

**Burley-in-Wharfedale
Neighbourhood Plan
Representations to
Submission Draft Plan**

On behalf of CEG Land Promotions Ltd

20 July 2017

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27/10/2014

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(Admin))

1.0 Introduction

1.1 These representations to the Burley-in-Wharfedale Neighbourhood Plan – Submission Draft (“Submission Draft Plan”) are made on behalf of CEG Land Promotions Ltd (“CEG”). CEG has a long standing interest in Burley-in-Wharfedale and is promoting land to the west of the settlement for a development of 500 new homes, alongside community uses and infrastructure, including a new school, allotments and wider areas of public open space.

1.2 CEG has been promoting this development since 2012 and in September 2016 submitted a planning application for the above uses to City of Bradford Metropolitan District Council (“CBMDC”) (Planning Application Reference: 16/07802/MAO). This application remains under the consideration of CBMDC. A copy of the indicative masterplan that that was submitted as part of this application is included at **Appendix 1**.

1.3 CEG’s proposals have evolved from the ‘Vision Document’ that was provided to the Parish Council as part of the very early stages of the preparation of the Neighbourhood Plan and was also submitted as part of representations to the Bradford Local Plan Core Strategy consultation. In particular the proposals have been formulated on the basis of a comprehensive master planning exercise and detailed technical analysis of not only the site itself, but also an assessment of and its interaction with the wider settlement and the surrounding Green Belt.

1.4 In promoting its site for development, CEG has engaged extensively and positively in the development plan process and in particular the emerging Neighbourhood Plan. CEG welcomes the production of the Neighbourhood Plan and has held several meetings with Burley Parish Council to discuss its content. CEG initially responded to the Parish Council’s initial ‘Call-for Sites’ process by way of a letter dated 27th October 2014 (included at **Appendix 2**) which incorporated the ‘Vision Document’ referenced above. Further representations were then submitted to the Informal Consultation Draft Plan on 16th February 2016 (**Appendix 3**), whilst most recently representations to the Regulation 14 Formal Consultation Draft Plan were made on 14th October 2016 (**Appendix 4**). These earlier representations (in particular the most recent comments on the Formal Consultation Draft) should be read alongside this submission.

1.5 Whilst a number of key issues raised in these earlier representations have been taken into account within the Submission Draft Plan, CEG still has a number of fundamental concerns with its content. The remainder of this document sets out the detail of CEG’s outstanding concerns and objections. In addition to the Submission Draft Plan itself, these comments also draw upon the content of the Basic Conditions Statement which accompanies the plan. These representations are structured as follows:

Section 2 of the report set out CEG’s primary concern with the Submission Draft Plan. This relates to concerns over how the plan is seeking to influence the strategy for the distribution of the level of housing identified for Burley-in-Wharfedale by the Bradford Local Plan Core Strategy, without having taken any form of objective assessment.

Section 3 then provides general comments about the recent adoption of Bradford Core Strategy and makes a number of suggested revisions to the Submission Draft Plan to ensure that it reflects this position.

Section 4 considers the content of the accompanying Basic Conditions Statement and comments on where it is considered that the 'basic conditions' for producing a Neighbourhood Plan, as required by Schedule 4B of the Town and Country Planning Act 1990 have not been met.

Section 5 provides comments and objections to a number of listed policies in the plan. Drawing upon conclusions reached in Section 3 in respect of basic conditions, these objections primarily relate to the way the a number of proposed policies contradict national planning guidance, or those in the Core Strategy.

- 1.6 Taking account of these comments **Appendix 5** provides a schedule of amendments to the Submission Draft Plan, which in conjunction with required revisions to the Basic Conditions Statement should be accommodated for the Neighbourhood Plan to be considered capable of being made and to progress towards referendum.

- 2.0** **Comments on Approach to Delivering the Core Strategy Housing Requirement and Growth Strategy**
- 2.1 This section of the representations deal with CEG’s primary concern with the Submission Draft plan. It is considered that its strategic approach in respect of delivering the Core Strategy housing requirement and influencing the future Site Allocations Plan is internally inconsistent and is not formulated from any form of objective assessment or evidence base.
- 2.2 Unlike early iterations of the plan, the Submission Draft Plan does not allocate sites for housing. Paragraph 4.27 of the plan states that as it *“cannot review the boundary of the Green Belt, the final allocation of housing sites to meet the requirement set out under Policy WD1 rests with Bradford Council following a Green Belt review”*.
- 2.3 The earlier Paragraph at 4.25, however, is inconsistent with this position, stating that in translating the vision for Burley means that, meeting the housing needs of the village will involve *“avoiding a single large development that is perceived as a separate place”* and *“dispersing new housing development across a range of sites will help to ensure that these sites are of a size that avoids dominating the local area”*.
- 2.4 Earlier versions of the plan (see Informal Consultation Draft – December 2015 for example) did seek to allocate sites and whilst this is no longer the case, the statement at Paragraph 4.25 as quoted above effectively remains a hangover from that earlier approach of actually identifying sites, and seeking to justify the strategic approach of dispersal as advocated at that point.
- 2.5 Paragraph 4.24 of the Submission Draft Plan advises that such an approach is a result of previous public consultation, which expressed a preference for dispersing the level of housing identified for Burley-in-Wharfedale in the Core Strategy across several sites. Critically, this public consultation, the results of which are contained at Appendix 1 of the Submission Draft Plan, was carried out in 2014 and the views expressed at that time were predicated on the delivery of 200 new homes proposed by the draft iteration of the Core Strategy at that time. Since that time Policy WD1 of the Core Strategy has been modified and subsequently adopted increasing the number of homes identified for Burley-in-Wharfedale to 700 homes together with an acknowledgement that this will involve a *“significant contribution”* from Green Belt release. Importantly beyond the reference to the significant contribution from Green Belt, the Core Strategy does not seek to influence how in spatial terms those homes will be delivered. This will be for the forthcoming Site Allocations Plan which will be informed by a Green Belt review.
- 2.6 Given the fundamental change in housing numbers identified for Burley-in-Wharfedale since that consultation took place, it is not sound to simply translate the views expressed by a public consultation event considering the approach to the delivery of 200 homes of which only a very small element would need to come forward within the existing Green Belt into the same broad spatial approach for the higher figure. It is also an approach based purely on public opinion based on a list of potential sites identified at that time, without any form of objective assessment. Indeed were public consultation undertaken on the approach to accommodating 700 homes as it was for 200 homes then the response may have been markedly different,

given the ability to disperse such a number of new homes in a sustainable and appropriate way.

- 2.7 Furthermore an approach advocating dispersal which is not based upon an accurate picture of alternatives formed from an objective assessment being carried out by the Parish Council pre-judges the appropriateness of an outcome where, for example, a single large site is deemed the most suitable, rather than several smaller sites 'dispersed' around the settlement. Other Neighbourhood Plans have been found unlawful in the High Court in similar circumstances for not carrying out a proper assessment of alternative approaches when advocating an approach for the allocation of housing. An example of this is *Stonegate Homes Ltd and Littleworth Properties versus Horsham District Council and Henfield Parish Council High Court Case – Ref: [2016] EWHC 2512 (Admin)*). In this case the High Court quashed a decision to make the plan and one of the grounds for doing so was the fact it had advocated an approach for accommodating housing needs, involving promoting a site to the east of the settlement, but in doing so had not come to such a position based on sound evidence and had not properly assessed the implications of alternative spatial approaches to meeting the housing needs, including through Strategic Environmental Assessment. A copy of this judgement is included at **Appendix 6**.
- 2.8 It is further noted the Strategic Environmental Assessment (SEA) Screening Assessment which accompanies the Submission Draft Plan concludes at Table 2 of Paragraph 5.4 that an SEA is not required on the basis that the plan does not allocate sites and as a result does not have the potential for '*significant environmental effects*'. Although not allocating sites, it is clear that the approach advocated at Paragraph 4.25 of the Submission Draft Plan does seek to influence future allocations, for which the potential environmental effects have not been considered as part of the SEA screening. Dispersal may result in in greater environmental effects over a wider part of the settlement than a more contained approach. In this regard, the conclusion of the SEA screening process is fundamentally flawed. In the context of the Henfield Parish Council decision referenced above, it is clear that an approach within a Neighbourhood Plan which advocates one approach to the delivery and distribution of housing over another and has the potential to result in significant environmental effects should be subject to Strategic Environmental Assessment.
- 2.9 CEG has suggested in earlier representations (see for example the representations to the Formal Consultation Draft included at **Appendix 4** to this letter) that the most appropriate course of action in light of such deficiencies, is for the Parish Council to fully re-consult local residents on the approach to the distribution of housing, based on the Core Strategy requirement of 700 new homes and at that same carry out an objective analysis of alternative strategies. In the absence of such consultation, or indeed objective analysis having been carried out, it is considered that this potentially renders the approach taken by the Submission Draft Plan unlawful. Such deficiencies can, however, still be remedied at this stage, without significant changes to the plan. This can be achieved by removing the reference within the Neighbourhood Plan to a preferred approach of dispersing new homes across several sites and avoiding a single large site and instead staying silent on such a matter. In following this approach and leaving such strategic decisions over distribution to the Local Plan Site Allocations in an unfettered manner, it will also allow the conclusions of the SEA screening to then be considered robust.

2.10 As reflected in the schedule of required changes contained at **Appendix 5** paragraphs 4.23 - 4.25 of the Submission Draft Plan should therefore be amended as follows (new text is shown underlined and suggested deletions as ~~striketrough~~):

4.23 *Consultation with local people took place in 2014 on the basis of accommodating a lower overall housing requirement of 200 homes. This revealed concerns about the affordability of housing in Burley, particularly for young people and families. Residents are also concerned about there being a range of housing types available - the perception is that many new developments are skewed towards larger dwellings.*

4.24 *The main issues raised by local people during the consultation for the then lower housing requirement were:*

- the need for new homes to be spread over several sites, not in one big estate-type development; and
- the lack of affordable homes to buy or rent.
- provision for a growing percentage of elderly residents

4.25 *The vision for Burley is to ensure that the village continues to feel focussed around a village centre and avoids sprawl along the main commuter routes to Menston, Otley or Ilkley. This means that new housing should be well integrated into the village. ~~, avoiding a single large development that is perceived as a separate place.~~ This will ensure that residents in the new homes feel integrated with the existing community. ~~Dispersing new housing development across a range of sites will help to ensure that these sites are of a size that avoids dominating the local area.~~*

2.11 In addition, references within Appendix 1 of the Submission Draft Plan to the results of the 2014 consultation event, whereby views are expressed about the suitability of the various alternative potential housing sites should also be deleted, given that these views expressed were predicated on the delivery of a much smaller housing requirement and the fact that the Neighbourhood Plan no longer involves the allocation of housing sites in the way that earlier iterations of the plan sought to.

2.12 Notwithstanding the comments made in respect of other aspects of the Submission Draft Plan as set out in the following sections of these representations, it is considered that the above required amendments are essential to allow the plan to be found capable of being made and to allow it to progress towards referendum.

3.0 Adoption of Core Strategy

3.1 In addition to the key points raised at Section 2, it is of fundamental importance that the neighbourhood Plan should accurately reflect the up to date position of the Bradford Local Plan Core Strategy. Whilst the Core Strategy has previously been subject to a temporary holding direction (as the Submission Draft Plan references), following due consideration this was lifted by the Secretary of State by way of a letter dated 27th March 2017. Most recently at a full meeting of its members on 18th July 2017, Bradford Council adopted the Core Strategy. It now forms part of the development plan and provides the strategic context upon which the Burley-in-Wharfedale Neighbourhood Plan should comply. As discussed in Section 4 of these representations, it is a statutory 'basic condition' of the Neighbourhood Plan for it to be in conformity with that strategic local plan document

3.2 A full audit of the Submission Draft Plan should be carried to ensure consistency with the adopted Core Strategy and whilst such consistency matters are considered fully in Sections 4 and 5 of these representations, the remainder of this section highlights factual areas where the plan should be updated to reflect the adoption of the Core Strategy.

Vision

3.3 CEG considers that the overarching Vision of the draft Neighbourhood Plan needs to be updated to reflect the Green Belt releases that will be required in order to accommodate the scale of development set out in the now adopted Core Strategy. At present it refers to the retention of the Green Belt and its wording therefore needs to be altered to state that whilst the Green Belt around the village will need to be altered, the most important parts will need to be retained. In addition the second and third paragraphs should be amended to identify that that the village is a defined Local Growth Centre and that new development can support the delivery of new infrastructure.

3.4 It is also not considered appropriate for the vision to require new developments to be designed so that they "preserve and enhance" the character of Burley-in-Wharfedale, as this contradicts the requirements of national policy. Instead, this element of the Vision should be reworded so that, in accordance with para. 137 of the NPPF, it provides support for proposals that preserve or enhance those elements of the setting of Burley-in-Wharfedale's conservation area that make a positive contribution towards it.

3.5 As reflected in the schedule of amendments at **Appendix 5**, the Vision as set out on page 4 and repeated at paragraph 3.8 should be amended to read as follows:

"Our vision is to ensure that over future decades, the village of Burley-in-Wharfedale will retain the attractive conservation area centre, and green belt surrounding border, which includes Ilkley Moor and its link down to the River Wharfe.

As a Local Growth Centre Whilst the village will grow, although this must be proportionate to its infrastructure and Burley will remain separated from neighbouring communities by green spaces. Whilst new housing and infrastructure will be required to be accommodated in the existing Green Belt, the most sensitive areas will be retained.

New developments will be designed to ~~conserve and enhance~~ respect the character of Burley-in-Wharfedale, such developments will be integrated into the community, benefiting both existing and new residents while enhancing the Wharfe Valley.

Open spaces and community services will be improved and new ones created when needed – so that the village and its facilities work well for all its residents and visitors.”

