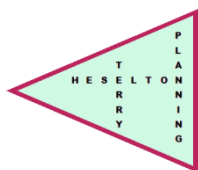


Malpas and Overton Neighbourhood Plan (Examination Version)

Report of the Independent Examination

Terry Raymond Heselton BA (Hons), Dip TP, MRTPI

Independent Examiner



Terry Heselton Planning

February 2015

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Summary

I have examined the Malpas and Overton Neighbourhood Plan as submitted to Cheshire West and Chester Council by Malpas Parish Council. The examination has been undertaken by written representations.

I conclude that the Neighbourhood Plan meets all of the statutory requirements, including those set out in paragraph 8(1) of Schedule 4B of the Town and Country Planning Act 1990. However several modifications are required to ensure that the Plan meets the four 'Basic Conditions', as defined in Paragraph 8(2) of the Schedule.

Subject to making the modifications set out in my report I recommend that the Malpas and Overton Neighbourhood Plan proceed to referendum, and that the voting area corresponds with the Malpas and Overton Neighbourhood Area as defined by Cheshire West and Chester Council on 17 April 2013.

1.0 Introduction

- 1.1 I have been appointed by Cheshire West and Chester Council, with the consent of Malpas Parish Council, to examine the Malpas and Overton Neighbourhood Development Plan and report my findings as an Independent Examiner.
- 1.2 The Malpas and Overton Neighbourhood Plan (referred to as ‘the Neighbourhood Plan’ or ‘the Plan’) has been produced by Malpas Parish Council under the provisions of the Localism Act 2011, which introduced the means for local communities to produce planning policies for their local areas. The Parish Council is a qualifying body for leading the preparation of a neighbourhood plan¹.
- 1.3 This Neighbourhood Plan is the third in Cheshire West and Chester to reach examination stage.
- 1.4 The Neighbourhood Plan covers the historic market town of Malpas and the surrounding rural area in the southern part of Cheshire, comprising most of Malpas Parish and Overton Parish.
- 1.5 The Neighbourhood Plan focuses primarily on ensuring that new development protects and enhances the local environment, that opportunities for local employment and rural diversification are created, and that the vitality and viability of the village centre is maintained.
- 1.6 My report provides a recommendation as to whether or not the Neighbourhood Plan should proceed to a Referendum. Were it to go to Referendum and achieve more than 50% of votes in favour, then the Neighbourhood Plan would be *made* by Cheshire West and Chester Council. The Plan would then be used to determine planning applications and guide planning decisions in the Malpas and Overton Neighbourhood Area.

2.0 Scope and Purpose of the Independent Examination

- 2.1 The independent examination of neighbourhood plans is intended to ensure that neighbourhood plans meet four ‘Basic Conditions’², together with a number of legal requirements. Neighbourhood plan examinations are narrower in scope than Local Plan examinations and do not consider whether the plan is ‘sound’.

¹ Section 38C of the Planning and Compulsory Purchase Act 2004 and Section 61F of the Town and Country Planning Act 1990.

² Set out in Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990

- 2.2 In order to meet the 'Basic Conditions', a neighbourhood plan must:
- have regard to national policies and advice contained in guidance issued by the Secretary of State',
 - contribute to the achievement of sustainable development,
 - be in general conformity with the strategic policies of the development plan for the area of the authority (or any part of that area), and
 - not breach, and be otherwise compatible with EU obligations
- 2.3 In addition to reviewing the examination version of the Neighbourhood Plan I have considered a number of background documents which are listed in Appendix 1, together with eleven submitted representations, as part of the examination.
- 2.4 The general rule is that examination of the issues is undertaken through consideration of written representations, unless the examiner considers that a public hearing is necessary to ensure adequate examination of an issue (or issues) or to ensure that a person has a fair chance to put a case.
- 2.5 In reviewing the Neighbourhood Plan and the accompanying background documents and submitted representations, I have not identified any issues on which I require clarification. I am also of the opinion that all parties have had full opportunity to register their views and put their case forward. I have therefore undertaken the examination through consideration of written representations, supported by an unaccompanied site visit of Malpas and Overton.
- 2.6 In undertaking the examination I am also required to check whether:
- the neighbourhood plan policies relate to the development and use of land for the designated neighbourhood area ³;
 - the neighbourhood plan meets the requirement to specify the period for which it is to have effect, not to include provision relating to 'excluded development', and not to relate to more than one neighbourhood area ⁴,
 - the neighbourhood plan has been prepared for an area that has been properly designated ⁵ and has been developed and submitted for examination by a qualifying body ⁶, and
 - adequate arrangements for notice and publicity have been made in connection with the preparation of the neighbourhood plan ⁷.
- 2.7 As Independent Examiner, I must make one of the following recommendations:
- that the Neighbourhood Plan is submitted to referendum, on the

³ Section 38A (2) Planning and Compulsory Purchase Act 2004 as amended

⁴ Section 38B (1) Planning and Compulsory Purchase Act 2004 as amended

⁵ Section 61G Town and Country Planning Act 1990 as amended

⁶ Section 38C Planning and Compulsory Purchase Act 2004 and Section 61F of the Town and Country Planning Act 1990.

⁷ Section 38A (8) Planning and Compulsory Purchase Act 2004 as applied by the Neighbourhood Planning (General) Regulations 2012

basis that it meets the 'Basic Conditions' and other legal requirements; or

- that modifications (as recommended in the report) are made to the draft Neighbourhood Plan and that the draft Neighbourhood Plan as modified is submitted to Referendum; or
- that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the 'Basic Conditions' and other relevant legal requirements⁸.

- 2.8 Modifications may only be recommended to ensure that the Neighbourhood Plan meets the 'Basic Conditions', that it is compatible with Convention Rights, or for the purpose of correcting errors⁹.
- 2.9 If recommending that the Neighbourhood Plan should proceed to referendum, I am required to then consider whether or not the Referendum Area should extend beyond the Malpas and Overton Neighbourhood Area, and if so what the extended area should be¹⁰.
- 2.10 I make my recommendations in this respect in the final section of this report.

3.0 Representations

- 3.1 Responses were received during the Regulation 16 Publicity period from the Marine Management Organisation, the Highways Agency, the Coal Authority, English Heritage, Welsh Water, Natural England, United Utilities Water Ltd, Gladman Developments Ltd, Cheshire West and Chester Council, and from two members of the public.
- 3.2 The **Marine Management Organisation**, the **Highways Agency**, **United Utilities Water Limited** and the **Coal Authority** had no substantive comments to make.
- 3.3 **Welsh Water** note that while the plan does not allocate individual housing there is sufficient capacity at the local Waste Water Treatment Works to accommodate the scale of development identified in the Cheshire West and Chester Local Plan.
- 3.4 **Natural England** specifically support policies H1 (New Housing), LC4 (Green Spaces and Corridors) and LC5 (Biodiversity), and comment on the location of designated nature conservation sites close to and within the plan area. Natural England would wish to ensure that future development is directed away from the most sensitive areas.
- 3.5 **English Heritage** consider that while the plan focuses on maintaining local character and distinctiveness there is insufficient emphasis on

⁸ Paragraph 10(2) Schedule 4B of the Town and Country Planning Act 1990 as amended

⁹ Paragraph 10(3) Schedule 4B of the Town and Country Planning Act 1990 as amended

¹⁰ Paragraph 10(5) Schedule 4B of the Town and Country Planning Act 1990 as amended

conserving and enhancing the historic environment, including archaeological assets. Detailed comments are provided on a number of sections and policies in the plan from this perspective.

- 3.6 **Cheshire West and Chester Council** consider the plan generally conforms with saved policies in the Chester District Local Plan except for Policy H2 (Rural Housing Development).
- 3.7 The Council also comments that the Neighbourhood Plan has been prepared in parallel with the Cheshire West and Chester Local Plan Part One: Strategic Policies, and reflects the evidence base and most recently assessed housing needs for the area. With the exception of Policy H2 (Rural Housing Development) the policies are considered to be in general conformity with Local Plan policies. The Council also considers that the conformity of Policies LE1 (Flexible Workspace) and LE2 (Rural Diversification and Rural Tourism), 'could be improved'. (The Local Plan (Part One) was at an advanced stage of preparation at the time the comments were submitted and has subsequently been adopted by the Council as part of the development plan for the area).
- 3.8 **Gladman Developments** consider the plan does not satisfy the Basic Conditions because a number of the policies, supporting text and evidence base conflict with national policy, do not contribute to the achievement of sustainable development and/or are not in general conformity with strategic development plan policies. Policy H1 (New Housing), Policy H3 (Housing Type and Tenure) and Policy H4 (Housing Quality and Design) are specifically highlighted in this respect. Consultation undertaken on the draft plan was also considered to be inadequate.
- 3.9 A **local resident** supports the plan which is described as 'representing the wishes of the local area'. Another **resident** considers that Policy LC2 (Renewable Energy) provides inadequate guidance on the siting of wind turbines which may have an adverse impact on his property, and suggests some wording for a more prescriptive policy.
- 3.10 Specific points raised are considered in section four (e) and section six of my report.

4.0 Compliance with Legal Requirements

(a) Plan Area

- 4.1 The Neighbourhood Plan relates to the whole of the Neighbourhood Area that was designated by Cheshire West and Chester Council on 17 April 2013, following an application by Malpas Parish Council. The Parish Council is recognised as a Qualifying Body for the purposes of preparing Neighbourhood Plans under Sections 61F and 61G of the Town and

Country Planning Act 1990.

- 4.2 The Malpas and Overton Neighbourhood Area corresponds with the area covered by Malpas Parish and Overton Parish, except for two small areas adjacent to Hampton and Nomansheath in the adjacent No Mans Heath and District Parish, which have been excluded because they relate more to those villages. It includes the settlement of Malpas. Both No Mans Heath and District Parish Council and Overton Parish Meeting have given their consent to this arrangement.
- 4.3 I am therefore satisfied that the relevant statutory requirements in relation to the designation of the Neighbourhood Area and the authority of the organisation preparing the Neighbourhood Plan have been complied with.
- 4.4 I am also satisfied that the Plan does not relate to more than one neighbourhood area and there are no other neighbourhood development plans for the designated Neighbourhood Area in accordance with statutory requirements.

(b) Policies for the Development and Use of Land

- 4.5 The Neighbourhood Plan sets out policies in relation to the development and use of land for the defined Neighbourhood Area, which accords with the definition of neighbourhood plans in Section 38A of the Planning and Compulsory Purchase Act 2004 (as amended).

(c) Time Period

- 4.6 A neighbourhood plan must specify the period during which it is to have effect. The Neighbourhood Plan clearly states on its title page that it covers the period 2010 to 2030. It therefore satisfies this legal requirement.

(d) Excluded Development

- 4.7 The Neighbourhood Plan does not include policies on excluded development such as national infrastructure, mineral or waste related development.

(e) Publicity and Consultation

- 4.8 Public consultation on the production of land use plans, including neighbourhood plans, is a legislative requirement. Building effective community engagement into the plan-making process encourages public

participation and raises awareness and understanding of the plan's scope and limitations.

