

Report on the Upton-by-Chester & District Neighbourhood Development Plan 2020 - 2030

An Examination undertaken for Cheshire West and Chester Council with the support of Upton-by-Chester Parish Council on the November 2021 submission version of the Plan.

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Date of Report: 13 April 2022

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Main Findings - Executive Summary

From my examination of the Upton-by-Chester & District Neighbourhood Development Plan (UNDP/the 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 – Upton-by-Chester Parish Council;
- The Plan has been prepared for an area properly designated – the Parishes of Upton-by-Chester, Bache and Moston, as shown on Figure 1.1 (page 4) of the Plan;
- The Plan specifies the period during which it is to take effect: 2020-2030; 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

Upton-by-Chester & District Neighbourhood Development Plan 2020–2030

- 1.1 The Civil Parishes of Upton-by-Chester, Bache and Moston are administered by the Upton-by-Chester Parish Council (UbCPC). The UbCPC area had a population of about 9,400 in 2017.¹ It is a residential suburban parish on the north western edge of Chester and includes the small centres of Upton, Upton Heath and Moston. For the sake of consistency and occasional brevity, I shall refer to the Plan as the Upton-by-Chester & District Neighbourhood Development Plan, the UNDP, or merely the Plan.
- 1.2 The initial process to prepare a neighbourhood plan for Upton-by-Chester began in 2014 when the Parish Council established a Steering Group. A questionnaire was distributed to all households, various consultation meetings took place and evidence was gathered. The Upton-by-Chester & District Neighbourhood Development Plan was submitted to Cheshire West and Chester Council (CWaCC) in November 2021, representing over seven years' work for those involved.

¹ 2017 mid-year estimates: Office for National Statistics.

The Independent Examiner

- 1.3 As the Plan has now reached the examination stage, I have been appointed as the examiner of the UNDP by CWaCC with the agreement of UbCPC.
- 1.4 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 Plan.

The Scope of the Examination

- 1.5 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
 - (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.
- 1.6 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'; and
 - 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.
 - Such matters as prescribed in the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the 2012 Regulations').
- 1.7 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

- 1.8 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;
 - 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 (under retained EU law)²; and
 - meet prescribed conditions and comply with prescribed matters.
- 1.9 Regulation 32 of the 2012 Regulations prescribes a further Basic Condition for a neighbourhood plan. This requires that the making of the Plan does not breach the requirement of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.³

2. Approach to the Examination

Planning Policy Context

- 2.1 The Development Plan for this part of CWaCC, excluding policies relating to minerals and waste development, includes the Cheshire West and Chester Local Plan (CWaCLP). The CWaCLP (Part One) deals with Strategic Policies and was adopted in January 2015. The CWaCLP (Part Two) covers Land Allocations and Detailed Policies and was adopted in July 2019.

² The existing body of environmental regulation is retained in UK law.

³ This revised Basic Condition came into force on 28 December 2018 through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

- 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. A revised NPPF was published in July 2021 and all references in this report are to the July 2021 NPPF and its accompanying PPG.

Submitted Documents

- 2.3 I have considered all policy, guidance and other reference documents I consider relevant to the examination, as well as those submitted which include:
- the draft Upton-by-Chester Neighbourhood Development Plan 2020–2030, dated November 2021;
 - Figure 1.1 on page 4 of the Plan which identifies the area to which the proposed Neighbourhood Development Plan relates;
 - the Consultation Statement Parts 1 and 2, dated November 2021;
 - the Basic Conditions Statement, dated November 2021;
 - the Strategic Environmental Assessment, Habitats Regulations Assessment and Marine Plan Screening Determination, dated November 2021;
 - all the representations that have been made in accordance with the Regulation 16 consultation; and
 - the request for additional clarification sought in my letter of 4 March 2022 and the responses of 18 March 2022 from UbCPC and CWaCC.⁴

Site Visit

- 2.4 I made an unaccompanied site inspection to the UNDP area on 8 March 2022 to familiarise myself with it and visit relevant locations referenced in the Plan and evidential documents. My inspection included visiting each of the proposed Local Green Spaces and the area around Dale Barracks.

