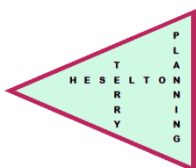


# **Draft Broxton and District Neighbourhood Plan (Submission Version)**

## **Report of the Independent Examination**

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

**Independent Examiner**



**Terry Heselton Planning**

**June 2016**



## **Contents**

	Summary	4
1.0	Introduction	5
2.0	Scope and Purpose of the Independent Examination	5
3.0	Representations	7
4.0	Compliance with Legal Requirements	8
	a) The Qualifying Body	
	b) Plan Area	
	c) Policies for the Development and Use of Land	
	d) Time period	
	e) Excluded Development	
	f) Publicity and Consultation	
5.0	Basic Conditions	12
	a) National Planning Guidance	
	b) Sustainable Development	
	c) Strategic Local Policy	
	d) European Union Obligations	
6.0	Comments on the Neighbourhood Plan	
	a) Introductory Sections	19
	b) Omissions	21
	c) Policies and Explanation	
	• Format	22
	• General comments	22
	• Themed Subsections	24
	d) Making it Happen	38
7.0	Conclusions and Formal Recommendations	38
	Declaration	40
	Appendix 1 : Background Documents	41

## **Summary**

I have examined the Broxton and District Neighbourhood Plan as submitted to Cheshire West and Chester Council by Broxton and District 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 a number of 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 Broxton and District Neighbourhood Plan proceed to referendum, and that the voting area corresponds with the Broxton and District Neighbourhood Area as designated by Cheshire West and Chester Council on 13 June 2013.

## **1.0 Introduction**

- 1.1 I have been appointed by Cheshire West and Chester Council, with the consent of Broxton and District Parish Council, to examine the Broxton and District Neighbourhood Development Plan and report my findings as an Independent Examiner.
- 1.2 The Broxton and District Neighbourhood Plan (referred to as ‘the Neighbourhood Plan’ or ‘the Plan’) has been produced by Broxton and District 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. Broxton and District Parish Council is a qualifying body for leading the preparation of a neighbourhood plan<sup>1</sup>.
- 1.3 The Plan Area comprises the three rural parishes of Broxton, Duckington and Harthill, at the eastern edge of the Cheshire Plain. It contains a number of small villages and hamlets including Barnhill, Brown Knowl, Duckington, Fullers Moor and Harthill, serving a small rural community of less than 500 people. The eastern part of the area forms part of the Cheshire Sandstone Ridge, an area of acknowledged landscape importance which commands widespread views of the surrounding area.
- 1.4 The Plan focuses on safeguarding the special landscape character of the area and associated local features while supporting the local economy and enhancing the provision of local services and infrastructure.
- 1.5 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 Broxton and District 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’<sup>2</sup>, 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’.
- 2.2 A neighbourhood plan meets the basic conditions if:
- having regard to national policies and advice contained in guidance

---

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

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

---

- issued by the Secretary of State', it is appropriate to 'make' the plan,
- the plan contributes to the achievement of sustainable development,
  - it is in general conformity with the strategic policies of the development plan for the area of the authority (or any part of that area), and
  - it does not breach, and is otherwise compatible with EU obligations
- 2.3 In addition to reviewing the Submission Draft of the Neighbourhood Plan I have considered a number of background documents which are listed in Appendix 1, together with representations submitted by fifteen individuals and organisations, 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 which require a public hearing to be held. I am also of the opinion that all parties have had full opportunity to register their views and put their case forward. Neither have I seen any requests for a hearing. I have therefore undertaken the examination through consideration of written representations, supported by an unaccompanied site visit of the Neighbourhood Plan Area.
- 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 <sup>3</sup>;
  - 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 <sup>4</sup>;
  - the Neighbourhood Plan has been prepared for an area that has been properly designated <sup>5</sup> and has been developed and submitted for examination by a qualifying body <sup>6</sup>, and
  - adequate arrangements for notice and publicity have been made in connection with the preparation of the Neighbourhood Plan<sup>7</sup>.
- 2.7 As Independent Examiner, I must make one of the following recommendations:

---

<sup>3</sup> Section 38A (2) Planning and Compulsory Purchase Act 2004 as amended

<sup>4</sup> Section 38B (1) Planning and Compulsory Purchase Act 2004 as amended

<sup>5</sup> Section 61G Town and Country Planning Act 1990 as amended

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

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

- that the Neighbourhood Plan is submitted to referendum, on the 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 requirements<sup>8</sup>.
- 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 errors<sup>9</sup>.
- 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 Broxton and District Neighbourhood Area, and if so what the extended area should be<sup>10</sup>.
- 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 a local Councillor and from or on behalf of fourteen organisations, namely; the Canal and River Trust, the Cheshire Brine Subsidence Compensation Board, the Coal Authority, Cheshire West and Chester Council, the Environment Agency, the Health and Safety Executive, Highways England, Historic England, National Grid, the National Trust, Natural England, Tilston Parish Council, United Utilities, and Welsh Water.
- 3.2 **Councillor M Jones** supports the development of the Plan.
- 3.3 **Cheshire West and Chester Council** consider the plan generally conforms with local strategic policies (in the Cheshire West and Chester Local Plan Part One and remaining saved policies in the Chester District Local Plan). The Council also make a number of positive suggestions to improve the clarity, practicability and conformity of a number of specific policies.
- 3.4 While supporting the overall objectives and policy intentions of the Plan the **National Trust** suggest that the scope of Policy RC2 (to protect landscape views) should be extended to protect key viewpoints from Bickerton Hill outside the Plan Area. The **National Trust** also consider that Policy RC5 (Conservation) should recognise the need to manage

---

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

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

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

rather than preserve natural habitats.

- 3.5 **Tilston Parish Council** support the creation of a safe footpath, cycleway and bridleway along the route of the former railway and also suggest the Plan should acknowledge the important heritage value of Broxton Old Hall.
- 3.6 **The Canal and River Trust, the Cheshire Brine Subsidence Compensation Board, the Coal Authority, the Environment Agency, the Health and Safety Executive, Highways England, Historic England, National Grid, Natural England, United Utilities, and Welsh Water** had no substantive comments to make.
- 3.7 General and detailed points raised on specific issues and policies in the Plan by those submitting representations are considered in Section Six of my report.

#### **4.0 Compliance with Legal Requirements**

##### **(a) The Qualifying Body**

- 4.1 The Broxton and District Parish Council is recognised as a relevant body for the purposes of preparing Neighbourhood Plans under Sections 61F and 61G of the Town and Country Planning Act 1990.

##### **(b) The Plan Area**

- 4.2 The Neighbourhood Plan relates to the whole of the Neighbourhood Area that was designated by Cheshire West and Chester Council on 13 June 2013, following an application by Broxton and District Parish Council.
- 4.3 The Neighbourhood Area fully contains the three rural Parishes of Broxton, Duckington and Harthill which are administered by one Parish Council. It includes a number of small villages and hamlets such as Barnhill, Brown Knowl, Duckington, Fullers Moor and Harthill.
- 4.4 The application was approved following the receipt by the Council of a map identifying the proposed Neighbourhood Area together with supporting documentation which was advertised for a six week period during which no substantive comments were received by the Council.
- 4.5 This satisfies the requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G of the Town and Country Planning Act 1990 (as amended) and Regulations 5, 6 and 7 of the Neighbourhood Planning (General) Regulations 2012.
- 4.6 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.

### **(c) Policies for the Development and Use of Land**

- 4.7 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).

### **(d) Time Period**

- 4.8 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 2015 to 2030 and therefore satisfies this requirement.

