (called Phase 6) have now been approved. There are four RM applications for the residential/community elements of the scheme, but effectively the focus is only on two of these; 16/01618 which is Phase 1 and proposes just 16 dwellings and 17/01269 which covers phases 2 to 5 and proposes 364 dwelling (making up the 380 units allowed under the outline application). The RM applications have been held up for a number of reasons (including appeal against affordable housing provision, appeal against refusal of connectivity scheme required by a condition attached to the outline permission). Although these have been resolved there is no date set for the RM applications to go before the Planning Committee.”* This proposal appears to be moving towards implementation. The scheme would represent a significant boost to housing supply.
97. The Pebworth Development Boundary identified through Policy SWDP 2 C, and shown on the SWDP Policies Map, is tightly drawn around buildings existing at the time of plan preparation. Policy SWDP 59 (reference SWDP 61/13) allocated 1.37 hectares of land for housing on land fronting Honeybourne Road adjoining, and immediately north of, the Fibrex Nurseries site. This site was separated from the Pebworth development boundary to the north-west only by a highway. Land adjoining, and immediately north of, the Fibrex Nurseries site has, following allocation in the SWDP, been developed with housing.

Footnote 2 to Policy SWDP 2 states “*The boundary to sites allocated for development outside and adjoining an existing settlement boundary will form the basis of an extension to the existing development boundary as set out on the Policies Map. Where a housing allocation is not coterminous with the development boundary, it will not be included in the boundary.*” Policy SWDP 59 B states housing proposals in all villages will be permitted where they comply with SWDP 2 B and fall into one of three stated categories. I read these as discrete categories. One of the categories includes “*local initiatives including Neighbourhood Plans*”. Policy SWDP 2 H supports development proposals promoted through neighbourhood planning mechanisms where proposals do not compromise the delivery of the plan’s strategic policies and proposals. The site allocation is in general conformity with strategic policy in this respect.

98. The site allocated in Policy P1 lies between the recent development to the north and Pebworth Fire Station to the south. Following development of 1.37 hectares of housing to the immediate north the site allocated by Policy P1 is well related to the other parts of the settlement. The site allocated by Policy P1 is a previously developed nursery site extensively covered with glass house type structures, a carpark and servicing roadways, two residential units, and other ancillary buildings. The site does not exhibit characteristics normally associated with open countryside. The allocated site is appropriate in the context of Policy SWDP 2 in particular part F of that policy as the allocated site is of “*an appropriate scale and type with respect to the size of the settlement, local landscape character, and the location and the availability of infrastructure*”.
99. The comprehensive Evidence Base Housing Background Paper describes in detail the site assessment and selection process followed, which was proportionate and appropriate to the scale of settlement. The method has included consideration of site availability, site suitability, and whether development is achievable. A wide range of sites was considered, and public consultation has been integral to the process. In terms of delivery a representation from a party with an interest in the allocated site has confirmed immediate availability.
100. I am satisfied the Ordnance Survey based map presented on page 29 of the Neighbourhood Plan is at sufficient scale to be able to precisely identify the spatial extent of the allocation. It is however not sufficiently clear from the wording of Policy P1 that an allocation of land is being made. The term “*having regard to*” the stated development principles does not provide a basis for the determination

of planning applications. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

101. Whilst there is reference to density of development Policy P1 is silent with respect to housing type. Housing mix requirements are specified in Policy P2. Representations promote residential development on land at Chapel Lane and at Bank Farm, and on additional land at the Fibrex Nurseries site. The merits or otherwise of housing development on additional or alternative land is not a matter for my consideration. I have earlier in my report explained my role is to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and other requirements I have identified. It is not within my role to examine any alternative Neighbourhood Plan.

102. Development principle a) of Policy P1 refers to density of future development. Strategic Policy SWDP 13 includes a broad indication of appropriate average net density on allocated sites in villages of 30 dwellings per hectare. This is subject to other parts of that policy including a requirement that *“housing development in south Worcestershire will make the most effective and efficient use of land, with housing density designed to enhance the character and quality of the local area, commensurate with a viable scheme and infrastructure capacity.”* Windfall housing developments should be assessed against the same density criteria relevant to their locality and the character of the built and natural environment context, including heritage assets. Paragraph 5.0 of the Neighbourhood Plan states *“The low density reflects the character of the development immediately adjacent to the site to the north where there are 13 dwellings on a 1.36-hectare site. This is an edge of settlement scheme so the development density should respect this and peter out and not introduce a hard-urban edge to this rural settlement.”* In answer to a request for clarification I made, the Parish Council has stated additional justification that the scheme should comprise approximately 10 to 12 dwellings is provided in the following:

“Pebworth Parish Neighbourhood Plan – Submission Draft

- *Chapter 4 The Local Context paragraphs 4.13 to 4.15 set out the development context for the parish.*
- *Chapter 5 Issues and Evidence – Housing paragraphs 5.10 to 5.11 summarise the housing need and questionnaire response.*

Housing Background Paper

- *Chapter 2 Policy Background paragraph 2.9 onward regarding Local Plan requirement.*
- *Chapter 4 Residents' Questionnaire Findings summarising the scale of sites that would be supported by the community*
- *Chapter 5 Housing Supply – Large scale commitments already in the parish.*

Consultation Statement

- *There are a number of responses from the Steering Group relating to this matter. Primarily dealt with on page 69 and pages 70-72."*

I am satisfied the proposed density of development has been sufficiently justified and is appropriate for the site taking into account the context of its setting.

