



Report on No Mans Heath & District Neighbourhood Plan 2010 - 2030

An Examination undertaken for Cheshire West and Chester Council with the support of the No Mans Heath & District Parish Council on the November 2017 submission version of the Plan.

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Main Findings - Executive Summary

From my examination of the No Mans Heath & District Neighbourhood Plan and its supporting documentation including the representations made, I have concluded that subject to the policy modifications set out in this report, the Plan meets the Basic Conditions.

I have also concluded that:

- The Plan has been prepared and submitted for examination by a qualifying body – the No Mans Heath & District Parish Council;
- The Plan has been prepared for an area properly designated – the whole of the Parish of No Mans Heath, small parts of Malpas Parish and part of Tushingham-cum-Grindley, Macefen and Bradley Parish as shown on page 3 of the submitted Plan;
- The Plan specifies the period to which it is to take effect: 2010 - 2030; and
- The policies relate to the development and use of land for a designated neighbourhood area.

I recommend that the Plan, once modified, proceeds to Referendum on the basis that it has met all the relevant legal requirements.

I have considered whether the referendum area should extend beyond the designated area to which the Plan relates and have concluded that it should not.

1. Introduction and Background

No Mans Heath Neighbourhood Plan (NP) 2010 - 2030

- 1.1 No Mans Heath lies just over 2km to the east of Malpas in the southern part of Cheshire West and Chester Council area. The A41 between Chester and Whitchurch forms a recently built by pass in a north south direction just beyond the eastern edge of the village. The NP indicates that the road between Malpas and Nantwich formed a crossroads in the village with the old A41.
- 1.2 The No Mans Heath & District Parish Council came into existence in May 2007 replacing the existing Hampton, Edge & Larkton and Bickley Parish Councils. With a population of just of 1132¹, the NP area comprises a gently undulating, agricultural landscape of scattered dairy, arable and stock farms and equine businesses, winding lanes, well established mixed hedgerows, small hamlets and isolated dwellings. The NP states the area is truly rural, and it is a description with which I fully agree.

¹ 2011 Census.

- 1.3 The scattered nature of the housing in the NP area is focussed on the two settlements of No Mans Heath and Hampton with a narrow range of facilities shared between them. No Mans Heath has a pub and general store/post office. Hampton has a shop and restaurant. Residents fulfil their recreation, business, schooling and health needs outside the parish². Most services are catered for in Malpas which is a Key Service Centre in Part One of the Cheshire West and Chester Local Plan ("CWaCLP (Part One").
- 1.4 Preparation of the NP began in 2012 with the establishment by the No Mans Heath Parish Council of a steering group. The steering group attended various meetings and organised several drop-in sessions and the distribution of questionnaires in 2013 and 2014. The NP represents nearly 6 years work by those involved.
- 1.5 The vision for the area derived from the results of questionnaires and local meetings is included on page 8 of the Plan and states: *"To preserve and enhance the built, natural and historic environment of the local area and the distinctive character of Bickley, Edge, Hampton, Larkton and No Mans Heath, whilst allowing for sustainable economic and social growth and development"*.
- 1.6 Seven aims have also been listed which lead to five policy areas: the local economy, transport and communications, landscape and environment, housing, and recreational and social infrastructure. Each policy area is considered separately with justification and evidence and the gist of the community feedback.

The Independent Examiner

- 1.7 As the Plan has now reached the examination stage, I have been appointed as the examiner of the No Mans Heath and District Neighbourhood Plan by Cheshire West and Chester Council (CWaCC), with the agreement of the No Mans Heath and District Parish Council.
- 1.8 I am a chartered town planner and former government Planning Inspector and have experience of examining neighbourhood plans. I am an independent examiner, and do not have an interest in any of the land that may be affected by the draft Plan.

The Scope of the Examination

- 1.9 As the independent examiner, I am required to produce this report and recommend either:
- (a) that the neighbourhood plan is submitted to a referendum without changes; or

² Consultation Statement page 3.

(b) that modifications are made and that the modified neighbourhood plan is submitted to a referendum; or

(c) that the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.

1.10 The scope of the examination is set out in Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) ('the 1990 Act'). The examiner must consider:

- Whether the Plan meets the Basic Conditions;
- Whether the Plan complies with provisions under s.38A and s.38B of the Planning and Compulsory Purchase Act 2004 (as amended) ('the 2004 Act'). These are:
 - it has been prepared and submitted for examination by a qualifying body, for an area that has been properly designated by the local planning authority;
 - it sets out policies in relation to the development and use of land;
 - it specifies the period during which it has effect;
 - it does not include provisions and policies for 'excluded development';
 - it is the only neighbourhood plan for the area and does not relate to land outside the designated neighbourhood area;
 - whether the referendum boundary should be extended beyond the designated area, should the Plan proceed to referendum; and
- Such matters as prescribed in the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the 2012 Regulations').

1.11 I have considered only matters that fall within Paragraph 8(1) of Schedule 4B to the 1990 Act, with one exception. That is the requirement that the Plan is compatible with the Human Rights Convention.

The Basic Conditions

1.12 The 'Basic Conditions' are set out in Paragraph 8(2) of Schedule 4B to the 1990 Act. In order to meet the Basic Conditions, the neighbourhood plan must:

- Have regard to national policies and advice contained in guidance issued by the Secretary of State;

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- Contribute to the achievement of sustainable development;
- Be in general conformity with the strategic policies of the development plan for the area;
- Be compatible with and not breach European Union (EU) obligations; and
- Meet prescribed conditions and comply with prescribed matters.