### **(e) Excluded Development**

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

### **(f) Publicity and Consultation**

- 4.10 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.
- 4.11 The submitted Neighbourhood Plan is accompanied by a comprehensive Consultation Statement which describes the process followed in preparing the Neighbourhood Plan as well as the methods used to engage with the local community and other stakeholders.
- 4.12 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.
- 4.13 The stages of consultation and engagement can be summarised as
- Public meeting and follow up working group meetings (July 2012 –

October 2013)

- Questionnaire and ongoing consultation (November 2013 – May 2015)
- Pre-submission (Regulation 14) consultation on the draft Plan (October – September 2015)

'Public meeting and follow up working group meetings (July 2012 – October 2013)

- 4.14 The first step in the preparation of the Plan was a public meeting organised by the Parish Council in July 2012. At the meeting views were sought on a range of issues including what people liked best about living in the Parish, what they disliked and how they would like to see the Parish evolve over the next ten years. Volunteers were also invited to contribute to a working group comprising local councillors and residents, which was tasked with preparing the Plan.
- 4.15 Following the initial meeting a dedicated webpage was established on the Parish Councils website in order to disseminate information and obtain feedback as work on the Plan progressed.
- 4.16 Working group meetings were held in March and May 2013 to further develop the issues, vision and objectives identified at the initial meeting and to seek views on specific topics, namely, housing, landscape, local economy, tourism and infrastructure. These meetings, which included interactive public sessions, were attended by key stakeholders.

Questionnaire and ongoing consultation (November 2013 – June 2015)

- 4.17 In order to further promote the preparation of the Plan and to obtain views on specific issues a questionnaire was distributed to every resident (not just households) in the Plan Area. The questionnaire was launched at a public meeting held on 28 November 2013, with free entry to every individual completing a questionnaire.
- 4.18 55 forms representing the views of 99 individuals were returned (approximately 27% of all occupied households) and the response to the questionnaire was collated and published on the Neighbourhood Plan website. A pamphlet summarising the survey results was also distributed to all residents.
- 4.19 I also note that during preparation of the Plan and the accompanying evidence base the Plan was a standard item on the agenda of each Parish Council meeting.
- 4.20 Prior to finalising the draft Plan a further public meeting was held on 10 June 2015 to inform the local community and other stakeholders of progress and to obtain comments on emerging policies.

Pre submission (Regulation 14) Consultation on the Draft Plan

- 4.21 The draft Plan was published for consultation in October 2015 and the 6 weeks Pre - Submission (Regulation 14) consultation ended on 28 September 2015.
- 4.22 The consultation was publicised through the Neighbourhood Plan website

and copies of the Plan were also available for inspection at a number of accessible locations throughout the local area including two public houses, a local community hall, the Methodist Chapel in Brown Knowl, and a local motor garage. Details of the various consultation bodies, including neighbouring parish councils, consultation bodies and other stakeholders who were specifically consulted on the draft Plan are provided in the Consultation Statement.

#### Conclusions

- 4.23 During the preparation of the Plan it is apparent that the Parish Council has placed considerable emphasis on community consultation and liaison with interested parties, and has taken positive steps to keep the local community informed of progress. This is demonstrated by the decision to distribute the questionnaire and subsequent summary of the results to every resident within the Plan Area, and also by the healthy response to the questionnaire.
- 4.24 While I have reservations about the fact that no evidence is produced to demonstrate how public meetings and working group meetings have been publicised, other than through the website which suggests an over reliance on digital media, I acknowledge that the meetings held appear to have been effective in gathering views and creating a consensus. I also note that the Regulation 14 Consultation Draft Plan was available in both paper and electronic formats so that those without access to digital media have not been unduly disadvantaged.
- 4.25 Similarly while it would have been helpful give an indication of the numbers attending meetings in order to assess the effectiveness of the meetings, and the associated publicity, as there is no prescription in the Regulations on the frequency or manner of publicity this does not prevent the Plan satisfying the Basic Conditions.
- 4.26 I am also satisfied that, with the exception of the National Trust who own and manage land on the eastern edge of the Plan Area, those with an interest in the Plan were made aware of the opportunity to comment on it and that the views of relevant consultation bodies have been pro-actively sought. While it is regrettable that the National Trust were not specifically consulted during the preparation of the Plan the fact that the Trust was made aware of the proposals in time to enable the submission of comments at Regulation 16 stage means the Trusts views can be taken into account as part of the examination.
- 4.27 My only other reservation concerns the fact that the Consultation Statement provides only limited information regarding the nature of the comments received at Regulation 14 Consultation stage and does not indicate how the Plan has been amended in response to the comments received. However as none of the three respondents suggest in response to the Regulation 16 Publicity that their concerns have not been adequately addressed I have no reason to believe that any individual or organisation has been disadvantaged by this omission.
- 4.28 I am also satisfied that an ongoing dialogue has been maintained with

interested parties throughout the preparation of the Plan.

- 4.29 Taking all the above factors into account there is enough evidence to show that the consultation process as a whole was appropriate to the size of the local community and conducted in an open and transparent manner, and that opportunities for engagement, involvement and feedback were provided throughout the preparation of the Plan. The Regulation 14 requirements for consultation and publicity have therefore been met.

#### 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 in December 2015. 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. The plan is also supported by an evidence base summary and a character assessment of the local area.
- 4.31 Cheshire West and Chester Council published details of the Plan and the accompanying documents on their website and in the local press, notified interested parties and 'consultation bodies' of its receipt, and provided details as to how and by when representations could be submitted. Summary information and paper copies of the submitted documents were also made available at a number of accessible locations within the local area and at Council offices.
- 4.32 The formal six week publicity stage for submitting representations covered the period Thursday 14 January to Friday 26 February 2016. Fifteen responses were received during the publicity period and no additional comments were received after the deadline for submitting comments expired.

#### Conclusions

- 4.33 In the light of the foregoing I am satisfied that the Regulation 16 requirements to bring the proposal to the attention of people who live, work or carry on business in the neighbourhood area 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 development<sup>11</sup> 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 development that is outside the strategic elements of the Local Plan.<sup>12</sup>
- 5.3 The NPPF incorporates 12 Core Principles<sup>13</sup> 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?'<sup>14</sup>, and 'How policies should be

---

<sup>11</sup> National Planning Policy Framework (2012) para 14

<sup>12</sup> National Planning Policy Framework (2012) para 16

<sup>13</sup> National Planning Policy Framework (2012) para 17

<sup>14</sup> Planning Practice Guidance para 040 Ref ID: 41-040-20140306

drafted'<sup>15</sup>, 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 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 Broxton and District 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

---

<sup>15</sup> Planning Practice Guidance para 041 Ref ID: 41-041-20140306

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 may be new development in the Plan Area associated with tourism and the local economy, and includes policies to manage and integrate that development. Other policies aim to conserve and enhance landscape character and the natural and built environment, and to ensure the retention and improvement of local facilities and green spaces. These are key aspects of sustainable development, as set out in the NPPF, which states (paragraph 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 policies<sup>16</sup>. 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 29 January 2015)