103. Development principle c) of Policy P1 requires provision of an attenuation pond. Such a solution may not prove to be the most efficient or cost effective/viable solution to flooding issues. Principle c) could be interpreted as requiring a development scheme to address existing flooding problems on the adjacent highway, which it may not. Development principle d) of Policy P1 refers to "a *footpath connection*". In response to a request I made for clarification the Parish Council stated "*This relates to a footway adjacent to the carriageway. It is understood that the land belongs to the local highway authority and that any developer would enter into an agreement with the local highway authority*". I have recommended a modification in these respects so that the policy has regard for national policy by being precise, whilst also avoiding unnecessary prescription, and that obligations have regard for the tests set out in paragraph 204 of the Framework. Whilst normally it is confusing and unnecessary for a policy of a neighbourhood plan to refer to requirements set out in other policies of the neighbourhood plan the reference in principle e) to Policy P3 is a convenient method of demonstrating regard for the Guidance which states an allocation policy should set out "*any appropriate design principles that the community wishes to establish.*"⁴³

⁴³ Planning Policy Guidance Paragraph: 098 Reference ID: 41-098-20180913 Revision date: 13 09 2018

104. As recommended to be modified the policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
105. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with delivering a wide choice of high-quality homes; and requiring good design. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 2:

In Policy P1

- **replace the text before “b)” with “The 1-hectare site at Fibrex Nurseries, identified on the adjacent map, is allocated for housing development comprising approximately 10-12 dwellings, subject to the following development principles:**
- **replace part c) with “it is demonstrated measures are included that ensure the development does not result in on-site flooding, and does not increase off-site flooding;”**
- **in part d) replace “footpath” with “footway” and after “facilities” replace the full stop with “; and”**
- **in part e) replace “Given” with “given”**

Policy P2 Housing Mix Policy

106. This policy seeks to establish that new housing development of 3 or more homes should provide an appropriate mix of dwellings to meet the needs of Pebworth residents. The policy also conditionally discourages homes of 4 or more bedrooms.
107. A representation on behalf of two individuals’ states *“This policy is inconsistent with the housing mix and affordable housing policies of the SWDP. Further the policy is imprecise and unclear in its application, e.g. are all the forms of housing listed in the policy to be provided on one site, irrespective of the total amount of housing over 3 units? The draft PPHDP does not fulfil the basic conditions.”*

108. A representation on behalf of CALA Homes (Midlands) Limited who have an interest in Fibrex Nurseries includes *“the Parish Council’s Housing Needs Survey (published 2017) identifies a need for up to 20 affordable homes in the Parish whereas, in combination with draft Policy 2, the draft Policy [referring to Policy P1] seeks to restrict development at the site to bungalows and affordable market housing only. This means that the Neighbourhood Plan does not make any provision for affordable housing in Pebworth or, indeed, within the Parish boundary”* and *“The draft Policy sets out a proposed mix of houses and identifies a focus on bungalows, small family homes (up to 3 bedroom) and starter homes (up to two bedroom). The Policy discourages four or more bedroomed homes, unless there is ‘overwhelming’ supporting evidence. The Policy would apply to development sites of 3 dwellings or more, including the proposed allocation at Fibrex Nurseries. The draft Policy seeks to influence the mix of housing on new development sites in Pebworth, having regard to the existing housing stock and age profile of the existing population. We have concerns that the specified mix of houses has not been market tested, and that the specific mix of bungalows and smaller properties proposed may not generate sufficient value to meet the costs of development. In this scenario, sites would not come forward for development.”*
109. In a representation the District Council states *“both elements of the policy are overly onerous. It is suggested that the policy encourages but does not require the provision of bungalows and affordable market homes, including small family homes with up to three bedrooms and starter homes with up to two bedrooms, as on smaller schemes this is likely to be make the development unviable. It is also not clear if the discouraging of four, or more, bedroom dwellings relates to sites of more than three dwellings or on all proposals which include the provision of at least one dwelling? In either case, ‘overwhelming evidence’ should be defined.”*
110. The policy is without consequence. The terms *“should provide”*, *“should include”*, and *“discouraged”* do not provide a basis for the determination of planning applications. The terms *“appropriate”* and *“needs of current and future residents”* are imprecise. The term *“bungalow”* is imprecise. It is necessary to recognise the need for attention to viability and deliverability as required by paragraph 173 of the Framework. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of

predictability and efficiency as required by paragraph 17 of the Framework.

111. Paragraph 50 of the Framework refers to the need to plan for a mix of housing based on current and future demographic trends, market trends, and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes). Strategic Policy SWDP 14 includes provision for housing mix to be informed by *“local data, for example neighbourhood plans”*. Whilst the threshold of 3 dwellings in Policy P2 is less than the 5-dwelling threshold in SWDP14 I consider this has been sufficiently justified in the reasoned justification on page 31, and is in any case in general conformity with the strategic policy.