1.13 Regulation 32 of the 2012 Regulations prescribes a further Basic Condition for a neighbourhood plan. This requires that the neighbourhood plan should not be likely to have a significant effect on a European Site (as defined in the Conservation of Habitats and Species Regulations 2017) or a European Offshore Marine Site (as defined in the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007), either alone or in combination with other plans or projects.

2. Approach to the Examination

Planning Policy Context

- 2.1 The Development Plan for this part of CWaCC, not including documents relating to minerals and waste development, includes the CWaCLP. CWaCLP (Part One) deals with Strategic Policies and was adopted in January 2015. Part Two of the Local Plan ('CwaCLP (Part Two)') covers Land Allocations and Detailed Policies and is at an advanced stage, having been submitted for examination on 12 March 2018. The development plan also includes policies from the Chester District Local Plan (2006) which are being retained until they are replaced by policies in the CWaCLP (Part Two)³.
- 2.2 The planning policy for England is set out principally in the National Planning Policy Framework (NPPF). The Planning Practice Guidance (PPG) offers guidance on how this policy should be implemented. PPG makes clear that whilst a neighbourhood plan is not tested against the policies in an emerging Local Plan, the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the Basic Conditions against which a neighbourhood plan is tested. It cites, as an example, that up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan contributes to the achievement of sustainable development⁴. Paragraph 184 of the NPPF also provides, "The ambition of the neighbourhood should

³ Basic Conditions Statement paragraph 5.2.

⁴ PPG Reference ID: 41-009-20160211.

be aligned with the strategic needs and priorities of the wider area". On this basis, I refer to the emerging Local Plan, the CWaCLP (Part Two) in this report.

- 2.3 The CWaCLP (Part One) indicates that new development will be brought forward according to a settlement hierarchy which lists Chester, Ellesmere Port, Northwich and Winsford as the locations where the majority will be built. In order to maintain the vitality and viability of rural areas, Key Service Centres are defined where an appropriate amount of development will be brought forward to support new homes and economic and social development. CWaCLP (Part One) Policy STRAT 2 includes Malpas as a Key Service Centre, together with nine other settlements.
- 2.4 Policy STRAT 8 of the CWaCLP (Part One) states that the Key Service Centres such as Malpas provide a good range of facilities and services and will be the main focus of development in the rural area. Nevertheless, the CWaCLP (Part One) states that new development will also be accommodated at local service centres. These local service centres will be identified through the CWaCLP (Part Two) Land Allocations and Detailed Policies Plan. The amount of development in each local service centre will reflect the scale and character of the settlement concerned and the availability of services, facilities and public transport. The CWaCLP (Part Two) includes No Mans Heath as a local service centre.

Submitted Documents

- 2.5 I have considered all policy, guidance and other reference documents I consider relevant to the examination, including those submitted which comprise:
- the draft No Mans Heath & District Neighbourhood Plan 2010 - 2030;
 - the map on page 3 of the Plan which identifies the area to which the proposed neighbourhood development plan relates;
 - the Consultation Statement, November 2017;
 - the Basic Conditions Statement, November 2017;
 - all the representations that have been made in accordance with the Regulation 16 consultation;
 - the Strategic Environmental Assessment Screening Opinion prepared by CWaCC November 2017; and
 - the request for additional clarification sought in my letter of 1 February 2018 and the response on the 7 February 2018 provided by the Parish Council, both of which are available on the CWaCC website⁵.

⁵ View at: http://consult.cheshirewestandchester.gov.uk/portal/cwc_ldf/np/nmh_pub

Site Visit

- 2.6 I made an unaccompanied site visit to the NP Area on 30 January 2018 to familiarise myself with it and visit relevant sites and areas referenced in the Plan and evidential documents.

Written Representations with or without Public Hearing

- 2.7 This examination has been dealt with by written representations. I considered hearing sessions to be unnecessary as the consultation responses clearly articulated the objections to the Plan and presented arguments for and against the Plan's suitability to proceed to a referendum. As noted in paragraph 2.5 above, the Parish Council helpfully answered in writing the questions which I put to them in my letter of 1 February. No requests for a hearing session were received.

Modifications

- 2.8 Where necessary, I have recommended modifications to the Plan (**PMs**) in this report in order that it meets the Basic Conditions and other legal requirements. For ease of reference, I have listed these modifications separately in the Appendix.

3. Procedural Compliance and Human Rights

Qualifying Body and Neighbourhood Plan Area

- 3.1 The No Mans Heath & District Neighbourhood Plan has been prepared and submitted for examination by No Mans Heath & District Parish Council which is a qualifying body. The NP states that it extends over the whole of the No Mans Heath & District Parish, together with two small additions which lie within the parishes of Malpas and Macefen. This constitutes the area of the Plan designated by CWaCC on 6 June 2013. The NP includes a map 1 at page 3 on which the area of the NP is delineated together with the former parishes of Larkton, Edge, Hampton and Bickley. The map shows an area of Macefen Parish which may be the part of the parish included in the NP area, but it does not identify any of Malpas Parish which has been included within the NP area. Comparison of the NP map with Parish boundaries as shown on the CWaCC website suggests that Whitegates Farm and land to the immediate west is within Malpas Parish.
- 3.2 Furthermore, the Regulation 16 consultation response from CWaCC indicates that since the NP area was designated, there has been a Community Governance Review which has resulted in changes to parish

boundaries. The NP area now includes small parts of Malpas Parish and part of Tushingham-Cum-Grindley, Macefen and Bradley Parish.