- 4.9 The submitted Neighbourhood Plan is accompanied by a comprehensive Consultation Statement which describes in some detail the process followed in preparing the Neighbourhood Plan as well as the methods used to engage with the local community and other stakeholders. It also demonstrates how comments received from members of the public and other stakeholders have been taken into account, and how these have influenced the preparation of the plan.
- 4.10 I have considered the various stages of consultation undertaken prior to and during preparation of the Neighbourhood Plan with particular regard to content, openness and transparency, as well as the extent to which the Regulatory requirements have been satisfied.
- 4.11 The stages of consultation and engagement can be summarised as
- Initial Consultation (April – June 2012)
 - Second Consultation (Vision and Objectives stage)
 - Two Day Workshop (September 2013)
 - Transport and Travel Workshop (November 2013)
 - Pre-submission (Regulation 14) consultation on the draft Plan
- 4.12 At the start of the process the Neighbourhood Plan Steering Group undertook a branding exercise and created a caricature called 'Maxwell' based on the outline of the Parish. This appeared on all publications including the Neighbourhood Plan website, the Facebook site, 16 editions of the Parish News and on posters.

Initial Consultation (April – June 2012)

- 4.13 The first step in the preparation of the Neighbourhood Plan was a questionnaire/leaflet delivered to every house in the Neighbourhood Plan area. The questionnaire was intended to identify what people like and dislike about Malpas and Overton, what things they thought were lacking and how they would like to see the village evolve. This was accompanied by visits to over 25 local clubs and societies, including young persons and older people's organisations, and setting up a Facebook page to raise awareness. A total of three weeks were initially allowed for the return of questionnaires although the consultation period was subsequently extended a further three weeks to include the village fete held on Monday 4th June 2012 to celebrate the Queens Diamond Jubilee, when 50 people visited the Neighbourhood Plan stall.
- 4.14 A total of 91 written responses were received to the consultation and the results were published on the Neighbourhood Plan website. This was followed by an open exhibition to display the results of a character study of Malpas undertaken on behalf of the Parish Council, which was attended by 60 people, and which generated additional views.

Second Consultation: Vision and Objectives

- 4.15 In response to the comments received a draft vision and objectives for the plan were drawn up followed by the publication of a second questionnaire

booklet in May 2013, which was again delivered to all 815 homes in the Parishes. Questions asked were structured around seven themes (subsequently realigned into the six themes in the draft plan) accompanied by draft proposals.

- 4.16 The Consultation Statement summarises the results of the consultation which influenced the drafting of specific policies in the plan.

Neighbourhood Plan Workshop September 2013

- 4.17 A two day workshop with invited participants including Ward and Parish Councillors, Cheshire West and Chester Council officers, Natural England, parish clerks, local residents and business owners, was held in September 2013 facilitated by consultants on behalf of the Parish Council. Participants discussed a wide range of topics, explored issues and aspirations, and identified a number of local priorities as the basis for further investigation and policy development.

Transport and Access Review Workshop November 2013

- 4.18 A second workshop was held in November 2013 to gather baseline data and explore options concerning transport and communications issues. The output from the workshop has informed the transport policies in the plan and is also intended to provide the basis for the production of an integrated village travel plan.

Pre submission (Regulation 14) Consultation on the Draft Plan

- 4.19 Following consideration of all the information gathered during the previous stages of consultation the draft Plan was completed in December 2013. The Pre submission (Regulation 14) consultation took place between 06 January 2014 and 23 February 2014.
- 4.20 The consultation was publicised in the February 2014 edition of the Parish News and accompanied by a leaflet distributed to every household in both Malpas and Overton Parishes. Hard copies were placed in accessible locations such as the doctor's surgery and Bishop Heber Community library and an electronic version was available on the Neighbourhood Plan website.
- 4.21 Three 'drop in' sessions were arranged at different locations on different dates providing a further opportunity to learn about and to discuss the proposals.
- 4.22 Specific evidence is provided in the Consultation Statement to demonstrate how the publication of the plan and the opportunity to comment on it has been publicised, including a copy of the draft Neighbourhood Plan leaflet and details of the various statutory bodies, neighbouring Parish Councils and private individuals who were e-mailed copies of the plan direct.
- 4.23 The Consultation Statement also contains a 'change request log' identifying the issues and concerns raised, with a commentary as to how the points raised have been accommodated in the submitted version of the Plan, or the reasons for rejecting them.

- 4.24 It has been suggested by Gladman Developments as part of their representations that consultation on the draft plan was inadequate because neither the wider community, including surrounding areas and organisations with an interest in the Plan were consulted directly on it, and because the consultation was not advertised on the Cheshire West and Chester Councils website nor on the Malpas Parish Council website, with a dedicated Neighbourhood Plan website being the only means of seeing information.
- 4.25 However the evidence provided by the appendices attached to the Consultation Statement, which include lists of those Parish Councils (Appendix A2), and private individual/organisations (Appendix A3) who were specifically consulted, contradicts this argument. While I appreciate that non local organisations operating over a large geographical area face particular challenges in obtaining information about Neighbourhood Plans, this is now less of an issue due to the availability of centralised information regarding the progress of Plans displayed on Local Planning Authority and other websites. I also note that Gladman Developments were included in the list of organisations consulted.
- 4.26 With regard to the use of websites for displaying information it is not in my experience normal practice for Local Planning Authorities to publicise details of the Regulation 14 Consultation as this is a matter for the Qualifying Body who are responsible for the preparation of the Plan and consultation on it leading up to the Regulation 16 Publicity stage. I also find that there is a link from the Parish Council website to the dedicated Neighbourhood Plan website.

Conclusions

- 4.27 During the preparation of the plan it is apparent that a wide variety of methods have been used to inform and engage with the local community including conventional methods such as meetings, posters, workshops, exhibitions and mail/telephone contact, as well as electronic methods such as email, the provision of a dedicated web page on the Parish Council's website and social media (Facebook). The use of the Maxwell caricature has also been a particularly innovative feature of the consultation, which I would commend to others as a means of raising the Neighbourhood Plan profile.
- 4.28 The publication of the consultation draft plan which was available in both paper and electronic formats has also been well publicised, and I am satisfied that those with an interest in the plan have been made aware of the opportunity to comment on it and that the views of relevant consultation bodies have been pro-actively sought.
- 4.29 Taking this and all of the previous stages into account, there is therefore plenty of evidence to show that the consultation process was comprehensive and conducted in an open and transparent manner from start to finish, with lots of opportunities for engagement, involvement and feedback. The Regulation 14 requirements for consultation and publicity have therefore been met and in some case exceeded.

Regulation 16 Publicity

- 4.30 The draft Neighbourhood Plan, as amended in response to the consultation, was subsequently submitted to Cheshire West and Chester Council. The submitted plan, incorporating a map identifying the area covered by the Neighbourhood Plan, was accompanied by a Consultation Statement, and a Basic Conditions Statement explaining how the proposed Neighbourhood Plan meets the requirements of paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990.
- 4.31 The Consultation Statement provides details of those consulted and explains how they were consulted. It also contains a 'change request log' identifying the issues and concerns raised, with a commentary as to how the points raised have been accommodated in the submitted version of the Plan, or the reasons for rejecting them.
- 4.32 Cheshire West and Chester Council subsequently published details of the Plan and the accompanying documents, notified interested parties and 'consultation bodies' of its receipt, and provided details as to how and by when representations could be submitted. The formal six week publicity stage for submitting representations covered the period Friday 3 October to Monday 17 November 2014.
- 4.33 In the light of the foregoing I am satisfied that the Regulation 15 and Regulation 16 requirements for publicity have been met.

5.0 Basic Conditions

- 5.1 This section of my report considers whether the Neighbourhood Plan taken as a whole 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 it is in general conformity with local strategic policy. It also addresses EU obligations. Each of the plan policies is considered in turn in the section of my report that follows this.

(a) National Planning Guidance

- 5.2 National planning Guidance is set out principally in the National Planning Policy Framework (NPPF) which was published in 2012. At the heart of the NPPF is a presumption in favour of sustainable development¹¹ which when applied to neighbourhood planning means that neighbourhoods should develop plans which support the strategic development needs set out in Local Plans, and which plan positively to support and shape local

¹¹ National Planning Policy Framework (2012) para 14

- development that is outside the strategic elements of the Local Plan.¹²
- 5.3 The NPPF incorporates 12 Core Principles¹³ which underpin both plan-making and decision-taking. These are summarised in paragraph 17 of the NPPF and elaborated in the remainder of the NPPF through individual policy topics such as building a strong economy, delivering a wide choice of high quality homes, requiring good design, promoting sustainable transport, and conserving the historic environment.
- 5.4 Included in the 12 Core Principles is a requirement to produce neighbourhood plans which set out a positive vision for the future of the area and which provide a practical framework within which decisions on planning applications can be made.
- 5.5 The NPPF also (paragraph 184) requires neighbourhood plans to be ‘aligned with the strategic needs and priorities of the wider local area, and to 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 (and neighbourhood development orders) should not promote less development than that set out in the Local Plan or undermine its strategic policies.
- 5.6 It goes on (paragraph 185) that once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local plan for that neighbourhood, where they are in conflict.
- 5.7 More detailed guidance and advice, expanding on the general policies in the NPPF has been available since March 2014 as Planning Practice Guidance (PPG). This includes specific guidance as to ‘What evidence is needed to support a neighbourhood plan?’¹⁴, and ‘How policies in a neighbourhood plan should be drafted’¹⁵, that is “*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*”.
- 5.8 I have had regard to these principles in carrying out the examination, since the manner in which policies are drafted and whether or not they are supported by appropriate evidence is clearly fundamental to determining whether or not individual policies and a plan as a whole

¹² National Planning Policy Framework (2012) para 16

¹³ National Planning Policy Framework (2012) para 17

¹⁴ Planning Practice Guidance para 040 Ref ID: 41-040-20140306

¹⁵ Planning Practice Guidance para 041 Ref ID: 41-041-20140306

satisfies the Basic Conditions.

- 5.9 Less straightforward to determine is whether a policy is distinct, and whether it reflects local circumstances. For example while it is clear that many policies in the Malpas and Overton Neighbourhood Plan are driven by local circumstances and community preferences, to a certain extent some could apply to other, if not all, locations. I have taken the view that the fact that a local community has chosen to include a particular policy, reflects its awareness that the particular issue is of special importance to the locality, and this does not therefore prevent that policy from satisfying the Basic Conditions.
- 5.10 Taken as a whole I conclude that the Neighbourhood Plan reflects the broad principles embedded in the NPPF and PPG. In those instances where individual policies and/or supporting text have been found to be inconsistent with national policy I have made specific recommendations to correct this later in the report.

(b) Sustainable Development

- 5.11 In carrying out the examination I am also required to consider whether the Plan would contribute to the achievement of sustainable development, as described in the NPPF.
- 5.12 There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of interdependent roles, namely:
- **an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
 - **a social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
 - **an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.
- 5.13 Although the Neighbourhood Plan does not make specific provision for new development, for example through site allocations, it does recognise there will be new development in the Plan area, and includes policies to manage that development. The focus is about conserving and enhancing

the natural and historic environment, ensuring access to local job opportunities and facilities, and supporting the town centre. These are key aspects of sustainable development, as set out in the NPPF, which states (para 9) that *“Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life, including (but not limited to):*

- *making it easier for jobs to be created in cities, towns and villages;*
- *moving from a net loss of bio-diversity to achieving net gains for nature;*
- *replacing poor design with better design;*
- *improving the conditions in which people live, work, travel and take leisure; and*
- *widening the choice of high quality homes”.*

- 5.14 Subject to the modifications recommended later in my report I am satisfied that the Neighbourhood Plan is capable of contributing to the achievement of sustainable development.