112. Policy P2 links the term affordable with the size of market dwellings however the term affordable has particular meaning in Planning policy terms. The Glossary of the Framework defines affordable housing as *“Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision. Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency. Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable). Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low-cost homes for sale and intermediate rent, but not affordable rented housing. Homes that do not meet the above definition of affordable housing, such as ‘low cost market’ housing, may not be considered as affordable housing for planning purposes.”* Strategic Policy SWDP 15 relates to this definition

of affordable housing. Policy SWDP 15 includes provision that “*on sites of less than 5 dwellings a financial contribution towards local affordable housing provision should be made, based on the cost of providing the equivalent in value to 20% of the units as affordable on site.*” The requirement of Policy P2 that schemes of 3 or more homes should include affordable market homes would introduce a significantly more onerous affordable homes provision obligation on small schemes that has not been sufficiently justified in the Neighbourhood Plan, nor in the Housing Background Paper. I have recommended a modification in this respect. Whilst not necessary for the policy to refer to other policies of the Development Plan, the modification I have recommended does so in this instance for the avoidance of doubt.

113. As recommended to be modified the policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

114. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with delivering a wide choice of high-quality homes. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 3:

Replace Policy P2 with “To be supported proposals for 3 or more homes must provide a mix of dwellings that meets local needs identified in the latest housing need assessment including provision of single storey dwellings; small family homes up to 3 bedrooms; and starter homes up to 2 bedrooms, unless it is demonstrated this is not viable.

Proposals for homes of 4 or more bedrooms will not be supported unless it is demonstrated they are necessary to meet identified local housing need.

To be supported all proposals must meet affordable housing needs in accordance with Policy SWDP 15.”

Policy P3 Design Policy

115. This policy seeks to establish criteria so that new development and alterations make a positive contribution towards the distinctive character and form of the village, hamlet or countryside.
116. In a representation Worcestershire County Council states *“This policy contains some good information on the use of SuDS on developments of all sizes. The LLFA suggest reference is made to the WCC SuDS Guide which is available on the WCC website. This policy should also be expanded to include wording on the long-term maintenance of SuDS. To ensure that the drainage systems keep functioning as they should regular maintenance is required. The policy should require a maintenance plan to be submitted for all developments to ensure that a plan and a suitable relevant body is in place to continue maintenance of SuDS for the lifetime of the development. Either this policy or potentially Policy P8 should mention retrofitting fits when re-using, converting or adapting existing buildings and other brownfield sites. A brownfield development can still make extensive use of SuDS and make a big impact on the flood risk of the local area.”*
117. Worcestershire County Council also states *“The proposal to include provision for renewable energy as part of the design policy is positive and supports policy 27 of the South Worcestershire Development Plan. The UK has a target of 15% of UK energy needs to be delivered through renewable energy by 2020 under the EU Renewable Energy Directive. It may also be beneficial to address the overall energy efficiency of the buildings to ensure the energy demand is as low as possible. Reducing the need for energy can support those households who struggle to afford to heat their homes and reduce the risk of fuel poverty and fuel debt as well as reducing carbon emissions. The latest figures show that over 10% of households in Wychavon District are considered to be fuel poor meaning they have high energy costs but a low household income. It would be encouraging to see recognition of the issues of fuel poverty, energy efficiency and emissions. The infrastructure proposals for using the community funding may be an opportunity to see local action in this area. Potential projects supported through developers' contributions could include improvements to energy efficiency of existing housing stock. The UK Government has a target to improve the energy efficiency performance of homes towards and band C energy rating through their fuel poverty strategy 'Cutting the cost of keeping warm'.”*

118. Worcestershire County Council also states “We welcome the inclusion of wording on electric vehicle charging points covering 1 for every 50 parking spaces. The Road to Zero Strategy produced by the UK Government outlines the intention to consult on proposals for all new UK homes to have an electric vehicle charge point where appropriate”.
119. A representation on behalf of CALA Homes (Midlands) Limited who have an interest in Fibrex Nurseries states “The Policy is supported in terms of the requirement for development to make a positive contribution towards the distinctive character and form of Pebworth Parish. The requirement for development to reduce flood risk and achieve a betterment in surface water run-off rates exceeds the requirements of Policy SWDP 29, which makes a clear distinction between the run-off rates that greenfield and previously developed sites are required to meet. Greenfield sites need only demonstrate that the post-development run-off rate will not increase, provided there are no identified surface water run-off issues, whereas the draft Neighbourhood Plan policy requires that all sites show a betterment in surface run off rates. The draft Neighbourhood Plan policy should be amended to ensure it is consistent with SWDP Policy 29. It should require that the minimum requirement for greenfield sites is the surface water run-off shall not increase, and that proposals on brownfield land must show a 20% reduction in surface water run-off rates compared to the pre-development situation.” I have recommended a modification so that the policy is in general conformity with, but does not duplicate strategic policy SWDP 29.
120. In a representation the District Council states “insert wording ‘achieve high quality design and’ after ‘and alterations should’. Policy includes certain requirements which are beyond the control of planning, such as road markings, highway signs and retention of kerbs. Requirement for any street lighting to be agreed with the Parish Council seems overly onerous? Worcestershire County Council’s Interim Parking Standards (2016) have been replaced by the Streetscape Design Guide (2018) and the latter should therefore be referenced.”
121. The Policy is without consequence and the terms “should make”, “as appropriate”, “where appropriate” and “where possible” do not provide a basis for the determination of planning applications. The terms “retain the impression of openness”, “contribution towards” and “form of the village, hamlet or countryside”, “where possible retaining and enhancing existing vegetation”, and “minimum” are imprecise. The

achievement of the listed criteria will be only necessary so far as they are relevant to the determination of a planning application. It is necessary to recognise the need for attention to viability and deliverability as required by paragraph 173 of the Framework. Strategic Policy SWDP 29 includes provision relating to maintenance of SuDS and required post-development surface water run-off rates. It would be unnecessary and confusing for Policy P3 to repeat such provision. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. It is beyond my remit to recommend modification so that the policy addresses additional issues including fuel poverty; energy efficiency and emissions.