Paragraphs 1.13 – 1.14 – Reference to Holding Direction

- 3.6 In light of the adoption of the Core Strategy, paragraph 1.13 of the Submission Draft Plan, which presently makes reference to the temporary holding direction being in place, should be amended to instead make reference to the adoption of this plan. Paragraph 1.14 should also be amended to reflect the adoption of the Core Strategy. Revised wording for these paragraphs is included in the schedule of required amendments at **Appendix 5**.

Key Diagram

- 3.7 The Core Strategy Key Diagram included at Figure 1 (page 9) reflects an out-of-date version of the plan and does not identify Burley-in-Wharfedale at a Local Growth Centre as is now the case. The plan should therefore either be removed from the Neighbourhood Plan altogether, or replaced by one that reflects the adopted Core Strategy.

Paragraph 2.9 - Green Belt

- 3.8 The adopted Core Strategy confirms within Policy WD1 that Burley-in-Wharfedale will accommodate at least 700 new homes during the plan-period “with a significant contribution from Green Belt changes.” In light of this it is considered that paragraph 2.9 which presently states that the setting of Green Belt boundaries is a strategic planning policy matter and that the Neighbourhood Plan cannot change such boundaries, should at least make reference to the Core Strategy.
- 3.9 As reflected in the schedule of required amendments at **Appendix 5**, it is therefore proposed that paragraph 2.9 is amended to read as follows:

2.9 *The Green Belt around Burley is tightly drawn. The setting of Green Belt boundaries is a strategic planning policy matter and as such resides with BDMC. The Neighbourhood Plan cannot change Green Belt boundaries, although it is acknowledged that the Bradford Core Strategy confirms that accommodating 700 new homes will require a ‘significant contribution’ from Green Belt changes.”*

- 3.10 It is considered that there are a further number of fundamental inconsistencies between the Submission Draft Plan and the adopted Core Strategy and these are discussed further in the later sections of these representations.

4.0 **Comments on Basic Conditions Statement**

4.1 There is a statutory requirement for a Neighbourhood Plan to satisfy a number of 'basic conditions' before it can proceed to examination. These are set out in Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. They are also listed within paragraph 65 of the 'Neighbourhood Planning' section of the National Planning Policy Guidance (PPG). This guidance also states that throughout the process of developing a neighbourhood plan (our emphasis), the qualifying body (in this case the Parish Council) should consider how it will demonstrate that its plan meets these basic conditions.

4.2 The Submission Draft Plan is accompanied by a 'Basic Conditions Statement' produced on behalf of Burley –in-Wharfedale Parish Council and the Neighbourhood Plan Steering Group by Kirkwells Town Planning Consultants. This document is not dated; it is the first time that it has been made available and does not make clear whether this is an update of an earlier iteration. Importantly it also provides no commentary on how the Neighbourhood Plan has evolved to ensure compliance with the basic conditions. Accordingly we would question whether compliance with basic conditions has been considered throughout the process of the preparation of the Plan and influenced its content as required by national guidance as referenced above, or instead whether it is a simple 'retro-fit' attempt at the end of the process to seek to demonstrate that already drafted policies comply with the required basic conditions such as compliance with national policy and guidance, the delivery of sustainable development, conformity with strategic policies of the local plan, or compliance with EU obligations.

4.3 Consideration of compliance with key basic conditions is set out below:

Having regard to national planning guidance

4.4 The Planning Practice Guidance is clear that a neighbourhood plan must not constrain the delivery of important national policy objectives, including those set out in the NPPF¹. The basic conditions statement, other than providing general comments on how the Submission Draft Plan complies in very general terms to the twelve core planning principles set out in Paragraph 17 of the NPPF, does not provide any analysis as to how the general approach, or more importantly the specific policies of the plan complies with the detail of national guidance. It is CEG's view, as Section 5 of these representations demonstrate, that a number of policies in the plan do not comply with the NPPF and should be amended.

4.5 As a starting point the Basic Conditions Statement should be redrafted to incorporate such an assessment and where this highlights any absence of conformity, those policies should be amended.

¹ Planning Practice Guidance – Paragraph 068 Ref. ID 41-068-20140306

General Conformity with the strategic policies in the Local Plan

- 4.6 In considering 'general conformity' the Planning Practice Guidance² indicates 4 key tests as follows:
- whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;
 - the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;
 - whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy;
 - the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach
- 4.7 These matters are not explicitly considered in the Basic Conditions Statement, with Page 14 of the statement simply stating that the Submission Draft Plan is in general conformity with strategic Local Plan policies contained in the adopted Replacement UDP 2005 and has been prepared "*with regard to the reasoning and evidence informing the emerging Bradford Core Strategy*". This is then followed by a table entitled "Table 3 - Conformity with Local Strategic Planning Policy" listing the Neighbourhood Plan policies and setting these against the relevant corresponding Replacement UDP and Core Strategy Policies.
- 4.8 Firstly, it is considered that this table is out of date, in light of the adoption of the Core Strategy on 18th July 2017. The Core Strategy now forms part of the development plan and replaces many of the Replacement UDP policies listed in the table. Full weight can be given to these policies when considering conformity. In this regard, the table should be updated and at the same time simplified to list the wording of the Core Strategy policies (and delete any Replacement UDP policies) rather than the present approach of including both the Core Strategy - Publication Draft wording and the Main Modifications. The current approach is both out of date and results in unnecessary repetition and confusion.
- 4.9 More fundamentally however, neither Table 3 which is simply a list of policies from the each of the documents, or indeed any other part of the Basic Conditions Statement provides any form of assessment of how the proposed policies actually conform with the Local Plan.

Compliance with EU Obligations

- 4.10 The Planning Practice Guidance advises that a neighbourhood plan must be compatible with a range of European Union obligations as incorporated into UK law in order to be legally compliant.
- 4.11 The basic conditions statement confirms that screening assessments were undertaken in respect of Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) and it was concluded that such assessments are not required on the basis that in implementing the policies of the plan it is unlikely that significant environmental effects would occur, or that it would result in significant negative

² Planning Practice Guidance – Paragraph 074 Ref. ID 41-074-20140306

impacts on internationally designated wildlife sites which have not already been assessed as part of the assessment of the Core Strategy.

- 4.12 Such conclusions are based on the basis that the plan is not allocating sites for development. As discussed in Section 2, the Submission Draft Plan does however seek to influence strategic matters by setting out a preference for the spatial approach to the future allocation of housing sites. This strategy has been formulated without any consideration given to the environmental consequences, or the effect on protected sites and species of accommodating 700 homes in this way.
- 4.13 Taking account of the conclusions reached in Section 2 regarding the need for Strategic Environmental Assessment where a plan incorporates a spatial approach to meeting housing needs, then it is clear that the Submission Draft Plan in its current form does not accord with the basic condition of being compatible with EU obligations. This can be rectified and the conclusions of the SEA and HRA screening to be considered robust, by the revising the plan (as set out in Section 2 of this statement) to remove references to an approach advocating a dispersing new homes over a range of sites.

5.0 **Comments on Individual Policies**

Policy BW2 – Development Outside of the Settlement Boundary

- 5.1 Policy BW2 is wide ranging in seeking to protect and prevent adverse impact on a range of natural and historic assets from development outside of the current settlement boundary. Such development will need to occur in order to deliver the housing identified in the Core Strategy.
- 5.2 CEG is concerned that this unnecessarily overlaps with and does not accurately reflect the detailed wording of the corresponding policies of the Core Strategy, as well as Policy WD1 which relates to development in Wharfedale. For example part b) relates to the need to protect moorland habitats, however these are afforded protection by Policies SC8 and EN2 of the Core Strategy. These policies seek to avoid adverse impact, rather than afford outright protection and therefore part b is inconsistent with these.
- 5.3 Most significantly, parts a) and e) of Policy BW2 conflicts with paragraph 14 of the NPPF by seeking to presume – outright - against development which could give rise to potentially adverse impact. By contrast, paragraph 14 requires planning permission to be granted unless the adverse impacts of a development significantly outweigh the public benefit. In line with paragraph 216 of the NPPF (which requires Plans to be consistent with the framework), the wording of Policy BW2 should be updated to reflect this.
- 5.4 Part d) of Policy BW2 seeks where appropriate “to preserve *field patterns, tree cover and the wider context of moorland, river and woodland*”, which is considered to be vague, unsupported by any justification or evidence and is not clear how this would be assessed.
- 5.5 CEG therefore consider that Policy BW2 is unnecessary as the assets which it seeks to protect are more appropriately protected by the NPPF and the Core Strategy.
- 5.6 Were the policy to be retained, its wording should be amended to ensure consistency with national guidance and the Core Strategy. A revised wording for this policy, addressing the points raised above is contained in the schedule of amendments at **Appendix 5**.

Policy BW5 – Mix and Type of Housing

- 5.7 This policy is not required as matters relating to mix and type of housing are already covered by Policy HO8 of the adopted Core Strategy. In this regard Policy BW5 is unnecessary and in any event is inconsistent with HO8. The policy should be removed.

Policy BW6 – Provision of Affordable Housing

- 5.8 This policy is not required as matters relating to Affordable Housing are covered by Policy HO11 of the Core Strategy, which, subject to viability, requires developments of 11 units or more in Wharfedale to deliver 30% affordable housing. In any event and as highlighted in Section 3 of these representations draft Policy BW6 which proposes a level of affordable housing of up to 15% on developments of 11 units or more is

inconsistent with HO11. No justification or evidence to support this alternative approach has been presented. The policy should be deleted.

Policy BW13 – Walking and Cycling Routes and Bridlepaths

- 5.9 CEG support the spirit of Policy BW13 and intentions to deliver improved walking and cycling routes and bridlepaths. For the purposes of soundness, however, we do not consider it realistic for the Policy to expect 'every opportunity' to be taken to improve the inter-linking of the network. The policy should be amended to remove this phrase and a suggested revised wording of the policy is contained in the schedule of amendments at **Appendix 5**.

6.0 Conclusions and Recommendations

- 6.1 CEG Land Promotions Ltd (CEG) has engaged positively throughout the preparation of the Burley-in-Wharfedale Neighbourhood Plan, including making submissions at all stages of consultation. All of the points raised by CEG to the Submission Draft Plan reflect comments made during the earlier stages and not addressed by the Parish Council.
- 6.2 CEG's primary concern relates to how the plan advocates that the level of housing identified by the adopted Core Strategy should be dispersed around the settlement avoiding a single large development is not based on any form of any objective assessment or consideration of alternative approaches. Indeed it is solely based on the outcome of a public consultation event carried out in 2014 which was not underpinned by any evidence and the views expressed at that time were predicated on the delivery of 200 new homes proposed by the Core Strategy at that time and not 700 homes as now set by the adopted Core Strategy.
- 6.3 In the absence of any form of objective assessment or Strategic Environmental Assessment considering alternative approaches, such a strategic approach to allocations is unjustified and challengeable at law. Accordingly any reference within the Neighbourhood Plan to the approach of dispersing new homes across several sites and avoiding a single large site should be removed from the plan. Amended text for this part of the plan is included in the schedule of amendments at **Appendix 5**. In following this approach and leaving such strategic decisions over distribution to the Local Plan Site Allocations in an unfettered manner, it will also allow the conclusions of the SEA screening to then be considered robust.
- 6.4 The Submission Draft Plan needs to be updated to reflect the recent adoption of the Bradford Core Strategy, whilst these representations highlight where there is inconsistency between the Submission Draft Plan and the Core Strategy, national guidance and EU obligations. All of these issues are resolvable through amendments to the plan as set out at Appendix 5 of these representations, including the potential deletion of policies which unnecessarily duplicate those in the Core Strategy.
- 6.5 Should all of these amendments be incorporated in a modified plan and in particular those removing reference to the spatial approach to delivering the Core Strategy housing requirement, then the Burley-in-Wharfedale Neighbourhood Plan can be considered to be in compliance with Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 and capable of progressing towards a referendum.

Appendix 1: Land West of Burley-in-Wharfedale – Indicative Masterplan

Contractors are not to scale dimensions from this drawing



Drawing based on survey information by others



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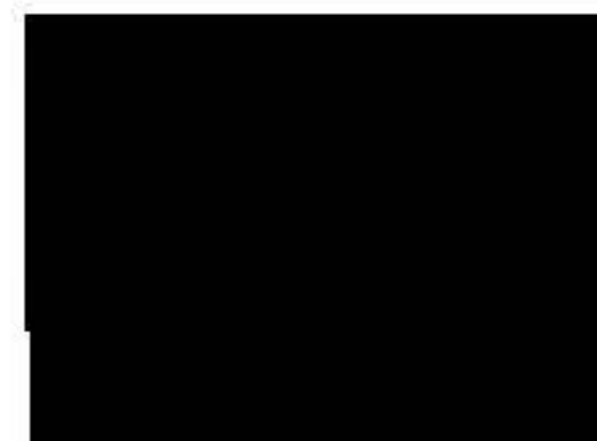
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**Appendix 2: CEG Representations to
Neighbourhood Plan 'Call-for-Sites' –
27/10/2014**

Ian Orton
Parish Clerk
Burley-in-Wharfedale
LS29 7BT



nlpplanning.com

Date 27 October 2014
Our ref 50335/JG/CD/7692235v1
Your ref

Dear Mr Orton

Burley-in-Wharfedale Neighbourhood Plan - Call for Sites

On behalf of our client CEG Land Promotions Ltd (CEG), we write to put forward land immediately to the west of Burley in Wharfedale for consideration as part of your emerging Neighbourhood Development Plan.

The Site

The extent of the site is shown on the attached plan and covers an area of 23 hectares to the west of the built up area of the village and south of the A65. Whilst the land is presently identified as Green Belt, the emerging Bradford Local Plan Core Strategy acknowledges that there will be a need to review Green Belt boundaries in Burley to meet future housing needs.