- 3.3 I have no reason to doubt the accuracy of the NP area as approved by CWaCC but, to avoid ambiguity, the boundary of the NP should be shown as a separate colour on the map on page 3 of the NP, together with the part of the NP area which is within Malpas and Tushingham-cum-Grindley, Macefen and Bradley Parishes **(PM1)**. At the very least, this distinction should then avoid any inadvertent inclusion of the area in any review of the NP already made for Malpas.
- 3.4 It is the only neighbourhood plan for No Mans Heath and District Parish and does not relate to land outside the designated neighbourhood area.

Plan Period

- 3.5 The papers accompanying the submission of the Plan specify clearly the period for which it is to take effect (from 2010 to 2030), but this is not evident from the Plan itself. The end date aligns with the CWaCLP (Part One) which is also 2030. To be accurate and avoid confusion, the NP cover should show that it is for the period 2010 to 2030 **(PM2)**.

Neighbourhood Plan Preparation and Consultation

- 3.6 The Consultation Statement completed in November 2017, indicates a process of several stages from March 2012 to submission to CWaCC in November 2017. The Consultation Statement lists all the activities and provides comprehensive documentation of nearly 50 occasions of public meetings, Parish Council meetings and consultations held between May 2012 and September 2017. Neighbourhood Plan Questionnaires were circulated to households and the small number of businesses in 2012 and 2013, with a further questionnaire in 2014 about the vision and objectives of the NP. There were 125 responses which represented a return of 24% of questionnaires distributed⁶. Three drop-in sessions were held through February to April 2013, with a further session in December 2015. The Consultation Statement helpfully provides analysis of the results of the questionnaires and notes of the meetings.
- 3.7 The Draft Plan was published for consultation under Regulation 14 of the 2012 Regulations on 18 September 2015. The consultation period ran for over 6 weeks until 30 October 2015. The NP was made available to all local businesses in and around the Parish, publicised on parish notice boards and shared by email to all in the community who had previously provided an email address for this purpose. There were 14 responses from interested parties.

⁶ Consultation Statement 2017 Appendix 5.

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- 3.8 Consultation in accordance with Regulation 16, when the Plan was submitted to CWaCC, was carried out for a period of just over 6 weeks from 4 December 2017 to 19 January 2018. 10 responses were received. I am satisfied that a transparent, fair and inclusive consultation process has been followed for this Neighbourhood Development Plan that has had regard to advice in the PPG on plan preparation and is procedurally compliant in accordance with legal requirements.

Development and Use of Land

- 3.9 The Plan sets out policies in relation to the development and use of land in accordance with s.38A of the 2004 Act.

Excluded Development

- 3.10 The Plan does not include provisions and policies for 'excluded development'.

Human Rights

- 3.11 The Basic Conditions Statement advises that, in preparing the NP, regard was had to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and that it complies with the Human Rights Act 1998. CWaCC has not alleged that Human Rights might be breached. I have considered this matter independently and I have found no reason to disagree with that position.

4. Compliance with the Basic Conditions

EU Obligations

- 4.1 The NP was screened for Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA) by CWaCC and submitted with the NP in accordance with the legal requirement under Regulation 15(e)(i) of the 2012 Regulations. The Council found that it was unnecessary to undertake SEA or HRA. Natural England, Historic England and the Environment Agency, when consulted, agreed with that assessment. Due to the proximity of Wales, Natural Resources Wales and Cadw were consulted but did not respond.
- 4.2 Having read the SEA and HRA Screening Opinions and the other information provided, and considered the matter independently, I agree with those conclusions. Therefore, I am satisfied that the NP is compatible with EU obligations.

Main Issues

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- 4.3 Having considered whether the Plan complies with various procedural and legal requirements it is now necessary to deal with whether it complies with the Basic Conditions, particularly the regard it pays to national policy and guidance, the contribution it makes to the achievement of sustainable development and whether it is in general conformity with strategic development plan policies. I test the Plan against the Basic Conditions by considering specific issues of compliance of all the Plan's policies.
- 4.4 As part of that assessment, I consider whether the policies are sufficiently clear and unambiguous having regard to advice in the PPG. The NP 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 evidence⁷.
- 4.5 Having regard to the No Mans Heath and District Neighbourhood Plan, the consultation responses, other evidence⁸ and the site visit, I consider that there are three main issues relating to the Basic Conditions for this examination. These are:

Issue 1: Whether the proposals for homes and jobs are in general conformity with the adopted strategic planning policies (and align with those emerging), whether they would contribute to the achievement of sustainable development and whether they have regard to national policy and guidance?

Issue 2: Whether the proposals for safeguarding the character and appearance of the landscape, countryside and natural environment have regard to national guidance, contribute to sustainable development and generally conform with strategic statutory planning policies, striking the right balance with rural economic needs?

Issue 3: Whether the remaining policies (other matters) in the Plan provide an appropriate framework to shape and direct sustainable development whilst maintaining the essential character of the Plan area and supporting essential facilities and services in meeting the Basic Conditions?

Issue 1: Whether the proposals for homes and jobs are in general conformity with the adopted strategic planning policies (and align with those emerging), whether they would contribute to the achievement of sustainable development and whether they have regard to national policy and guidance?

⁷ PPG Reference ID: 41-041-20140306.

⁸ The other evidence includes my letter to the Parish Council seeking clarification and the replies: see footnote 5.