122. Paragraphs 58 to 60 of the Framework state: *“Local and neighbourhood plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area. Such policies should be based on stated objectives for the future of the area and an understanding and evaluation of its defining characteristics. Planning policies and decisions should aim to ensure that developments: • will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; • establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit; • optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks; • respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation; • create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and • are visually attractive as a result of good architecture and appropriate landscaping. Local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally. Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through*

unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.” As recommended to be modified Policy P3 seeks to promote or reinforce local distinctiveness without unnecessary prescription.

123. Local planning authorities may use nationally recognised optional technical standards where there is evidence to show these are required. However, Neighbourhood Plans may not be used to apply these.⁴⁴ The Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 included the following: *“From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings”*. Whilst Policy P3 relates to all development types these include dwellings which are likely to be the most common type of development occurring in the plan area over the plan period. Following my request for clarification regarding the intended approach the Parish Council has expressed a desire that parts e) and f) of Policy P3 should remain within the policy on the basis of support and encouragement. The District Council supports such an approach. Whilst I consider it is undesirable for policies to include community aspirations to be encouraged such an approach would have regard for national policy including the Written Ministerial Statement of 25 March 2015. I have recommended parts e) and f) of the policy are modified so as not to introduce technical standards or requirements relating to the construction or performance of new dwellings.

124. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

125. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport; requiring good design; meeting the challenge of climate change and flooding;

⁴⁴ <https://www.gov.uk/guidance/housing-optional-technical-standards>

conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 4:

In Policy P3

- **replace the opening paragraph with the policy with “To be supported all proposals for new development and alterations must achieve high quality design; and demonstrate regard to the following criteria, unless it can be clearly shown they are not viable or deliverable:”**
- **in criterion 1f) delete “and retain the impression of openness”**
- **in criterion 3a) delete “where appropriate”**
- **in criterion 4b) delete “where possible”**
- **in criterion 4c) delete “as appropriate” and “Where appropriate”**
- **in criterion 5a) delete “and where possible retaining and enhancing existing vegetation”,**
- **replace criterion 5c) with “include sustainable drainage design features;”**
- **delete parts 5 e) and 5 f) and insert a final free-standing paragraph at the end of the Policy that states “In addition development proposals are encouraged to include:**
 - **features that contribute to the efficient use of water and reduce surface water run-off including water butts and rainwater harvesting; and**
 - **the use of renewable energy to generate power for example Photo Voltaic panels and tiles, solar panels and air source heat pumps to reduce the reliance on fossil fuels.”**
- **in part 6 b) insert “safe” before “minimum”**
- **in criterion 7a) replace “County Council 2016 interim” with “the latest Worcestershire County Council”**

Replace Appendix 3 with the Worcestershire County Council Streetscape Design Guide (2018)

Policy P4 Local Green Space Policy

126. This policy seeks to establish that three named areas should each be designated as a Local Green Space.

127. A representation of an individual supports the *“green spaces identified in the central village position as more than adequate in comparison to other local villages.”*
128. In a representation the District Council states *“a specific map showing the numbered Local Green Spaces would be useful for clarity”*. Designation of Local Green Space can only follow precise identification of the land concerned. The proposed Local Green Spaces are presented on the Policies Map within Appendix 6 of the Neighbourhood Plan at a scale that is barely sufficient to identify the land proposed for Local Green Space designation. Whilst electronic versions of the Policies Map can be expanded in order to examine particular areas this is not an option when viewing a paper copy of the Policies Map. The information and illustrations contained within the Green Space Background Paper assist in identifying the boundaries of the areas concerned. For a designation with important implications relating to development potential it is essential that precise definition is achieved. I have recommended a modification so that a detailed map of each designated Local Green Space is included within the Neighbourhood Plan and Policy P4 should refer to those maps. This will ensure that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
129. The policy seeks to explain the term *“exceptional circumstances”* referring to *“development that will not conflict with the purpose of the designation”*. I have given consideration to the possibility of the policy including a full explanation of *“very special circumstances”*. Such circumstances may be that development is proposed that would clearly enhance the Local Green Space for the purposes for which it was designated, or proposals are made for essential infrastructure that cannot be located elsewhere. I have concluded such explanation would necessarily be incomplete and that decision makers must rely on paragraph 78 of the Framework that states *“local policy for managing development within a Local Green Space will be consistent with policy for Green Belts”* and the part of the Framework that relates to ‘Protecting Green Belt land’, in particular paragraphs 87 to 91 inclusive. The wording of the policy does not adequately reflect the terms of the designation of Local Green Spaces set out in paragraph 76 of the Framework where it is stated communities will be able to rule out development other than in very special circumstances. The Neighbourhood Plan is not able to

designate Local Green Spaces on terms that are different to those set out in the Framework. I have recommended a modification in this respect.

130. The Framework states *“Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them”* and *“Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed and be capable of enduring beyond the end of the plan period.”*

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

132. The Framework states that Local Green Space designation *“should only be used:*

- *where the green space is in reasonably close proximity to the community it serves;*
- *where the green area 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*
- *where the green area concerned is local in character and is not an extensive tract of land.”*⁴⁵

133. I find that in respect of each of the intended Local Green Spaces the designation relates to green space that is in reasonably close proximity to the community it serves, is local in character, and is not an extensive tract of land.