---

<sup>16</sup> National Planning Policy Framework (2012) para 184

- 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 2007).
- 5.17 The Cheshire Replacement Minerals Local Plan and the Cheshire Replacement Waste Local Plan have no relevance for the Broxton and District Neighbourhood Area.
- 5.18 The Cheshire West and Chester Local Plan (Part One): Strategic Policies (the Local Plan) sets out a number of strategic policies to guide future development in the wider local area. Policies relevant to the Neighbourhood Plan are:-
- STRAT 1 Sustainable Development
  - STRAT 2 Strategic Development
  - STRAT 8 Rural Area
  - STRAT 9 Green Belt and Countryside
  - STRAT 10 Transport and Accessibility
  - STRAT 11 Infrastructure
  - ECON 1 Economic Growth, Employment and Enterprise
  - ECON 3 Visitor Economy
  - SOC 5 Health and Well-being
  - SOC 6 Open Space, Sport and Recreation
  - ENV 2 Landscape
  - ENV 3 Green Infrastructure
  - ENV 4 Biodiversity and Geodiversity
  - ENV 5 Historic Environment
  - ENV 6 High Quality Design and Sustainable Construction
  - ENV 7 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 Of less relevance is the Chester District Local Plan (CDLP) which was adopted as long ago as May 2006. Policies in the Plan were initially saved for a three year period until 12 May 2009 under the provisions of the Planning and Compulsory Purchase Act 2004. Policies that remained relevant and compliant with (at the time) national and regional or Structure Plan policies were then extended beyond that date by Direction of the Secretary of State.
- 5.21 Although a number of saved policies in the CDLP have been superseded by policies in the Local Plan others will remain in force until replaced by



future development plan documents and are still part of the 'development plan' for the area, although less weight may be attributed to them owing to the period of time which has elapsed since they were first adopted.

5.22 A number of these are hybrid policies which while performing a development management function also contain strategic elements which meet the definition of strategic policy set out in PPG.<sup>17</sup>

5.23 Remaining 'Saved' Policies which are of most relevance to the Neighbourhood Plan are:-

- ENV 25 Areas of Special County Value
- ENV 26 The Green Network
- ENV 27 Nature Conservation Strategy
- ENV 28 General (Nature Conservation)
- ENV 29 Features of Local Importance
- ENV 30 Strategic Wildlife Corridors
- ENV 66 Limited extensions, alterations or replacement dwellings
- TR 20 New developments (Transport)
- EC 11 The re-use of rural buildings
- EC 21 Agricultural diversification
- RET 12 Village shops
- RET 14 Shopping development in the open countryside
- HO 4 Infill housing development
- HO 5 Criteria for assessing proposals for residential sites not allocated in the Local Plan
- HO 7 Housing in the open countryside
- HO 8 Extensions to existing dwellings
- HO 9 Conversion of non-residential properties to residential use
- HO 10 Re-use of rural buildings
- HO 11 Replacement dwellings
- SR 14 Countryside recreation

5.24 As the 'saved' policies in the CDLP predate the NPPF, the NPPF takes precedence where there is a conflict.

5.25 There are also a number of non strategic 'saved' CDLP policies that are modified or superseded by the Plan policies.

5.26 In assessing whether the Neighbourhood Plan is in general conformity with strategic policies contained in the Development Plan for the area I have taken policies in the 2015 adopted Local Plan as the starting point.

5.27 A number of modifications are necessary for the Neighbourhood Plan to

---

<sup>17</sup> Planning Practice Guidance para 076 Ref ID: 41-076-20140306

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 Union Obligations**

- 5.28 Local Planning Authorities are legally responsible for deciding whether neighbourhood plan proposals are compatible with EU obligations, including obligations under the Strategic Environmental Assessment (SEA) Directive<sup>18</sup>.
- 5.29 In circumstances where a neighbourhood plan is likely to have significant environmental effects, for example where it includes proposals to allocate land for development, it may require an SEA to be undertaken as part of the preparation process, in accordance with the SEA Directive and Environmental Assessment Regulations<sup>19</sup>. Draft neighbourhood plan proposals should therefore be screened to assess whether they are likely to have significant environmental effects<sup>20</sup>. Where significant environmental effects are identified plans should be accompanied by a full SEA report.
- 5.30 Cheshire West and Chester Council have therefore prepared a Strategic Environmental Assessment (SEA) screening opinion based on policies in the draft Plan. The assessment concludes that the Neighbourhood Plan does not require a full SEA as no significant environmental effects are likely to occur as a result of the implementation of policies contained in the Plan.
- 5.31 A separate Habitats Regulations Assessment screening as to whether a Habitats Regulations Assessment (HRA)<sup>21</sup> was required under the Habitats Directive<sup>22</sup> was also carried out by the Council. This concludes that an 'appropriate assessment' of European designated sites is not required in order to progress the Plan further.
- 5.32 I also note that none of the relevant statutory consultation bodies have raised any concerns in relation to the screening process or the conclusions reached.
- 5.33 Natural England have confirmed in writing that they agree with the conclusions that no significant effects will result from the implementation of the policies (as drafted) and that it is unnecessary to undertake a full SEA or HRA. The Environment Agency indicated that they do not wish to make any comments.
- 5.34 No comments were received from English Heritage and no objections in relation to any of the above matters were received during the Regulation

---

<sup>18</sup> European Directive 2001/42/EC

<sup>19</sup> Environmental Assessment of Plans and Programmes Regulations 2004

<sup>20</sup> Planning Practice Guidance para 027 Ref ID: 11-027-20150209

<sup>21</sup> 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).

<sup>22</sup> European Directive 92/42/EEC

16 'Publicity' stage.

- 5.35 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.
- 5.36 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 general conformity with local strategic policies. Where modifications are recommended, they are highlighted in **bold print**, with any proposed new wording in *italics*.

### (a) Introductory Sections

- 6.2 The introductory sections of the Neighbourhood Plan comprise an Introduction explaining the background to the plan, a map of the Plan Area, and a section outlining the overall vision, key issues and objectives, followed by an explanation of the neighbourhood plan process (Developing the Neighbourhood Plan) and the arrangements for engaging with the local community during the preparation of the Plan.

#### Comments

- 6.3 Although limited in scope these opening sections are clearly written and informative and provide the background to the policies that follow.
- 6.4 However the absence of more information on key issues and the planning context within which the Plan has been prepared means an opportunity has been lost to establish a sense of place and to fully explain the factors which have influenced the overall Plan vision and objectives.
- In this respect I would question the logic of placing the summary of key issues (on page 5) and the commentary on the 'countryside status' of the area (in the first paragraph on page 6) between the vision and objectives in section 2.
- 6.5 It would be more logical and greater clarity could be achieved if the first part of the Plan is restructured so that the Introduction was followed by the existing section on 'Developing the Neighbourhood Plan' with a new section (Planning Context and Key Issues) outlining the planning context

and summarising key issues identified during the preparation of the Plan immediately preceding the vision and objectives.

- 6.6 While I acknowledge there is no prescription in national planning policy, Planning Practice Guidance and neighbourhood plan regulations regarding the format and content of neighbourhood plans, it is nevertheless important that the overall approach taken in the Plan is logical and adequately justified.
- 6.7 In order to present an accurate explanation of the planning context within which the Plan has been prepared I also recommend that the first paragraph on page 6 should be amended and expanded to reflect comments made by **Cheshire West and Chester Council** as part of their response to the Submitted Plan.