Written Representations with or without Public Hearing

- 2.5 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. No requests for a hearing session were received.

Modifications

- 2.6 Where necessary, I have recommended modifications to the Plan (**PMs**) in this report in order that it meets the Basic Conditions and other legal

⁴ View all the all the relevant Plan documentation, including the core submission documents and correspondence at:

<https://consult.cheshirewestandchester.gov.uk/kse/event/36689>

requirements. For ease of reference, I have listed these modifications separately in the Appendix to this report.

3. Procedural Compliance and Human Rights

Qualifying Body and Neighbourhood Plan Area

- 3.1 The Upton-by-Chester Neighbourhood Development Plan has been prepared and submitted for examination by UbCPC, which is a qualifying body. The UNDP extends over all the area administered by UbCPC. This constitutes the area of the Plan designated by CWaCC in January 2015.

Plan Period

- 3.2 The Plan specifies the Plan period as 2020 to 2030.

Neighbourhood Plan Preparation and Consultation

- 3.3 The Consultation Statement (CS) comprises two parts. Part 1 covers the Regulation 14 consultation stage. Part 2 deals with all the prior consultation details. The first stages of the preparation of the Plan took place in 2014 with a public meeting, a presentation at the Upton Annual Assembly and an information stand at the Upton Community Celebration. Part 2 provides a comprehensive list of the numerous consultation meetings with residents, local businesses and organisations, local schools, public bodies including CWaCC officers, and not-for-profit organisations throughout the period from 2014 to July 2021. In addition, articles were regularly published in the Parish Magazine and an UNDP Facebook page was created.
- 3.4 The Pre-Submission Plan was published for consultation under Regulation 14 of the 2012 Regulations on 8 February 2021 for a period of six weeks until 22 March 2021. 334 individuals or organisations submitted responses which are analysed in Part 1 of the CS and which summarises the numerous responses from statutory consultees, members of the public and other stakeholders together with the response from the UNDP Steering Group and any proposed changes to the Plan.
- 3.5 The Plan was finally submitted to CWaCC in November 2021. Consultation in accordance with Regulation 16 was carried out from 13 January 2022 until 24 February 2022. 14 representations were received, including one accepted by CWaCC which was submitted after the closing date. I am satisfied that a transparent, fair and inclusive consultation process has been followed for the UNDP, that has had regard to advice in the PPG on plan preparation and engagement and is procedurally compliant in accordance with the legal requirements.

Development and Use of Land

- 3.6 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

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

Human Rights

- 3.8 The Basic Conditions Statement (BCS) advises that the Plan is fully compatible with the European Convention on Human Rights, transposed into UK law by the Human Rights Act 1998. It states the Plan has been prepared within the existing framework of statute, national planning policy and guidance, and local level strategic planning policies, which are both compatible with the Convention. The BCS goes on to outline that, in accordance with established process, the Plan has been produced in full consultation with the local community and it is subject to independent examination. It concludes the Plan does not contain policies or proposals that would infringe the human rights of residents or other stakeholders over and above the existing strategic policies at national and local levels.
- 3.9 Given the conclusions on the Plan's general conformity with the strategic policies of the Local Plan and regard to national planning policy, it is reasonable to conclude that the making of the Plan should not breach human rights. I am aware from the CS Parts 1 and 2 that considerable emphasis was placed throughout the consultation process to ensure that no sections of the community were isolated or excluded. I have considered this matter independently and I have found no reason to disagree with the statement in the BCS and I am satisfied that the policies will not have a discriminatory impact on any particular group of individuals.

4. Compliance with the Basic Conditions

EU Obligations

- 4.1 A Strategic Environmental Assessment (SEA) screening was undertaken by CWaCC which considers that it is unlikely there will be any significant environmental effects arising from the Neighbourhood Plan. As such, a SEA of the Plan is not required. The screening was submitted to the statutory environmental bodies (Historic England, Natural England and the Environment Agency).
- 4.2 A Habitat Regulations Assessment (HRA) screening opinion was sought from Cheshire West and Chester Council in order to confirm whether an HRA was required to support the Plan. It was considered that any policies

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or proposals coming forward in the Neighbourhood Plan area would not result in a Likely Significant Effect on a European site than already identified and assessed through the Local Plan (Part One and Part Two) Habitats Regulation Assessment Report.