⁴⁵ Paragraph 77 National Planning Policy Framework 2012

134. The Green Space Background Paper dated November 2018 is an example of good practice in that evidence that the areas proposed for designation as Local Green Space are “*demonstrably special to a local community and hold a particular local significance*” is well structured presenting the areas concerned as valued assets. The Green Space Background Paper provides sufficient evidence for me to conclude that each of the areas proposed for designation as Local Green Space is demonstrably special to a local community and holds a particular local significance.
135. The Guidance states land can be considered for designation even if there is no public access. The Guidance states “*A Local Green Space does not need to be in public ownership. However, the local planning authority (in the case of local plan making) or the qualifying body (in the case of neighbourhood plan making) should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan*”.⁴⁶ The method of assessment of potential Local Green Spaces adopted has included consultation with landowners as described in paragraph 6.0 on page 38 of the Neighbourhood Plan, and paragraphs 4.12 and 4.14 of the Green Space Background Paper. Designation of a site as Local Green Space has not been pursued in the absence of support of landowners.
136. The summary of site assessments presented as Appendix 4 of the Green Space Background Paper states The Close and the field between Manor Farm and The Close have been identified as a Significant Gap in the SWDP and the latter site is also important to the setting of the conservation area. The regime set out in paragraphs 131, 137, and 140 of the Framework, relevant to the conservation and enhancement of a Conservation Area (including assessment of the desirability of new development; looking for opportunities for new development making a positive contribution to local character and distinctiveness; and assessment of the benefits of enabling development) together provide a very different approach to that arising from designation as Local Green Space which is seeking to rule out new development other than in very special circumstances. Similarly, where the proposed Local Green Spaces include land identified on the South Worcestershire Development Plan Policies Map as Significant Gaps protected by strategic policy SWDP 2 D this designation does

⁴⁶ National Planning Policy Guidance Paragraph: 019 Reference ID: 37-019-20140306

not precisely replicate the aims of, nor preclude, a designation as Local Green Space. The Guidance states “*One potential benefit in areas where protection from development is the norm (eg villages included in the green belt) but where there could be exceptions is that the Local Green Space designation could help to identify areas that are of particular importance to the local community.*”⁴⁷ Whilst the Green Space Background Paper does not specifically consider the case for additional benefit it does confirm that the sites proposed for designation are demonstrably special to the local community. The proposed designations have been subject to extensive public consultation. I am satisfied designation is appropriate under these circumstances.

137. I find that the areas proposed as Local Green Space are suitable for designation and have regard for paragraphs 76 and 77 of the Framework concerned with the identification and designation of Local Green Space.

138. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

139. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 5:

Replace Policy P4 with “The following areas (identified on the Policies Map and individual site maps) are designated as Local Green Space where development will be ruled out other than in very special circumstances:

The Close (including land around the Village Hall);

The recreation field; and

The field between Manor Farm and The Close.”

⁴⁷ Planning Practice Guidance Paragraph: 010 Reference ID:37-010-20140306

Include in the Neighbourhood Plan a map of each Local Green Space at sufficient scale to identify the precise boundaries of the area of land designated.

Policy P5 Protect Locally Important Views

140. This policy seeks to establish that new development should not cause the loss of, or have a detrimental impact on identified important local views. The evidence base paper ‘Assessment of Important Views in Pebworth Parish’ explains the method used to identify the locally important views and includes evidence that supports the policy. This document, and Appendix 4 of the Neighbourhood Plan which draws on the evidence base paper, includes gradings of identified views but these are not referred to in the policy.
141. The District Council states: *“Appendix 4, Map of Viewpoints – the inclusion of vista splays, as opposed to locational markings, will aid the decision maker in determining whether or not a Locally Important View will be impacted”*.
142. A representation on behalf of CALA Homes (Midlands) Limited who have an interest in Fibrex Nurseries states *“The draft Policy seeks to protect important views and vistas from any adverse impact of new development. Development will not be supported where its design, scale, height, massing, or light generated will cause the loss of, or have a detrimental impact on identified views and vistas. Viewpoint 1 (‘Panoramic views of Cotswold escarpment including Meon Hill and Dover’s Hill from Broad Marston Road and Honeybourne Road’) is in close proximity to the Fibrex Nurseries site. The draft Neighbourhood Plan policy goes beyond the requirements of SWDP Policy 25, by prescribing that development should not result in ‘any’ adverse impact on the views and vistas identified. The Policy should be amended to reflect the approach and wording of the SWDP policy, which requires that proposals consider landscape character assessments and guidelines, are appropriate to and integrate with the character of landscape setting, and conserve and where appropriate enhance primary characteristics defined in the assessments and important features.”*
143. The term “*should be*” is without consequence. A requirement to not have “*any adverse impact*” is too restrictive in that it could limit almost any development in identified views. The requirement for a Landscape Visual Impact Assessment in respect of new development

affecting any of the identified views would be contrary to the Guidance on Information Requirements and Validation, and in respect of proposals that are less than ‘major’ in scale would represent a disproportionate and unacceptable burden. The term “*scale, height, massing*” is confusing as scale includes the size, bulk and mass of a building. The introduction of the term “*vista*” into the policy is not explained nor justified in the reasoned justification or supporting evidence. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

144. I am satisfied the selection of the identified locally important views has been adequately explained and their local significance has been tested through extensive consultation. Planning policy must operate in the public interest. I am satisfied the Map of Viewpoints presented on page 55 of the Neighbourhood Plan demonstrates the identified locally important views are visible from locations to which the general public have free and unrestricted access.