(c) Strategic Local Policy

- 5.15 Statutory weight is given to neighbourhood development plans that are closely aligned with and in general conformity with the strategic policies of the development plan for the local area. Neighbourhood plans are also required to plan positively to support local strategic policies¹⁶. This ensures neighbourhood plans cannot undermine the overall planning and development strategy for the local area set out in the development plan.

- 5.16 The current development plan for the area comprises

- Cheshire West and Chester Local Plan (Part One): Strategic Policies (adopted January 2015)
- Remaining saved policies in the Chester District Local Plan (adopted by Chester City Council May 2006)
- Saved policies in the Cheshire Replacement Minerals Local Plan (adopted by Cheshire County Council 1999), and
- Saved policies in the Cheshire Replacement Waste Local Plan (adopted by Cheshire County Council 1999).

- 5.17 The Cheshire Replacement Minerals Local Plan and the Cheshire Replacement Waste Local Plan would appear to have no relevance for the Malpas and Overton Neighbourhood Development Plan.

- 5.18 The Cheshire West and Chester Local Plan (Part One): Strategic Policies (the Local Plan) was adopted as recently as 29 January 2015 and sets out a number of strategic policies to guide future development in the wider

¹⁶ National Planning Policy Framework (2012) para 184

local area. Policies relevant to the Neighbourhood Plan are

- STRAT1 Sustainable Development
- STRAT2 Strategic Development
- STRAT8 Rural Area
- STRAT9 Green Belt and Countryside
- STRAT10 Transport and Accessibility
- STRAT11 Infrastructure
- ECON1 Economic Growth, Employment and Enterprise
- ECON2 Town Centres
- ECON3 Visitor Economy
- SOC1 Delivering Affordable Housing
- SOC3 Housing Mix and Type
- SOC5 Health and Well-being
- SOC6 Open Space, Sport and Recreation
- ENV2 Landscape
- ENV3 Green Infrastructure
- ENV4 Biodiversity and Geodiversity
- ENV5 Historic Environment
- ENV6 High Quality design and Sustainable Construction
- ENV7 Alternative Energy Supplies

5.19 As the Local Plan post dates the NPPF its policies take precedence in the event of any conflict.

5.20 Although a number of saved policies in the Chester District Local Plan (CDLP) are superseded by policies in the Local Plan others will remain in force until replaced by future development plan documents. These are identified in Appendix A of the Local Plan.

5.21 In assessing whether the Neighbourhood Plan is in general conformity with strategic policies contained in the Development Plan for the area I have therefore taken the adopted Local Plan as the starting point together with those saved strategic policies in the CDLP which are not superseded by Local Plan policies.

5.22 Although the CDLP does not distinguish between strategic and non strategic (ie development management) policies it is apparent that a number satisfy the definition of a strategic policy set out in national Planning Practice Guidance¹⁷, and are therefore of relevance to this examination. This includes policies which provide an overarching direction or objective, those which seek to shape the broad characteristic of development, and those which provide a framework for decision making or establish a standard or other requirement essential to achieving the wider vision of the Local Plan. A number of others are hybrid policies which while performing a development management function also contain strategic elements which meet the definition of strategic policy set out in the PPG.

5.23 There are also a number of non strategic 'saved' CDLP policies that are

¹⁷ Planning Practice Guidance para 076 Ref ID: 41-076-20140306

modified or superseded by the plan policies.

- 5.24 A number of modifications are necessary for the Neighbourhood Plan to be in general conformity with the above strategic policies. These are set out in the *Comments on the Neighbourhood Plan* section of my report.

(d) European Convention on Human Rights and EU Obligations

- 5.25 Cheshire West and Chester Council have prepared a Strategic Environmental Assessment (SEA) screening statement¹⁸, and a Habitats Regulations Assessment (HRA) screening statement¹⁹ on behalf of the Parish Council. The report establishes that the Neighbourhood Plan does not require a full SEA as no negative significant environmental effects will occur as a result of the implementation of policies contained in the Neighbourhood Plan.
- 5.26 The relevant statutory consultation bodies were consulted during the preparation of the report and following its publication.
- 5.27 Natural England and English Heritage have confirmed in writing that they agree with the conclusion of the screening report that no significant effects will result from the implementation of the policies and that it is unnecessary to undertake a full SEA or HRA.
- 5.28 No comments were received from the Environment Agency.
- 5.29 No objections in relation to any of the above matters were received during the Regulation 16 'publicity' stage.
- 5.30 Although an equalities impact assessment has not been undertaken the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics. And no evidence has been put forward to suggest otherwise.
- 5.31 I am therefore satisfied that the Neighbourhood Plan does not breach, and is otherwise compatible with EU obligations and human rights requirements and therefore satisfies that 'Basic Condition'.

6.0 Comments on the Neighbourhood Plan

- 6.1 The Neighbourhood Plan is considered against the Basic Conditions in this section of my report, particularly whether individual policies and supporting text have regard to national policy, and whether they are in

¹⁸ in accordance with European Directive 2001/42/EC

¹⁹ in accordance with Article 6(3) of the EU Habitats Directive and with regulation 61 of the Conservation of Habitats and Species regulations 2010 (as amended).

general conformity with local strategic policies in the adopted Local Plan (Part One): Strategic Policies document, and remaining 'saved' Chester District Local Plan policies. Where modifications are recommended, they are highlighted in **bold print**, with any proposed new wording in *italics*.

(a) General Comments

Conservation and Enhancement of the Historic Environment

- 6.2 As referred to in paragraph 3.5 above English Heritage are concerned that while the plan focuses on maintaining local character and distinctiveness there is insufficient emphasis on conserving and enhancing the historic environment, including archaeological assets.
- 6.3 The response helpfully identifies those sections and policies where it is felt the plan should be amended in order to bring it more in line with national planning policy in this respect. This particularly concerns the following sections and policies in the plan: paragraph 2.6 (Village Character), Key Point 7, Key Point 8, Neighbourhood Plan Vision, Policy H4 (Housing Character and Design), paragraph 5.2 (Built Environment and Local Character), Policy BE2 (Design of New Buildings), Policy BE3 (Alterations and Extensions), Policy LC2 (Renewable Energy), Policy LC3 (Key Views) and Policy SF2 (Church Street).
- 6.4 In considering whether or not the plan meets the Basic Conditions I note that the conservation and enhancement of the historic environment is a key attribute of sustainable development and national planning policy emphasises the importance of 'conserving heritage assets in a manner appropriate to their significance'.
- 6.5 However a number of comments made by English Heritage, particularly regarding the evidence for and justification of policies, are based on detailed national policy aimed at Local Plans which is not necessarily appropriate for a Neighbourhood Plan. The application of tests of soundness is equally inappropriate since the neighbourhood plan is judged on whether or not it satisfies the Basic Conditions, not whether it is 'sound'.
- 6.6 While I therefore recommend a number of modifications to ensure the plan has appropriate regard to national policy in relation to the conservation and enhancement of the historic environment, a number of other points are rejected.

Village boundary

- 6.7 Cheshire West and Chester Council in their response to the submitted plan highlight a discrepancy regarding the definition of the settlement boundary for Malpas. This concerns the delineation of the village boundary in Figure 5.1 with all land outside of this boundary referred to as being 'in the surrounding rural area'. However the boundary does not

include all of the consented development around the edge of the village (which is identified in a plan supplied by the Council as part of their comments), and no explanation is provided as to why some areas are included and some excluded.

- 6.8 In the view of Cheshire West and Chester Council this boundary does not serve as a settlement boundary for the purposes of Local Plan policy. Although it is the Council's intention to identify the settlement boundaries of all key service centres (including Malpas) in preparing the Local Plan (Part Two): Land Allocations and Detailed Policies document, the Council would like to see some clarity on the boundary in the interim. The Council also considers that the second paragraph in the Explanation to Policy SF1 contributes to the confusion and should therefore be deleted.

Comment

- 6.9 I note that the adopted Local Plan (Part One) (paragraph 5.73) establishes a commitment to defining the settlement boundaries of key service villages through the preparation of the Local Plan (Part Two) document, and that where there is a need to accommodate development on the edge of a settlement that the boundary will be drawn to reflect this.
- 6.10 As the combined yield from dwellings completions since 2010 and current permissions (as at April 2014) exceeds the housing requirement of 200 dwellings for the village identified in Policy STRAT 8 of the Local Plan, it is anticipated by the Council that the settlement boundary will be drawn tightly around the built up area of the village, including sites with permission.
- 6.11 Areas outside defined settlement boundaries will be treated as countryside and subject to the requirements of 'rural areas' policies. The delineation of the precise settlement boundary or 'built form of settlements' as referred to in the Local Plan, is therefore fundamental to the operation of a number of policies, namely; H1, H2, LC1, LC5, and LE2.
- 6.12 If the existing 'built form' of Malpas' as defined in Figure 5.1 is to be used for development management purposes until the settlement boundaries are formally defined in the Local Plan (Part Two) it is important that an adequate explanation is provided in the plan.
- 6.13 This issue is addressed in my recommended modifications to Policy H1 and Policy SF1.

(b) Introductory Sections

- 6.14 The introductory sections of the Neighbourhood Plan comprise an Introduction explaining the background to the plan and the key themes, a section entitled 'Malpas Today' providing information on the evolution of the village and different character areas, and an explanation of the neighbourhood plan process followed by the overall vision and objectives

for the plan area. They are supported by a series of maps which identify the Neighbourhood Plan area, provide information on previous phases of development, and identify designated heritage assets. There is also a commentary on twelve key points and conclusions from analysis of the evidence base that have shaped the development of the plan.

Comments

- 6.15 These opening sections are clearly written and informative. They provide the background to the policies that follow and a comprehensive assessment of issues, which helps to develop a strong sense of place and to demonstrate how the vision and objectives have been arrived at.
- 6.16 The use of cross referencing to the accompanying evidence base, which is also a feature of the Explanation accompanying each of the policies, is particularly instructive.
- 6.17 My only concern is that the response to the Regulation 16 publicity has highlighted a small number of inconsistencies with national planning policy and local strategic policy in paragraph 2.6 concerning village character, in some of the conclusions reached in the twelve key points in the 'Malpas Today' section, and in the third objective.
- 6.18 In this respect I agree with English Heritage who consider that the conclusion to key point 7 which deals with the 'conservation, preservation and enhancement of the landscape and historic and cultural environment', places too much emphasis on the need for policies to protect distinctive local character and not enough emphasis on the need to conserve and enhance the historic environment, including archaeological assets. Similar considerations apply to the conclusion to key point 8 (Renewable Energy) where the impact of renewable energy proposals should include consideration of the impact on heritage assets, as well as local character and landscape.
- 6.19 However, I do not share the view put forward by English Heritage (in relation to paragraph 2.6 and elsewhere), that the plan is deficient in evidence regarding the historic environment, and that the plan should be informed by an up-to-date conservation area appraisal and management plan.
- 6.20 First, information regarding heritage assets is provided in other parts of the plan such as Key Point 7 and Figure 2.6.
- 6.21 Second, while national planning policy (NPPF paragraph 169) refers to the need for up-to-date evidence of heritage assets and the contribution they make to the environment, the Planning Practice Guidance accompanying national policy indicates (paragraph 040) that evidence in neighbourhood plans should be proportionate and may rely on evidence produced by Local Planning Authorities. In other words the level of detail that might be expected in a Local Plan is not necessarily appropriate for a neighbourhood plan.
- 6.22 I am also mindful of the fact that the Local Plan recently adopted by Cheshire West and Chester Council which incorporates strategic policies

to protect heritage assets, is based upon an up to date evidence base, which informs the Neighbourhood Plan.