- 4.3 The Screening determination made by CWaCC is that the Plan is unlikely to have an adverse effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010 (d)), alone or in combination with other plans and projects. As such, Appropriate Assessment is not considered to be required. The screening exercise concluded that no European sites would be significantly affected by the proposals within the Plan.
- 4.4 So far as The North West Marine Plan and the Welsh Marine Plan are concerned, the Neighbourhood Plan is generally anticipated to have a positive relationship with both of them. The policies will help to combat or reduce climate change, reduce air quality and emissions and improve water quality. No specific additional work is suggested as the policies are generally positively worded and compatible with the objectives of the Marine Plans.
- 4.5 The statutory consultees Natural England (NE)⁵, Historic England (HE)⁶, the Environment Agency (EA)⁷, Cadw⁸ and Natural Resources Wales (NRW)⁹, who were consulted on the contents of the SEA determination report, agreed that a full SEA was not required. Similarly, NE and NRW accepted that no further work was required on HRA.
- 4.6 I have read the SEA, HRA and Marine Plan Screening Determinations and the other information provided, and having considered the matter independently, I also agree with those conclusions. Therefore, I am satisfied that the UNDP is compatible with EU obligations.

Main Issues

- 4.7 Having considered whether the Plan complies with various procedural and legal requirements, it is now necessary to deal with whether it complies with the remaining 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

⁵ Reply from Natural England, dated 21 October 2020 (see CWaCC response to examiner, dated 18 March 2022).

⁶ Reply from Historic England, dated 26 October 2020 (see CWaCC response to examiner, dated 18 March 2022).

⁷ Reply from the Environment Agency, dated 6 October 2020 (see CWaCC response to examiner, dated 18 March 2022).

⁸ Reply from Cadw, dated 3 November 2020 (see CWaCC response to examiner, dated 18 March 2022).

⁹ Reply from Natural Resources Wales, dated 3 November 2020 (see CWaCC response to examiner, dated 18 March 2022).

against the Basic Conditions by considering specific issues of compliance of all the Plan's policies.

- 4.8 As part of that assessment, I consider whether the policies are sufficiently clear and unambiguous, having regard to advice in the PPG. A neighbourhood plan policy 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.¹⁰
- 4.9 Accordingly, having regard to the Upton-by-Chester Neighbourhood Development Plan, the consultation responses, other evidence¹¹ and the site visit, I consider that the main issues in this examination are whether the UNDP policies (i) have regard to national policy and guidance, (ii) are in general conformity with the adopted strategic planning policies and (iii) would contribute to the achievement of sustainable development? I shall assess these issues by considering the policies within the themes in the sequence in which they appear in the Plan.

Vision and Objectives

- 4.10 The vision for the UNDP is described on page 11 of the Plan under eleven bullet points which illustrate the wide diversity of land uses within the Plan area: the residential areas, Green Belt, countryside and open spaces, the shopping hubs, Chester Zoo, the Countess of Chester Hospital and Dale Barracks. Eight objectives are then derived from the vision which then form a prelude to the twenty policies grouped into themes which serve as chapter headings: Sustainability; Physical Character; Housing; Local Services and Facilities; Transport and Communications; Economic Activity; and Dale Barracks.

Sustainability (Policies S1 & S2)

- 4.11 Policy S1 is aimed at seeking reductions in carbon emissions, mitigating the impacts of climate change and requiring development to be constructed sustainably. The policy would have regard to national guidance¹² and generally conforms with Policy ENV 6 of the CWaCLP (Part One). Policy S2 supports renewable energy generation, has regard to national guidance¹³ and generally conforms with Policy ENV7 of the CWaCLP (Part One). Both policies meet the Basic Conditions.

¹⁰ PPG Reference ID: 41-041-20140306.