145. The locally important views are not sufficiently precisely identified through description in the policy itself. When the policy descriptions are combined with the supporting photographs and descriptions in Appendix 4 then greater clarity is achieved. Notwithstanding the fact the Map of Viewpoints includes a note that “*views are often in multiple directions*” and a written description of direction of view is included in the assessment table in Appendix 4, the policy is not sufficiently precise to guide the preparation and determination of development proposals. The Policies Map in Appendix 6 of the Neighbourhood Plan refers to the viewpoints as “*indicative*”. Whilst an explanation and reasoning for use of the term “*indicative*” is set out in the Assessment of Important Views in Pebworth Parish Evidence Base document with reference to the examples of movement corridors and framed vistas, an indicative viewpoint cannot function as a basis for the formulation and determination of development proposals. In a letter dated 18 March 2019 I asked the District and Parish Councils to respond to a request for clarification as follows: “*Are the Parish Council in agreement to replace the viewpoint indicators on the Policies Map with a vista splay that illustrates the written descriptions in Policy P5 and the photographs included in Appendix 4?*” In response the Parish Council has confirmed “*Yes indicative arrows can be added – descriptions of*

the direction are set out in Appendix 4 within the assessment table along with a photograph and full description of each view to aid the applicant or decision maker”.

146. I have recommended a modification so that the policy refers to locally important views seen from identified viewpoints and that the Map of Viewpoints is adjusted to identify the direction of view that is to be considered in the assessment of development proposals so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
147. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
148. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with requiring good design; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 6:

In Policy P5 replace the text before the list of view descriptions with “To be supported developments must demonstrate the siting, design, scale, and light generation proposed will not cause significant detriment to the following views (which are further illustrated and described in Appendix 4) when viewed in the direction indicated from locations identified on the Map of Viewpoints (in Appendix 4):”

Amend the Map of Viewpoints and the Policies Map to identify the direction of the locally important views from each viewpoint.

In the key to the Policies Map delete “indicative”

Policy P6 Footpaths

149. This policy seeks to establish support for the enhancement and improvement of footpaths (including public rights of way, bridleways, cycle paths and restricted byways). The policy also includes criteria for the assessment of new development, and supports a footway link between Pebworth and Little Meadows.
150. In a representation the District Council suggest a new title for the policy as it refers to footpaths and biodiversity. I agree that the policy title should reflect the policy content for the benefit of Plan users. The term “*should include*” is without consequence. It is unnecessary and confusing for a policy to state “*in the designated area*” as all the policies of the Neighbourhood Plan apply within all, or a stated part of, the Neighbourhood Area. The term “*footpaths (including public rights of way, bridleways, cycle paths and restricted byways)*” is confusing. The Neighbourhood Plan is not able to grant public access rights. It is not appropriate for the policy to refer to accessibility for residents to the exclusion of others. On 15 March 2019 I wrote to the Parish and District councils to seek clarification whether it is “*intended Policy P6 should relate to all active travel routes (including footpaths, bridleways, cycle paths, and restricted byways).*” The Parish Council has confirmed that this is the case. I have recommended modifications in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
151. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
152. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport; and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 7: In Policy P6

- replace the first paragraph with “Proposals for the enhancement and improvement of active travel routes (including footpaths, bridleways, cycle paths, and restricted byways) will be supported.”
- in the second paragraph replace the text before the colon with “To be supported development proposals must meet the following criteria to enhance accessibility and support local biodiversity:”
- in part a) delete “public”
- in part b) after “existing” insert “active travel”

Replace the policy title with “Active Travel and Biodiversity”

Policy P7 Protect Community Facilities

153. This policy seeks to establish support for proposals that sustain or extend the viable use of community facilities, and establish a strong conditional presumption against redevelopment of community facilities for other uses.
154. In a representation Worcestershire County Council states “*We are pleased to see that the Pebworth Parish Council consider the local school of Pebworth First a key community asset, a sentiment shared by Worcestershire County Council.*”
155. In a representation the District Council states “*criteria a) should include currently available facilities with capacity*”. I have recommended a modification that refers to available capacity, and is relevant to circumstances where alternative facilities of the same type are available in a no less than convenient location for local users, so that the policy passes the Wednesbury test of reasonableness⁴⁸.
156. A representation on behalf of CALA Homes (Midlands) Limited who have an interest in Fibrex Nurseries states “*Our client supports the Policy aspiration to retain existing community facilities. The proposed allocation at Fibrex Nurseries will support all aspects of village life and existing facilities such as Pebworth Primary School (currently under capacity and an identified subject of concern for local residents), the Village Hall, St Peter’s Church, the Mason’s Arms Public House, the Mobile Library service and bus services to nearby*”

⁴⁸ Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223
<http://www.bailii.org/ew/cases/EWCA/Civ/1947/1.html>

settlements including Stratford-upon-Avon. The new resident population associated with the development of the Fibrex Nurseries site would support the Parish Council in its aspirations to create new community facilities including a community pub / café and community shop, as outlined in Section 8.0 of the draft Plan (Implementation – Infrastructure Projects). The demand and level of support for these and services would also be increased through a larger allocation at the Fibrex Nurseries site.” I have referred to the issue of the scale of the housing allocation at the Fibrex Nurseries site when considering Policy P1 earlier in my report.