### Recommendation 01

- a) Delete 'is likely to be designated as Open Countryside under Strat9 (see appendix B) which has been developed by CWaC', in the first sentence on page 6' and delete the associated footnote (Broxton and District have been advised by CWaC that Countryside and Open Countryside designations are the same).
  - b) Insert '*is designated as Countryside in Policy STRAT 9 of the Cheshire West and Chester Local Plan (Part One) and it is not anticipated that any Local Service Centres will be designated within the Neighbourhood Plan area through the Local Plan (Part Two) which is in preparation*', after 'Broxton and District' in line 1 on page 6.
  - c) Delete 'Open' from bullet point 4 on page 6.
  - d) Combine the first three sentences from the first paragraph on page 6 with the Key Issues on page 5 to form a new section 'Planning Context and Key Issues'.
  - e) Reorganise the introductory sections of the Plan to incorporate the existing section on 'Developing the Neighbourhood Plan' after the Introduction followed by a new section 'Planning Context and Key Issues', by combining the first three sentences on page 6, as amended and expanded in line with a) above, with the summary of Key Issues in Section 2 'Vision and Key Issues'. These sections should precede the 'Vision and Objectives' in the Plan.
- 6.8 Further changes are required to the introductory sections in order to correct a number of anomalies and inaccuracies.
- 6.9 First, in the second paragraph on page 3 the reference to 'the vast majority of (the Plan Area) is countryside' is confusing as in planning terms the whole of the area is recognised as countryside there being no 'designated' settlements within the Plan Area. This ambiguity could be avoided by referring to the Plan Area as a rural area.

- 6.10 Second, there is an incomplete reference to the availability of local services in larger centres outside the Plan area in the third paragraph in the Vision on page 5.
- 6.11 Third, the Key Issues on page 5 should be drafted as questions or statements otherwise these simply duplicate the objectives on page 6.
- 6.12 It is also not clear whether Key Issue 4 on page 5 is intended to refer to the scale of future development and whether there is support for future development of an appropriate scale or whether the emphasis is on restricting development.

### Recommendation 02

- a) Delete 'the vast majority of which is countryside' in line 3 of paragraph 3 on page 3 and insert '*rural*' after 'which covers the' in the second line of paragraph 3.
  - b) Delete 'service' in the second paragraph in the Vision on page 5 and insert '*continue to provide a range of services for*'.
  - c) Delete 'Maintain', 'protect the', and 'encourage' in Issue 1 and insert '*value of the area*' at the end.
  - d) Delete 'Support' in Issue 2.
  - e) Delete 'Support' in Issue 3.
  - f) Replace Issue 4 with '*The scale and type of future development*'.
  - g) Delete 'Improve' in issue 5.
- 6.13 There are two typographical errors in the Introductory sections.

### Recommendation 03

- a) Substitute '*produced*' for 'producing' in line 7 on page 3.
- b) Substitute '*Local Plan (Part One)*' for 'Local plan (part 1)' in line 5 on page 6

### (b) Omissions

- 6.14 In response to the Regulation 16 Publicity **Tilston Parish Council** have expressed surprise that there is no mention of either Broxton Hall or Broxton Old Hall, including its unique Domesday Book heritage as part of the 'Broxton Hundred'.
- 6.15 While the Plan would no doubt be improved by incorporating additional background information about the Plan area, particularly regarding its evolution and heritage, there is no prescription about the range of topics that should be covered in neighbourhood plans, or the level of detail. Neither does this omission affect the Plan's ability to satisfy the Basic

Conditions. I therefore make no recommendations in this respect.

### **(c) Policies and Explanation**

#### **Format**

- 6.16 The land use policies part of the Plan is organised into five themes, namely; Maintain the Rural Character, Protect the Landscape and Encourage Nature Conservation, Support the Local Economy and Businesses, Support Local Tourism and Recreation, Housing and Improve Infrastructure and Access to Facilities. Each themed subsection contains a group of policies relevant to that particular theme and individual policies are set out in bold text followed by a supporting Explanation and justification.

#### Comments

- 6.17 The individual subsections are presented in a well organised and consistent way.
- 6.18 While it would have been helpful to include more cross referencing to information in the supporting Evidence Base document this is not essential for the Plan to satisfy the Basic Conditions.

#### **General**

#### Cross referencing to Cheshire West and Chester Local Plan (Part One)

- 6.19 Numerous references are made throughout the Plan to the adopted Cheshire West and Chester Local Plan (Part One), including specific reference to Policy ENV 4 Biodiversity and Geodiversity in a number of policies.
- 6.20 It is clearly in the interests of joined up plan making that different tiers of plan making, which may have reached different stages in the process, should inform one another, and the regard that has been given in the Neighbourhood Plan to local strategic policy is to be welcomed.
- 6.21 However while it is appropriate to refer to relevant Local Plan (Part One) policies in the supporting 'Explanation' to individual policies this is not the case with the policies themselves which should as far as possible be self contained. Otherwise there is a risk of creating the impression that one particular policy is more important than other relevant policies, or that with the passage of time conflict may arise with strategic policies which become out of date and are modified or deleted. In any case cross referencing to Local Plan policies is unnecessary as decision makers are required to take all relevant policies into account when considering development proposals.

#### **Recommendation 04**

**Delete references to ‘Only development that conforms to the Local Plan Policy ENV 4 Biodiversity and Geodiversity will be considered’ in the following policies; LE1 (Renewable Energy), LE2 (Employment Development), LT1 (Local Tourism Development), and IF4 (Communications Infrastructure), and insert a reference to Local Plan Policy ENV4 in the accompanying explanation to each policy.**

#### Policies intended to control the negative impacts of development.

- 6.22 A number of policies in the Plan are intended to control the potential impacts of development. For example Policy LE1 (Renewable Energy) requires developments to avoid adverse impacts on landscape character, key views and the character of the built up area, while another policy strand requires development to avoid harm to heritage assets, residential amenity, wildlife species and underground water resources. Other policies, such as Policy LE2 (Employment Development) and Policy IF4 (Communications Infrastructure), stipulate that proposals will be supported provided they do not have negative effects/impacts on landscape character, heritage assets and residential amenity.
- 6.23 However the overall approach to controlling development, and the terminology used, is not consistent throughout the Plan. For example, the avoidance of harm to heritage assets and residential amenity in Policy LE1 contrasts with the approach in other policies, namely Policies LE2, LE3, LT1 and IF4, where proposals are required to avoid causing negative impacts on residential amenity and other considerations identified in those policies, which is not the same thing.
- 6.24 In any case it is unrealistic to require development proposals to avoid any adverse or negative impact on (or harm to) considerations such as residential amenity, landscape character, key views, heritage assets, the character of the built environment, and local infrastructure, since all proposals must arguably have some degree of adverse impact.
- 6.25 In order to overcome this dilemma Policies LE1, LE2, LE3, LT1, IF1, and IF4 should also include a test as to whether a proposal has a ‘significant effect’ or an ‘unacceptable adverse impact’ in line with the practice adopted in other development plans. While I appreciate that decision makers would still be required to make a judgement as to whether an impact is considered significant or unacceptable I consider this to be a more realistic approach.
- 6.26 Specific modifications to individual policies are therefore recommended, as appropriate, in the remaining sections of my report.
- 6.27 For clarification this approach is not appropriate when considering impacts on protected wildlife species, designated wildlife habitats and underground water resources as these tend to be more clear-cut impacts where any harm would be reason to reject the proposal.

### Page Layout Corrections

- 6.28 In order to improve the readability of the document a number of corrections are required to the layout of pages 8 -10 in Section 4 and to the 'footer' on page 15 to the end of the document.