It is considered that the site offers the best opportunity to meet Burley's long terms needs in a sustainable way, with minimal disruption and in a manner that can deliver real benefits to the village that small scale and piecemeal development could not.

A 'Vision Document' for the site incorporating an indicative master plan has been prepared on behalf of CEG, demonstrating how it could be developed in such a way and this has already been provided to the Parish Council. Were the site to be developed in full, it has the ability to deliver approximately 500 new dwellings within a landscaped setting, whilst providing opportunities for other community uses, should they be required, such as a new school, children's play areas, and community gardens/allotments. It also has the potential to accommodate commercial uses to complement the existing offer of the village, such as a residential care home, located close to Ilkley Road.

Access/Traffic

Importantly, vehicular access to the site could be accommodated off Ilkley Road at the north east corner of the site and close to the Generous Pioneer Public House, with additional pedestrian and cycle paths into the site, allowing any development to integrate with the village. This would allow vehicular traffic to be accommodated within the development and access the wider road network



without the need to travel through the village, thereby minimising the pressure placed upon the existing road network in the village.

Conclusion

In accordance with the requirements of national planning guidance when considering sites to meet long term development need, the site represents an excellent opportunity for allocation for residential development. In particular it is:

Suitable – It has the ability to meet the future housing needs of the village, as will be set in the Bradford Local Plan Core Strategy, in a comprehensive manner, providing opportunity to deliver wider community and economic benefits. Unlike other sites to the east or south of the village, the development of this site for housing would not risk coalescence with neighbouring settlements.

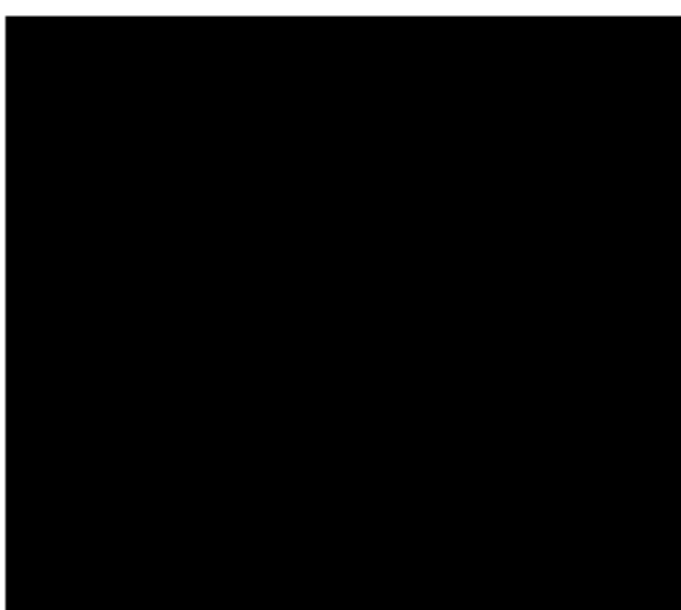
Deliverable – Having undertaken a number of assessments on technical matters as part of the production of the Vision Document, it is considered that there are no barriers preventing the site coming forward for development. The master plan proposes development outside of flood risk areas; a suitable vehicular access into the site can be created that can be safely accommodated within the local highway network; the site is not classified as accommodating high quality agricultural land; and there are no landscape designations across the site that would preclude development.

Available – The entirety of the site is within CEG's control and would be immediately available for development. The housing needs of the village could therefore be met with certainty and at the earliest opportunity.

We trust that you will give the site full consideration as you further progress your Plan and our client would welcome the opportunity to continue to engage with you as part of this process.

Should you require any further information from us at this stage, then please do not hesitate to get in touch.

Yours sincerely



Chris Darley
Planning Director

Cc Steve McBurney – CEG

**Appendix 3: CEG Response to
Neighbourhood Plan – Informal
Consultation Draft – 16/2/2016**

Burley-in-Wharfedale Parish Council
Neighbourhood Planning Forum,
Queen's Hall,
Main Street,
Burley in Wharfedale,
LS29 7EN



nlpplanning.com

Date 16th February 2016
Our ref 50335/JG/CD/10728376v1
Your ref

Dear Sir / Madam

Burley-in-Wharfedale Neighbourhood Development Plan - Informal Consultation - Comments by CEG

Nathaniel Lichfield & Partners act on behalf of CEG Land Promotions Ltd ("CEG") and write to provide comments on the recently published informal consultation draft of the Burley-in-Wharfedale Neighbourhood Development Plan ("the draft Neighbourhood Plan").

CEG is a locally based land promotion firm with close ties to Burley-in-Wharfedale. It is a company with a strong track record of working closely with local communities and has taken an active and positive role in supporting the preparation of neighbourhood plans elsewhere in the country. It welcomes the publication of the draft Neighbourhood Plan, and in particular the opportunity to comment at this stage in the process and in advance of the statutory 6 week consultation period, which we understand is presently scheduled to occur later in the year.

CEG wishes to support the Parish Council in its efforts to produce a Neighbourhood Plan. In particular it wishes to engage positively and collaboratively as the plan progresses to ensure that the final plan that is produced can steer development and the future growth of the settlement in the most appropriate and sustainable manner and, importantly in a way that is in accordance with the regulatory framework and consistent with the wider strategic development plan policies for the area.

As members of the Parish Council will be aware from previous communications, CEG in conjunction with the land owner, is promoting land immediately to the west of Burley-in-Wharfedale for residential development, alongside supporting community uses. A 'Vision Document' setting out CEG's initial proposals for the site, which demonstrate how it could accommodate approximately 500 units, alongside other uses including a potential new Primary School, has previously been provided to the Parish Council, as part of the very early stages of the formulation of the Neighbourhood Plan.



Comments on the Neighbourhood Plan

CEG has considered all aspects of the draft Neighbourhood Plan and intends to provide detailed comments on the individual policies and themes in due course as part of the formal consultation. At this stage CEG is supportive of a number of aspects of the plan, including:

- A commitment to meet the housing needs of Burley-in-Wharfedale (Objective 2). We do however disagree with the level of housing the draft plan is seeking to accommodate. This is a matter discussed in detail later in this letter.
- An acknowledgement that Green Belt boundaries will need to be amended to meet future housing requirements, and the acknowledgement that the Neighbourhood Plan is unable to undertake such a review (Paragraph 4.15). This is consistent with national and local planning policy.
- The identification of the CEG land to the west of Burley-in-Wharfedale (site BU/001) as a preferred location to accommodate an amendment to the current Green Belt boundary to accommodate housing (Paragraph 4.15).
- The retention of existing green spaces and allotments within the built up area (Policies BW13 and BW14).
- The identification of Greenholme Mills as a 'Neighbourhood Commercial Zone', accommodating B1, B2 and B8 uses (Policy BW8).

Notwithstanding the above matters upon which CEG is generally supportive, we have a fundamental concern that the draft Neighbourhood Plan does not comply with a number of the 'basic conditions'¹ with which a Neighbourhood Plan is required to comply, before it can be submitted to the Local Planning Authority and then proceed to examination. The basic conditions upon which a neighbourhood plan must comply are set out in paragraph 65 of the 'Neighbourhood Planning' section of the National Planning Policy Guidance (PPG). This guidance also states that throughout the process of developing a neighbourhood plan, the qualifying body (in this case the Parish Council) should consider how it will demonstrate that its plan meets these basic conditions and that early discussions should take place with the Local Planning Authority. The Local Planning Authority is then expected to then provide feedback on whether they consider that such conditions have been complied with before the plan is then formally submitted to them.

CEG is concerned that the plan fails to accord with a number of the identified basic conditions. In particular:

- It has not had regard to national policy and advice contained in guidance issued by the Secretary of State. (Basic Condition A)
- It does not contribute towards the achievement of sustainable development. (Basic Condition B)
- It has not been prepared in general conformity with the strategic policies contained within the Local Plan for the area. (Basic Condition E)

¹ The 'Basic Conditions' are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004.



- It is not clear whether it complies with all relevant European Union (EU) obligations. (Basic Condition F)

We therefore wish to highlight these concerns with you at this early stage.

1. Conformity with Strategic Policies of the Local Plan; and

2. Regard to National Policy and Secretary of State Guidance

The basic conditions of being in conformity with the strategic policies contained in the Local Plan for the area and being prepared having regard to national policy and secretary of state guidance are reiterated in Paragraph 184 of the National Planning Policy Framework (NPPF). This advises that Neighbourhood Plans should not only reflect the strategic policies of the Local Plan but should also plan positively to support them. It further states that Neighbourhood Plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies. Whilst the Burley Neighbourhood Plan acknowledges these requirements, it does not however comply with them.

Bradford Metropolitan District Council (“the Council”) is at an advanced stage in the preparation of the Local Plan Core Strategy which, once adopted later this year, will set the strategic planning framework for the area. This will replace the strategic policies contained in the 2005 Replacement Bradford Unitary Development Plan (RUDP) which are now out of date and in the case of policies relating to the supply of housing, cannot be considered up-to-date, given that the Council is presently unable to demonstrate a five year housing land supply.²

The Core Strategy was submitted for examination in December 2014 and the hearing sessions took place in March 2015. Following these hearing sessions, the Council has responded by publishing a series of Main Modifications, which have recently been the subject of further consultation. It is therefore this version of the Core Strategy which the Inspector will consider and determine whether the plan is sound and can be adopted by the Council, taking account of all comments made. Earlier versions of the plan should now be afforded little, if any weight.

The Parish Council will be aware that as part of the modifications, Burley-in-Wharfedale is now identified as a Local Growth Centre within the District Settlement Hierarchy as set out in Strategic Policy SC4 of the Core Strategy, reflecting its sustainable location to accommodate housing growth. Reflecting this change, the overall housing figure for the settlement, as contained in modified Policies HO3 and WD1, now stands at 700 units. Policy WD1 as currently drafted, and as will be considered by the Inspector, now states: *“Burley-in-Wharfedale will see the creation of 700 new homes through redevelopment of sites within the settlement and with a significant contribution from Green Belt changes, together with associated community facilities.”*

² Paragraph 49 of the NPPF advises that “relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.” Issues of five year housing land supply were recently clarified in an appeal decision at Cote Farm, Thackley (Ref. APP/W4705/W/14/3001692) (11/11/2015). Paragraph 21 of the Inspector’s decision refers to the absence of a 5 year land supply being common ground between the parties, before going on to conclude that that the shortage of housing land is “immediate and severe”.



Whilst the draft Neighbourhood Plan states at Paragraph 1.13 that it takes into account emerging policy and will continue to do so as Bradford's plans progress towards adoption, this is factually wrong.

The draft Neighbourhood Plan was published subsequent to the Core Strategy Main Modifications. However, for the reasons set out below, it is clear that it is not in conformity, particularly in respect of the level of housing growth it is planning for. Indeed we note that at the time of drafting these representations, the Neighbourhood Planning section of the Parish Council website states that: *"The Burley Neighbourhood Plan is not required to meet the proposed housing target of 700 homes, but has been drafted to meet the current target of 200 homes by 2030"*.

The above statement is clearly incorrect. The 200 homes figure is taken from the previous Publication Draft of the Core Strategy, which has been superseded by the Main Modifications and is therefore no longer a *"current target"*. Prior to the Publication Draft, the earlier Further Engagement Draft identified Burley as Local Growth Centre accommodating 500 additional dwellings. By planning for a total of 200 homes during the plan period, the Neighbourhood Plan cannot be considered to be in conformity with the current position of the emerging Core Strategy. It is based upon a figure contained in a previous draft of the plan for which no weight can be attached.

In addition to not being in conformity with the strategic policies of the emerging Local Plan, it also does not have regard to national planning policy. Paragraph 184 of the NPPF states that Neighbourhood Plans should be positively prepared, should not promote less development than set out in the Local Plan, or undermine its strategic policies. As presently drafted, the Neighbourhood Plan fails on all these matters.

Should the Neighbourhood Plan therefore proceed in its current form, we consider that there is considerable risk that the plan will not be found sound at the independent examination stage (assuming Bradford Council allows it to proceed to this stage) and will therefore not be able to proceed towards a referendum.

Given that the plan is not consistent with the emerging Core Strategy and in light of such risks of proceeding on this basis going forward, we consider that the Parish Council should make amendments to the plan and instead plan for the 700 homes figure identified in the current modified Core Strategy, and to reflect the identification of Burley-in-Wharfedale as a Local Growth Centre. This should happen prior to formal consultation on the Neighbourhood Plan.

Failing this, the Parish Council should halt further progression of the Neighbourhood Plan until the Core Strategy is adopted, or at the very least until after the Inspector's report is published in the coming months, when clarity will be provided on whether the proposed figure of 700 units is deemed by the Inspector to be sound. Thereafter, the Neighbourhood Plan will need to reflect the content of the Core Strategy and/or the Inspector's Report. There is certainly no basis whatsoever for progressing with a plan which is already out of date and, even if 'made', would likely carry limited, if any weight in the future determination of planning applications.

Accommodating 700 new homes

In the scenario where the Core Strategy Inspector finds the housing figure of 700 units to be sound and the Core Strategy is then adopted by Bradford Council, it is clear that the draft Neighbourhood Plan's presently stated strategy of avoiding a single large scale housing development and instead



dispersing development across a range of sites will need to be revisited. Indeed it is CEG's position that this approach should be revisited regardless of any final conclusions reached by the Core Strategy Inspector, in order to avoid the potential for dispersed development within several parts of the Green Belt surrounding the settlement. Such an approach is advocated in national policy, whereby paragraph 52 of the NPPF states that the supply of new homes can sometimes be best achieved through planning for larger scale development, including extensions to existing villages.

In this context, we consider that the Parish Council should embrace the benefits that would arise from consolidating much of the requirement on a single site as an extension of the settlement.