157. The representation of the District Council states “*criteria c) two years seems extensive*”. On 15 March 2019 I wrote to seek clarification from the Parish Council where in the evidence base the two-year marketing requirement included in part c) of the policy was justified. The Parish Council replied “*The justification is based on the Parish Council’s own recent experience with the closure and then sale of the local Public House, the Mason Arms. An explanation is set out in paragraph 2.0 of the Reasoned Justification of Policy 7. It took two years to find a purchaser for the pub, which is now open in the village of Pebworth. Had there been a policy requirement for the site to be marketed for a shorter period in place at the time, it is likely that the community would have lost this valuable community facility. The length of time taken to find a purchaser and an explanation of parish concerns is also explained within the Issues and Evidence Chapter paragraph 5.45. This matter was also addressed in the Consultation Statement in response to a comment ... on page 95.*” I consider the two-year marketing requirement has been sufficiently justified in the context of the Neighbourhood Area. The terms “*strong presumption against*” and “*normally be supported*” do not provide a basis for the determination of planning proposals. It is unnecessary and confusing for one policy to state “*if they comply with other policies in this Neighbourhood Plan*” as all of the policies of the Neighbourhood Plan apply throughout the Neighbourhood Area, unless a smaller area is stated.

158. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

159. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their

community. The policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 8:
In Policy P7**

- **delete the first paragraph and list of facilities**
- **in the second paragraph delete “normally” and delete “if they comply with other policies in this Neighbourhood Plan”**
- **in the third paragraph after “facility” insert “including (insert list of facilities)”**
- **in part a) replace the text after “accessibility” with “for users, and of the same type with sufficient capacity are available or provided; or”**

Policy P8 Rural Employment – Existing Buildings

160. This policy seeks to establish conditional support for the re-use, conversion and adaptation of rural buildings for small businesses, recreation, or tourism purposes.

161. In a representation the District Council states *“rural building’ should be defined in the RJ or perhaps a footnote; presumably this means a building outside of the defined Development Boundary but does it just mean farm buildings, as the reasoned justification suggests, or could it include, for example, commercial buildings, residential garages and annexes too?”* On 15 March 2019 I wrote to the Parish and District Councils seeking clarification where the term *“rural buildings”* is defined. In reply the Parish Council stated *“Rural Buildings are considered to be farm/agricultural buildings as explained within paragraph 1.0 of the Reasoned Justification.”* I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

162. The Framework states *“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”* I have recommended a modification in this respect so that the policy has regard for national policy.

163. The term “*in principle*” introduces uncertainty and does not provide a basis for the determination of planning applications. The term “*structurally sound*” will not be able to be determined in respect of information required to be submitted as part of a planning application. The term “*appropriate to a rural location*” is imprecise and adds nothing to the criteria that follow part c). The term “*adequate*” is imprecise. No justification is provided to limit part d) to consideration of the use proposed and the policy would not provide guidance to decision makers in respect of proposals with other components. I have recommended modifications in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

164. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

165. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with supporting a prosperous rural economy; promoting sustainable transport; requiring good design; promoting healthy communities; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 9:

In Policy P8

- **delete “rural buildings” and insert “farm/agricultural buildings”**
- **delete “in principle”**
- **delete “structurally sound”**
- **delete part b)**
- **in part d) delete “use” and insert “development”**
- **replace part f) with “The residual cumulative transport impacts are not severe, and the development will not result in additional on-road parking.”**

Policy P9 Retaining Existing Employment Opportunities

166. This policy seeks to establish conditional support for the expansion of existing businesses. This policy also seeks to establish that loss of existing employment of business use will be resisted unless it can be demonstrated that continued use of the site as a business premises is no longer financially viable. In reply to a request for clarification the Parish Council has confirmed that it is intended the policy should relate to all existing businesses.
167. When considering Policy P1 earlier in my report I have referred to the part of the representation on behalf of CALA Homes (Midlands) Limited who have an interest in Fibrex Nurseries that refers to the question whether there is a loss of employment land as a result of the housing allocation. For convenience I repeat here the relevant part of the representation which states *“Some responses to the Parish Council’s Regulation 14 consultation have asked if the proposed site allocation would result in the potential loss of employment land. However, the site is currently occupied by a nursery business and principally comprises a number of glass houses and polytunnels, with some brick buildings also present. The nursery business grows a variety of plants and comprises a horticulture activity, with an element of sales to the visiting public. Whilst the existing business is employment generating, the lawful use is considered to be a mixed sui generis. On this basis, the existing use falls beyond the scope of SWDP Policy 12 (Protection of Existing Employment Sites), the relevant employment protection policy in view of Pebworth being a Category 3 village within the SEDP settlement hierarchy (Policy SWDP 2, Annex D confirms). SWDP Policy 12 provides protection for sites in rural areas that are currently or were last used for B1, B2, B8, leisure and / or recreation related purposes. There is, therefore, no requirement to demonstrate that the site is no longer viable for an employment generating use in the case of a proposed change to a non-employment generating use such as residential. The SWDP strategic approach to encourage economic growth is, in any case, to locate new employment development at strategic allocated sites, or alternatively on existing employment sites through the conversion of existing buildings. In this particular case, it is considered unlikely that another business would be able to occupy the Fibrex Nurseries site, given that the specialist nature of the existing glass houses and poly tunnels which mean they are not capable of conversion to an alternative use.”* The reasoned justification to Policy P9 states *“the Fibrex Nursery site is not included in this policy as it has been*

identified for a housing allocation that will bring social, economic and environmental benefits.” The Fibrex Nursery site appears to be primarily used for horticulture, in particular the growing of plants under cover, which would not be an existing employment site for the purposes of Policy SWDP 12. The reasoned justification to Policy P9 clearly states the Fibrex nursery site *“is not included in this policy as it has been identified for a housing allocation that will bring social, economic and environmental benefits.”* I have recommended a modification of the policy to clarify the relationship of Policy P9 with Policy P1 so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