- 4.6 The spatial strategy of the CWaCLP (Part One) includes meeting future housing needs and supporting economic growth. The CWaCLP (Part One) also seeks growth which is higher than that to meet local needs⁹. Under Policy STRAT 1 of the CWaCLP (Part One) new development is directed first of all to the four main urban areas of Chester, Ellesmere Port, Northwich and Winsford and then to the larger villages and market towns which have been identified as Key Service Centres. Finally, an appropriate level of development will also be brought forward in smaller rural settlements which have adequate services and facilities and access to public transport. The local service centres have been identified in the emerging CWaCLP (Part Two). No Mans Heath is one such local service centre.
- 4.7 Policy STRAT 2 of the CWaCLP (Part One) seeks the delivery of the key elements of strategy: about 22,000 new dwellings and 365 ha of land for employment development. Policy STRAT 8 of the CWaCLP (Part One) requires the provision of at least 4,200 new dwellings across the rural area outside the four main urban areas, together with the provision of an additional 10ha of employment land. At No Mans Heath, a local service centre in the emerging CWaCLP (Part Two), adopted Policy STRAT 8 indicates that the amount of development should reflect the scale and character of the settlement and the availability of services, facilities and public transport.
- 4.8 The Introduction to the Housing section includes a statement in the third paragraph that, in the wider plan area, infill development would be permitted. This would be contrary to Policy STRAT 9 of the CWaCLP (Part One). Therefore, I agree with the alteration suggested by CWaCC to specify that infilling can only occur within the development boundary of No Mans Heath. My recommended wording is in **PM3**.
- 4.9 The CWaCLP (Part One) states that the Council will identify settlement boundaries for the four urban areas, key service centres and local service centres through the CWaCLP (PartTwo). In describing the rationale for a Development Boundary (DB) at No Mans Heath, the NP suggests that, once the Plan is made, the DB will be a material consideration in the determination of planning applications by CWaCC. This is incorrect, and underplays the status of the NP to the extent that, when made, the NP will be part of the development plan alongside the local plan and consequently would have primacy unless outweighed by material considerations. Therefore, I shall recommend an appropriate modification to the DB section on page 19 of the NP (**PM4**).
- 4.10 Turning to the detailed policies of the NP, Policy H1 indicates that small scale development of up to five houses would be supported in principle,

⁹ CWaCLP (Part One) paragraph 5.1.

other than in exceptional circumstances to meet a community need. Given the limited opportunities for larger scale redevelopment in No Mans Heath and the policies in the NP and local plan to protect the countryside, I agree that housing development should normally be limited to small scale developments. However, the limit of five houses appears arbitrary, without objective supporting evidence. Policy SOC 1 of the CWaCLP (Part One) describes a threshold of three or more dwellings above which a proportion of affordable housing shall be provided. I believe that a limitation of five dwellings would most likely threaten the viability of a scheme if one or two would be required to be affordable. Such a threat to viability would be contrary to national planning guidance.

- 4.11 If a proposal were to come forward for in excess of five houses, a consequence would be a greater number of open market homes more able to absorb the costs of the increase in the number of affordable homes. The development would still be small scale if it were for six or seven dwellings, although I consider that a proposal which included more than ten dwellings would not be considered small scale in view of the modest size of No Mans Land. Consequently, in order to facilitate the delivery of affordable housing, I shall recommend the deletion of the five houses limit.
- 4.12 I shall also recommend the deletion of the reference to the "latest Fabric Energy Efficiency Standards or equivalent" the contents of which are so detailed that to be included in the policy would be contrary to national planning policy guidance, a point made by CWaCC. The recommended modifications are shown in **PM5**.
- 4.13 I take the view that the second paragraph of Policy H1 reads more like explanatory text and should be moved from the policy to Justification and Evidence (**PM6**). In addition, the paragraph states that the expectation would be about 50 houses over the plan period. The plan period is 2010 to 2030. The NP (page 19) and answers from the Parish Council to my questions indicate that over 80 homes have been approved within the NP area since the beginning of 2010 up to May 2016, including 37 within or adjacent to the proposed No Mans Heath settlement boundary¹⁰. Therefore, it would be reasonable to qualify the expectation of 50 houses over the plan period in that section. A more comprehensive description of the expectation incorporating the numbers above would prevent the NP from being misleading. Nevertheless, the currently stated expectation of 50 houses is not so flawed that it fails a Basic Condition and I shall not recommend a modification.
- 4.14 However, the paragraph also refers to phasing and, given the variety of means by which housing can be permitted as identified in Policy H1, I do

¹⁰ See letter dated 7 February 2018 from No Mans Heath Parish Council.

not consider that such phased development would be feasible, particularly as housing which would otherwise be judged sustainable, could be prevented. Therefore, the final sentence in the paragraph should be deleted **(PM7)**.

- 4.15 Points a) and b) of Policy H1 both deal with empty buildings and it would serve the aim of clarity if they were merged. If the properties are empty, it can be safely assumed that they are redundant or disused. The reference to meeting local needs in relation to normal market housing would be contrary to national guidance¹¹. The NP should be read as a whole and therefore there is no need to add the reference to Policy ECON 3 **(PM8)**.
- 4.16 Point c) of Policy H1 supports redevelopment of brownfield sites where they are unsuitable for employment development and to meet the local needs of the area. CWaCC has indicated that this would be contrary to adopted Policy STRAT 9 which does not provide for redevelopment of land outside the settlement boundary. However, the emerging CWaCLP (Part Two) includes Policy DM19 which describes nine circumstances where redevelopment of land outside a settlement boundary would be acceptable. Unsuitability for, or incapability of, employment use and local need are not included as criteria in Policy DM19.
- 4.17 Without prejudice to the forthcoming examination of the CWaCLP (Part Two), it seems to me that Policy DM19 would enable redevelopment of brownfield sites for housing in sustainable circumstances and NP Policy H1 c) would be compatible with it, subject to the exclusion of the sequential preference for employment development and the reference to local need. Therefore, I shall recommend a modification to link the Policy H1 to Policy DM19 and delete the phrases to which I refer above **(PM9)**.
- 4.18 Policy H1 e) refers to development of up to five houses and, as above, in the absence of any objective evidence justifying the number, I consider that a reference to small scale is sufficient to avoid unacceptably large housing schemes. In addition, Rural Exception sites are those which would not normally be used for housing¹². Accordingly, the inclusion of sites "within" the Development Boundary is superfluous. I shall recommend appropriate modifications **(PM10)**.