The benefits of such an approach can be summarised as follows:

- A single large development provides the critical mass and financial capability to deliver new community uses and infrastructure, such as a new school, alongside new housing, as well as providing meaningful improvement to public transport provision, such as increased frequency or extended services. A more dispersed approach is unlikely to be able to deliver new infrastructure, thereby placing increased pressure on existing services.
- It focuses on a single, but large, Green Belt release within the most appropriate location, preventing less suitable releases which may have a greater impact on the strategic function of the Green Belt, putting at risk coalescence with other settlements such as Menston.
- It provides certainty that long term housing needs can be delivered and new enduring Green Belt boundaries established, thereby creating a defensible position against future planning applications for unwanted housing.
- The scope for greater Section 106 Agreement and CIL payments to benefit local facilities and the improvement of local services. The Parish Council would also have greater control over this, if it were planned for in an adopted Neighbourhood Plan. Indeed Paragraph 72 of the Community Infrastructure Levy (CIL) section of the National Planning Practice Guidance states that where a Neighbourhood Plan is in place, 25% of any CIL resulting from the development would be payable directly to the Parish Council, with opportunities for this proportion to be increased through negotiation with the District Council as the charging authority.
- It maximises the opportunity to deliver a mix of house types, sizes and tenures to meet local needs, including the delivery of affordable housing and Starter Homes for local people.
- Importantly, by meeting the majority of the settlement's housing requirement in a single development within one part of the village, it provides an opportunity for the Parish Council to work with the developer to implement, and manage, a long term construction management plan to ensure minimal impacts on existing residents.

In seeking to accommodate new housing in Burley, it is noted that the draft Neighbourhood Plan already recognises that CEG's landholding represents the most appropriate location to amend Green Belt boundaries in the village, albeit on a more limited basis given the number of new homes the draft plan is based upon. It therefore follows that in planning for the higher Core Strategy figure and taking account of the benefits of accommodating this additional requirement on a single site, then it is best met on the full extent of CEG's landholding to the west of Burley (Ref. BU/001) in the manner set out in the Vision Document that has previously been shared with you. Further detailed master planning has been undertaken on behalf of CEG and as a result of a



careful analysis of the site characteristics and wider environmental considerations a scheme of 500 homes, a new primary school, as well as wider community infrastructure has been formulated in a way that would integrate with and complement the existing settlement.

The benefits of accommodating the additional housing requirement on the land to the west of Burley are as follows:

- The site is very well related to the existing settlement, allowing effective integration and access to new community facilities. It would not act as an isolated and separate development.
- Access can be achieved in a way that will avoid additional unnecessary traffic passing through the village centre, including an access directly onto the A65.
- Housing can be delivered outside areas of flood risk. Unlike many parts of Burley, the site is largely in Flood Zone 1.
- The site is entirely outside the Conservation Area and relatively unconstrained by heritage issues.
- Based on the Council's most recent Habitats Regulations Assessment (November 2015), the site is categorised as being 'unconstrained' from a protected species perspective.
- The site can be developed in a way which would not prejudice the purpose of Green Belt, as identified at paragraph 80 of the NPPF. Unlike other potential locations around Burley, the site presents no risk of coalescence with neighbouring settlements; it aligns with existing defensible boundaries and provide a future defensible western Green Belt boundary to contain future development; and would protect the historic character of the settlement. Many of the other Green Belt sites identified in the SHLAA would breach clearly defined Green Belt boundaries, including the railway line to the south and the A65 to the north and east of the settlement, thereby risking future coalescence and incursion into the countryside.

In light of these conclusions, and in order to ensure consistency with the emerging Core Strategy, we consider that the draft Neighbourhood Plan should be amended to make clear that its preference in accommodating 700 new homes would be for the Green Belt to be amended to the west of the village to facilitate the development of 500 homes, alongside land to accommodate any required community infrastructure.

In this context CEG looks forward to discussing their proposals for this land with the Parish Council in further detail, to ensure that the optimal scheme is able to be delivered to the long term benefit of existing and future residents of Burley-in-Wharfedale.

3. Contributing towards the achievement of Sustainable Development

This 'basic condition' is consistent with the overarching principle of the planning system that all plan-making and decision-taking should help to achieve sustainable development. In this regard, the PPG advises that a qualifying body must demonstrate how its plan will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures).



Having reviewed the Neighbourhood Plan, it is not clear how such matters have been considered (if at all). For example, there is no discussion of the sustainability implications of the level of housing that is being planned for, or indeed how new infrastructure associated with the delivery of new housing will contribute towards sustainable development. There is also no analysis or discussion of the sustainability implications of planning for greater levels of development.

Importantly, whilst Appendix 1 of the Neighbourhood Plan provides a review of the SHLAA sites as potential housing allocations, there does not appear to have been any form of methodological or objective assessment of these sites, or indeed any discussion of alternative options considered. Whilst the analysis appears based upon feedback from earlier public consultation, this feedback does not appear to be based upon any specific criteria. CEG would welcome clarification on how such matters have been addressed by the Council, and in particular the alternative approaches (if any) that have been considered.

If this work has not yet been undertaken, it is therefore essential that such an assessment of how the plan contributes towards the achievement of sustainable development is undertaken prior to any formal consultation being carried out. This should include an assessment of the potential sites on an objective basis and subject to appropriate criteria.

Although not a legal requirement, we consider that this process would be best achieved through the preparation of a Sustainability Appraisal. Indeed, the Planning Practice Guidance advises that qualifying bodies may find this a useful approach for demonstrating how their draft plan or order meets this basic condition.

4. Compliance with EU obligations

As a further 'basic condition' of legal compliance, a neighbourhood plan must be compatible with a number of EU obligations, as incorporated into UK law. Such compliance issues will therefore form a key part of any future examination of the Burley Neighbourhood Plan. We understand that following a request made by Historic England, an Environmental Impact Assessment of the draft plan is due to be carried out, the outcome of this process may identify significant environmental impacts requiring alterations to the content of the document. Notwithstanding this process and its potential outcomes, it is not however clear whether the other EU obligations have been met. These are discussed in turn below.

Strategic Environmental Assessment

The National Planning Practice Guidance (PPG) advises that in the circumstances where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment (SEA) to be undertaken. Such assessments are a requirement of EU obligations, as incorporated into UK law, and will form part of the examiner's assessment into the legal compliance of the plan. The initial stage of this process is to carry out a screening assessment in accordance with Regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004. In carrying out this screening the PPG goes on to advise that SEA may be required, for example, where:

- a neighbourhood plan allocates sites for development;
- the neighbourhood area contains sensitive natural or heritage assets that may be affected by the proposals in the plan;



- the neighbourhood plan is likely to have significant environmental effects that have not already been considered and dealt with through a sustainability appraisal of the Local Plan.

At this stage neither the draft Neighbourhood Plan nor the Parish Council website indicates whether this initial screening has been carried out; whether any engagement has taken place with Bradford Council or any other body; or what the outcome of that process has been. CEG would welcome confirmation of this matter and, if it has been carried out, what the outcome has been. The Parish Council should be aware that the Bradford Local Plan Core Strategy has been subject to SEA.

Habitats Regulations Assessment

A further EU obligation upon which a Neighbourhood Plan must comply with is the Birds and Habitats Directives which are translated into UK law via the Conservation of Habitats and Species Regulations 2010 (“the Habitats Regulations”). The regulations provide for the designation and protection of “European sites” and “European Protected Species”. In this case the South Pennine Moors Special Protection Area (SPA) and Special Area of Conservation (SAC) represent a European site.

A Neighbourhood Plan cannot progress if the likelihood of significant effects on any European Site, either alone (or in combination with other plans and projects) cannot be ruled out.

In the first instance, similar to the requirement for SEA, an initial screening process must be carried out to determine whether likely significant effects on a European site can be ruled out on the basis of objective information, involving consultation with Natural England and other key bodies. If the conclusion is that the plan is likely to have a significant effect on a European site then an Appropriate Assessment of the implications of the plan for the European site, in view of the site’s conservation objectives, must be undertaken. In the circumstances that a plan is determined to require an Appropriate Assessment under the Habitats directive then it will normally also require a SEA. The Parish Council will be aware that following initial screening the Core Strategy has been subject to Appropriate Assessment, which has been subject to a recent review as part of the Main Modifications.

It is not clear whether this initial screening process has yet been carried out by the Council, or indeed what the outcome has been. In order for the Neighbourhood Plan to be considered legally compliant, such matters will need to be fully addressed by the Parish Council.

Conclusions

CEG wish to support the Parish Council in the preparation of a Neighbourhood Plan for Burley and indeed support a number of its key aims and conclusions. It is however considered that the plan fails to satisfy a number of ‘basic conditions’ upon which such a plan must comply with before it can be submitted to the Local Planning Authority.

Most critically, the plan fails to accord with the strategic policies of the emerging Core Strategy and does not comply with national guidance, which states that Neighbourhood Plans should be positively prepared, should not promote less development than set out in the Local Plan and should not undermine its strategic policies. As presently drafted, the Neighbourhood Plan fails on all these matters and should be amended accordingly. Failing this, the Parish Council should halt



Nathaniel Lichfield
& Partners

Planning. Design. Economics.

further progression of the Neighbourhood Plan until the Core Strategy is adopted, or at the very least until after the Inspector's report is published

We trust that these initial representations will be given full consideration and would welcome the opportunity to discuss them further with the Parish Council. In particular CEG look forward to further discussing how their site can assist in accommodating the level of housing identified in the Core Strategy and the benefits to Burley-in-Wharfedale from doing so.

Yours faithfully

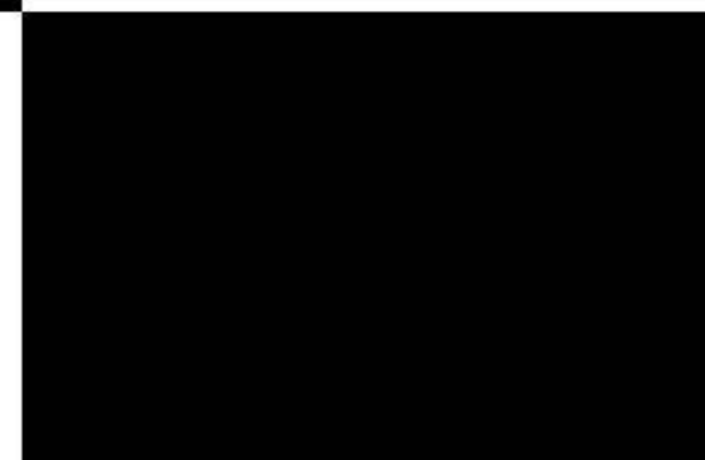


Chris Darley
Planning Director

cc Steve McBurney – CEG Land Promotions Ltd

**Appendix 4: CEG Response to
Neighbourhood Plan – Formal
Consultation Draft – 14/10/2016**

Burley-in-Wharfedale Parish Council
Neighbourhood Planning Forum,
Queen's Hall,
Main Street,
Burley-in-Wharfedale
LS29 7EN



nlpplanning.com

Date 14 October 2016
Our ref 50335/JG/CD/12474605v4
Your ref

Dear Sir / Madam

Burley-in-Wharfedale Neighbourhood Development Plan - Regulation 14 Consultation Draft - Comments by CEG

Nathaniel Lichfield & Partners act on behalf of CEG Land Promotions Ltd ("CEG") and write to provide comments on the recently published Regulation 14 Consultation Draft of the Burley-in-Wharfedale Neighbourhood Development Plan ("the draft Neighbourhood Plan").

CEG welcomes the opportunity to be able to provide comments on the draft Neighbourhood Plan and remains keen to support the Parish Council in its efforts towards producing it. CEG has positively engaged with the Parish Council throughout the process to date, including attending consultation events and meeting with Councillors throughout this process to discuss the proposals for the land to the west of Burley-in-Wharfedale. Most recently we provided detailed comments on the earlier 'Informal Consultation Draft', by way of a letter dated 16th February 2016.

As the Parish Council will also be aware, CEG has now submitted an outline planning application to Bradford Metropolitan District Council ("Bradford Council") for up to 500 homes and associated community uses including a new education facility on the land to the west of Burley-in-Wharfedale. These proposals have evolved from the early 'Vision Document' that was provided to the Parish Council by CEG as part of the very early stages of the preparation of the Neighbourhood Plan and was also submitted as part of representations to the Bradford Local Plan Core Strategy consultation. In particular the proposals have been formulated on the basis of a comprehensive masterplanning exercise and detailed technical analysis of not only the site itself, but also an assessment of and its interaction with the wider settlement and the surrounding Green Belt. CEG looks forward to engaging further with the Parish Council on the planning application.

Comments on the draft Neighbourhood Plan are set out below and are effectively split into two parts. The first part of this letter provides comments on strategic matters including the extent to which the draft plan complies with the 'basic conditions' set by statutory legislation and



Government policy, including its conformity with the emerging Bradford Local Plan Core Strategy. The second part of the letter provides comments on specific policies of the draft plan.

Part A – General Comments

Paragraph 14 of the National Planning Policy Framework (NPPF) introduces a presumption in favour of sustainable development. Paragraph 16 of the NPPF goes on to state that the application of the ‘presumption’ will have implications for how communities engage in neighbourhood planning. Critically, this means that neighbourhoods should:

- develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development; and
- plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan.

There is a statutory requirement for a Neighbourhood Plan to satisfy a number of ‘basic conditions’ before it can be submitted to the Local Planning Authority and then proceed to examination. The basic conditions upon which a neighbourhood plan must comply are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. They are also listed within paragraph 65 of the ‘Neighbourhood Planning’ section of the National Planning Policy Guidance (PPG). This guidance also states that throughout the process of developing a neighbourhood plan, the qualifying body (in this case the Parish Council) should consider how it will demonstrate that its plan meets these basic conditions.