### **Recommendation 05**

- a) **Reposition the Section header '4. The Policies' on the bottom of page 8 to the top of page 9**
- b) **Reposition the sub heading 'Explanation' on the bottom of page 9 to the top of page 10**
- c) **Change the date of 'Final Version' from '1-8-15' to '18-10-15' and delete 'Draft for Discussion' in the footer on pages 15 – 29 of the document.**

### **Themed Subsections and Policies**

#### **Subsection 4.1 Maintain the rural character, protect the landscape and encourage nature conservation.**

- 6.29 **Policy RC1 (Landscape Character)** is intended to ensure development contributes positively to established landscape character and that existing hedgerows and mature trees are retained wherever possible.
- 6.30 The policy has regard to national policy by seeking to conserve and enhance the natural environment. This is consistent with the environmental dimension of sustainable development.
- 6.31 Policy RC1 conforms with Local Plan Policy ENV2 by promoting development which wherever possible enhances local landscape character and responds to local surroundings. It also generally reflects the Plan strategy to protect rural areas and avoid harm to the character of the countryside.
- 6.32 However I would question whether it is reasonable or even practical to require all forms of development, including changes of use, to contribute positively to established landscape character. I therefore suggest the words 'where appropriate' should be incorporated in the first part of the policy, and that the policy is worded in a more positive way in line with national planning policy. I appreciate this weakens the policy to a degree but without this qualification I am not confident that the policy could be applied in a consistent or meaningful way.
- 6.33 I also agree with **Cheshire West and Chester Council** that the reference to maintaining and replicating the existing landscape character does not increase the level of protection and could prove to be a hostage to fortune.



**Recommendation 06**

- a) Delete 'will be permitted only if it contributes' in line 1 of Policy RC1 and insert '*should, where appropriate, contribute*' after 'seeking approval'.
- b) Delete 'The existing character should be maintained and replicated.' in line 3.

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

6.35 **Policy RC2 (Landscape Views)** complements Policy RC1 by protecting 'significant' views in the area which are identified in Figure 3 as those which contribute most strongly to landscape character. In order to ensure that 'significant' views are not compromised proposals must be accompanied by a Landscape Visual Impact Assessment. A further policy strand also aims to protect medium range views across open fields toward the hills.

6.36 In considering whether this policy satisfies the Basic Conditions I am required to address concerns raised by the **National Trust** and **Cheshire West and Chester Council**.

6.37 The **National Trust** would like the policy to include reference to the views from Bickerton Hill which encompass much of the Plan area, and in particular to add four viewpoints from land owned and managed by the Trust at Bickerton Hill to the 33 viewpoints already identified in the Plan.

6.38 These viewpoints are identified in a study<sup>23</sup> commissioned by the Trust to provide a greater understanding of how the surroundings contribute to the significance of Bickerton Hill in order to assist the Trust's conservation and management work.

6.39 The fact that the suggested viewpoints have been identified as a result of an independent study, which provides reliable evidence regarding the main viewpoints from Bickerton Hill, makes a compelling case for including them within the Plan. However three of the viewpoints, namely viewpoints A, B and D, fall outside the Plan area. Since policies contained in the Plan can only apply within the Plan area it is axiomatic that those policies cannot be used to control land uses or developments that impact on views from outside the Plan area.

6.40 In considering the remaining viewpoint (G) I am left with a dilemma since it is normally a matter for the Parish Council to determine the content and level of detail in its Plan. However I am mindful of the fact that as the Trust was unaware of the Plan proposals and did not submit comments until Regulation 16 stage the Parish Council has not had the opportunity to formally consider the merits of the Trust's submitted comments and suggested viewpoints.

---

<sup>23</sup> Bickerton Hill Settings Pilot Study (Land Use Consultants) second draft November 2015

- 6.41 From my observations on the ground I note that the suggested viewpoint (G) although situated close to viewpoints 16, 17 and 18 identified in Figure 3, is situated at a greater height, and that it affords similar but not identical views. I therefore conclude that its inclusion would enhance the number and range of protected views in the Plan.
- 6.42 Although not opposing the policy in principle **Cheshire West and Chester Council** consider that as drafted it is too onerous because it would apply to any development requiring planning permission.
- 6.43 While there is nothing in national policy which gives entitlement to a view it is accepted practice to protect specific views where this is justified in the wider public interest. The evidence presented in the Plan and the accompanying Character Assessment clearly demonstrates the value of the significant views identified in the Plan to the landscape character of the area. This underpins the designation of part of the Plan area as an Area of Special County Value (CDLP Policy ENV 25)
- 6.44 However the meaning of the second part of the policy is not clear as it implies that other, undefined views, are also worthy of protection although no evidence has been put forward as to which views are particularly valued and worthy of protection. It seems to me that the principle of protecting a view cannot be extended to protecting general, undefined views. I therefore recommend the second part of the policy be deleted and that the policy concentrates on protecting identified views, as suggested by **Cheshire West and Chester Council**.
- 6.45 The policy and supporting text should clarify that Landscape Visual Impact Assessments will only be required in the case of proposals likely to impact on identified 'significant' views, in order to avoid placing an unreasonable burden on other development proposals.
- 6.46 Changes are also required to improve the clarity of the policy and the supporting explanation plus the legibility of Figure 3.
- 6.47 Although both the policy and the supporting explanation refer to a Proposals Map no map is included with the Plan. While there is no legislative or regulatory requirement for neighbourhood plans to be accompanied by a proposals map it is important that the area or site (including views and vistas) to which policies and proposals apply are clearly identified. As figure 3 effectively performs the function of a Proposals Map I recommend it be re-titled, subject to improving the legibility of the map, as the location of viewpoints and associated numbering and 'lines of sight' are not easy to identify in many cases.

#### **Recommendation 07**

- a) **Incorporate the additional viewpoint G suggested by the National Trust, in Figure 3.**
- b) **Delete 'existing views in the area' in line 2 of policy RC2, insert '*significant views as delineated on the Proposals Map*' after 'complement, respect and protect', and delete the**

second sentence.

- c) Insert '*Where a proposal impacts on an identified 'significant view'*', before 'A Landscape Visual impact Assessment....'
- d) Delete the second paragraph of Policy RC2.
- e) Change the title of Figure 3 to '*Proposals Map*', add '*Significant Views*' to the map legend and improve the legibility of the map.
- f) Delete 'and Figure 3 on page 31' in line 4 of the supporting explanation to Policy RC2.

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

6.49 **Policy RC3 (Community Green Spaces)** aims to protect three village greens, an open space known as the 'football field', and a disused railway line which have been identified as particularly important to local character. Development that prejudices these green spaces or their settings will not be permitted.

6.50 The three greens at Harthill, Brown Knowl and Duckington are considered important to the character and identity of each settlement. The 'football field' which is located in a woodland clearing at the end of Sandy Lane, Brown Knowl, although not ideal for playing football provides an informal recreation space. The line of the former Chester to Whitchurch railway which passes through the western part of the Plan area is considered to offer potential for a pedestrian/cycle recreational route.

Comments

6.51 The objective of protecting existing open spaces generally conforms with Local Plan policies to protect open spaces, sport and recreation facilities (Policy SO 6) and to support the protection and enhancement of green infrastructure (Policy ENV 3). It also complements the approach in saved CDLP Policy ENV17 to protect areas of green space.

6.52 While the desirability of identifying and protecting Local Green Space is recognised in national planning policy this is subject to meeting stringent conditions set out in paragraph 77 of the NPPF and the supporting planning practice guidance on Local Green Space designation.

6.53 The three criteria which must all be satisfied are;

- 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.

6.54 Based on the information in the supporting evidence base report and character assessment and my own observations I am satisfied that four of the five sites satisfy the three criteria, namely the three village greens and the football field.