¹¹ Statutory guidance is provided in "Allocation of accommodation: guidance for local housing authorities in England" (2012) and "Providing social housing for local people" (2013). The latter document indicates that it is in addition to the former. View at: <https://www.gov.uk/government/publications/allocations-of-accommodation-guidance-for-local-housing-authorities-in-england>

¹² NPPF Annex 2: Glossary.

- 4.19 Policy H2 seeks housing development which is not built at an excessive housing density, respects the semi-rural character of the area and avoids the creating the impression of uniformity. Such considerations would be in general conformity with national guidance¹³. Therefore, the policy would meet the Basic Conditions.
- 4.20 Policy H3 seeks high quality design and refers to all new housing development within the settlement boundary. Given that new housing could be built adjacent to the settlement boundary and outside it under Policy H1, Policy H3 should not be restricted to dwellings just within the settlement boundary. I have already dealt above with the limitation on five houses.
- 4.21 Furthermore, Policy H3 f) refers to the need to include an element of low cost market housing. I recognise that there may be various financial devices available in order to build houses which are then sold at less than open market price. The Parish Council, in a response to one of my questions, suggested the Malpas and District Community Land Trust. However, I consider that it would not be appropriate to include such a requirement in a policy which would become part of the development plan. The policy already refers to providing a mix of housing to meet local needs as identified in the most up to date Parish Council Housing Survey and I consider that this should be able to achieve a wide choice of high quality homes as advised in national policy guidance, including where appropriate, starter homes¹⁴. Furthermore, the NP provides only for small scale housing development. In addition to affordable housing sought under Policy SOC 1 of the CWaCLP (Part One), if a scheme has also to provide low cost market homes, I consider that the viability of the project may be threatened to the extent that no new dwellings would be built.
- 4.22 Policy H3 g) aims to provide for the changing needs and life styles of an ageing population. I have already referred to the unacceptably excessive detail of Fabric Efficiency Standards. However, the CWaCLP (Part One) refers to the various design standards which can assist in guiding development across the borough. Lifetime Homes Standards, Building for Life 12 and By Design are included within the guidance. The need to reflect guidance in Building for Life is already included in Policy H1 and I shall cross refer to the CWaCLP (Part One) Policy ENV 6 in NP Policy H3. Accordingly, I shall recommend the deletion of point g) and combine a reference to the ageing population in point f). Finally, point b) refers to the loss of outlook. The planning system does not protect private views from dwellings unless it is in the public interest and so I shall delete the reference to outlook. Therefore, and as suggested in part by CwaCC, I shall recommend modifications to Policy H3 **(PM11)**.

¹³ PPG Reference ID: 26-007-20140306; NPPF paragraph 58.

¹⁴ NPPF Paragraph 50.

- 4.23 Policy H4 deals with the Development Boundary (DB) and consists of two paragraphs. The first paragraph proposes the DB and, despite the comments of CWaCC, subject to some adjustment to delete superfluous phrases, I am content that it constitutes a land use policy. However, the second paragraph would be more properly included in the introductory section entitled Rationale for a No Mans Heath Development Boundary **(PM12)**.
- 4.24 NP Policies ECON1, ECON 2, ECON 3 and ECON 4 aim to maintain and encourage small businesses, rural tourism and local facilities that will benefit the local economy and the wider community. NP Policy ECON 1 is consistent with Policy ECON 1 (economic growth, employment and enterprise) and Policy STRAT 8 (development in rural areas) of the adopted CWaCLP (Part One). However, NP Policy ECON 1 implies that new small-scale employment opportunities will be supported anywhere in the countryside in a rural environment and this is contrary to the aims of local plan Policy STRAT 9 (Green Belt and countryside). The small but significant alteration suggested by CWaCC to delete “particularly” would remedy that deficiency **(PM13)**.
- 4.25 Policy ECON 2 addresses the loss of employment sites and community facilities and I consider that it is in general conformity with adopted local plan strategic objective SO2, adopted local plan Policy ECON 1 and the emerging CWaCLP (Part Two) and hence meets the Basic Conditions.
- 4.26 Similarly, subject to one alteration, NP Policy ECON 3 would be in general conformity with local plan Policy STRAT 9. The modification I shall recommend is the deletion of point e) which concerns the change of use of agricultural buildings **(PM14)**. I appreciate that this can be a vexing issue in the management of development in the countryside, but the complexity of the application of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) does not lend itself to attempting to cover all the variables in a development plan policy. Such cases are best dealt with on their merits by normal development management.
- 4.27 NP Policy ECON 4 considers the scale design and amenity of new development for employment purposes and lists four requirements. Point b) includes a reference to the loss of outlook. As I concluded when considering Policy H3 above, the planning system does not protect private views unless it is in the public interest. Therefore, I shall delete the phrase from the policy **(PM15)**.
- 4.28 Policy ECON 4 d) provides for on-site car and commercial vehicle parking. Requirements for parking in relation to new development are set out in

the CWaCC's parking standards¹⁵. The policy seeks the provision of spaces which fully meets the needs of the projected number of employees and commercial services of the prospective occupiers. However, the adopted parking standards of CWaCC outlined in Supplementary Planning Guidance (SPG) do not require such provision¹⁶. Policy STRAT 10 of the CWaCLP (Part One) states that new developments will be expected to provide adequate levels of car and cycle parking in accordance with the Council's parking standards, taking account of the accessibility of the development; the type, mix and use of the development; the availability of, and opportunities for, public transport; and local car ownership levels. Therefore, to ensure that the policy is in general conformity with the strategic policies of the adopted local plan, I shall substitute the requirement to comply with the SPG in preference to fully meeting the needs of employees and the associated operations **(PM16)**.