¹¹ The other evidence includes the responses from UbCPC and CWaCC dated 18 March 2022 to the questions in my letter of 4 March 2022.

¹² NPPF: paragraph 8 c).

¹³ NPPF: paragraph 155.

Physical Character (Policies PC1, PC2, PC3 & PC4)

- 4.12 Policy PC1 considers designated and non-designated heritage assets. CWaCC commented that the phrase "*protect or enhance*" in the policy should be replaced with "*preserve or enhance*". In the CWaCLP (Part Two) the verb "*preserve*" is used rather than "*protect*" in Policy DM 46 which refers to Conservation Areas, Policy DM 47 which deals with Listed Buildings and Policy DM 48 which considers non-designated heritage assets. Therefore, as the more recently adopted part of the Local Plan and in the interest of clarity, I shall recommend that Policy PC1 is modified by the replacement of "*protect*" with "*preserve*" in the policy heading and in the five bullet points. **(PM1)** The policy would then have regard to national guidance¹⁴, generally conform with Policy ENV 5 of the CWaCLP (Part One) and meet the Basic Conditions.
- 4.13 Policy PC2 seeks to conserve local character and distinctiveness. The policy has regard to national guidance¹⁵, generally conforms with Policy ENV 6 of the CWaCLP (Part One) and meets the Basic Conditions, subject to the addition of a reference to the beauty of the area. **(PM2)**
- 4.14 Policy PC3 comprises three elements, the first of which is to protect and enhance open spaces and leisure and recreational facilities. This has regard to national guidance¹⁶ and generally conforms with Policy SOC 6 of the CWaCLP (Part One). The second element of Policy PC3 seeks the provision of open space in new housing developments, also has regard to national guidance¹⁷ and generally conforms with Policy SOC 6 of the CWaCLP (Part One), subject to the inclusion of references to recreational facilities and Policy DM 36 of the CWaCLP (Part Two). **(PM3)** Sport England also sought the inclusion of a reference to Policy SOC 6 above, but the development plan should be read as a whole and, therefore, such an inclusion would be superfluous.
- 4.15 The third element of Policy PC3 designates five Local Green Spaces (LGS). As explained in the NPPF, LGS designation should only be used where the green space is: a) in reasonably close proximity to the community it serves; b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and c) local in character and is not an extensive tract of land.¹⁸ Having visited each LGS on the site visit, I consider that they all meet the criteria for designation outlined in NPPF with the exception of LGS 2 The former cricket pitch at the frontage of the 1829 Building on the Countess of Chester Health Park.

¹⁴ NPPF: 16. Conserving and enhancing the historic environment.

¹⁵ NPPF: paragraph 126.

¹⁶ NPPF: paragraph 99.

¹⁷ NPPF: paragraph 98.

¹⁸ NPPF: paragraph 102. Paragraph 101 also advises that LGS should be capable of enduring beyond the end of the plan period.

- 4.16 I accept that LGS 2 is located within the community it would serve, is local in character and not an extensive tract of land but it appears to function more as an outlook from residential properties alongside the Liverpool Road in Upton Dene and is not so demonstrably special that it merits LGS designation, beyond its current Green Belt status.¹⁹ Accordingly, I shall recommend the deletion of LGS 2 from Policy PC3. **(PM4)**
- 4.17 In addition, the penultimate sentence in Policy PC3 states that development considered an exception or (as) a very special circumstance should consider the potential for alternative sites to be used which are not LGS. This additional constraint together with the further alterations sought by NHS Property Services go beyond paragraph 103 of the NPPF and the control of development in the Green Belt, albeit the consideration of less harmful alternative sites could reasonably form part of the balance in determining whether very special circumstances exist. Therefore, I shall recommend the deletion of that sentence from Policy PC3. **(PM5)** The last part of the policy would then have regard to national guidance and generally conform with Policy ENV 2 of the CWaCLP (Part One). Policy PC3 would then meet the Basic Conditions.
- 4.18 Policy PC4 seeks to protect hedgerows, trees and watercourses, has regard to national guidance²⁰, generally conforms with Policy ENV 3 of the CWaCLP (Part One) and meets the Basic Conditions.