- 6.55 Although I have reservations about the fact that there does not appear to have been any targeted consultation with landowners about the designation of these sites as Community Green Space as suggested in planning practice guidance<sup>24</sup> it is apparent that the sites are owned and managed by organisations who were aware of the proposals and could have objected to their inclusion if they so wished. In this respect Brown Knowl Green and Duckington Green form part of the adopted highway managed by Cheshire West and Chester Council, the 'football field' is part of the extensive National Trust landholding and Harthill Green is part of the Bolesworth estate.
- 6.56 Similar considerations cannot be applied to the disused railway line which is in multiple, private ownership.
- 6.57 I have also taken into account the fact that the village green at Harthill is already protected as an 'important area of green space' through saved CDLP Policy ENV 17. While designation as a 'Community Green Space' conflicts with planning practice guidance<sup>25</sup> which suggests that duplication of extant policies should be avoided this must be balanced with the legitimate aspiration to identify and recognise the special local significance of these sites particularly since a future review of CDLP Policy ENV 17 designations would be outside the control of the Parish Council.
- 6.58 The disused railway line does not however meet the criteria since it is part of an extensive route which extends beyond the Plan area and cannot be considered to be local in nature. This is reinforced by the fact that it forms part of the Strategic Recreation Corridor identified in CDLP Policy SR 14 and the Green Network identified in CDLP ENV 26. It should therefore be deleted from the policy in order to meet the Basic Conditions.
- 6.59 While the policy wording and accompanying rationale is reasonably clear I agree with **Cheshire West and Chester Council** that the policy could be strengthened by incorporating specific reference to avoiding the partial or total loss of designated community green spaces.
- 6.60 I am also mindful of the fact that although reference is made in the policy to a proposals map no map is included in the plan. It is important that the area or site boundaries to which policies and proposals apply are clearly identified and I therefore recommend that the Community Green Space boundaries are identified on the Proposals Map which I have previously recommended to be incorporated in the Plan in connection with Policy RC2 (Landscape Views).

### **Recommendation 08**

- a) Delete site 5. 'disused railway line' from the policy and make consequential amendments to the supporting explanation,**
- b) Delete 'prejudices these' in line 2 of Policy RC3 and insert**

---

<sup>24</sup> Planning Practice Guidance para 019 Ref ID: 37-019-20140306

<sup>25</sup> Planning Practice Guidance para 011 Ref ID: 37-011-20140306

- ‘results in the partial or total loss of’ after ‘Development that’.***  
**c) Identify the site boundaries on the Proposals Map incorporated in the Plan in accordance with Recommendation 07 and add ‘Community Green Spaces’ to the map legend.**

- 6.61 Subject to the above modifications the Policy meets the Basic Conditions.
- 6.62 **Policy RC4 (Style of Buildings)** requires new development to reflect local styles and architecture and where possible to incorporate features beneficial to wildlife. It is supported by an assessment of local character as part of the evidence base.
- 6.63 It has regard to national policy by promoting designs which reflect local character and distinctiveness and which provide a net gain in biodiversity. Good design and planning for biodiversity are key aspects of sustainable development.
- 6.64 The policy also generally conforms with principles established in the Local Plan (Part One) by promoting development of an appropriate scale and design to conserve each settlements character and setting (Policy STRAT 8), which safeguards and enhances biodiversity (Policy ENV 4) and which respects local character and achieves a sense of place (Policy ENV 6)
- 6.65 The policy therefore meets the Basic Conditions and no modifications are required.
- 6.66 **Policy RC5 (Conservation)** requires proposals to demonstrate in a statement accompanying the application how natural habitats and environmentally sensitive areas listed in the policy (such as woodland, ponds, and SSSI) will be protected.
- 6.67 In considering whether the policy satisfies the Basic Conditions I have taken into account comments submitted by **Cheshire West and Chester Council** and the **National Trust** concerning the practicability of the policy.
- 6.68 For example, while acknowledging that the policy sets out a range of useful criteria to which development should adhere **Cheshire West and Chester Council** consider that the requirement for all development proposals to be accompanied by a statement addressing all the points listed is ‘excessively onerous’.
- 6.69 The **National Trust** point out that there are circumstances where the enforced preservation or protection of natural resources in itself may not be enough to ensure the long term survival of a particular feature unless accompanied by appropriate management measures. Reference is made to the need for woodland management through tree felling and scrub clearance, and to the need for the appropriate management and enhancement of SSSI.
- 6.70 In this respect I am mindful of the fact that national planning policy places
-

considerable emphasis on the conservation and enhancement of the natural environment, rather than preservation or protection, and that planning policies are expected to 'promote the preservation, restoration and re-creation of priority habitats and ecological networks....(paragraph 117 NPPF).

- 6.71 It is also not clear how the policy would be applied since it would not be appropriate in all circumstances and to all types and size of development.
- 6.72 I therefore recommend that the requirement for applications to be accompanied by a 'nature conservation statement' should be removed from the policy and replaced with more positive wording to ensure developments conserve and enhance biodiversity. This would bring the policy more in line with the NPPF and obviate the need for additional information to be submitted with applications for which there is no apparent justification.
- 6.73 Other recommended changes are intended to address the concerns raised by the **National Trust** by recognising that conservation measures should be appropriate to the particular local circumstances and by providing more flexibility in relation to future management.
- 6.74 I also agree with the **National Trust** that the policy heading should refer to 'nature conservation', in order to distinguish it from heritage conservation.

#### Recommendation 09

- a) Insert '**Nature**' before 'Conservation' in the policy heading,
  - b) Replace the first line of Policy RC5 with the following '***Proposals for development should conserve and enhance biodiversity and geodiversity including***'
  - c) Delete 'Biodiversity and geodiversity in accordance with the National Planning Policy Framework (NPPF) will be protected' (bullet point 4)
  - d) Replace the last bullet point with '***The conservation and enhancement of natural habitats should be accompanied by new habitat creation and careful management measures where appropriate***'.
  - e) Remove references to 'will be protected' and 'will be preserved' from the remaining bullet points
- 6.75 Subject to the above modifications the Policy meets the Basic Conditions. It 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).
- 6.76 The policy also conforms with Local Plan Policy ENV 4 by aiming to safeguard and enhance biodiversity and will also contribute to the

creation, enhancement and protection of green infrastructure in line with Local Plan Policy ENV 3.

#### **Subsection 4.2 Supporting the Local Economy and Businesses**

- 6.77 **Policy LE1 (Renewable Energy)** supports proposals to develop renewable energy sources provided a range of adverse impacts are avoided including adverse impacts on landscape character, key views, and the character of the built environment, and there is no harm to residential amenity, heritage assets, wildlife species/habitats, or underground water resources.
- 6.78 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.
- 6.79 It generally conforms with Local Plan Policy ENV 7 (Alternative Energy Supplies) and extant CDLP policies which aim to protect environmental resources and local amenity.
- 6.80 My only reservation about the policy concerns the need to adopt a consistent approach throughout the Plan to policies which are intended to control the impacts of development, as referred to previously in paragraphs 6.22 – 6.27 of my report. Since all development proposals could conceivably cause some degree of adverse environmental impact the policy as drafted does not provide a reasonable basis for considering applications. The various environmental considerations identified in the policy should therefore be qualified so that the impact is judged in terms of whether there would be an unacceptable impact or not. The exception to this concerns impacts on underground water resources, and protected wildlife species and designated habitats, where any negative impact or harm would be sufficient reason to reject a proposal.
- 6.81 An additional change is required to bullet point 5 since, as pointed out by **Cheshire West and Chester Council**, the level of protection given to wildlife species or habitats goes beyond the level of protection in Local Plan and national policy which is restricted to protecting priority species and designated habitats, and no justification is provided for this different approach .
- 6.82 As the policy refers to ‘key views’ with no explanation as to whether these differ from the ‘significant views’ identified in connection with Policy RC2 (Landscape Views) I assume they are the same. I therefore recommend that ‘key views’ in bullet point 1 be changed to ‘significant views as delineated on the proposals map’ to be consistent with Policy RC2 (Landscape Views) and to clarify precisely which views are protected by the policy.