- 4.29 Accordingly, with the recommended modifications, I consider that the policies concerning the provision of homes and jobs would generally conform with strategic statutory policies, would contribute to the achievement of sustainable development and have due regard to national policy and guidance. Therefore, the Basic Conditions are met.

Issue 2: Whether the proposals for safeguarding the character and appearance of the landscape, countryside and natural environment have regard to national guidance, contribute to sustainable development and generally conform with strategic statutory planning policies, striking the right balance with rural economic needs?

- 4.30 The justification and evidence of the Landscape and Environment section is well written, evocative and encapsulates what I saw on my visit to the area. NP Policy LAN 1 considers landscape character and important views. NP Policy LAN 2 seeks to protect woodland, tress and hedgerows. Policy LAN 1 is in general conformity with Policy ENV2 and Policy STRAT 9 of the CWaCLP (Part One). Policy LAN 2 is in general conformity with Policy ENV3 of the CWaCLP (Part One). Therefore, both policies meet the Basic Conditions.
- 4.31 Policy LAN 3 deals with extension and alteration to existing buildings in the countryside. CWaCC has suggested two additions to the NP, one of which would include a reference to minimising the impact of alterations and extensions to existing buildings on heritage settings, the other being the inclusion of the justification for such an intention in the policy.
- 4.32 There are no general policies in the NP, as submitted, which set out how the protection to any heritage assets would be achieved. But I do not

¹⁵ CWaCLP (Part One) paragraph 5.84.

¹⁶ Table 4.2: Parking Standards Supplementary Planning Guidance: May 2017.

consider this is a fatal omission from the NP because the historic environment in the NP area is safeguarded by the comprehensive Policy ENV5 of the CWaCLP (Part One). Nevertheless, the additions suggested by CWaCC would generally conform with Policy ENV5 and so I shall recommend the appropriate modifications to the NP **(PM17)**.

- 4.33 Policy LAN 4 seeks to protect an area of common land from (all) development. The policy refers to the "areas listed in and shown on the proposals map (Appendix 6) ...". The Land at Edge Green, as it is defined, is shown to have an area of 6.61ha and is a very elongated, irregular tract of land, more akin to a green corridor¹⁷. In my opinion, the policy is very strict and may restrict development which could have a positive effect on the area. Therefore, I shall recommend a modification to the policy based on the need to safeguard its character.
- 4.34 I shall also recommend the clarification of the map at Appendix 6 which appears to include in various colours the delineated boundaries of land holdings **(PM18)**.
- 4.35 Policy LAN 5 deals with the environmental sustainability of buildings and is in general conformity with Policy ENV 6 of the CWaCLP (Part One). Policy LAN 6 addresses agricultural buildings and, as noted by CWaCC, includes types of development which may benefit from permitted development rights¹⁸. Therefore, I shall include an introductory phrase "Where planning permission is required..." **(PM19)**. Subject to this change, the policy is in general conformity with Policy STRAT 9 of the CWaCLP (Part One). Policy LAN 7 aims to protect wildlife sites and corridors. The policy is in general conformity with Policy ENV 4 of the CWaCLP (Part One), subject to introducing a qualification about the significance of the possible adverse effects **(PM20)**. Built development would almost always have effects on wildlife, albeit in some minor way. Therefore, the addition would ensure that very minor effects would not prejudice development which would otherwise be sustainable.
- 4.36 Policy LAN 8 supports renewable energy and aims to ensure that appropriate decommissioning and reinstatement measures are put in place after operations cease. Other than certain reservations about the details of the implementation of the decommissioning and reinstatement, the policy is in general conformity with Policy ENV 8 of the CWaCLP (Part One). However, the final paragraph of the policy is overly detailed and onerous. The statement in the policy that restoration should be fully funded at current costs when development commences lacks clarity and may not deliver what is intended.

¹⁷ <https://common-land.com/lands/show/cheshire/page:2>

¹⁸ The Town and Country (General Permitted Development) (England) Order 2015.

- 4.37 When restoration is due following cessation of the operations, the costs of the scheme may be far higher than when development commenced. The policy, quite rightly, seeks the total removal of plant and buildings but, based on my experience, some landowners may reasonably wish to retain certain facilities, such as improved access and concrete hardstandings, which can assist subsequent agricultural operations. Therefore, I support the suggested rephrasing of the policy by CWaCC and shall also recommend making it more flexible and dependent on an agreed scheme of decommissioning and restoration **(PM21)**.
- 4.38 Accordingly, with the recommended modifications, I consider that the landscape, countryside and natural environment policies are in general conformity with the strategic policies, have regard to national guidance, would not unacceptably inhibit rural economic growth and would contribute to the achievement of sustainable development, thereby meeting the Basic Conditions.

Issue 3: Whether the remaining policies (other matters) in the Plan provide an appropriate framework to shape and direct sustainable development whilst maintaining the essential character of the Plan area and supporting essential facilities and services in meeting the Basic Conditions?