- 6.23 I would add, as referred to in paragraph 6.5 above, that the conclusion reached by English Heritage that the plan is unsound because of the above factors is not appropriate since the Neighbourhood Plan is judged on whether or not it satisfies the Basic Conditions, not whether it is 'sound'. I therefore conclude that modification to the plan is not required to address these particular objections.
- 6.24 With regard to the third 'Objective' (on page 18) I concur that this does not fully accord with national planning policy and local strategic policy which do not discriminate in favour of providing housing for local people first. (The point previously raised by Gladman Developments has only been partially addressed in the submitted version of the plan). The wording should therefore be amended to bring it in line with national policy.
- 6.25 There is also one minor factual error to note. The reference to Figure 2.7 in the first paragraph of Key Point 7 should be to Figure 2.6.

Recommendation 01

Amend Key Points 7 and 8 and the conclusion to both key points to incorporate appropriate references to conserving and enhancing heritage assets.

Recommendation 02

Replace Objective 3 with the following wording “*Support housing growth which meets identified housing need, including all sections of the local community*”.

Recommendation 03

Change the reference to 'Figure 2.7' in the first paragraph of Key Point 7 to 'Figure 2.6'.

(c) General Approach

- 6.26 The Neighbourhood Plan recognises that the emerging (at the time) Local Plan (Part One): Strategic Policies will set the agenda for housing numbers and growth. It does not attempt to establish an appropriate level of future housing or employment growth or identify specific sites to accommodate future growth. Rather it focuses on how new development will be managed, relying primarily on existing permissions and future windfall proposals on sustainable sites to cater for future needs. The emphasis is on organic sustainable growth that respects the character of Malpas and safeguards the heritage and landscape assets of the Plan

area.

Comments

- 6.27 The overall approach to growth and development in the plan is generally consistent with the growth strategy in the Cheshire West and Chester Local Plan (Part One): Strategic Policies, which identifies Malpas (Policy STRAT 2) as a key service centre which provides a good range of facilities and services for the surrounding area and which will be the focus for new development in the rural area. I note the Local Plan (Policy STRAT 8) expects Malpas to accommodate at least 200 dwellings and that more than this number of dwellings is already provided for through recent completions and current permissions.
- 6.28 The focus on conserving and enhancing the character of the village is consistent with the approach to key settlements in the Local Plan (Policy STRAT 8) which indicates that development in key service centres should be appropriate in scale and design to conserve each settlements character and setting. The Local Plan also refers (para 5.66) to “*striking a balance between allowing for the managed growth of rural towns and key settlements whilst taking account of the overall plan strategy to concentrate most new development in the borough’s four urban areas*”.
- 6.29 Policies in the Plan to create local job opportunities and local facilities, and to protect and enhance the village centre, also conform with strategic policies to support the role of the village as a settlement serving a wider catchment area.

(d) Land Use Policies and Explanatory Text

- 6.30 The land use policies part of the plan is organised into six themes, namely; Homes for All, Built Environment and Local Character, Landscape Character and the Natural environment, Services and Facilities, Supporting the Local Economy, and Transport and Communications. Each section begins with a list of the objectives that each theme will contribute to, followed by a summary of the issues and opportunities, a summary of the relevant evidence base (cross referenced to the accompanying ‘Evidence Base’ document), plus comments and conclusions from the various community consultation exercises under the heading ‘Voice of the Community’
- 6.31 Individual policies within each theme are set out in bold text followed by a supporting Explanation and justification.
- 6.32 The policies are followed by ‘aspirations’ which are described in the introduction to the policies section as ‘elements that have been identified as important by the local community but which do not fulfil the land use and development criteria to be included in neighbourhood plans.’ The final section of the plan ‘Making it Happen’, which describes the process for finalising the plan, refers to pro-active action that will be required in liaison with other organisations and stakeholders, to pursue these aspirations.

- 6.33 Finally each theme concludes with a summary of key national and local strategic policies which are relevant to the policies within that particular theme.

Comments

- 6.34 I recognise that plan making at the local level will inevitably focus on wide ranging aspirations of the community, some of which may be non land use based. Where neighbourhood plans incorporate non land use policies and aspirations it is important that these are clearly distinguishable from the land use and development policies that will be used to inform the decision making process. I am satisfied that the structure of the document and the explanation given in it is a practical response to this issue which enables non land use aspirations to be consulted on and incorporated within the document in a way in which the 'aspirations' will not be confused with land use policies.
- 6.35 For clarification my report does not consider the non land use policies and intentions described under 'Aspirations' in the plan.
- 6.36 One further point to note is that in assessing the general conformity of Neighbourhood Plan policies with local strategic policies throughout the course of the examination I have noticed a number of inaccuracies in the lists of Local Plan and saved CDLP policies at the end of each section. As the lists of policies do not match relevant policies quoted in the Basic Conditions Statement to, which is closer to my own analysis, I recommend that these be reviewed and amended.

Recommendation 04

Correct the lists of Local Plan and saved CDLP policies referred to under 'Policy Compliance' at the end of each section.

Section 5.1 Homes for All

- 6.37 **Policy H1 (New Housing)** directs new development to sustainable locations within and on the edge of Malpas, where it can best be integrated into the existing pattern of development. The policy makes it clear that the housing target for Malpas is being determined through the emerging Local Plan and that the number of new homes provided must comply with that target. Brownfield sites are preferred to greenfield sites and housing development in the surrounding rural area will not normally be considered appropriate (except for individual dwellings in conformity with Policy H2).
- 6.38 The explanatory text accompanying the policy also refers to a site assessment methodology (Appendix B) which is intended to provide a means of assessing and comparing potential development sites.

Comments

- 6.39 The policy generally conforms with Local Plan Policies SRAT1, STRAT2, STRAT8, STRAT9 and SOC5 by promoting sustainable forms of development that has regard to health and wellbeing objectives, and by supporting the development strategy for key service centres and the rural area.
- 6.40 However, as referred to in paragraphs 6.7-6.12 above the delineation of the existing built up area of the village in Figure 5.1, combined with the reference to ‘the surrounding rural area’ means that as drafted the policy is unclear and contradictory. For example it facilitates development on greenfield sites adjacent to the existing built up area that are defined in Figure 5.1 as ‘within the surrounding rural area’, while at the same time stating that development in the surrounding rural areas will not be considered appropriate. This situation is further complicated by the intention of Cheshire West and Chester Council to identify settlement boundaries through the Local Plan (Part Two) Land Allocations and Detailed Policies document, taking account of existing planning consents and proposed housing allocations (if any are required to meet identified housing needs).
- 6.41 Amendment to the policy and accompanying Explanation is therefore required to remove this anomaly. My recommended wording takes account of the proposed designation of settlement boundaries at a later date in order to future proof the policy.
- 6.42 Further amendment is required in order to fully reflect national planning policy with regard to development on brownfield and greenfield land. While I am aware that recent ministerial statements encourage building more homes on brownfield land, and the government is currently consulting on measures to achieve this, there is at the moment no reference in national policy to prioritising brownfield development over greenfield sites. I also agree with the point made by Gladman Developments that brownfield development is not necessarily more sustainable than greenfield depending on location and other factors. The reference to treating brownfield development as more sustainable than greenfield should therefore be replaced with a reference to encouraging brownfield development in line with paragraph 111 of national planning policy.
- 6.43 On a minor point the reference to restricting development to within 10 minutes walk of the village centre is perhaps overly prescriptive and potentially contradicts the intention to facilitate development on the edge of the village.
- 6.44 Gladman Developments also object to the use of the site assessment matrix referred to in the Explanation accompanying the policy and set out in Appendix B on the grounds that it is not a robust tool for decision making since determining whether a proposal is sustainable or not is a balancing exercise rather than a formulaic methodology. However as the use of the matrix is not a policy requirement and the text emphasises that

the matrix is 'one potential means of assessment and comparison', I consider it provides a useful starting point for the assessment of sites. Subject to amending the matrix to provide equal weighting for brownfield and greenfield sites, as referred to above, it can be retained.

- 6.45 Finally, for complete accuracy the policy should reflect the fact that there may be circumstances (albeit very limited) when greenfield development may occur within the built up area.

Recommendation 05

- a) Delete '(ie less than 10 minutes' walk)'
- b) Replace 'Brownfield sites will generally be assessed as being more sustainable than greenfield sites.' with '*Development on brownfield sites will be encouraged within the built up area*'.
- c) Insert '*within the built up area or*' after 'Where Greenfield development occurs it should be on sites that are.....'
- d) Delete the final paragraph of the policy and substitute the following:
'Until the Local Plan (Part Two): Land Allocations and Detailed Policies Plan has been adopted housing development outside the built form of Malpas village (as defined in Figure 5.1) will not normally be considered appropriate unless it is directly adjacent to the village or for a single dwelling in conformity with Policy H2.
After the Local Plan (Part Two): Land Allocations and Detailed Policies Plan has been adopted housing development outside the settlement limits defined in the Local Plan will not normally be appropriate unless it is for a single dwelling in conformity with Policy H2.'
- e) Amend the matrix in Appendix B to give equal weighting to brownfield and greenfield sites.

- 6.46 Subject to the above modifications the Policy meets the Basic Conditions.

Policy H2 (Rural Housing Development)

- 6.47 The policy identifies the types of individual dwellings that will be acceptable in the rural area (outside Malpas), including replacement dwellings, rural workers dwellings, ancillary relatives accommodation, individual dwellings with exceptional innovative designs, and individual dwellings that demonstrate excellence and innovation in environmental sustainability.

Comments

- 6.48 It is clear from the policy and the explanatory text that the majority of new homes are intended to be provided within and adjacent to the built up area and only a small number of dwellings are anticipated being approved

through Policy H2 at dispersed locations in the remainder of the Plan area.