CEG are concerned that the draft Neighbourhood Plan as presently drafted fails to comply with a number of the basic conditions, including:

- Regard to national policy and advice contained in guidance issued by the Secretary of State. (Basic Condition A)
- Contribution towards the achievement of sustainable development. (Basic Condition D)
- Conformity with the strategic policies contained within the Local Plan for the area. (Basic Condition E)
- Compliance with all relevant European Union (EU) obligations. (Basic Condition F)

These matters are discussed in detail below:

Conformity with Strategic Policies contained within the Local Plan;

It is a requirement that a neighbourhood plan is prepared in general conformity with the strategic policies contained within the Local Plan for the area. Paragraph 184 of the NPPF which advises that Neighbourhood Plans should not only reflect the strategic policies of the Local Plan, but should also plan to positively support them.

The Parish Council will be aware that the draft Bradford Local Plan Core Strategy (“Core Strategy”) is now at a very advanced stage of preparation. The Government appointed Inspector’s report into the examination of the draft Core Strategy was published on 22nd August 2016 and made publically available on 2nd September. This concludes that subject to the Main Modifications proposed by and previously consulted on by Bradford Council, the plan is both sound and legally compliant.



Furthermore we are aware that following receipt of the Inspector's report Bradford Council are already applying "substantial" weight to Core Strategy policies in the determination of planning applications.

The Core Strategy as modified and as deemed sound and legally compliant by the Inspector identifies Burley-in-Wharfedale as a Local Growth Centre within the settlement hierarchy, with Policies HO3 and WD1 identifying Burley-in-Wharfedale as accommodating 700 new homes by 2030. Importantly, Policy WD1 also states that "*Burley-in-Wharfedale will see the creation of 700 new homes through redevelopment of sites within the settlement and with a significant contribution from Green Belt changes, together with associated community facilities.*" (our emphasis)

It is in this context that the Neighbourhood Plan should be drafted. Whilst it is acknowledged that the current draft Neighbourhood Plan was published in advance of the Core Strategy Inspector's report being made publicly available, it is noted that in its current form the draft Neighbourhood Plan still contains numerous references to the earlier versions of the Core Strategy and in particular the lower level of new housing contained in the earlier Publication Draft, which are now obsolete and should therefore be removed or updated.

The current draft Neighbourhood Plan, rather than being re-written, has clearly evolved from these earlier versions, whereby much of it is still based upon the premise of delivering this lower level of housing. This is clearly confusing for those wishing to comment upon the plan, a situation further compounded by how the Parish Council has consulted on the plan. For example, the Parish Council's website, under its section entitled "Neighbourhood Plan" currently has a sub-section entitled "Draft Neighbourhood Plan"¹ which states that "*Since the proposed modification to the Bradford Core Strategy has not yet been approved for adoption, the Burley Neighbourhood Plan is not required to meet the proposed the housing target of 700 homes, but has been drafted to meet the current target of 200 homes by 2030.*" A link is then provided to the earlier Informal Consultation Draft, which was actively promoting the delivery of 200 homes and identifying locations for those homes to be accommodated. This is plainly wrong and an erroneous basis to produce a Neighbourhood Plan; and indeed misleading to the public, when seeking their views on the draft. In these circumstances we would therefore question the legal and substantive validity of this current statutory public consultation exercise.

It is of further concern that in the context of the delivery of housing, the current draft plan continues to rely on the results of surveys of local residents undertaken at a time when the plan was considering how to accommodate 200 new homes, rather than support the delivery of 700 homes as set out in the Core Strategy. Whilst this matter is discussed in further detail later in this letter, those survey results (which effectively are out of date) should not be afforded any weight as a basis for formulating policy, or indeed the wider 'Vision' of the plan. Instead, the policies and overall approach of the draft Neighbourhood Plan should instead be informed by a thorough and robust evidence base, and in accordance with Paragraph 184 of the NPPF be in compliance with national guidance and in way that will support the delivery of the Core Strategy.

As a remedy, and before submission to Bradford Council we would urge the Parish Council to update the plan fully taking into account the Core Strategy as deemed sound by the Inspector and therefore predicated on accommodating 700 new homes and then carry out a further round of

¹ http://www.burleyparishcouncil.co.uk/Burley-Wharfedale-PC/draft_neighbourhood_plan_document-16550.aspx



community engagement and consultation on such a plan, ensuring there are no misleading statements on the Parish Council website.

Delivering the Core Strategy Housing Requirement

It is noted that unlike the earlier Informal Consultation Draft, the current draft Neighbourhood Plan does not explicitly identify sites in order to deliver the 700 new homes required by the Core Strategy, with paragraph 4.22 stating that *“as the neighbourhood plan cannot review the boundary of the Green Belt, the final allocation of housing sites to meet the requirement set out under Policy WD1 rests with Bradford Council following a Green Belt review”*. It is understood that this change to the draft plan from the earlier iteration is in response to comments from Bradford Council. Such a position is supported by CEG. However, it is then crucial that the draft Neighbourhood Plan does not then include policies or text, which implicitly supports or undermines the ability of Bradford Council's Land Allocations Development Plan Document (DPD) to properly assess and consider the most appropriate location or locations for the delivery of housing. This will be in conjunction with a Green Belt review and wider technical and sustainability analysis.

In its current form, it is considered that the draft Neighbourhood Plan does contain references which may undermine or conflict with the emerging DPD. Paragraph 4.20 of the draft Neighbourhood Plan comments on how new housing should be delivered in the context of the wider 'Vision' for the settlement, stating that the delivery of the vision means *“avoiding a single large development that is perceived as a separate place”* and *“dispersing new housing development across a range of sites will help to ensure that these sites are of a size that avoids dominating the local area”*.

Whilst there may have been some public support in the early community engagement for a dispersed approach, this should be afforded little, if any, weight given that it was predicated on the delivery of 200 new homes and not 700 as set out in the Core Strategy deemed sound by the Inspector. Given the fundamental change in housing numbers, it is not sound to simply translate the views expressed in delivering the lower number into the same broad spatial approach for the higher figure. Such an approach which is not based upon an accurate picture of alternatives based on an objective assessment² being carried out by the Parish Council pre-judges the appropriateness of an outcome where, for example, a single large site is deemed the most suitable, rather than several smaller sites 'dispersed' around the settlement. It cannot therefore properly be advocated in advance of a detailed review of all the potential development sites and their appropriateness in terms of national and local development plan policy.

Furthermore, the Parish Council need to be aware of the wider planning and Green Belt consequences of advocating a 'dispersal' approach towards the delivery of 700 new homes, particularly in the context that it is accepted that the majority of these will need to be delivered on land presently within the Green Belt. These matters have been considered in detail as part of CEG's planning application for the development of the land to the west of the settlement. In particular the application is supported by a detailed review of the Green Belt surrounding Burley-in-Wharfedale, as well as a planning and technical assessment of the alternative sites that have been

² See Stonegate Homes Ltd and Littleworth Properties versus Horsham District Council and Henfield Parish Council High Court Case – Ref: [2016] EWHC 2512 (Admin)



identified by Bradford Council through their Strategic Housing Land Availability Assessment (SHLAA) process.

The submitted Green Belt review demonstrates that Burley-in-Wharfedale is bound by strong and durable boundaries to the north (the Bypass), to the south (the railway line) and to the east (Bradford Road) and many of the alternative sites breach these boundaries. The area of Green Belt to the south of Burley-in-Wharfedale is also highly sensitive, being very narrow and development in this area would risk coalescence with Menston. Development of several sites in these locations would clearly undermine the function and purposes of Green Belt, given the nature of the boundaries and how such sites relate to them. Conversely, the land to the west of Burley does not represent a durable boundary, however the development of this land provides the opportunity through appropriate landscaping along its western edge to create a new strong and defensible boundary. Development of the site would also not result in coalescence with Ilkley and a gap of 1.8km would remain. A copy of the Burley-in-Wharfedale Green Belt Appraisal which accompanies the planning application is appended to this letter.

CEG's planning application also demonstrates that without the land to the west, virtually all other sites that have been identified within the Bradford SHLAA would be required. In addition to many of these being unsuitable in Green Belt terms and overall impact, many others are simply undeliverable or unsuitable for the delivery of housing. A copy of this assessment of the alternative sites is also appended to this letter. Advocating such an approach would therefore run contrary to delivering sustainable development, a "basic condition" of a Neighbourhood Plan and would also fail to plan positively to deliver the Core Strategy contrary to the requirements of Paragraph 184 of the NPPF as referred to above.

This approach also ignores the benefits that would arise from a single site location as opposed to the dispersal approach. The benefits of such an approach are as follows:

- It focuses on a single, but large, Green Belt release within the most appropriate location when considered against the purposes of Green Belt as defined by Paragraph 80 of the NPPF. It would therefore prevent the need for releases in less suitable locations which may have a greater impact on the strategic function of the Green Belt, putting at risk coalescence with other settlements such as Menston;
- It provides certainty that long term housing needs can be delivered and new enduring Green Belt boundaries established, thereby creating a defensible position against future planning application for unwanted housing;
- A single large development provides the critical mass and financial capability to deliver new community uses and infrastructure, such as a new school, alongside new housing, as well as providing meaningful improvements to public transport provision, such as increased frequency or extended services. A more dispersed approach whilst potentially delivering the same number of new homes is unlikely to be able to deliver new infrastructure (particularly on site provision), thereby placing increased pressure on existing services;
- The scope for greater Section 106 Agreement and potential CIL payments to benefit local facilities and the improvement of local services. The Parish Council would also have greater control over this, if it were planned for in an adopted Neighbourhood Plan.



- It maximises the opportunity to deliver a mix of housing types, sizes and tenures to meet local needs, including the delivery of affordable housing and Starter Homes for local people and;
- By meeting the majority of the settlement's housing requirements in a single development within one part of the village, it provides an opportunity for the Parish Council to work with the developer to implement, and manage, a long term construction management plan to ensure minimal impacts on existing residents.

In conclusion, the overarching Vision and the accompanying commentary as presently contained at Paragraph 4.20 of the draft Neighbourhood Plan should be amended to remove any reference which seeks to influence the locational strategy for delivering 700 new homes in Burley-in-Wharfedale. Such an approach has the potential to be inconsistent with and therefore prejudice the process that will be undertaken by Bradford Council as part of their Land Allocations document, which will be supported by a detailed technical analysis and sustainability appraisal of the most appropriate such locations.

Regard to National Policy and Guidance

The Planning Practice Guidance³ advises that in preparing a Neighbourhood Plan, a basic conditions statement should be prepared indicating how the qualifying body (in this case the Parish Council) has had regard to national policy and considered whether a particular policy is or is not relevant. It goes on to state that a qualifying body is encouraged to set out the particular national policies that it has considered, and how the policies in a draft neighbourhood plan take account of national policy and advice. The guidance further confirms that this should occur throughout the process of preparing the plan. We are not aware of such a statement being prepared by the Parish Council and if not, it is clear that such a statement should be prepared.

In addition, CEG is concerned that a number of policies contained in the draft Neighbourhood Plan do not accurately reflect national guidance as contained in the NPPF. For example draft Policy BW2 which relates to the development outside of existing settlement boundary is supportive of development which will not have an "adverse impact" on heritage assets. This approach runs contrary to paragraphs 133 and 134 of the NPPF which is permissive of development whereby the wider benefits outweigh any identified "harm". This matter is discussed in further detail within Part B of these representations.

In conclusion, in addition to the preparation of a 'basic conditions statement', the Parish Council should also undertake a detailed audit of all its policies setting out how they comply with both national policies and strategic policies within the Local Plan. This should be undertaken prior to the draft Neighbourhood Plan being submitted to Bradford Council. The outcome of this exercise is that there will be a need to amend the policies within the draft Neighbourhood Plan; and thereafter it would be appropriate to consult upon its content prior to submission to Bradford Council.

Compliance with EU obligations

A further 'basic condition' of legal compliance (Condition F) is that a Neighbourhood Plan should comply with all relevant EU obligations, as translated into UK laws. It is noted that the draft

³ PPG – Paragraph: 070 Reference ID: 41-070-20140306



Neighbourhood Plan is accompanied by a report which screens against the requirements to undertake a Strategic Environmental Assessment (SEA) and a Habitats Regulations Assessment (HRA) of the plan. It is noted that in respect of SEA, the screening report concludes that the plan is unlikely to have significant environmental effects and therefore SEA will not be required. The report confirms that this conclusion is reached on the basis of the nature of the plan and the policies it contains and in particular the fact that it does not allocate sites for development. Such a conclusion, however, does not take into account the fact that the draft Neighbourhood Plan in advocating a 'dispersal' approach to the delivery of the overall housing has a potential to influence allocations, which in turn may have strategic environmental consequences. Such consequences have not been considered by the Parish Council, or indeed taken into account by the SEA Screening Report. In such circumstances we do not consider that it is possible to conclude that a Strategic Environmental Assessment of the draft Neighbourhood Plan is not required until this matter has properly been considered. Therefore unless the Neighbourhood Plan is amended to remove any reference to a preferred locational strategy for the delivery of new housing, then the SEA screening report should be updated to consider the implications of the current approach.

Part B - Specific Comments on the draft Neighbourhood Plan

In light of the comments provided in Part A of this letter, the following section provides additional comments on specific elements and policies of the draft Neighbourhood Plan. It therefore needs to be read in conjunction with Part A above. The following section focuses only on key policies and matters of concern and therefore the absence of any comment does not equate to tacit support for any other particular policy.