Housing (Policies H1, H2 & H3)

- 4.19 Policy H1 supports large scale housing development only at Dale Barracks if the site becomes available during the Plan period or, in exceptional cases, to meet an identified community need. In addition, small-scale housing development will be supported in principle, provided that it is environmentally sustainable. Dale Barracks is a developed site within the Green Belt where redevelopment is supported in CWaCLP (Part Two) Policy GBC 1.C should the site become surplus to military activities. Support for small scale housing development would generally have regard to Policy STRAT 1 of the CWaCLP (Part One) but not if such proposals were to be made in the Green Belt or in countryside which, in the case of this Plan, are synonymous. Therefore, I shall recommend a modification to exclude such areas from the policy. **(PM6)**
- 4.20 The final paragraph of Policy H1 supports certain types of housing development shown under four bullet points. Proposals for residential development are considered in Policy DM 19 of the CWaCLP (Part Two). Policy DM 19 distinguishes between Identified Settlements, Countryside and Green Belt. The identification of the four types of housing in Policy H1 is confusing because the first two categories, the re-use of redundant or disused buildings and the redevelopment of brownfield sites, are only included within the Countryside section of Policy DM 19 and subject to

¹⁹ PPG Reference ID: 37-010-20140306.

²⁰ NPPF: paragraphs 179 & 180.

seven criteria. Given that all the countryside in the Neighbourhood Plan area is Green Belt, the final section of Policy DM 19 would then apply.

- 4.21 The third category identified in Policy H1 is infilling development of up to two houses within the existing settlement where there is a gap in an otherwise built-up frontage. However, Policy DM 19 has no such detailed restriction which applies to Identified Settlements, which would include Chester and which the built-up part of the Plan area belongs. Finally, the fourth category supports sites within the built-up area that provide affordable housing and which, in any event, is dealt with in the following Policy H2: Housing mix. Accordingly, in order to enable Policy H1 to align with Policy DM 19 of the CWaCLP (Part Two) and thus provide clarity, I shall recommend the deletion of the final section of the policy. **(PM6)** Policy H1 would then have regard to national guidance²¹ and also meet the other Basic Conditions.
- 4.22 Policy H2 considers the mix of housing types. The policy has regard to national guidance²² and generally conforms with Policy SOC 3 of the CWaCLP (Part One), subject to the addition suggested by CWaCC concerning accessible and adaptable dwellings which I shall recommend. **(PM7)** The policy would then meet the Basic Conditions.
- 4.23 Policy H3 expects all new housing development to be of high-quality design and have regard to the Design Code set out in Appendix 8 of the Plan. The policy has regard to national guidance²³, generally conforms with Policy ENV 6 of the CWaCLP (Part One) and meets the Basic Conditions. The Design Code includes a section on Dale Barracks and at 5.4 lists a Framework of Opportunities, point 7 of which refers to the existing all-weather pitch north of Prosser Road. The Defence Infrastructure Commission (DIO) submitted that the opportunity for extended community use should be qualified by the addition of “if viable”. However, I consider that use of the qualification “potential” is sufficiently flexible for viability to be included in any assessment. Moreover, the list is described in the introduction to the section as “broad brush”. Therefore, I see no need for any alteration to that sentence in the Design Code.

Local Services and Facilities (Policies LSF1 & LSF2)

- 4.24 Local services and facilities are considered in Policy LSF1, which supports the provision of new facilities for community services, and Policy LSF2, which seeks to prevent the change of use or redevelopment of existing community facilities which would result in their loss. Both policies have regard to national guidance²⁴, generally conform with Policies SOC 5 and STRAT 11 of the CWaCLP (Part One) and meet the Basic Conditions.

²¹ NPPF: 5. Delivering a sufficient supply of homes.

²² NPPF: paragraph 62.

²³ NPPF: 12. Achieving well-designed places.

²⁴ NPPF: paragraph 93.

Transport and Communications (Policies T1, T2, T3, T4, T5 & T6)

- 4.25 This section of the Plan includes six policies derived from the two objectives which are described immediately preceding the policies. There is also an impressive and convincing amount of accompanying evidence. Each policy has regard to national guidance and generally conforms with strategic policies of the CWaCLP (Part One) as listed in the table below.