- 6.49 Policy H2 therefore reflects the general intention of national planning policy, Local Plan Policy STRAT9 and CDLP Policy HO7 to restrict housing development in the countryside. The policy will contribute toward the achievement of sustainable development by directing development away from the countryside toward more sustainable locations, at the same time supporting the rural economy by enabling provision to be made for rural workers dwellings.
- 6.50 However criteria (ii) in relation to homes for family relatives is the subject of objection by Cheshire West and Chester Council, and criteria (iv) in relation to proposals which demonstrate excellence and innovation in environmental sustainability is the subject of objection by Gladman Developments.
- 6.51 In considering the case for criteria (ii) I note that paragraph 55 of national planning policy indicates that new isolated homes in the countryside should be avoided unless there are special circumstances, and goes on to identify four examples, not including ancillary relative's accommodation. However that is not to say that other types of development might not be acceptable in certain circumstances. Local Plan Policy STRAT9 is more restrictive and lists only those types of development that will be acceptable in the countryside, again not including a new home for a family relative.
- 6.52 Although the policy aims to control future occupancy the Council anticipate problems in enforcing this and suggest that ancillary accommodation might be more appropriately secured through CDLP Policy HO18 which provides for ancillary relatives accommodation through extensions to existing properties or conversion of existing curtilage buildings.
- 6.53 Although neighbourhood plans are only required to have regard to national planning policy and to conform generally with local strategic policy in order to satisfy the Basic Conditions, where there are basic conflicts and practical issues the policy should be supported by appropriate and proportionate evidence, in line with Planning Practice Guidance. As this is not the case I recommend that this part of the policy be deleted and replaced with a reference in the text to providing ancillary relatives accommodation through CDLP Policy HO18.
- 6.54 Similar considerations apply to criteria (iv), as individual dwellings that demonstrate excellence and innovation in environmental sustainability are not identified in national planning policy as one of the special circumstances where isolated dwellings may be acceptable, and no evidence has been provided to demonstrate the need for this type of development which could result in a proliferation of dwellings in the countryside. I also agree that there may be circumstances where dwellings of this type may occasionally be acceptable as a dwelling with 'exceptional quality or innovative design', one of the exceptions to the general policy of restraint, identified national policy.

- 6.55 In relation to proposals for replacement dwellings the policy conforms with Local Plan Policy STRAT9. It also takes account of national policy (paragraph 55) and conforms with Local Plan Policy STRAT9 and with CDLP Policy EC23 in relation to dwellings for rural workers.

Recommendation 06

Delete criteria (ii) and (iv) from the policy and insert a reference in the Explanatory text to the scope for providing ancillary relatives accommodation through CDLP Policy HO18.

- 6.56 Subject to the above modifications the policy meets the Basic Conditions.

- 6.57 **Policy H3 (Housing Type and Tenure)** aims to ensure that new housing development provides an appropriate element of affordable housing in accordance with the most up to date assessed needs in the Strategic Housing Market Assessment.

- 6.58 The policy specifically highlights the housing needs of local people, including older people, and requires a proportion of new homes to be built to Lifetime Homes Standard, although it also acknowledges that specific site conditions may affect scheme viability

Comments

- 6.59 Policy H3 has regard to national planning policy by supporting the provision of inclusive and mixed communities one of the key aspects of sustainable development. It also generally conforms with Local Plan policies SOC1, SOC3 and SOC5.
- 6.60 However to more accurately reflect national policy and local strategic policy, consistent with the previously recommended change to the third Objective of the plan, (see Recommendation 02) the policy should aim to satisfy objectively identified housing need, not just housing need of local people.
- 6.61 While the intention to secure a proportion of Lifetime Homes on new developments of more than 10 dwellings is a laudable objective, particularly in the light of the current media focus on planning for an ageing population, it is unfortunately not supported by specific evidence.
- 6.62 While a number of policies in the plan are justified on the basis of strong local support, where policies such as Policy H3 introduce specific standards or targets, it is important that they are supported by 'proportionate and robust evidence' to explain the intention and rationale of the policies in line with PPG guidance²⁰, for example in this case to justify why a departure from national and local strategic policy is

²⁰ Planning Practice Guidance para 040 Ref ID: 41-040-20140306

appropriate. I am particularly mindful of the fact that Policy H3 could create a situation where future proposals would be judged against an inflexible threshold which would not allow changing circumstances to be taken into account.

Recommendation 07

- a) In the second paragraph insert '*objectively assessed housing needs, including*' after 'Application of this policy should aim to ensure that new housing development provides for.....'.
- b) In the second sentence of the fourth paragraph delete 'At least 25% of new houses on developments of more than 10 homes in Malpas should be' and insert '*Developments of more than 10 homes in Malpas should include an element of fully compliant LifeTime homes*', and make consequential changes to paragraph five of the policy and to the Explanatory text.

6.63 Subject to the above modifications the Policy meets the Basic Conditions.

6.64 **Policy H4 (Housing Character and Design)** requires new housing schemes to reflect the organic growth of Malpas and ideally to be limited to a maximum of 30 houses in order to avoid large 'estate type' areas of similar appearance. Where schemes exceed 30 dwellings they should incorporate different areas of 'distinct and discernible character', each no larger than 30 dwellings.

Comments

6.65 The policy has regard to national policy by promoting designs which respond to and make a positive contribution to local character and history. This is a key aspect of sustainable development. It also reflects Local Plan Policy STRAT8 by promoting development appropriate in scale and design to conserve the settlements character and setting and reflects Policy ENV6 by promoting sustainable development which respects local character and achieves a sense of place.

6.66 This approach is justified by evidence of growth over the previous 100 years, and reflects a strong community desire to avoid larger homogenous developments which are not well integrated into the existing settlement. As such the policy represents a very well thought through and flexible approach to future growth.

6.67 Subject to incorporating a reference to conserving and enhancing the historic environment in order to address general concerns raised by English Heritage I conclude that the policy satisfies the Basic Conditions. In so doing I reject the assertion by Gladman Developments that the policy is overly restrictive and will not contribute to sustainable development particularly since the representation acknowledges that the

policy may allow schemes larger than 30 dwellings.

Recommendation 08

Incorporate a reference to ‘conserving and enhancing the historic environment, including the setting of heritage assets, where appropriate’ in both the policy and the Explanatory text.

Section 5.2 Built Environment and Local Character

- 6.68 In common with other sections of the plan the policies dealing with built environment and local character are preceded by text which identifies the objectives which are met by the policies, and which summarises the issues and opportunities which are addressed and the relevant evidence base. As referred to previously English Heritage are concerned that the plan generally, and section 5.2 in particular, places insufficient emphasis on conserving and enhancing the historic environment to balance the focus on maintaining local character and distinctiveness.
- 6.69 While I agree that in order to fully reflect national policy additional reference should be made to conserving and enhancing the historic environment I do not share the view that the plan is deficient in evidence regarding the historic environment, and that the plan should be informed by an up-to-date conservation area appraisal and management plan, for the reasons set out in paragraphs 6.19 - 6.22 above. I make a number of recommendations in this section accordingly.

Recommendation 09

Incorporate additional reference under Issues and Opportunities (in Section 5.2) to the desirability of conserving and enhancing the significance of heritage assets including their setting.

Subject to the above modification the policy meets the Basic Conditions

- 6.70 **Policy BE1 (Scale and Form of New Development)** has regard to national policy by requiring development to conform with the principles of good design in order to safeguard the built character and historic environment of Malpas, and the rural character of the surrounding area, particularly with regard to the scale and form of development. This is consistent with the environmental dimension of sustainable development.
- 6.71 The policy also generally conforms with principles established in the Local Plan by promoting development of an appropriate scale and design to conserve the settlements character and setting (Policy STRAT8), which respects and responds positively to heritage assets (Policy ENV5) and

which respects local character and achieves a sense of place (Policy ENV6).

- 6.72 The final paragraph of the policy however introduces a threshold which requires the application of Building for Life Assessments to schemes larger than 6 residential units, for which no evidence and justification has been provided.
- 6.73 While a number of policies in the plan are justified on the evidence of strong local support, where policies introduce specific thresholds it is important that they are supported by 'proportionate and robust evidence' to explain the intention and rationale of the policies in line with PPG guidance²¹. I am particularly mindful of the fact that Policy BE1 could create a situation where future proposals would be judged against an inflexible threshold which would not allow changing circumstances to be taken into account. This paragraph would in any case be better placed in the Explanatory text as supporting guidance.

Recommendation 10

Delete the last paragraph and incorporate the text in the accompanying Explanation as guidance, with an amended reference to requiring Building for Life Assessments in appropriate circumstances, rather than for all schemes larger than 6 dwellings.

- 6.74 Subject to the above modification the policy meets the Basic Conditions.
- 6.75 **Policy BE2 (Design of New Buildings)** has regard to national policy by promoting design which reflects local character and distinctiveness. The achievement of a high quality built environment and the protection of the built environment contribute to the social and environmental aspects of sustainable development.
- 6.76 The policy also generally conforms with principles established in the Local Plan by promoting development of an appropriate scale and design to conserve the settlements character and setting (Policy STRAT8) and which respects local character and achieves a sense of place (Policy ENV6)
- 6.77 The policy is supported by an assessment of local character as part of the evidence base.
- 6.78 Subject to incorporating a reference to conserving and enhancing the historic environment in order to address general concerns raised by English Heritage, and bring the policy more in line with national policy and Local Plan policy ENV5 in this respect I conclude that the policy satisfies the Basic Conditions.

²¹ Planning Practice Guidance para 040 Ref ID: 41-040-20140306

Recommendation 11

Incorporate a reference to ‘conserving and enhancing the historic environment, including the setting of heritage assets, where appropriate’ in both the policy and the Explanatory text.

- 6.79 **Policy BE3 (Alterations and Extensions)** is intended to ensure that alterations and extensions to buildings are sensitively designed and do not harm either the character of the building nor its contribution to the character of the wider area. This is in addition to specific controls already provided through listed building and conservation area legislation.
- 6.80 The policy has regard to national planning policy and contributes to sustainable development by widening choice and supporting improvements in the conditions in which people live and work while reflecting the need to protect and enhance the built and historic environment.
- 6.81 The policy also reflects principles established in the Local Plan by promoting development of an appropriate scale and design to conserve the settlements character and setting (Policy STRAT8), which safeguards heritage assets (Policy ENV5) and which respects local character and achieves a sense of place (Policy ENV6).
- 6.82 A minor change to the policy wording is suggested by English Heritage which I agree would strengthen the policy wording and better reflect national planning policy in relation to the conservation of heritage assets.

Recommendation 12

Delete ‘the setting of adjacent’ after ‘including its impact on...’ and insert ‘*significance of heritage assets and their setting*’.

- 6.83 Subject to the above modification the policy meets the Basic Conditions.
- 6.84 **Policy BE4 (Character Buildings and Structures)** gives specific protection to buildings, structures and spaces which have been identified as being ‘important to local character’ by the local community. Development must respect and enhance the character and setting of these ‘local assets’, which are identified in Figure 5.1 and in Appendix D.
- 6.85 Policy BE4 has regard to national policy by seeking to sustain and enhance significant local heritage assets, which will contribute toward both the quality of the built environment and toward people’s quality of life – two of the key aspects of sustainable development.
- 6.86 The policy also conforms with Local Plan Policy ENV5 (Historic Environment) by seeking to safeguard non designated heritage assets in addition to designated assets, as these also contribute to the distinctive

identity of the village.

- 6.87 I note that designated local heritage assets comprising listed buildings and a schedule ancient monument are identified separately in Figure 2.6 in the plan, although no explanation is provided as to the difference between designated heritage assets which are protected through specific legislation, and non designated heritage assets which are not.
- 6.88 I therefore recommend that additional explanation is provided in the accompanying Explanatory text to the policy to this effect and in order to clarify that the identified local heritage assets represent a lower tier of protection within the hierarchy of designations.