168. Part of the representation on behalf of CALA Homes (Midlands) Limited states *“A residential development and associated land take at the front of the site, as proposed in the current draft Plan, is likely to make the remainder of the Fibrex nurseries site unviable, and the Neighbourhood Plan’s proposal with regards to the future use of the remaining land and associated buildings at the site is unclear.”* This is a matter that is relevant to consideration of any future planning application in the context of the entire Development Plan including the implementation of Policy P9 (if made) rather than for my consideration in assessing whether or not Policy P9 meets the Basic Conditions. When considering Policy P1 earlier in my report I have stated the merits or otherwise of housing development on additional or alternative land is not a matter for my consideration.

169. In a representation the District Council states *“it would be useful to know whether this policy relates to just B Class Business Uses or all premises where a business is operating, such as farms and existing tourism, recreation and leisure uses.”* On 15 March 2019 I wrote to the Parish and District Councils seeking clarification that Policy P9 relates to all *“existing businesses”*. In response the Parish Council stated the policy relates to all existing businesses. The Framework states neighbourhood plans *“should support the sustainable growth and expansion of all types of business and enterprise in rural areas.”*

170. The Framework states *“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”* I have recommended a modification in this respect so that the policy has regard for national policy.

171. It is unnecessary and confusing for one policy to state “*provided they conform to other policies of the Neighbourhood Plan and Local Plan*” as all the policies of the Development Plan apply throughout the Neighbourhood Area unless a smaller area is specified. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

172. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Pebworth Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

173. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As proposed to be modified the policy has regard to the components of the Framework concerned with building a strong, competitive economy; supporting a prosperous rural economy; promoting sustainable transport; requiring good design; promoting healthy communities; meeting the challenge of climate change and flooding; and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 10:

In Policy P9

- **delete “provided they conform to other policies of the Neighbourhood Plan and Local Plan, and”**
- **delete “traffic” and after “mitigated” continue “; and the residual cumulative transport impacts are not severe, and the development will not result in additional on-road parking.”**
- **commence the second paragraph with “With the exception of land allocated for housing development in Policy P1 of the Neighbourhood Plan”**

Summary and Referendum

174. I have recommended 10 modifications to the Submission Version Plan. I have also made a recommendation of modification in the Annex below.

175. I am satisfied that the Neighbourhood Plan⁴⁹:

- is compatible with the Convention Rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the Statutory Requirements set out in paragraph 8(1) of schedule 4B of the Parish and Country Planning Act 1990 and meets the Basic Conditions:
 - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
 - the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.⁵⁰

I recommend to Wychavon District Council that the Pebworth Parish Neighbourhood Development Plan for the plan period up to 2030 should, subject to the modifications I have put forward, be submitted to referendum.

⁴⁹ The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

⁵⁰ This basic condition arises from the coming into force, on 28 December 2018, of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 whereby the Neighbourhood Planning Regulations 2012 (5) are amended

176. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.⁵¹ I have seen nothing to suggest that the policies of the Plan will have “*a substantial, direct and demonstrable impact beyond the neighbourhood area*”⁵². I conclude the referendum area should not be extended beyond the designated Neighbourhood Area.

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Wychavon District Council as a Neighbourhood Area on 10 April 2013.

Annex: Minor Corrections to the Neighbourhood Plan

177. A number of consequential modifications to the general text, and in particular the ‘reasoned justification’ of policies sections, of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies.

178. Warwickshire County Council requests paragraph 4.3 is adjusted to recognise the section of the railway line between Honeybourne and Long Marston serves the Quinton Rail Technology Centre which provides secure rolling stock storage, workshops and research and development facilities for the rail industry.

179. Worcestershire County Council state references to the Development Plan including paragraph 1.8 should refer to the Worcestershire Waste Core Strategy and Minerals Local Plan.

180. Worcestershire County Council advise the latest version of the Minerals Local Plan is at the 4th Stage Consultation.

181. The District Council states “*Appendix 3 – as detailed in response to Policy P3, Worcestershire County Council’s Interim Parking Standards (2016) have been replaced by the Streetscape Design Guide (2018) and the latter should therefore be appended*”.

182. The District Council states “*Appendix 6 – Policies Map is currently visually complicated with conflicting layers. Earlier suggestions of a larger map showing the extent of the Housing Allocation at Policy P1, a separate map showing the numbered Local*

⁵¹ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁵² Planning Practice Guidance Reference ID: 41-059-20140306

Green Spaces at Policy P4 in addition to Locally Important Views showing vista splays at Appendix 3 may mean that the Policies Map is unnecessary.”

183. I recommend minor change only in so far as it is necessary to correct an error or where it is necessary so that the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

**Recommended modification 11:
Modify general text to achieve consistency with the modified policies, and to correct identified errors including those arising from updates. Renumber policies and parts of policies arising from deletions.**

Chris Collison
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10 April 2019
REPORT ENDS