- 4.39 Policy TRANS 1 addresses the detail of connectivity issues and generally conforms with the aim to support high quality communications infrastructure expressed in NPPF and Policy STRAT 11 and paragraph 5.101 of the CWaCLP (Part One) ¹⁹.
- 4.40 Policy TRANS 2 consider the impact of proposed development on the local road network and people who use it. The policy is in general conformity with Policy ENV 6 of the CWaCLP (Part One) which includes the aims of ensuring ease of movement and legibility, with priority for pedestrians and cyclists, and the promotion of safe, secure environments and access routes. CWaCC has indicated that transport assessments would only be sought where justified by the number of units or size of the site. Such a scale of development is not provided for in the NP. CWaCC also suggested that the requirement for new housing and economic development to contribute to cycling and pedestrian networks may not be appropriate in all cases. I agree with those comments and shall recommend consequent modifications to the policy **(PM22)**.
- 4.41 Policy TRANS 3 deals with parking. I agree with CWaCC that the second sentence of the policy is more in the nature of justification than policy and I shall recommend that it should be moved there **(PM23)**. CWaCC state that their parking standards are used to assess proposals, albeit flexibly,

¹⁹ NPPF paragraph 42.

to take account of the specific case and local circumstances. Nevertheless, as stated above in relation to Policy ECON 4, requirements for parking in relation to new development are set out in the CWaCC's parking standards²⁰.

- 4.42 Policy TRANS 3 seeks the provision of 1 space per bedroom. However, the adopted parking standards of CWaCC outlined in SPG do not require such provision²¹. Policy STRAT 10 of the CWaCLP (Part One) states that new developments will be expected to provide adequate levels of car and cycle parking in accordance with the Council's parking standards, taking account of the accessibility of the development; the type, mix and use of the development; the availability of, and opportunities for, public transport; and local car ownership levels. Therefore, to ensure that the policy is in general conformity with the strategic policies of the adopted local plan, I shall substitute the requirement to comply with the SPG in preference to meeting the needs of new housing development as currently expressed in Policy TRANS 3 **(PM24)**.
- 4.43 Policy RS1 considers existing and new community facilities and states that their retention and continued use will be supported subject to Policy STRAT 9 of CWaCLP (Part One). Moreover, NPPF states that planning policies and decisions should guard against the unnecessary loss of valued facilities and services where this would reduce the community's ability to meet its day to day needs²². CWaCC has commented that reference to Policy STRAT 9 should be moved within the NP policy to the sentence where the relocation of services or facilities is addressed. I agree, but also believe that Policy STRAT 9 in NP Policy RS1 should have been written as STRAT 8. STRAT 8 states that the retention of rural shops and community facilities, and the provision of new facilities at an appropriate scale to the settlement, will be supported. STRAT 9 deals with relocation in the countryside. Therefore, I shall substitute Policy STRAT 8 for STRAT 9 in the first sentence of the policy and insert STRAT 9 in the second sentence. **(PM25)**.
- 4.44 Policy RS 2 expects all new development to address the effects and benefits it will have on community infrastructure and how any effects can be mitigated. The policy is in general conformity with CWaCLP Policy STRAT 11 which states that to facilitate the delivery of infrastructure, new development will, where appropriate, be required to contribute towards the Council's identified infrastructure priorities in accordance with Circular 5/2005, Community Infrastructure Levy regulations or successor regulations/guidance. Policy RS3 supports improvements to the network of footpaths, cycleways and bridleways. The policy is in general conformity

²⁰ CWaCLP (Part One) paragraph 5.84.

²¹ Table 4.2: Parking Standards Supplementary Planning Guidance: May 2017.

²² NPPF paragraph 70.

with CWaCLP Policies STRAT 10 (Transport) and SOC 5 (Health and well-being).

- 4.45 Therefore, with the recommended modifications, I consider that the policies on other matters would be in general conformity with the strategic statutory policies and would both contribute to the achievement of sustainable development and have regard to national policy and guidance. Accordingly, the Basic Conditions are met.

5. Conclusions

Summary

- 5.1 The No Mans Heath Neighbourhood Plan has been duly prepared in compliance with the procedural requirements. My examination has investigated whether the Plan meets the Basic Conditions and other legal requirements for neighbourhood plans. I have had regard to all the responses made following consultation on the NP, and the evidence documents submitted with it.
- 5.2 I have made recommendations to modify a number of policies and text to ensure the Plan meets the Basic Conditions and other legal requirements. I recommend that the Plan, once modified, proceeds to referendum.

The Referendum and its Area

- 5.3 I have considered whether or not the referendum area should be extended beyond the designated area to which the Plan relates. The No Mans Heath NP as modified has no policy or proposals which I consider significant enough to have an impact beyond the designated neighbourhood plan boundary, requiring the referendum to extend to areas beyond the Plan boundary. I recommend that the boundary for the purposes of any future referendum on the Plan should be the boundary of the designated neighbourhood plan area.
- 5.4 I note that No Mans Heath has been subjected to recent pressure to accommodate a modest amount of new house building. The recent adoption of the CWaCLP (Part One) and the advanced state of the CWaCLP (Part Two) should considerably reduce unwanted pressure by enabling demand to be focussed elsewhere in the CWaCC area.
- 5.5 The Parish Council is to be commended for its efforts in producing a clear and concise document. Incorporating the modifications I have recommended, the NP will make a positive contribution to the development plan for the area and help to find the right balance between the protection of character and appearance of the No Mans Heath area and the surrounding countryside, whilst enabling small scale sustainable development to proceed. The high quality of the NP was also enhanced by

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the cooperation between the Parish Council and CWaCC, the results of which were evident in the comprehensive notes of the meetings between the two parties.