Recommendation 13

Incorporate additional explanation in the Explanatory text regarding the relationship between designated and non designated heritage assets to clarify that the local heritage assets have been identified and are being protected because of their particular local significance, and that these will supplement designated assets, which are protected through specific legislation.

- 6.89 Subject to the above modification the policy meets the Basic Conditions.
- 6.90 **Policy BE5 (Archaeology)** aims to conserve and enhance designated and non designated archaeological assets by requiring planning applications to be accompanied by archaeological surveys, followed if appropriate by field survey/excavation and mitigation measures. Features of particular local significance are identified in the policy and in Figure 5.2.
- 6.91 A number of concerns have been raised in response to the Regulation 16 publicity regarding the clarity of the policy and the extent to which it reflects national planning guidance namely :
- i. The policy wording does not reflect the fact it is specifically dealing with archaeological heritage assets as opposed to all heritage assets
 - ii. The policy fails to distinguish between scheduled monuments and sites of local importance
 - iii. A number of scheduled monuments have been omitted from Figure 5.2
 - iv. The requirement for all planning applications for development affecting areas identified in Figure 5.2 to be submitted with a 'field evaluation' is at odds with national planning guidance
 - v. The second paragraph of the accompanying Explanation conflicts with the requirement for archaeological assessment in the main policy.

Comments

- 6.92 i. Although the policy heading refers to 'Archaeology' and the

- explanatory text makes it clear that the policy is concerned with archaeological sites this is not reflected in the policy wording which could be misinterpreted. In the interests of absolute clarity the policy wording should refer to archaeological heritage assets.
- ii. English Heritage considers the plan should include a separate bullet point in the policy relating to scheduled monuments and the monuments should be listed in the plan. However as the explanatory text makes it clear that the policy is intended to supplement existing national and local strategic policies, and the bullet points specifically refer to sites of local significance I do not feel this is necessary. I am also aware that the list of designated heritage assets, including scheduled monuments are continually updated so listing currently known sites could be misleading in the future. It would however be appropriate to ensure consistency between the policy wording and the Explanatory text.
 - iii. For the reason stated above as the lists of designated historic assets are continually updated and Figure 5.2 is in any case intended to identify sites of local significance my feeling is that the scheduled monument (east of Overton Hall) identified in Figure 5.2 should be deleted. As a corollary to this the plan should clarify that Figure 2.6 identifies designated heritage sites, including archaeological sites, within the built up area of Malpas village only, and that these are identified for information purposes as the lists of designated heritage sites are continually updated.
 - iv. I disagree with the interpretation of national planning policy which clearly states (paragraph 128) that an appropriate desk based assessment should be submitted where sites have the potential to include heritage assets with archaeological interest, whether or not these are locally identified sites. It goes on to state that this may be followed by a field evaluation, 'where necessary', which is consistent with the approach set out in the policy. No modification is therefore required.
 - v. On the basis of the technical advice provided by both English Heritage and Cheshire West and Chester Councils archaeology team as part of their respective representations I am persuaded that the guidance provided in the Explanation to the policy regarding appropriate field evaluation techniques is misleading, and does not cover the full range of techniques. In the circumstances it would be better to delete the second paragraph.

Recommendation 14

- a) **Insert '*archaeological*' after 'Development must conserve and enhance designated and undesignated.....'**
- b) **Insert '*In addition to designated archaeological sites*' at the beginning of the third sentence in the first paragraph of the policy.**
- c) **Delete scheduled monument (Number 30392 east of Overton Hall) from Figure 5.2, and amend the heading to Figure 2.6 to**

clarify that the map only identifies designated heritage sites, including archaeological sites, within the built up area of Malpas for information purposes.

d) Delete the second paragraph in the Explanation accompanying the policy.

6.93 Subject to the above modification the policy meets the Basic Conditions.

Section 5.3 Landscape Character and the Natural Environment

Policy LC1 (Landscape Character and Development)

6.94 In recognition of the areas distinctive landscape character new development in the rural area (i.e. outside Malpas) will be required to preserve and enhance the established landscape character. The design of new buildings is also expected to respond to the established character of existing rural buildings. The impact of any associated external lighting should also be minimised.

6.95 Policy LC1 has regard to national policy by seeking to conserve and enhance the natural environment, and ensure that new developments respond to local character and history, reflecting the identity of local surroundings. This is consistent with the environmental dimension of sustainable development.

6.96 The policy also conforms with Local Plan Policy ENV5 by promoting development which respects local character and achieves a sense of place through appropriate layout and design.

6.97 However the first paragraph of the policy is confusing and contradictory. On the one hand the policy establishes a requirement for development in the rural area to preserve and enhance landscape character, which I infer to mean development which is acceptable in accordance with other Neighbourhood Plan and local strategic policies, whereas the second part of the paragraph seems to be concerned with circumstances where development would not normally be acceptable. As drafted the policy would not require development approved as an exception to normal policy to preserve and enhance the established landscape character.

6.98 I therefore recommend the deletion of the second part of the first paragraph.

The reference to 'outside of Malpas village' should also be amended to be consistent with the approach recommended in relation to Policy H1 in order to provide more clarity and future proofing in relation to the delineation of settlement limits and operation of development management policies.

6.99 Subject to these modifications the policy meets the Basic Conditions.

Recommendation 15

- a) Delete 'unless there are exceptional circumstances for the development and no suitable alternative sites are available'.
- b) Change 'outside of Malpas village' to '*outside the built up area of Malpas village*'.

- 6.100 **Policy LC2 (Renewable Energy)** supports proposals involving renewable technology, including wind turbines, provided a range of adverse and unacceptable impacts are avoided including adverse impacts on the landscape and character of the built environment; significant harm to heritage assets, residential amenity and wildlife species; and unacceptable public health and safety impacts.
- 6.101 The policy has regard to national planning policy by supporting the move to renewable and low carbon energy sources, while taking account of a range of considerations which contribute to the achievement of the economic, social and environmental dimensions of sustainable development.
- 6.102 It generally conforms with Local Plan Policies STRAT1, ENV2, ENV5, ENV5, ENV6 and ENV7.

Comments

- 6.103 Policy LC2 in common with a number of other policies is subject to a general objection by English Heritage that inadequate attention is given to conserving and enhancing the historic environment. In this particular instance as equal weight is given to 'avoiding harm to heritage assets' in the list of considerations which proposal must address, special recognition is not required in this instance.
- 6.104 I do take the point that the reference in the final paragraph of the policy to assessing the impacts on heritage assets on the basis of (the future) Malpas Conservation Area Appraisal is inappropriate as proposals should be judged on the basis of local, strategic and national policy rather than evidence base documents. I recommend accordingly.
- 6.105 There is also a basic inconsistency in the policy which should be rectified. Although the policy includes a detailed list of considerations which proposals must address the introductory paragraph to the policy refers to an incomplete list of considerations which could be taken out of context.
- 6.106 I am also required to address an objection to the policy by a member of the public who does not feel the policy provides adequate guidance to ensure the protection of residential amenity. It is suggested that an alternative policy based on a minimum separation distance of 800 metres between wind turbines and residential properties would better satisfy the Basic Conditions. However since the purpose of the examination is to determine whether the plan meets the Basic Conditions and not to test for soundness, neither is it appropriate to assess whether an alternative approach would better meet the Basic Conditions than the policy in the

Plan.

- 6.107 I would add that as the justification for the alternative policy is based on evidence from a different local authority area I can attach only limited weight to it as it does not necessarily relate to local circumstances.
- 6.108 As the policy is based on the most up to date Planning Practice Guidance on renewable energy and generally accords with local strategic policy, particularly Local Plan Policy ENV7 (Alternative Energy Supplies), I am satisfied that it represents an appropriate response to managing proposals for wind turbines and other forms of renewable energy.

Recommendation 16

- a) **In the first paragraph delete ‘landscape character, built character and residential amenity is not significantly adversely affected.’ after ‘The development of renewable energy is supported provided....’ and substitute ‘*a range of unacceptable environmental, amenity and public health and safety impacts are avoided*’.**
- b) **Replace the final paragraph of the policy with the following ; ‘*The impacts on landscape character, built character and heritage assets should be assessed with reference to national planning policy, local strategic policy and other relevant policies in the Neighbourhood Plan (especially BE1, LC1, LC3 and LC4)*’.**

- 6.109 Subject to the above modifications the policy meets the Basic Conditions.

Policy LC3 (Key Views)

- 6.110 The policy aims to protect key views into and out of Malpas, and to minimise the visual impact on the landscape. Key views are identified in Figure 5.1. This will contribute toward a high quality built environment one of the key attributes of sustainable development.
- 6.111 The policy reflects saved Local Plan Policy ENV6 (High Quality Design) which promotes development which respects local character and is sympathetic to heritage, environmental and heritage assets. Paragraph 8.51 of the Local Plan states that new development will be required to demonstrate that it is appropriate to the character and context of the local and surrounding environment, including consideration of important views.
- 6.112 While I accept as pointed out by Gladman Developments that there is nothing in national planning policy which gives entitlement to a view it seems to me that the intention of the policy is not to constrain development but to ensure that the design and layout of new development respects existing views. As referred to in the final paragraph of the accompanying Explanation proposals should ensure that views are used as ‘positive design features that will add a distinctive sense of place,

for example by aligning new roads to vistas’.

- 6.113 Neither in this case do I consider that the general mantra of English Heritage that inadequate attention is given to conserving and enhancing historic environment is justified as the policy is complimentary to national , local strategic and other Neighbourhood Plan policies, and to specific historic environment legislation.
- 6.114 The policy therefore meets the Basic Conditions and no modifications are required.
- 6.115 **Policy LC4 (Green Spaces and Corridors)** aims to protect green areas and open spaces which have particular local significance, including green corridors, amenity spaces, sport and recreation sites, and sites valued by the local community for their nature conservation value. 42 ‘green spaces’ are identified in Figure 5.1 and described in more detail in Appendix E of the Plan. Significant new developments will be required to enhance or to create new green space, including wildlife corridors. The Explanatory text states that these green spaces are additional to those already identified and protected through saved policies in the Chester District Local Plan.

Comments

- 6.116 The objective of protecting and enhancing existing open spaces generally conforms with local strategic policy to provide high quality open space (SOC5), to protect and enhance existing open spaces (SOC6), to safeguard sites with nature conservation value (ENV4) and to create a network of green infrastructure (ENV3).
- 6.117 The desirability of identifying and protecting green areas that are of particular significance to local communities is also recognised in national planning policy and facilitated through the designation of ‘Local Green Space’ (paragraphs 76 and 77). While Policy LC4 does not specifically refer to Local Green Space the designated sites are identified as Green Corridors/Green spaces in Figure 5.1, and referred to as Local Green Spaces and Corridors in Appendix E.
- 6.118 However although I recognise that the local community is in the best position to judge which sites hold particular local significance for them I have a number of reservations about the identified sites, particularly regarding conformity with national policy (as set out in NPPF paragraph 77), and the supporting Planning Practice Guidance on Local Green Space designation.
- 6.119 First, national planning policy stipulates that Local Green Space designation will not be appropriate for most green areas or open space and identifies three criteria which must all be satisfied, namely;
- that the green space is in reasonably close proximity to the community it serves
 - the green area is demonstrably special to a local community and holds a particular local significance, and
 - it is local in character and not an extensive tract of land.