UNDP Policy	Topic	NPPF paragraph (s)	CWaCLP (Part One) Policies
T1	Sustainable Transport	105, 106, 112, 113	STRAT 10 STRAT 11
T2	Pedestrians and cyclists	104, 106, 112	STRAT 10 SOC 5 ENV 6
T3	Parking	108	STRAT 10
T4	Electric charging points	112	STRAT 10
T5	Cycle parking	104, 106	STRAT 10
T6	Communications Infrastructure	114	ECON 1

- 4.26 The policies meet the Basic Conditions.

Economic Activity (Policies E1 & E2)

- 4.27 Policy E1 supports retail shop usage but seeks to limit the occupancy by fast food takeaways within each of the three main shopping areas. The policy has regard to national guidance²⁵, generally conforms with Policy ECON 2 of the CWaCLP (Part One) and meets the Basic Conditions.
- 4.28 Policy E2 supports development for business purposes which, as currently drafted, would include support for retail and restaurant uses which is not the aim of the policy.²⁶ Therefore, I shall recommend the deletion of the reference to Class E of the Use Classes Order 1987. **(PM8)** Policy E2 would then have regard to national guidance²⁷, generally conform with Policy ECON 1 of the CWaCLP (Part One) and meet the Basic Conditions.

The Dale Barracks (Policy D1)

- 4.29 Dale Barracks, as defined in Policy GBC 1 of the CWaCLP (Part Two), is a large scale commercial and employment site in the Green Belt where the principle of development for military use will be supported. Policy GBC 1.C of the CWaCLP (Part Two) then states that, additionally, in the event of any part of the land becoming surplus to military activities, partial or

²⁵ NPPF: paragraphs 86 & 93.

²⁶ See Regulation 16 representation from CWaCC and response from UbCPC dated 18 March 2022 to my question 2.

²⁷ NPPF: paragraphs 81 & 82.

complete redevelopment proposals should be comprehensively planned in line with an agreed development brief which meets eleven criteria listed in the Local Plan.

- 4.30 Policy D1 of the Plan supports redevelopment of the Dale Barracks site subject to conforming with Policy GBC 1.C and also subject to nine bullet pointed provisos. Bullet point eight seeks the retention and, where possible, the enhancement of all the existing sports pitches on the site. It also states that development must demonstrate that the existing sport and recreation facilities/pitches at the site can be fully maintained, enhanced and transferred into permanent club/community use.
- 4.31 The DIO submitted that, amongst other things, it is not for the Plan to require land to be transferred to a third party. I agree. Policy DM 36 of the CWaCLP (Part Two) requires an applicant to make provision for the management and maintenance in perpetuity where on-site pitch provision is required. Paragraph 14.22 of the CWaCLP (Part Two) adds further explanation. Therefore, to enable Policy D1 to generally conform with Policies SOC 5 and SOC 6 of the CWaCLP (Part One) and align with Policy DM 36 of the CWaCLP (Part Two), as well as Policy GBC 1.C of the CWaCLP (Part Two), I shall recommend that the second sentence of bullet point eight is deleted. The issues of maintenance, enhancement and financial contributions are covered in Policies SOC 6 and DM 36 referred to above. Sport England sought the inclusion of a reference to its Active Design Guidance and I agree that adding a further bullet point to the policy to that effect, as suggested by UbCPC, would enable Policy D1 to have regard to national guidance. **(PM9)**
- 4.32 Sport England also sought the addition of a phrase to Policy D1 which would then make the policy apply to the several playing pitches outside the site area, but adjacent to it. However, Policy D1 cannot apply to land outside the delineated site and still align with any clarity to Policy GBC 1.C of the CWaCLP (Part Two).
- 4.33 Accordingly, in conclusion, I consider that Policy D1 as recommended to be modified would have regard to national guidance²⁸, generally conform with strategic policies and meet the Basic Conditions.