**Recommendation 10**

- a) Insert '*unacceptable*' in bullet points 1 and 2, before 'adverse impacts'.
- b) Replace 'harm to' with '*unacceptable adverse impacts on*' in bullet points 3 and 4.
- c) Replace 'impact' in bullet point 6 with '*adverse impacts*'.
- d) Delete bullet points 5 and 7 and insert a new sentence at the end of the policy '*or the proposal would harm underground water resources or protected/priority species or habitats*'.
- e) Substitute '*significant views as delineated on the Proposals Map*' for 'key views' in line 1.

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

6.84 **Policy LE2 (New Employment Development)** and **Policy LE3 (Home Working)** support the development, diversification and limited expansion of local businesses, plus the operation of businesses from home, provided there are no negative effects on landscape character, residential amenity and other environmental considerations.

6.85 The policies have regard to national planning policy by supporting local businesses and economic growth in a positive sustainable manner. Facilitating economic growth is one of the key attributes of sustainable development. They also reflect the economic strategy of the Local Plan (Part One) to promote sustainable economic growth particularly by encouraging indigenous business growth (Local Plan Policy ECON 1 Economic growth).

6.86 As drafted however Policy LE2 appears to extend the types of economic development permitted in the countryside by Local Plan Policy STRAT 9 (Green Belt and the Countryside) by supporting new build development, whether this is intentional or not. Clarification is therefore required that the establishment of new enterprises is limited to small scale rural diversification schemes and the reuse of existing buildings.

6.87 Reference to rural diversification in Policy RE2 would also be more appropriate than in Policy RE3 which concerns home working.

6.88 My only other reservation about the policies concerns the need to adopt a consistent approach throughout the Plan to policies which are intended to control the impacts of development, as referred to previously in paragraphs 6.22 – 6.27 of my report. Since all development proposals could conceivably cause some degree of adverse environmental impact the policies as drafted do not provide a reasonable basis for considering applications. The various environmental considerations identified in the policies should therefore be qualified so that the impact is judged in terms of whether would be an unacceptable impact or not.

6.89 There is also an unexplained general reference to 'not have other adverse



impacts' at the end of Policy LE3, which is unnecessary, as development proposals will be considered in relation to all relevant policies in the Neighbourhood Plan as well as higher tier policies.

#### **Recommendation 11**

- a) Replace 'The development' in line 1 of Policy LE2 with '*Rural diversification schemes of a suitable scale, the reuse of existing buildings for economic purposes,*'
- b) Replace 'negatively affect', in line 2 with '*have an unacceptable adverse impact on*'.

#### **Recommendation 12**

- a) Delete 'and rural businesses wishing to diversify' in line 1 of policy LE3.
- b) Replace 'negative', in line 2 with '*unacceptable adverse*'.
- c) Delete 'and development is of a suitable scale not have other adverse impacts' in lines 2/3.

- 6.90 Subject to the above modifications Policy LE2 and Policy LE3 meet the Basic Conditions.

#### **Subsection 4.3 Support Local Tourism and Recreation**

- 6.91 **Policy LT1 (Local Tourism Development)** requires proposals for tourism related uses to ensure there are no negative impacts on landscape character, significant and key views and local infrastructure.
- 6.92 The policy generally reflects national policy and local strategic policy which support rural diversification, including tourism (Local Plan Policies STRAT 9 and ECON 3) provided this is balanced with environmental considerations.
- 6.93 In setting out the specific environmental considerations which tourism related development is expected to address the policy requires proposals to avoid negative impacts on both significant and key views. However it is not clear what the distinction is between the 'significant views' identified in connection with Policy RC2 (Landscape Views) and 'key views'.
- 6.94 In the absence of any information and justification for those views considered worthy of protection as 'key views' I recommend that reference to 'key views' is removed from the plan. As referred to previously it is not appropriate to extend the principle of protecting specific views to general, undefined views. This would also ensure a consistent approach between Policies RC2 (Landscape Views), LE1 (Renewable Energy) and LT1 (Local Tourism Development).

- 6.95 Reference should also be made to 'significant views as delineated on the Proposals Map' in order to identify the specific views considered worthy of protection and to ensure a consistent approach between Policies RC2 (Landscape Views), LE1 (Renewable Energy) and LT1 (Local Tourism Development).
- 6.96 My only other reservation about the policy concerns the need to adopt a consistent approach throughout the Plan to policies which are intended to control the impacts of development, as previously referred to in paragraphs 6.22 – 6.27 of my report. Since all development proposals could conceivably cause some degree of adverse environmental impact the policy as drafted does not provide a reasonable basis for considering applications. The various environmental considerations identified in the policy should therefore be qualified so that the impact is judged in terms of whether there would be an unacceptable impact or not.

### Recommendation 13

- a) Replace 'negative' in line 1 of Policy LT1 with '*unacceptable adverse*'.
- b) Delete 'and key' in line 2, and insert '*as delineated on the Proposals Map*', after 'significant views'.

### Subsection 4.4 Housing

- 6.97 **Policy NH1 (Housing)** restricts the provision of new dwellings in the Plan area to those required for agricultural workers or dwellings provided through the conversion of existing buildings.
- 6.98 This reflects the sustainability objectives of both national planning policy and local strategic policy to steer development away from the countryside toward designated settlements and towns, although by not acknowledging the scope for replacement dwellings or affordable housing the policy is arguably more restrictive than higher tier policy.
- 6.99 Whether or not that is the case as the policy adds nothing to extant local strategic policy, which is also the view of **Cheshire West and Chester Council**, I recommend the policy be deleted.
- 6.100 The accompanying explanatory text could be incorporated in the new 'Planning Context and Key Issues' section of the Plan (see Recommendation 01) to provide a more detailed explanation of the strategic planning context behind the Plan.

### Recommendation 14

**Delete Policy NH1 and incorporate the supporting explanation within a new Planning Context and Key Issues section of the Plan (see Recommendation 01)**

#### **Subsection 4.5 Infrastructure and Access to Facilities**

- 6.101 **Policy IF1 (Community Facilities)** is intended to encourage the provision of more local facilities provided a number of requirements, including access, location, provision of local employment and impact on nearby 'service centres' are met. **Policy IF2 (All Saints Harthill Church)** promotes the retention of the redundant Harthill Church for community use and local enterprise.
- 6.102 Both policies have regard to national policy by 'promoting the retention and development of local services and community facilities' as referred to in NPPF paragraph 28 bullet point 4. Building a prosperous rural economy and vibrant communities are key attributes of the economic and social dimensions of sustainable development.
- 6.103 The policies generally conform with Local Plan Policy STRAT 8 (Rural Areas) which supports the retention and development of local services and community facilities, and Local Plan Policy STRAT 11 (Infrastructure) which supports measures to protect and enhance access to new facilities.
- 6.104 However I have a number of reservations about the clarity of Policy IF1 and the accompanying explanation.
- 6.105 First, reference is made in the policy to 'improving sustainable access' and 'siting facilities in the most sustainable locations' with no explanation provided in the accompanying text. If the intention is to ensure that facilities are located close to the main concentrations of population where they can be accessed by non car born means, then reference should be made to this.
- 6.106 Second, the policy appears to introduce a type of 'sequential test', which I assume is unintentional, by requiring decision makers to assess whether proposals are located in the most sustainable locations. As sustainability is a relative term any proposal for new facilities within the Plan area could be judged to be less sustainable than alternative locations elsewhere and consequently deemed to be not acceptable.
- 6.107 Third, while the explanatory text refers to avoiding the loss of two public houses and other services within the Plan area, by also referring to the need to avoid impacts on local amenity and landscape, it implies that alternative uses might be acceptable, which is clearly contradictory. In any case, the impact of development on local amenity and landscape character are locational considerations that would provide more precise guidance in the policy than a general reference to 'sustainable locations'.
- 6.108 To be consistent with my recommended changes to the wording of other policies that are concerned with controlling the impacts of development, reference to 'adverse impact' should also be included in bullet point 6.
- 6.109 Turning to Policy IF2 (All Saints Harthill Church) although only very limited information is provided to explain the background and justify the retention of the redundant church at Harthill as a community facility, I am mindful of

the fact that the proposal has been in the public domain throughout the preparation of the Plan. As no concerns or objections have been submitted at any stage I have no reason to question the inclusion of the policy.