- 6.120 A number of identified sites do not meet one or all of these requirements.
- 6.121 Although a number of sites are situated within or adjacent to the existing built up area, others are relatively remote from Malpas and cannot be described as 'being in reasonably close proximity to a local community'. I accept that national policy is somewhat vague in this respect, for example the definition of local community might be interpreted as 'the community living within the plan area', although a more realistic interpretation is for sites to be located in reasonably close proximity to a settlement. Planning Practice Guidance (paragraph 014) also suggests sites should be within easy walking distance of the community served particularly if public access is a factor. On this basis I consider that at least nine of the designated sites, namely Sites 14, 15, 16, 19, 21, 23, 24, 29, and 40, do not satisfy the first criteria.
- 6.122 In addition as both national policy and the accompanying Planning Practice Guidance emphasise the need for designated Local Green Space to be demonstrably special and to hold particular local significance, I consider the inclusion of four areas of local amenity space (Sites 2, 3, 4, and 5 which are described in Appendix E as children's play areas) is inappropriate.
- 6.123 With regard to the third criteria, while it is a moot point as to what constitutes a site that is local in character, it seems to me that Sites 16, 17 and 40 cannot satisfy this criteria as they are relatively extensive tracts of countryside, comprising a mixture open fields and woodland.
- 6.124 Second, a high proportion of sites (27 out of 42) have been included because they are considered to have nature conservation value. In comparison with other sites such as recreation open space where the use and function of the site is obvious, it seems to me that it is necessary to provide some evidence of the nature conservation value in order to justify designation, although none has been provided. Bearing in mind that national Planning Practice Guidance suggests that evidence should be proportionate and appropriate I would have thought that while a full ecological survey might not be necessary each site should at least be supported by an inventory of corroborated species, and other relevant information.
- 6.125 Third, a number of sites are already protected through saved CDLP policies. Five (Sites 1, 6, 8, 9, and 10) are designated as 'Other Green Space' in the CDLP, and a further five (Sites 12, 15, part 16, 23, 29, and part 40) are identified as Designated Nature Conservation Sites (i.e. Sites with Nature Conservation Value, Areas with Nature Conservation Value or Sites of Biological Importance). Not only does this duplicate saved CDLP policies but it conflicts with Planning Practice Guidance on Local Green Space designation which suggests (paragraph 011) that where land is already protected by another designation consideration should be given as to whether any additional local benefit would be gained by designation as Local Green Space.
- 6.126 Fourth, the inclusion of linear corridors comprising public footpaths,

byways and bridleways, (and in three cases sections of public road) is not in accordance with Planning Practice Guidance (paragraph 018) which indicates that there is no need to designate linear corridors as Local Green Space simply to protect rights of way that are already protected by other legislation. If the intention is to protect the inherent character of these green corridors, rather than to safeguard existing 'rights of way', there is again no supporting evidence for this. There is also a practical difficulty with the way the corridors have been identified as it is not possible to determine the extent of the associated hedgerow/tree cover which is intended to be protected.

- 6.127 Fifth, Planning Practice Guidance (paragraph 019) emphasises the importance of contacting landowners at an early stage about proposals to designate any part of their land as Local Green Space. Although landowners will have had the opportunity to make representations on the proposals during formal consultation on the Plan, I can find no evidence of targeted consultation with landowners. Nine sites are referred to as private land or private garden in Appendix E although it is apparent that there are many more ownerships to consider. For example Site 40 (Kidnal Hill) comprises mostly farm land which does not enjoy public access. Although designation as Local Green Space does not confer rights of public access over land, I would have thought it appropriate to discuss the proposals with the landowner. Similarly Cheshire West and Chester Council as Local Education Authority might reasonably expect to be involved in discussions regarding the proposed designation of school playing fields as Local Green Space, particularly since designation might affect their own forward planning, which could conceivably involve the future relocation of school playing fields.
- 6.128 I also note that Site 23 (Gams Wood) falls outside the Neighbourhood Plan area.
- 6.129 Notwithstanding the above considerations I acknowledge that the desire to protect land valued by the local community is an appropriate aspiration for the Plan. Neither would designation of the Local Green Spaces identified in the Plan generally conflict with the requirement set out in national policy that designation should be consistent with the principles of sustainable development and complement the provision of new homes, jobs and other essential services.
- 6.130 The only potential exceptions to this are Sites 30, 31 and 32 which are located at the urban edge. In this respect Site 32 (Marshy land at the bottom of Well Street) already has the benefit of planning consent, whereas Planning Practice Guidance (paragraph 008) indicates that Local Green Space designation will rarely be appropriate where land has planning permission for development unless development would be compatible with the reason for designation, or where the permission is no longer capable of being implemented.
- 6.131 In conclusion however, owing to the fact that sites identified as Local Green Space in the Plan do not comply with the criteria for designating Local Green Space set out in national planning policy and the

accompanying Planning Practice Guidance, and/or have not been adequately justified, I have to recommend the policy be deleted in order to meet the Basic Conditions.

- 6.132 In so doing I am mindful of the fact that few of the identified sites are likely to be threatened by short term development pressures due to their location or the fact that they are already protected through other existing legislation or extant policies. Future consideration could therefore be given to reviewing the list of sites and providing appropriate justification to ensure compliance with national policy and Planning Practice Guidance. This could be pursued either through a future Plan review, or as part of Cheshire West and Chester Councils proposed Site Allocations and Detailed Policies Local Plan.

Recommendation 17

Delete Policy LC4

- 6.133 **Policy LC5 (Biodiversity)** aims to increase biodiversity in the rural area by ensuring that development includes provision for new or extended wildlife corridors and green spaces, and through the use of indigenous species in new planting. The policy also promotes the retention of existing hedgerows and mature trees.
- 6.134 The policy has regard to national policy by seeking to conserve and enhance the natural environment, particularly biodiversity. This is consistent with the environmental dimension of sustainable development, which includes the objective of 'moving from a net loss of biodiversity to achieving net gains for nature' (NPPG paragraph 9).
- 6.135 The policy conforms with Local Plan Policy ENV4 by aiming to safeguard and enhance biodiversity and will also contribute to the creation, enhancement and protection of green infrastructure in line with Policy ENV3.
- 6.136 The first part of the policy therefore meets the Basic Conditions and no modification is required. However as the second part of the policy concerns tree protection, including TPO protected trees and trees within the Malpas Conservation Area, I see no reason why the policy as a whole should not apply within the built up area as well as the rural area, to avoid disparity between the two parts of the policy.
- 6.137 I also agree with English Heritage that the second part of the policy is misleading because it implies that trees (over 1.5 metres) in conservation areas, which are given automatic protection, could be felled if proven to be of poorer quality than category A and B trees, which is not the case. It would therefore be more appropriate for the final part of the policy, which provides explanatory text about the operation of the policy, to be removed from the policy and incorporated within the accompanying Explanation. This would also provide the opportunity to rectify the omission of any explanation about category A and B trees which I understand to be part of

the current BS Standard classification used for surveying trees (BS 5837).

Recommendation 18

- a) **Delete ‘in the rural area’ in the first sentence.**
- b) **Delete ‘It is accepted that lower quality trees’ to the end of the paragraph and incorporate this text together with an accurate explanation of current legislation regarding tree protection and the relationship with the current BS Standard classification used for surveying trees, in the Explanation accompanying the policy.**

6.138 Subject to these recommended modifications the policy meets the Basic Conditions.

Section 5.4 Services and Facilities

- 6.139 **Policy SF1 (Village Centre)** has regard to national policy by ‘promoting the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship’ (NPPF paragraph 28 bullet point 4). Building a prosperous rural economy and vibrant communities are key attributes of the economic dimension to sustainable development.
- 6.140 The policy generally conforms with Local Plan Policy STRAT8 which supports the retention of rural shops and community facilities, and the provision of new facilities at an appropriate scale to the settlement.
- 6.141 Although there is no precedent for defining ‘village centres’ in the CDLP, and no intention to define them in the Local Plan (Part two), the definition of the ‘village centre’ is clearly necessary in order to identify the area within which Policy SF1 applies. This will help to provide a focus for future investment and growth.
- 6.142 As referred to in paragraphs 6.7 – 6.12 above however the accompanying Explanation to the policy confuses the Key Service Centre role of Malpas in the Local Plan as a location for accommodating future growth and providing a range of services for the surrounding area, with the specific role of the village centre, which is defined in Figure 5.1. I agree with Cheshire West and Chester Council that the second paragraph in the Explanation should therefore be deleted, particularly since Policy SF1 already makes it clear that the ‘village centre’ is defined in Figure 5.1.
- 6.143 On a separate issue Figure 5.1 is referred to as the ‘proposals map’ in Policy SF1, although this is inconsistent with other references to Figure 5.1 throughout the plan. As Figure 5.1 comprises a mixture of supporting information and delineated policy areas, such as the extent of the built up area and village centre boundary, describing it as a proposals map in the

context of Policy SF1 is not strictly necessary, and I recommend the wording be amended accordingly.

- 6.144 With regard to the precise boundary of the village centre, I note this encompasses a mixture of retail, commercial, and community premises, including St Oswald's Church and part of the adjacent churchyard, uses which correspond with those referred to in paragraph 28 in national policy. I would have thought it also appropriate to include the car park and two modern retail units immediately adjacent to the centre, but it is not my role to test the soundness of the boundary and I therefore make no recommendation in this respect.

Recommendation 19

- a) **Delete the first two sentences in the policy and substitute the following: '*The Village Centre as defined in Figure 1 should remain the focal area where shops, services and community facilities are clustered*'**
- b) **Delete the second paragraph in the accompanying Explanation.**

- 6.145 Subject to the above modification the policy meets the Basic Conditions.
- 6.146 **Policy SF2 (Church Street)** promotes the retention of the special character of Church Street, including its special heritage value and specialist food and drink retail offer.
- 6.147 The policy has been challenged on the basis that it is unclear why Church Street has been singled out for special protection, which could undermine the character of other streets, and why a policy dealing with local character and design issues has been included in the retail section.
- 6.148 I do not feel either of these points affect the ability of the policy to satisfy the Basic Conditions. The policy accords with national policy by aiming to safeguard the distinctive character of the area by retaining and strengthening the existing mixture of uses, including the specialist food and drink retail offer. It compliments Local Plan Policy ECON 2 by promoting the development of a strong evening economy and Policy ECON3 by supporting the visitor economy.
- 6.149 Subject to incorporating a reference to conserving and enhancing the historic environment in order to address general concerns raised by English Heritage, and bring the policy more in line with national policy and Local Plan Policy ENV5 on the historic environment I conclude that the policy satisfies the Basic Conditions.

Recommendation 20

Incorporate a reference to ‘conserving and enhancing the historic environment including its setting where appropriate’ in both the policy and the Explanatory text.