Overview

- 4.34 Therefore, on the evidence before me, with the recommended modifications, I consider that the policies within the UNDP are in general conformity with the strategic policies of the CWaCLP (Part One), have regard to national guidance, would contribute to the achievement of sustainable development and so would meet the Basic Conditions.
- 4.35 A consequence of the acceptance of the recommended modifications would be that amendments would have to be made to the explanation

²⁸ NPPF: paragraphs 29, 60, 62, 92, 93, 99 & 104.

within the Plan in order to make it logical and suitable for the referendum. These might also include incorporating factual updates, correcting minor inaccuracies, revising any references to the NPPF (2021) with updated paragraph numbers, or text improvements suggested helpfully by CWaCC, such as including in paragraph 5.2 an explanation of how national Green Belt policy and Policy STRAT 9 of the CWaCLP (Part One) relate to the Plan area.²⁹ None of these alterations would affect the ability of the Plan to meet the Basic Conditions and could be undertaken as minor, non-material changes.³⁰

5. Conclusions

Summary

- 5.1 The Upton-by-Chester & District Neighbourhood Development 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 UNDP, and the evidence documents submitted with it.
- 5.2 I have made recommendations to modify a small number of policies 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 UNDP as modified has no policy or proposal 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.

Concluding Comments

- 5.4 The Parish Council, the Steering Group (See Appendix 8 of the Plan) and other voluntary contributors are to be commended for their efforts in producing a comprehensive Plan. It is a professionally presented and well-illustrated document. The Plan is logical, well-structured and very informative. I enjoyed examining it and visiting the area. The associated Appendices and statements, particularly the Basic Conditions Statement, were extremely useful, as were the constructive comments of CWaCC in

²⁹ See answer to my question 9 from UbCPC dated 22 March 2022.

³⁰ PPG Reference ID: 41-106-20190509.

their Regulation 16 consultation and the helpful responses from both Councils to my questions of clarification.

- 5.5 The high quality of the Plan is demonstrated by the small number of recommended modifications (necessary to meet the Basic Conditions) which are to only seven of the twenty policies. With those modifications, the UNDP will make a positive contribution to the Development Plan for the area and should enable the character and appearance of the Parishes of Upton-by-Chester, Bache and Moston to be maintained.

Andrew Mead

Examiner

Appendix: Modifications

Proposed modification no. (PM)	Page no./ other reference	Modification
PM1	Policy PC1	Replace the heading with: "Preserving and Enhancing Heritage Assets" . In each of the five bullet points replace "Protect" with "Preserve ..." .
PM2	Policy PC2	Amend first sentence to: "Development will be supported which conserves and enhances the beauty and character of the area, ..." .
PM3	Policy PC3	Amend the second sentence to: "New housing development must provide high quality open space and recreational facilities of at least the standards in Policies DM 35 and DM 36 of Part Two of the Cheshire West and Chester Local Plan."
PM4	Policy PC3 Figure 8.4 Appendix 4	Delete Local Green Space 2 The former cricket pitch at the frontage of the 1829 Building on the Countess of Chester Health Park.
PM5	Policy PC3	Delete the penultimate sentence from the policy: "Any development Local Green Spaces".
PM6	Policy H1	Add to the second paragraph: "...provided that it is environmentally sustainable and not located in the Green Belt." Delete the final paragraph of the policy: "The following types of housing development, etc ...".
PM7	Policy H2	Add: "All relevant new residential dwellings should meet the requirements set out in the Building Regulations Approved Document M, section M4(1) Category 1 – visitable dwellings. The requirements set out in M4(2) – accessible and adaptable dwellings should be met for all new residential dwellings and the requirements set out in M4(3) – wheelchair users should also be met for a proportion of new residential dwellings. The requirements relating to M4(2) and M4(3) should be met where reasonably practicable and financially viable."

PM8	Policy E2	Delete the phrase "... falling within Class E of the Use Classes Order 1987 as amended ...".
PM9	Policy D1	<p>Delete the second sentence from bullet point eight.</p> <p>Add a tenth bullet point: "Sport England Active Design Guidance should inform the comprehensive development brief and be followed in all stages of the planning process".</p>