Ref.	Comment
Vision	
Page 4	<p>CEG considers that the overarching Vision of the draft Neighbourhood Plan needs to be updated to reflect the Green Belt releases that will be required in order to accommodate the scale of development set out in the Core Strategy. At present it refers to the retention of the Green Belt and its wording therefore needs to be altered to state that whilst the Green Belt around the village will need to be altered, the most important parts will need retained. In addition the second and third paragraphs should be amended to identify that that the village is a defined Local Grown Centre and that new development can support the delivery of new infrastructure.</p> <p>It is also not considered appropriate for the vision to require new developments to be designed so that they "preserve and enhance" the character of Burley-in-Wharfedale, as this contradicts the requirements of national policy. Instead, this element of the Vision should be reworded so that, in accordance with para. 137 of the NPPF, it provides support for proposals that preserve or enhance those elements of the setting of Burley-in-Wharfedale's conservation area that make a positive contribution towards it.</p>
1. Introduction	
Pages 7 - 8,	These paragraphs relate to the conformity of the Neighbourhood Plan with the



Paragraph 1.8 and 1.11	wider Development Plan. In this regard these paragraphs should be updated to reflect the significant weight that can now be afforded to the draft Core Strategy.
Pages 8-9, Paragraph 1.15 and Figure 1	The Bradford Core Strategy Key Diagram as included on Page 9 is taken from an earlier Publication Draft version Core Strategy prior to the publication of the Main Modification and is now obsolete having been superseded by the revisions made by the Main Modifications. The diagram in replicating the Core Strategy serves no purpose and should therefore be deleted. The text at para 1.15 should also be updated, accordingly.
Page 11, Paragraphs 1.18 - 1.21	This part of the plan refers to the public consultation that has been taken on the draft Neighbourhood Plan to date and the outcomes of the consultation. The text should clarify that this consultation exercise was carried out in the context of the Core Strategy Publication Draft (February 2014) which included a housing requirement figure of 200 homes to be delivered in Burley-in-Wharfedale. As set out above, however, we consider that the outcomes of this consultation, particularly those responses received about how the quantum of development can be best incorporated within the settlement and the most appropriate locations for accommodating it, should be afforded little, if any, weight given that it was predicated on the figure of 200 homes.
2. Burley-in-Wharfedale Profile	
Page 17, Paragraph 2.9	The section on Green Belt – as currently set out in paragraph 2.9 – needs to acknowledge that Policy WD1 of the Core Strategy (as Modified) identifies the need for 700 homes to be delivered in Burley-in-Wharfedale “with a significant contribution from green belt changes”.
3. The Key Issues, Vision and Objectives	
Page 19, Paragraph 3.9	The proposed vision for Burley-in-Wharfedale as set out on Page 19 replicates the vision set out on Page 4. Accordingly our comments as set out above equally apply here and the vision should be amended in accordance with those earlier comments.
Page 19, Paragraph 3.12 (Objective 2 – To meet housing needs)	Objective 2 relating to meeting housing needs presently makes reference to the earlier Core Strategy Publication Draft housing figure of 200 units. This figure has since been amended to 700 units as part of the Main Modifications into the Core Strategy. Indeed the Inspector has concluded that this modification is required for the plan to be considered sound.
Page 20, Paragraph 3.14	<p>The text at paragraph 3.14 identifies Greenholme Mills as a key site for a future employment use. Whilst CEG support this approach, the initial statement is at odds with the rest of the paragraph which describes how the site is proposed to be redeveloped as part of a predominantly residential planning application. The planning application for the redevelopment includes no B1/B2 or B8 uses and the proposed wider commercial uses are purely speculative and cannot be guaranteed.</p> <p>The text also refers to this application being approved by Bradford MDC on 4th November 2015. This planning permission was quashed following a legal</p>



challenge and whilst it was reconsidered at planning committee on 6th October 2016, the proposals do not presently benefit from planning permission. The Parish Council's position in supporting the application appears at odds with the approach taken within the paragraph of seeking to maximise the employment generating use of the site.

4. Policies and Proposals

Page 28, Policy BW2 – Development Outside the Settlement Boundary	<p>Policy BW2 is wide ranging in protecting a range of natural and historic assets and we are concerned that it unnecessarily overlaps with and does not accurately reflect the detailed wording of the corresponding policies of the Core Strategy. For example part b) relates to the need to protect moorland habitats, however these are afforded protection by Policies SC8 and EN2 of the Core Strategy.</p> <p>Most significantly, parts a) and e) of Policy BW2 conflicts with paragraph 14 of the NPPF by seeking to presume – outright - against development which could give rise to potentially adverse impact. By contrast, paragraph 14 requires planning permission to be granted unless the adverse impacts of a development significantly outweigh the benefits . In line with paragraph 216 of the NPPF (which requires Plans to be consistent with the framework), the wording of Policy BW2 should be updated to reflect this.</p> <p>Part d) of Policy BW2 seeks to protect “the wider context of moorland, river and woodland”, which is considered to be vague and unsupported by any justification or evidence.</p> <p>We therefore consider that Policy BW2 is unnecessary as the assets which it seeks to protect are more appropriately protected by the NPPF and the Core Strategy.</p>
Page 34, Policy BW5 – Mix and Type of Housing	<p>This policy is not required as matters relating to mix and type of housing are already covered by Policy HO8 of the Core Strategy. In this regard Policy BW5 is unnecessary and in any event is inconsistent with HO8. The policy should be removed.</p>
Page 36, Policy BW6 – Provision of Affordable Housing	<p>Policy BW6 relating to the provision of Affordable Housing is not required as such matters are covered by Policy HO11 of the Core Strategy, which requires developments of 11 units or more in Wharfedale to deliver 30% affordable housing.</p>
Page 41, Policy BW9 – Protecting Existing Employment Premises (B1/B2/B8 use)	<p>Policy BW9 relating to the protection of Existing Employment Premises is considered to be unnecessary as the protection of such spaces is already afforded by Policy EC4 of the Core Strategy.</p>



<p>Page 57, Policy BW13 – Walking and Cycling Routes and Bridlepaths</p>	<p>CEG support the spirit of Policy BW13 and intentions to deliver improved walking and cycling routes and bridlepaths. For the purposes of soundness, however, we do not consider it realistic for the Policy to expect ‘every opportunity’ to be taken to improve the inter-linking of the network.</p> <p>Notwithstanding the proposed list of safeguarded routes, we are aware that as part of Bradford MDC’s consultation into its Rights of Way Improvements Plan, a number of requests have been made by local people to create a linkage between existing Public Rights of Way on Sun Lane (Public Footpaths ref. 45 and 36) and the PROW to the immediate north east of the CEG site, off Main Street (Public Footpath Ref. 39). It should be noted, too, that CEG’s proposals for the land to the west of Burley-in-Wharfedale incorporates a bridleway which makes this link.</p>
<p>5. Next Steps</p>	
<p>Page 69, Paragraph 5.1</p>	<p>Paragraph 5.1 makes reference to the previous questionnaires, drop in sessions and focus group research that has assisted the formulation of the plan. As our comments in Part A of this letter set out, such previous consultations and their results in respect of the delivery of new housing should be afforded very little, if any, weight as they were predicated on a housing requirement of 200 homes to be provided in Burley-in-Wharfedale. <u>Accordingly, we recommend that the next step for the Neighbourhood Plan should be for it to be redrafted in order that it is fully consistent with the Core Strategy and supports the delivery of 700 homes and a further round of consultation is then undertaken in advance of formal submission to Bradford Council.</u></p>

Conclusion

In conclusion, whilst CEG welcome the publication of the Formal Consultation Draft of the Burley-in-Wharfedale Neighbourhood Plan, it contains significant failures, when assessed against the ‘basic conditions’ which such a plan should satisfy.

The plan fails to comply with the emerging Bradford Local Plan Core Strategy (incorporating Main Modifications) which has been found sound by the Government appointed Inspector. It continues to be drafted on a premise of delivering the lower and now obsolete housing target and needs to be redrafted to reflect the Core Strategy and the requirement to support the delivery of 700 homes.

Whilst the plan is correct not to allocate sites to deliver the required 700 new homes given the need for Green Belt release, it is erroneous in continuing to seek to influence the spatial distribution of those homes, given its support for a “dispersal” approach. Such an approach is however not based upon any form of technical evidence base or analysis and has the potential effect of predetermining, or indeed undermining the ability of Bradford Council’s Land Allocations DPD to properly assess and consider the most appropriate location, or locations, for the delivery of housing based upon a detailed analysis. Public support for a dispersal approach does not amount to technical evidence and in any event no weight should be given to such support as it was forthcoming on the basis of a requirement to deliver 200 homes, which would have very different consequences than the dispersal of the now higher figure. Indeed the consequences of the



dispersal of the higher figure have not been considered by the Parish Council (nor an SEA produced to that effect). By advocating a dispersed approach the plan also fails to acknowledge or account for the benefits of delivering the majority of the required homes on a single large site. Those benefits are highlighted in this letter.

Finally it is considered that a number of the policies in the plan fail to accord with the detailed wording of the NPPF, whilst in other cases there is unnecessary replication of policies of the Core Strategy. An audit of all of the policies of the draft Neighbourhood Plan should be undertaken against these documents as part of the preparation of a basic conditions statement.

The outcome of these revisions to the draft plan is the need to carry out a further round of public engagement and consultation, based upon a clear premise of a plan positively supporting the delivery of 700 new homes. This should take place as a stage in advance of future submission of the plan to Bradford Council.

We trust that you will find these comments helpful and that they will be taken into account in the further drafting of the Neighbourhood Plan.

Yours sincerely



Chris Darley
Planning Director

cc Steve McBurney – CEG
 Andrew Marshall – Bradford MDC

Appendix 5: Schedule of required amendments

CEG Land Promotions Ltd

Suggested Revisions to Burley-in-Wharfedale Neighbourhood Plan – Submission Draft – January 2017

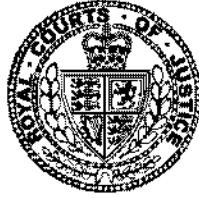
(To be read in conjunction with main representations)

Reference	Suggested Revision (new text is shown <u>underlined</u> and suggested deletions as strikethrough):
Revisions resulting from Section 2 of CEG Representations – Approach to Delivering Core Strategy Housing Requirement and Growth Strategy	
Page 37 – Objective 2 – To meet housing needs Paragraphs 4.23-4.25	<p>Paragraphs 4.23 - 4.25 of the NP should be amended as follows:</p> <p>4.23 <i>Consultation with local people took place in 2014 <u>on the basis of accommodating a lower overall housing requirement of 200 homes.</u> This revealed concerns about the affordability of housing in Burley, particularly for young people and families. Residents are also concerned about there being a range of housing types available - the perception is that many new developments are skewed towards larger dwellings.</i></p> <p>4.24 <i>The main issues raised by local people during the consultation <u>for the then lower housing requirement</u> were:</i></p> <ul style="list-style-type: none"> • <i>the need for new homes to be spread over several sites, not in one big estate-type development; and</i> • <i>the lack of affordable homes to buy or rent.</i> • <i>provision for a growing percentage of elderly residents</i> <p>4.25 <i>The vision for Burley is to ensure that the village continues to feel focussed around a village centre and avoids sprawl along the main commuter routes to Menston, Otley or Ilkley. This means that new housing should be well integrated into the village. , avoiding a single large development that is perceived as a separate place. This will ensure that residents in the new homes feel integrated with the existing community. Dispersing new housing development across a range of sites will help to ensure that these sites are of a size that avoids dominating the local area.</i></p>
Appendix 1	<p>Footnote to be added to Section 2, Appendix 1:</p> <p><u><i>“Note: These results were based on a survey of sites to accommodate the Publication Draft Core Strategy housing requirement of 200 homes. The Core Strategy now requires at least 700 to be accommodated in Burley-in-Wharfedale by 2030 with a significant contribution from Green Belt changes.”</i></u></p>
Page 11, Paragraphs 1.18 - 1.21	<p>Revise Paragraph 1.20 as follows:</p> <p>“1.20 <i>A second public consultation exercise was held on Saturday 11th October 2014, with over 400 attending and returning 170 in depth questionnaires. This consultation event reinforced the majority view from previous consultation activity that:</i></p> <ul style="list-style-type: none"> • <i>The countryside separating Burley from other settlements is an essential characteristic of the Parish;</i> • <i>People feel there is an overall balance of population and facilities</i> • <i>Building styles, the conservation area and overall settlement size are seen as essential characteristics.</i>

Reference	Suggested Revision (new text is shown <u>underlined</u> and suggested deletions as striketrough):
	<ul style="list-style-type: none"> No large-scale developments which would distort the existing balance of existing life <p><u>This consultation was, however, carried out on the basis of accommodating 200 new homes, rather than the 700 new homes and associated Green Belt changes required by the Core Strategy.</u></p>
Revisions resulting from Section 3 of CEG Representations – Adoption of Core Strategy	
Vision – Page 4 & Page 19	<p>“Our vision is to ensure that over future decades, the village of Burley-in-Wharfedale will retain the attractive conservation area centre, and green belt surrounding border, which includes Ilkley Moor and its link down to the River Wharfe.</p> <p><u>As a Local Growth Centre</u> Whilst the village will grow, <u>although</u> this must be proportionate to its infrastructure and Burley will remain separated from neighbouring communities by green spaces. <u>Whilst new housing and infrastructure will be required to be accommodated in the existing Green Belt, the most sensitive areas will be retained.</u></p> <p>New developments will be designed to conserve and enhance <u>respect</u> the character of Burley-in-Wharfedale, such developments will be integrated into the community, benefiting both existing and new residents while enhancing the Wharfe Valley.</p> <p>Open spaces and community services will be improved and new ones created when needed – so that the village and its facilities work well for all its residents and visitors.”</p>
Page 8, Paragraphs 1.13 – 1.14	<p>Revise paragraphs 1.13 and 1.14 as follows:</p> <p>“1.13 Work is currently under way on the Core Strategy document. Bradford MDC has recently adopted its Core Strategy. This document, when adopted, will sets out the strategic planning framework for our neighbourhood plan. The Core Strategy has been through examination, and the Inspectors Report was received in 2016. However, the Core Strategy cannot currently proceed to adoption as the Secretary of State has issued a Holding Direction.</p> <p>1.14 <u>In preparing our Plan, we have taken into account the policies of the adopted Core Strategy. this emerging planning policy and will continue to do this as Bradford’s plans progress towards adoption.</u> This is consistent with the guidance set out by Government in the NPPG.”</p>
Key Diagram	To update to reflect adopted Core Strategy.
Page 17, Paragraph 2.9 – Green Belt	<p>Revise Paragraph 2.9 as follows:</p> <p>“2.9 The Green Belt around Burley is tightly drawn. The setting of Green Belt boundaries is a strategic planning policy matter and as such resides with BMDC. The Neighbourhood Plan cannot change Green Belt boundaries, <u>although it is acknowledged that the Bradford Core Strategy confirms that accommodating 700 new homes will require a ‘significant contribution’ from Green Belt changes.</u>”</p>
Revisions resulting from Section 5 of CEG Representations – Comments on Individual Policies	
Page 30, Policy BW2 – Development Outside the Settlement Boundary	Policy BW2 to be deleted. Failing that it should be amended to read as follows:

Reference	Suggested Revision (new text is shown <u>underlined</u> and suggested deletions as strikethrough):
	<p><i>“Policy BW2 – Development Outside the Settlement Boundary</i></p> <p><i>Development proposals outside the settlement boundary as shown on Map 2 need to satisfy national and local policies relating to development within the Green Belt and will be supported when they, where appropriate:</i></p> <p><i>a) do not have an adverse impact on the cultural, ecological and archaeological importance of key features of Wharfedale <u>that outweigh the public benefits</u> ; and</i></p> <p><i>b) protect moorland habitats; and</i></p> <p><i>c) protect and enhance the role of the River Wharfe for green infrastructure (see also Policy BW15); and</i></p> <p><i>d) where appropriate, preserve field patterns, tree cover and “the wider context of moorland, river and woodland; and</i></p> <p><i>e) do not have an adverse impact on natural and built heritage assets <u>that outweigh the public benefits.</u>”</i></p>
Page 39, Policy BW5 – Mix and Type of Housing	Policy BW5 and associated text to be deleted.
Page 40, Policy BW6 – Provision of Affordable Housing	Policy BW6 and associated text to be deleted.
Page 63, Policy BW13 – Walking and Cycling Routes and Bridlepaths	<p>Policy BW13 to be amended as follows:</p> <p><i>“Policy BW13 – Walking and Cycling Routes and Bridlepaths</i></p> <p><i>Development proposals should, where appropriate, protect and enhance the existing pedestrian and cycling network and bridlepaths. In particular, enhancing the inter-connectedness of the network of foot, cycle and bridlepaths should be incorporated in designs. Every <u>Appropriate opportunities</u> should be taken to improve the inter-linking of the network so that it becomes more useful to the public.”</i></p>

**Appendix 6: Stonegate Homes Ltd and
Littleworth Properties versus Horsham
District Council and Henfield Parish
Council High Court Case – Ref: [2016]
EWHC 2512 (Admin))**



Neutral Citation Number: [2016] EWHC 2512 (Admin)

Case No: CO/2515/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/10/2016

Before:

THE HON. MRS JUSTICE PATTERSON DBE

Between:

THE QUEEN (on the application of	
(1) STONEGATE HOMES LIMITED	
(2) LITTLEWORTH PROPERTIES LIMITED)	<u>Claimants</u>
- and -	
HORSHAM DISTRICT COUNCIL	<u>Defendant</u>
- and -	
HENFIELD PARISH COUNCIL	<u>Interested Party</u>

Mark Lowe QC and Robert Williams (instructed by **Russell-Cooke**) for the **Claimants**
David Lintott (instructed by **Sharpe Pritchard**) for the **Defendant**

Hearing date: 4 October 2016

Approved Judgment

Mrs Justice Patterson:

Introduction

1. This is a claim under section 61N of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) which seeks to challenge the decision of the defendant on 27 April 2016 to make the Henfield Neighbourhood Plan (HNP). That decision was made following a referendum held on 12 April 2016 when the HNP was passed with a vote of 94.3% of the voters.
2. The claimants are developers who have been promoting a site known as Sandgate Nursery, on the western side of Henfield, as a site for the development of 72 dwellings. A planning application was refused by the defendant on 25 November 2014. That refusal was appealed by the claimants. The decision remains with the Secretary of State for determination.
3. The claim is brought on three grounds:
 - i) That the defendant had failed to lawfully assess reasonable alternatives to the spatial strategy as established by the HNP and, in particular, the alternative of permitting development on the western edge of Henfield;
 - ii) That the defendant had failed to consider any alternatives to the Built-Up Area Boundary (BUAB) as established in the HNP and had failed to act rationally in the selection of the BUAB;
 - iii) That the defendant and/or the examining inspector failed to give any or adequate reasons as to why the HNP met EU obligations.
4. The defendant submits:
 - i) That the challenge is limited in scope by section 38A(4) and section 38A(6) of the 2004 Act to a consideration of whether the making of the neighbourhood development order would breach or would otherwise be incompatible with any EU obligation or any of the Convention rights;
 - ii) Even if the scope of challenge is not so limited the option of developing land to the west of Henfield and that of including the “Barratt site” within the BUAB of Henfield had been adequately dealt with by the examiner and the defendant in a proportionate way and the reasons that had been advanced were adequate.
5. An acknowledgement of service and summary grounds of resistance were filed by the interested party, Henfield Parish Council, on 3 June 2016, which submit:
 - i) That it lawfully assessed development sites put forward during the call for sites including those on the western edge of Henfield;
 - ii) It did consider alternatives to the BUAB and it acted rationally in the selection of the BUAB.

Apart from submission of those grounds the Parish Council has played no active role in the proceedings before me.

6. On 27 June 2016 Gilbart J ordered a “rolled-up hearing”.

Legal framework

Development plans

7. The development plan has a particular significance in the operation of the planning system in England. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) provides:

“(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

Neighbourhood development plans

8. Amendments to the 2004 Act were made by the Localism Act 2011. Those amendments provide for a process whereby parish councils or bodies designated as neighbourhood forums can initiate the making of a neighbourhood development plan. The provisions provide for an independent examination of a neighbourhood development plan. The examiner may recommend that the plan, with or without modification, is submitted to a referendum. If more than half of those voting at a referendum vote in favour of the plan, the local planning authority must make the neighbourhood development plan.

9. The material provisions of section 38A of the 2004 Act provide:

“(1) Any qualifying body is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plan.

(2) A ‘neighbourhood development plan’ is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan.

(3) Schedule 4B to the principal Act, which makes provision about the process for the making of neighbourhood development orders, including—

(a) provision for independent examination of orders proposed by qualifying bodies, and

(b) provision for the holding of referendums on orders proposed by those bodies,

is to apply in relation to neighbourhood development plans (subject to the modifications set out in section 38C(5) of this Act).

(4) A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made—

(a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan, and

(b) if paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held.”

10. A qualified body is a parish council or an organisation or body designated as a neighbourhood forum authorised to act for a neighbourhood area for the purposes of a neighbourhood development plan: see section 38A(12) of the 2004 Act. Section 38B(1) of the 2004 Act prescribes that neighbourhood development plans must specify the period for which they are to have effect, may not include provision about excluded developments as defined and may not relate to more than one neighbourhood area.

11. Schedule 4B to the 1990 Act, with modifications, is applied to the process of preparing and making a neighbourhood plan: see sections 38A(5) and 38C(5) to the 2004 Act. Paragraph 7 of Schedule 4B requires the local authority to submit a draft neighbourhood plan for independent examination. Paragraph 8, as modified by section 38C(5)(d) of the 2004 Act, provides, so far as material:

“8(1) The examiner must consider the following—

(a) whether the draft neighbourhood development order meets the basic conditions (see sub-paragraph (2)),

(b) whether the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,

...

(2) A draft order meets the basic conditions if—

(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,

...

(d) the making of the order contributes to the achievement of sustainable development,

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.”

12. The reference in paragraph 8(2)(e) to the development plan excludes the neighbourhood development plan (see paragraph 17 of Schedule 4B to the 1990 Act). The basic condition in paragraph 8(2)(e) therefore means, “in general conformity with the strategic policies contained in the development plan (documents) for the area (or any part of that area).”
13. Paragraph 9 sets out the general rule that the examination of the issues by the examiner is to take the form of the consideration of written representations.
14. Paragraph 10 sets out what the examiner must do after the independent examination. That reads, where relevant:

“10(1) The examiner must make a report on the draft order containing recommendations in accordance with this paragraph (and no other recommendations).

(2) The report must recommend either—

(a) that the draft order is submitted to a referendum, or

(b) that modifications specified in the report are made to the draft order and that the draft order as modified is submitted to a referendum, or

(c) that the proposal for the order is refused.

(3) The only modifications that may be recommended are—

(a) modifications that the examiner considers need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),

(b) modifications that the examiner considers need to be made to secure that the draft order is compatible with the Convention rights,

(c) modifications that the examiner considers need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,

(d) modifications specifying a period under section 61L(2)(b) or (5), and

(e) modifications for the purpose of correcting errors.

...

(5) If the report recommends that an order (with or without modifications) is submitted to a referendum, the report must also make—

(a) a recommendation as to whether the area for the referendum should extend beyond the neighbourhood area to which the order relates, and

(b) if a recommendation is made for an extended area, a recommendation as to what the extended area should be.

(6) The report must—

(a) give reasons for each of its recommendations, and

(b) contain a summary of its main findings.

(7) The examiner must send a copy of the report to the qualifying body and the local planning authority.

(8) The local planning authority must then arrange for the publication of the report in such manner as may be prescribed.”

15. Paragraph 12 applies to the duty on the local planning authority after receipt of the independent examiner’s report. That reads:

“12(1) This paragraph applies if an examiner has made a report under paragraph 10.

(2) The local planning authority must—

(a) consider each of the recommendations made by the report (and the reasons for them), and

(b) decide what action to take in response to each recommendation.

(3) The authority must also consider such other matters as may be prescribed.

(4) If the authority are satisfied—

(a) that the draft order meets the basic conditions mentioned in paragraph 8(2), is compatible with the Convention rights

and complies with the provision made by or under sections 61E(2), 61J and 61L, or

(b) that the draft order would meet those conditions, be compatible with those rights and comply with that provision if modifications were made to the draft order (whether or not recommended by the examiner),

a referendum in accordance with paragraph 14, and (if applicable) an additional referendum in accordance with paragraph 15, must be held on the making by the authority of a neighbourhood development order.

(5) The order on which the referendum is (or referendums are) to be held is the draft order subject to such modifications (if any) as the authority consider appropriate.

(6) The only modifications that the authority may make are—

(a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),

(b) modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights,

(c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,

(d) modifications specifying a period under section 61L(2)(b) or (5), and

(e) modifications for the purpose of correcting errors.

(7) The area in which the referendum is (or referendums are) to take place must, as a minimum, be the neighbourhood area to which the proposed order relates.

(8) If the authority consider it appropriate to do so, they may extend the area in which the referendum is (or referendums are) to take place to include other areas (whether or not those areas fall wholly or partly outside the authority's area).

(9) If the authority decide to extend the area in which the referendum is (or referendums are) to take place, they must publish a map of that area.

(10) In any case where the authority are not satisfied as mentioned in sub-paragraph (4), they must refuse the proposal.

(11) The authority must publish in such manner as may be prescribed—

- (a) the decisions they make under this paragraph,
- (b) their reasons for making those decisions, and
- (c) such other matters relating to those decisions as may be prescribed.

(12) The authority must send a copy of the matters required to be published to—

- (a) the qualifying body, and
- (b) such other persons as may be prescribed.”

16. Under the Neighbourhood Planning (General) Regulation 2012, regulation 19 provides for the decision on a plan proposal. That reads:

“19. As soon as possible after deciding to make a neighbourhood development plan under section 38A(4) of the 2004 Act or refusing to make a plan under section 38A(6) of the 2004 Act, a local planning authority must—

(a) publish on their website and in such other manner as they consider is likely to bring the decision to the attention of people who live, work or carry on business in the neighbourhood area—

- (i) a statement setting out the decision and their reasons for making that decision (“the decision statement”);
- (ii) details of where and when the decision statement may be inspected; and

(b) send a copy of the decision statement to—

- (i) the qualifying body; and
- (ii) any person who asked to be notified of the decision.”

17. Section 61E of the 1990 Act reads:

“(4) A local planning authority to whom a proposal for the making of a neighbourhood development order has been made—

(a) must make a neighbourhood development order to which the proposal relates if in each applicable referendum under

that Schedule more than half of those voting have voted in favour of the order, and

(b) if paragraph (a) applies, must make the order as soon as reasonably practicable after the referendum is held.”

18. That is subject to subsection 8 which reads:

“(8) The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the order would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).”

19. Section 61N provides, where relevant:

“(1) A court may entertain proceedings for questioning a decision to act under section 61E(4) or (8) only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day on which the decision is published.”

The remainder of section 61N deals with challenges to the independent examiner’s report and the holding of a referendum. Those provisions are not relevant here.

Environmental assessment

20. Directive 2001/42/EC provides for the environmental assessment of certain plans and programmes. Article 1 sets out its objective. That reads:

“The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”

21. Article 2 provides that plans and programmes include those prepared at a local level for adoption.

22. Article 3 deals with the scope of the environmental assessment.

23. Article 5 provides for the preparation of an environmental report in which the likely significant effects on the environment of implementing the plan or programme and reasonable alternatives, taking into account the objectives and the geographical scope

of the plan or programme are identified, described and evaluated. The information to be given is set out in Annex I to the Directive. It includes at:

“(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.”