- 6.110 However changes are required to ensure consistency between the policy wording, which promotes the retention of the building for community use, and the supporting explanation which is concerned with ensuring that future uses do not have negative impacts on its heritage value.

#### **Recommendation 15**

- a) **Provide an explanation about the meaning of ‘sustainable access’ in the supporting explanation, including reference to ensuring that facilities are located within or close to existing settlements and accessible by walking or cycling.**
- b) **Delete bullet point 3 and insert a new bullet point ‘*do not have unacceptable adverse impacts on landscape character and local amenity*’.**
- c) **Insert ‘adverse’ after ‘Do not have an unacceptable’ in bullet point 6.**
- d) **Delete ‘so long as any change does not impact on the local amenity and landscape and is consistent with Strat9’ at the end of the supporting explanation, and insert a new sentence ‘*Proposals for new community facilities should be located so as not to have unacceptable adverse impacts on landscape character and local amenity*’.**

#### **Recommendation 16**

**Insert an additional sentence at the end of Policy IF2 as follows:  
‘*Future proposals for reuse should ensure there are no unacceptable adverse impacts on its heritage value*’.**

- 6.111 Subject to the above modifications Policy IF1 and Policy IF2 meet the Basic Conditions.
- 6.112 **Policy IF3 (Road Safety for Pedestrians)** aims to balance the needs of the motorist, by supporting road improvements and development, with the needs of pedestrians by requiring proposals to ensure safe pedestrian movement. A further policy strand requires schemes to retain local landscape character.
- 6.113 Facilitating safe pedestrian movements as an alternative to the motor car reflects the objectives in national planning policy of promoting sustainable transport and healthy communities. Road improvement and traffic management initiatives support economic growth and public health and safety. The policy therefore contributes toward the economic,

environmental and social aspects of sustainable development.

- 6.114 By supporting improvements to the transport network combined with promoting the provision of safe and accessible environments it also generally reflects the aims of Local Plan Policy STRAT 10 (Transport and Accessibility), and Local Plan Policy SOC 5 (Health and Well-being).
- 6.115 A minor amendment is required to ensure consistent wording with other policies that are intended to control the impacts of development.

### **Recommendation 17**

**Replace ‘they retain local’ in line 2 of Policy IF3, with ‘*there is no unacceptable adverse impact on*’.**

- 6.116 Subject to the above modification Policy IF3 meets the Basic Conditions.
- 6.117 **Policy IF4 (Communications Infrastructure)** recognises the importance of better virtual connectivity to local residents and businesses and supports the provision of new telecommunications infrastructure provided there are no negative impacts on landscape character, heritage assets or residential amenity.
- 6.118 The provision of high quality communications infrastructure and high speed broadband are recognised in national planning guidance as vital elements in the provision of local community facilities and services. They also contribute toward sustainable economic growth.
- 6.119 The policy generally conforms with the provisions of the Local Plan (Part One) by supporting measures to improve access to information and communications technologies (Policy STRAT 11 Infrastructure), and specifically, the delivery of high speed broadband infrastructure and adequate telecommunications in the rural area (Policy ECON 1 Economic growth, employment and enterprise).
- 6.120 The only change required to the policy concerns the need to adopt a consistent approach throughout the Plan to policies which are intended to control the impacts of development, as previously referred to in paragraphs 6.22 – 6.27 of my report. Since all development proposals could conceivably cause some degree of adverse environmental impact the policy as drafted does not provide a reasonable basis for considering applications. The various environmental considerations identified in the policy should therefore be qualified so that the impact is judged in terms of whether there would be an unacceptable impact or not.
- 6.121 A minor syntax correction is required in line 1 of the policy (‘provided they do not’ should be ‘it does not’ and a minor typographical correction is required to the spelling of ‘assets’. in line 2.

**Recommendation 18**

- a) **Replace ‘they do not negatively’ in line 2 of policy IF4 with ‘it does not have an unacceptable adverse’.**
- b) **Replace ‘asseis’ in line 2 with ‘assets’.**

6.122 Subject to the above modification Policy IF4 meets the Basic Conditions.

**(d) Making it Happen**

- 6.123 The final section of the Plan provides information about the arrangements for submitting the Plan to Cheshire West and Chester Council for the formal Regulation 16 Publicity stage, and the subsequent adoption procedures. It concludes with a commitment to regularly reviewing the Plan and keeping the evidence base up to date.
- 6.124 However there are a number of inaccuracies in the section dealing with the ‘Adoption Process’. For example the Plan is examined by a neighbourhood plan examiner rather than an inspector, and more than 50% of voters in a referendum are required to support the Plan in order for it to be ‘Made’, rather than at least 51% support it in order for the Plan to be adopted.
- 6.125 Since most of this Section 5 will be out of date by the time the next version of the Plan is published (if Cheshire West and Chester Council decide to proceed to a referendum) I recommend it is deleted and replaced with a new section ‘After Adoption’ incorporating the text from ‘After Adoption’ on page 24.

**Recommendation 19**

**Replace Section 5 ‘Making it Happen’ with a new section ‘After Adoption’ incorporating the text from the top of page 24.**

**7.0 Conclusions and Formal Recommendations**

Referendum

- 7.1 The Neighbourhood Plan meets the relevant legal requirements. Subject to the modifications recommended in my report it is capable of satisfying the ‘Basic Conditions’, and having regard to national policies and advice contained in guidance issued by the Secretary of State I consider it is appropriate to make the Neighbourhood Plan.
- 7.2 Although there are a 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 Broxton and District Neighbourhood Area.
- 7.4 As the impact of the policies, both collectively and individually, is likely to have 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 13 June 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            16 June 2016



**Appendix 1 :**

**List of Documents referred to in connection with the examination of the Broxton and District Neighbourhood Development Plan**

- Submission Version of the Broxton and District Neighbourhood Plan (October 2015)
- Basic Conditions Statement (December 2015)
- Consultation Statement (October 2015)
- Evidence Base Summary (October 2015)
- Broxton and District Character Assessment (October 2015)
- Bickerton Hill Settings Pilot Study (Land Use Consultants) November 2015
- 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) (as amended)
- The Environmental Assessment of Plans and Programmes Regulations (2004)
- Cheshire West and Chester Council Local Plan Part One: Strategic Policies (adopted January 2015)
- Remaining 'Saved' policies in the Chester District Local Plan (adopted May 2006)
- Cheshire West and Chester Council Screening Opinion on Strategic Environmental Assessment of the Neighbourhood Plan and Habitats Regulation Assessment (November 2015)
- Fifteen 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.