- 6.150 **Policy SF3 (Upper Floors)** encourages the use of upper floors in the defined village centre for office, professional services and residential use, in order to maximise the use of sustainable premises, help support the retention of listed and character buildings, and maintain the vibrancy of the centre.
- 6.151 The policy has regard to national policy by recognising the need to promote the vitality and viability of centres including the role that residential development can play in ensuring the vitality of centres. Widening the choice of housing and facilitating job creation are key aspects of sustainable development.
- 6.152 The policy contributes toward Local Plan Policy ECON2 and STRAT8 objectives by encouraging the provision of new facilities and job opportunities. It generally conforms with Local Plan Policy ENV5 by helping to safeguard designated and non designated heritage assets
- 6.153 The policy therefore meets the Basic Conditions and no modifications are recommended.
- 6.154 **Policy SF4 (New Community Infrastructure)** underpins the principle of taking into account the impact of new development on existing infrastructure, when assessing planning proposals. It is also intended to ensure that the impacts of development are appropriately mitigated and that the views of the local community are taken into account in order to understand local needs and priorities. The policy is accompanied by evidence of local priorities in a separate Appendix.
- 6.155 The provision of infrastructure, mitigating the impacts of development and providing services and facilities that reflect a community’s needs are fundamental principles embedded in national planning policy and key attributes of sustainable development.
- 6.156 Policy SF4 generally conforms with local strategic policy by providing for the delivery of infrastructure improvements and the provision/enhancement of new facilities (STRAT11), and by supporting opportunities to improve the health and wellbeing of local residents (SOC5).
- 6.157 The accompanying Explanation also reflects current CIL regulations by acknowledging that monies from planning applications should be spent on evidence local priorities and that the need for community facilities and infrastructure should be directly related to the development, necessary to make it acceptable in planning terms and reasonably related to it in scale and kind.

- 6.158 The policy therefore meets the Basic Conditions and no modification is required.

Section 5.5 Supporting the Local Economy

- 6.159 **Policy LE1 (Flexible Workspace)** promotes the provision of flexible workspace to support the expansion of local businesses, particularly within or immediately adjacent to the village centre, provided there are no unacceptable impacts on residential amenity, and traffic and parking considerations are taken into account. It is justified on the basis that there are a number of existing small businesses, including those operating from home that would benefit from support facilities and grow on space locally, and that Malpas represents a sustainable location in this respect.
- 6.160 Policy LE1 has regard to national planning policy by supporting economic growth and innovation in a positive sustainable manner. Facilitating economic growth is one of the key attributes of sustainable development.
- 6.161 Although Malpas is not identified as a strategic employment centre in the Local Plan, the rural area as a whole is expected to accommodate in the region of 10 hectares of land for business and industrial development on sites within and on the edge of key service centres, including Malpas. The policy will therefore contribute toward the achievement Local Plan strategy in this respect (Policies STRAT8 and ECON1).
- 6.162 My only concern is that the policy wording does not specifically restrict the provision of new workspace to Malpas although proposals for new build development outside the existing built up area would conflict with established national and local strategic policy (Policy STRAT 9) to safeguard the countryside. Subject to rectifying this anomaly the policy meets the Basic Conditions.

Recommendation 21

Delete 'in the area' after 'if a suitable location can be identified' and insert '*in Malpas*', and clarify in the Explanation that new build workshops will not be acceptable in the surrounding rural area.

Policy LE2 (Rural Diversification and Local Tourism)

- 6.163 The policy seeks to support rural diversification by identifying the types of employment and leisure/tourism development that is acceptable in principle, including small scale office, retail and tourism facilities provided proposals support existing farms or businesses, or are linked with the rural location. Proposals must be proportionate to the character of the area, and have full regard to transport impacts and effects on landscape character.
- 6.164 Policy LE2 generally reflects national policy and local strategic policy

which support rural diversification, including tourism (Policies STRAT9 and ECON3) However the emphasis is on the type of uses which will be supported ie small scale rural offices, retail and other small scale employment or tourism in order to support farm/rural diversification. No reference is made to the form of development which may be acceptable such as the re-use of existing rural buildings, limited expansion of existing businesses, and small scale, low impact rural/farm diversification schemes (as referred to in Local Plan Policy STRAT9).

- 6.165 Although there is nothing wrong with this approach because the emphasis is on rural/farm diversification the policy appears to overlook the fact that national and local strategic policy also supports the re-use of rural buildings and the expansion of existing buildings for employment purposes that are not necessarily related to farm diversification. Clarification is required on this point in order to bring the policy fully in line with higher tier policy.
- 6.166 Cheshire West and Chester Council have expressed concern about the retail element of the policy which they believe should reflect the sequential approach or be limited to small scale farm shops linked with rural diversification schemes. Although I can find nothing in national or local strategic policies which specifically supports new build retail development in the countryside whether it is related to rural/farm diversification or not, as there appears to be local consensus on this issue and no objection to the policy, I do not recommend the removal of this part of the policy. However clarification is required to ensure that small scale retail development (whether through conversion of existing premises or new build) is directly related to farm diversification. Similarly retail proposals in connection with tourism activity should be ancillary to that use. Neither is it appropriate to discriminate against non independent retail operators.

Recommendation 22

- a) In the second paragraph insert the following new sentence after 'or where the use is linked with the rural location.'
'In addition to farm/rural diversification schemes proposals for the extension of existing buildings or conversion of existing rural buildings for economic purposes will be supported' and include reference to this in the accompanying Explanation.
- b) Replace the final paragraph with the following;
'Proposals for small scale retail facilities within the rural area to support farm diversification, or as ancillary to tourism facilities, will be supported'.

Section 5.6 Transport and Communications

- 6.167 **Policy TC1 (Village Travel Plan)** provides a commitment to producing and maintaining a travel plan for the village. This is intended to form the basis for a comprehensive travel plan, by encouraging individual developers to co-operate with the Parish Council in connection with the preparation of travel plans triggered by future planning applications.
- 6.168 The promotion of sustainable transport, including the preparation of travel plans, is embodied in national planning policy and is a key attribute in the economic, social and environmental elements of sustainable development.
- 6.169 Clearly transport issues and traffic management are inextricably linked to land use planning. Given the likely future scale of development on the edge of Malpas I can see the merit in the approach outlined.
- 6.170 I also note that consultation during the preparation of the plan has highlighted the fact that traffic issues are a key area of concern, combined with the fact that there seems to be a consensus in favour of the policy and there are no objections
- 6.171 However the dilemma I have is that the policy is partly a proposed action on the part of the Parish Council and partly aspirational in terms of compelling a third party to undertake an action which the Parish Council has no control over.
- 6.172 As it is not a land use policy I am therefore not able to consider whether it satisfies the Basic Conditions.
- 6.173 In the circumstances I therefore have no option but to recommend the removal of the policy. I further recommend that the broad intention of the policy is incorporated as an aspiration in the plan with the proviso that developers should be encouraged to work with the Parish Council on the travel plan rather than being compelled to do so.

Recommendation 23

Delete Policy TC1 and incorporate it within the plan as an aspirational policy which encourages developers to co-operate with the Parish Council on traffic management issues and the preparation of travel plan for the village. The aspirational policy should be clearly distinguished from land use policies in the plan.

- 6.174 **Policy TC2 (Travel and Parking Impacts)** is intended to ensure developers accurately identify, assess and mitigate the travel and parking impacts of development, and that proposed mitigation measures are informed by local priorities identified through the NDP process.
- 6.175 Similar considerations apply as raised above. The first part of the policy comprises a description of the usual process that operates in connection

with development proposals. The second part of the policy describes an aspirational process and a dialogue which the Parish council would wish to be involved in.

- 6.176 I recommend its deletion for the same reasons.

Recommendation 24

Delete Policy TC2 and incorporate it within the plan as an aspirational policy which encourages developers to co-operate with highways officers and the Parish Council on measures to mitigate the travel and parking impact of development, including traffic management solutions. The aspirational policy should be clearly distinguished from land use policies in the plan.

- 6.177 **Policy TC3 (Pedestrian and Cycle Routes)** requires new developments to provide good footway and cycle connections, both within the scheme and linking to the village centre.
- 6.178 The promotion of sustainable transport, good design principles, and healthy communities with safe and accessible environments are embodied in national planning policy. These are all key attributes of the economic, social and environmental elements of sustainable development.
- 6.179 The policy generally conforms with Local Plan Policy STRAT10 which requires development to ensure that appropriate provision is made for alternative means of transport to the car and that measures are incorporated to improve physical accessibility, particularly for disabled and older people. It also supports the objectives of Policy SOC5 by promoting safe and accessible environments, with good access by walking and cycling.
- 6.180 As the Local Highway Authority is responsible for highway design standards (including footpath provision) which may vary over time, and as no evidence or justification has been put forward, I recommend the deletion of the last sentence of the policy.

Recommendation 25

Delete the last sentence of Policy TC3.

- 6.181 Subject to the above modification the policy meets the Basic Conditions.

7.0 Conclusions and Formal Recommendations

Referendum

- 7.1 I consider the Neighbourhood Plan meets the relevant legal requirements and subject to the modifications recommended in my report it is capable of satisfying the four 'Basic Conditions'.
- 7.2 Although there are a significant number of modifications the essence of the policies would remain, providing a framework, for managing future development proposals and protecting and enhancing the local environment.

I therefore recommend that the Neighbourhood Plan should, subject to the recommended modifications, proceed to referendum.

Voting Area

- 7.3 I am also required to consider whether the Referendum Area should be extended beyond the Malpas and Overton Neighbourhood Area. As the impact of the policies, both collectively and individually, is likely to be focused on the built up area of Malpas and to a much lesser extent on the surrounding countryside area, with minimal impact on land and communities outside the defined Neighbourhood Area I consider the Neighbourhood Area to be appropriate. No evidence has been submitted to suggest that this is not the case.

I therefore recommend that the Neighbourhood Plan should proceed to a Referendum based on the Neighbourhood Area as approved by Cheshire West and Chester Council on 17 April 2013.

Declaration

In submitting this report I confirm that

- I am independent of the qualifying body and the local authority.
- I do not have any interest in any land that may be affected by the Plan and
- I possess appropriate qualifications and planning and development experience, comprising 40 years experience in development management, planning policy, conservation and implementation gained across the public, private, and community sectors.

Examiner Terry Raymond Heselton BA (Hons), DiP TP, MRTPI

Dated 17 February 2015

Appendix 1 :

List of Documents referred to in connection with the examination of the Malpas and Overton Neighbourhood Development Plan

- Examination Version of the Malpas and Overton Neighbourhood Plan
- National Planning Policy Framework
- National Planning Practice Guidance
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004 (as amended)
- The Localism Act (2011)
- The Neighbourhood Planning (General) Regulations (2012)
- The Environmental Assessment of Plans and Programmes Regulations (2004)
- Cheshire West and Chester Council Local Plan Part One: Strategic Policies (adopted January 2015)
- Chester District Local Plan (adopted May 2006)
- Basic Conditions Statement (August 2014)
- Consultation Statement (August 2014)
- Environmental Screening and Habitats Regulation Assessment Statement (September 2014)
- Evidence Base Summary (August 2014)
- Application to designate a Neighbourhood Area, accompanying map and related correspondence
- Eleven representations received during the Publicity period

I also accessed Cheshire West and Chester Council's planning policy website pages during the course of the examination.