Andrew Mead

Examiner

Appendix: Modifications

Proposed modification no. (PM)	Page no./ other reference	Modification
PM1	Map: page 3	Identify the boundary of the NP in a separate colour. Identify the parts of the NP area which are within the Parishes of Malpas and Tushingham-cum-Grindley, Macefen and Bradley.
PM2	Cover of NP	Alter the caption to: "The Way Forward from 2010 to 2030" (or similar).
PM3	p 18: Third paragraph	Alter to: "Within the wider plan area, small, sympathetic, well designed and environmentally sustainable development which complies with Local Plan Policy STRAT 9 will be permitted. In No Mans Heath, new development, including infilling a small gap with up to two dwellings and redevelopment of land, will be permitted within the Development Boundary."
PM4	P 19	Within the first paragraph of the section "Rationale for a No Mans Heath Development Boundary (DB)", alter the second sentence to: "The land use policies in the NP, once the Plan is made, will form part of the development plan for the area, along with the local plan and will be used by CWaCC as the basis for determining planning applications."
PM5	Policy H1 First paragraph	Delete: "... up to five houses". Delete: "... incorporating the latest Fabric Energy Efficiency Standards or the equivalent standard in force at the time and ...".

		Delete reference to "small scale" from the Definitions.
PM6	Policy H1 Second paragraph	Remove second paragraph and place it in Housing - Justification and Evidence.
PM7	Policy H1 Second paragraph	Delete final sentence.
PM8	Policy 1 a) and b)	Delete a) and b); insert: "a) Re-use of redundant or disused buildings which would lead to an enhancement of the immediate area and in accordance with Policy STRAT 9."
PM9	Policy H1 c)	Delete c) and replace with "b) Redevelopment of brownfield sites subject to the criteria listed in Policy DM19 of CWaCLP (Part Two)."
PM10	Policy H1 e)	Delete e) and replace with "d) Small scale developments on Rural Exception Sites, other than in exceptional cases to meet a community need, adjoining the Development Boundary."
PM11	Policy H3	Delete the first phrase and replace with: "All new housing developments will be expected to be of a high quality design which will:" Point a) delete: "... settlement ...". Point b) delete: "... or outlook ...". Delete points f) and g) and replace with: " f) Provide a mix of housing to meet local needs as identified in the most up to date Parish Council

		Housing Survey and provide for the changing needs and life styles of an ageing population as enabled by CWaCLP (Part One) Policy ENV 6."
PM12	Policy H4	<p>Alter the first paragraph to:</p> <p>"The NP proposes a Development Boundary (DB) at No Mans Heath. Development in the NP area will be focussed within the DB with the aim of enhancing its role as a suitable settlement, whilst protecting the surrounding countryside."</p> <p>Move the second paragraph a) to d) into the Rationale for a No Mans Heath Development Boundary.</p>
PM13	Policy ECON 1	Delete: "particularly" from the first sentence.
PM14	Policy ECON 3	Delete point e).
PM15	Policy ECON 4 point b)	Delete "or outlook".
PM16	Policy ECON 4 point d)	<p>Delete and replace with:</p> <p>"Provides on-site car and commercial vehicle parking and delivery vehicle turning space to the requirements set out in the adopted parking standards of CWaCC."</p>
PM17	Policy LAN 3	<p>Add to the policy:</p> <p>Alterations and extensions to existing buildings must be carefully designed and implemented to ensure that the character of the building and its contribution to the character of the wider area, is not harmed and that its impact on significant heritage assets and their setting is minimised. The cumulative impact of small changes should be assessed and considered</p>

	Landscape and Environment – Justification and Evidence	<p>as this can be detrimental to the character of the area if not carefully controlled.”</p> <p>Add relevant paragraph outlined on page 5 of the letter dated 18 January 2018 from CWaCC.</p> <p>Add a map to Appendix 2 showing the designated heritage assets in the NP area.</p>
PM18	Policy LAN 4	<p>Replace the policy with:</p> <p>“The area listed and shown on the map at Appendix 6 is designated common land which will be protected from any development which would cause harm to the particular character which makes it valued by the local community.”</p> <p>Amend the map at Appendix 6 by the deletion of all the coloured boundary lines other than that which delineates the common land.</p> <p>Definitions: Common Land: delete final sentence.</p>
PM19	Policy LAN 6	<p>Add: “Where planning permission is required...” to the beginning of the policy.</p>
PM20	Policy LAN 7	<p>Substitute: “a significantly adverse effect” for an adverse effect”.</p>
PM21	Policy LAN 8	<p>Delete the final paragraph and substitute:</p> <p>“Before the commencement of development, a scheme for the decommissioning and reinstatement of the site shall be submitted to and agreed in writing by the local planning authority. The scheme should include details of how the decommissioning and reinstatement would be funded.”</p>

PM22	Policy TRANS 2	Insert the phrase: "Where appropriate, ..." at the beginning of the second sentence; and replace "All..." with "Where appropriate ..." at the beginning of the fourth sentence.
PM23	Policy TRANS 3	Move the second paragraph to the Justification and Evidence.
PM24	Policy TRANS 3	Amend the first paragraph to: "All new commercial and business development, not in existing business locations, and all new housing development, shall provide sufficient on-site car parking to accommodate the type and size of vehicles associated with the approved use, including off-road visitor parking. The parking provided shall meet the requirements of the adopted parking standards of CWaCC."
PM25	Policy RS 1	First sentence: replace "STRAT 9" with "STRAT 8" . Second sentence: amend to "The relocation of services or facilities within the parish will be supported where they comply with Policy STRAT 9 ..." .