24. Article 8 provides that the report shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.
25. Article 9 provides for what information is to be given on the decision and includes at Article 9(1)(b): “...the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with.”

Policy guidance

26. Planning practice guidance on neighbourhood planning provides that:

“Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan or the proposals in an order.”

27. On strategic environmental assessments the advice is that:

“The strategic environmental assessment should identify, describe and evaluate the likely significant effects on environmental factors using the evidence base ... reasonable alternatives must be considered and assessed in the same level of detail as the preferred approach intended to be taken forward in the neighbourhood plan (the preferred approach). Reasonable alternatives are the different realistic options considered while developing the policies in the draft plan ... the strategic environmental assessment should outline the reasons the alternatives were selected, the reasons the rejected options were not taken forward and the reasons for selecting the preferred approach in light of the alternatives ... the development and appraisal of proposals in the neighbourhood plan should be an iterative process with the proposals being revised to take account of the appraisal findings. This should inform the selection refinement and publication of the preferred approach for consultation.”

28. In a practical guide to the Strategic Environmental Assessment Directive (SEA) published by the Office of the Deputy Prime Minister (ODPM) there is advice at B3 on predicting the effects of the plan or programme including alternatives. Paragraph 5.B.9 says that authorities should predict effects by identifying the changes to the

environmental baseline which are predicted to arise from the plan or programme, including alternatives, which can be compared with each other and with no “plan or programme” and/or “business as usual” scenarios, where these exist, and against the SEA objectives. It continues at paragraph 5.B.10 that predictions do not have to be expressed in quantitative terms. Qualitative predictions can be equally valid and appropriate but qualitative does not mean “guessed” (see 5.B.11). Section B4 on evaluating the effect of the draft plan or programme including alternatives advises that evaluation involves forming a judgment on whether or not a predicted effect will be environmentally significant.

29. EU policy advice is contained in ‘Implementation of Directive 2001/42 on the assessment of certain plans and programmes on the environment’. Under the heading ‘Alternatives’ it reads, where relevant:

“On alternatives it indicates that the obligation to identify, describe and evaluate reasonable alternatives must be read in the context of the objective of the Directive which is to ensure that the effects of implementing plans and programmes are taken into account during their preparation and before their adoption.” (see 5(11)).

It continues:

“...it is essential that the authority or parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option. The information referred to in Annex I should thus be provided for the alternatives chosen.” (see 5.12)

30. The National Planning Policy Framework (NPPF) sets out the Government’s planning policies for England. Its policies are a material consideration. Paragraph 14 explains that at the heart of the NPPF is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and individual decision-taking. Paragraphs 183 to 185 deal specifically with neighbourhood development plans. They provide:

“183. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:

- set planning policies through neighbourhood plans to determine decisions on planning applications; and
- grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order.

184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. 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 orders should not promote less development than set out in the Local Plan or undermine its strategic policies.

185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. 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. Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.”

Factual background

31. Henfield is a settlement recognised as appropriate to accommodate further housing development. It was classified as a category 1 settlement in the settlement hierarchy established in the Horsham Core Strategy (2007). A category 1 settlement means that it has a good range of services and facilities as well as some access to public transport and is capable of sustaining some expansion. There is some variation in public transport services within the category 1 settlements. Several regular bus services connect Henfield with Horsham and the coastal conurbation.
32. The whole of Henfield Parish was designated a neighbourhood area for the purpose of preparing the HNP. The designation was approved by the defendant on 4 February 2014 and by the South Downs National Park on 13 December 2013.
33. The process up to submission of the HNP included a state of parish report which summarised the evidence provided by focus groups and others on which the HNP is based.
34. In July 2014 a Land and Site Assessment Schedule was prepared by the housing and development focus group. That included, at site 6, land at Sandgate Nursery in which the claimants have an interest. The site was noted to have an area of 3.76 hectares and had been identified in the 2014 Strategic Housing Land Availability Assessment (SHLAA) as developable with 30 units. Site 7 was land north of West End Lane which had a site area of 7.34 hectares which had been identified in the 2014 SHLAA as not developable. The site was on the west of Henfield, in a similar location to site

6 which was on the other side of West End Lane. At the time an application for 160 residential units had been refused and was the subject of a planning appeal by Barratt Homes. That appeal was allowed on 2 June 2014. I shall return to that later. Site 24, on the east of Henfield, known as land at east of Manor Close, had a site area of 4.12 hectares and again, had been subject to appeal where development of 102 units had been allowed.

35. The Pre-Submission Plan was dated September 2014. The Submission Plan was produced in March 2015. An independent examination was held. The examiner reported on 10 July 2015 and recommended that a referendum be held. That was scheduled for 22 September 2015 but was cancelled due to concerns raised by the community due to the reclassification of a site from housing use to mixed use. A further independent examination was held in February 2016 into a revised HNP. The examiner reported on 25 February 2016.
36. The HNP 2015 to 2035 was published on 25 February 2016. The relevant policies are:

“Policy 1: A Spatial Plan for the Parish.

The Neighbourhood Plan defines the Built Up Area Boundary of Henfield and Small Dole, as shown on pages 22 and 23. Development proposals located inside these boundaries will be supported, provided they accord with the other provisions of the Neighbourhood Plan and the Horsham development plan.

Development proposals outside of these boundaries will be required to conform to development plan policies in respect of development in the countryside. Proposals will be resisted if they adversely affect the setting of the South Downs National Park or if they result in the loss of Grade 1/2/3a agricultural land. Only proposals for minor development of an appropriate scale will be supported on land west of the Downs Link, or on the southern escarpment of Henfield village. ”

Policy 1 draws a clear distinction between sites within the BUAB where development proposals will be supported and development proposals outside the boundary which will be required to conform to development plan policies in respect to developments in the countryside.

37. The supporting paragraphs make clear that the policy establishes the key spatial priority for the HNP. Paragraph 4.13 reads:

“The key criteria for determining the right spatial strategy of the plan focused on sites within the Henfield boundary first, then identifying only sites that immediately adjoin the eastern boundary of the village, which is considerably closer to the majority of village services located on and around High Street. All other sites in the Horsham Strategic Housing Land Availability Assessment (SHLAA) and/or that responded to the Parish Council’s call for sites have been excluded from further assessment if they did not meet these criteria (see the separate Site Assessments Report in the evidence base).”

38. Paragraph 4.16 refers to the fact that to accommodate some of the proposals the policy modifies the BUAB of Henfield.
39. Paragraph 4.18 refers to the Sustainability Appraisal/Strategic Environmental Assessment (SA/SEA) report and its assessment that the policy had positive and neutral likely effects in achieving sustainable development in the parish.
40. Paragraph 4.19 reads:

“One alternative was to confine development within the existing settlement boundaries and allocate no new sites on the edge of the village, which resulted in too few new homes being allocated, though scoring well on a range of environmental measures. Another was to confine allocations to all the edges of the village and to allow for greater development at Small Dole but not to allocate land inside the boundary at Henfield. In this option, the scale of negative impact on environmental measures outweighed the benefits of delivering housing and, in any event, would very likely put at risk the chance of securing a majority vote at referendum. The remaining alternative was to favour sites on the western boundary of the village that consolidate the recent consent at West End Lane. This too scored badly overall as any further significant development in that area, which lies furthest from the village centre, would place unsustainable pressure on the local road system.”
41. Policy 2 provides housing site allocations. Those are predominantly on the east of Henfield and include land to the east of Manor Close where the development was allowed on appeal. They do not include the Barratt site, north of West End Lane or the Sandgate Nursery site.
42. The rest of the policies are not relevant for current purposes.
43. The SA/SEA provides an assessment of the options which were considered to policy 1. The site selection strategy is recorded as sites within the BUAB followed by sites on the eastern edge of Henfield as these are closer to the services and facilities in the village centre (see paragraph 7.9). Alternative option A confined development within the existing settlement boundaries and was dismissed as it resulted in too few new homes being allocated. Alternative option B confined allocations to all the edges of the village and allowed for greater development at Small Dole. That was dismissed due to the scale of negative impact on environmental measures. Alternative option C favoured sites on the western boundary of the village that consolidated the recent consent at West End Lane. That, too, scored badly overall as any further significant development in that area, which lies furthest from the village centre, would place unsustainable pressure on the local road system and infrastructure: see paragraph 7.11.
44. The wording in the final SEA on option C is identical to that contained in the Sustainability Appraisal in December 2014, that published in March 2015 and that published in August 2015.

45. In a note produced of a planning workshop on 7 July 2014 into the HNP on housing and development it was noted that the recent planning appeals/consents in Henfield had had an impact on local public opinion and, significantly:

“Sites in Henfield closer to the village services on its eastern edge would have less of an impact in terms of traffic movements generated by new residents (but marginal in terms of commuting, shopping, leisure trips).”

Submissions

46. To a great extent the claimants’ grounds of challenge overlap. For ease I have retained their original numbering but as will become apparent much of the reasoning applies to all and the rest of this judgment should be read with that in mind.

Ground 1(a): Assessment of alternatives to the spatial strategy within the HNP

47. The claimants contend that there were three basic errors, namely:
- i) That there was an unlawful departure from/failure to grapple with previous findings on a materially similar issue;
 - ii) That there was a lack of any evidential foundation for the conclusions that were drawn;
 - iii) There was a premature fixing of the spatial strategy.
48. The claimants rely upon the principle that where an issue has previously been the subject of a finding of fact or judgment by an expert independent tribunal in a related context the decision-maker must take into account and give appropriate respect to the conclusions of that tribunal. The weight to be given to the conclusions of the other tribunal and the ease with which the decision-maker can depart from previous conclusions of the tribunal depends upon the context. However, in all cases it is incumbent on the decision-maker to grapple with the conclusions of the tribunal and, if departing from them, to give reasons for so doing.
49. In support of that proposition the claimants rely upon the well known cases of **R v Warwickshire County Council ex parte Powergen Plc** (1998) 75 P&CR 89, **R (Bradley) v Work and Pensions Secretary** [2008] EWCA Civ 36, **R (Mayor of London) v Enfield London Borough Council** [2008] EWCA Civ 202 and **R (Bachelor Enterprises Limited) v North Dorset District Council** [2003] EWHC 3006 (Admin) and **R (Evans) v Attorney General** [2015] UKSC 21.
50. From those cases the claimants make the following five submissions:
- i) Both the local planning authority and the parish council were dealing, in the HNP, with the same proposition made by the parish council in the Barratt appeal. The only distinction was of size of development.
 - ii) The proposition was the same as that which was put to the inspector on the sustainability of the Barratt site and rejected by him after he had heard evidence.

- iii) The Barratt appeal inspector had heard evidence over several days.
 - iv) Neither the defendant nor the parish council began to grapple with the significance of the Barratt decision or to consider whether that appeal decision constituted a change of circumstances that might have warranted a different decision on spatial strategy in the HNP.
 - v) The decision made in the HNP was of an absolute nature, namely, that development on the west would “lead to unsustainable pressure on the local road network”.
51. The second strand of cases on which the claimants rely are those which highlight the principle of consistency in decision-making. The claimants rely on **North Wiltshire District Council v Secretary of State for the Environment** (1992) 65 P&CR 137 and **R (Fox Strategic Land & Property Limited) v Secretary of State for Communities and Local Government** [2012] EWCA Civ 1198. The claimants submit that although the decisions relate to individual planning applications there is no logical reason why the principle of consistency should not apply equally to the context of plan-making.
52. The defendant contends that a plan-making exercise is different to what was being considered in the cases of **Powergen, Evans, Bachelor** and **North Wiltshire**. The plan-making authority and independent inspector were looking at comparative sustainability. What was before them was an evaluative judgment as to where development should go within the neighbourhood. A court can only intervene if the decisions made were irrational.
53. The timing of the challenge is important to the overall context. The independent examiner’s report has not been challenged by the claimants at any stage. The February 2016 decision on the part of the defendant accepted the recommendation and modifications of the examiner that the HNP met the basic conditions in paragraph 8(2) of Schedule 4B of the 1990 Act which included a determination as to the compatibility with EU obligations. After the referendum on 12 April 2016 with 94.3% of the votes cast agreeing that the HNP be used in the determination of planning applications the defendant was under a duty to make the plan subject only to section 38A(6) which provides that local planning authorities are not subject to the duty if they consider that the making of the plan would breach or otherwise be incompatible with any EU obligation. Unless the claimants can establish that the defendant could not lawfully consider that the plan was incompatible with any EU obligation the claim must fail.

Discussion and conclusions

54. Alternative option C which related to sites on the western boundary of Henfield was dismissed in the SA/SEA report and in the HNP because “any further significant development in that area which lies furthest from the village centre would place unsustainable pressure on the local road system.” There was, therefore, a live issue as to whether development on the western side would place unsustainable pressure on the local road system. As a matter of fact the western area lay further from the village centre but that was not the rationale for rejecting the area in the SA/SEA or in the HNP.

55. The Barratt application on land north of West End Lane was made on 29 April 2014. The appeal into the refusal of planning permission by the defendant was heard over four days at the end of March and the beginning of April 2014. A decision letter was issued on 2 June 2014. One of the reasons for refusal was a highways reason. That was withdrawn by the council at appeal as a result of an agreement between Barratt and the Highways Authority on highway works and contributions. The issue of transportation though remained live at the appeal as the parish council and other interested parties maintained their objections. As a result, one of the main issues in the appeal recorded by the appeal inspector was what effect the development would have on the safety and free-flow of traffic in Henfield and on sustainable travel objectives. The inspector allowed the appeal.
56. In dealing with transportation objections he concluded that most Henfield facilities were within reasonable and level walking distance of the appeal site and the roads were also suitable for cycling. Improvements to the footways would make walking easier and safer and a more attractive option. He noted that much attention at the appeal before him focused on the junction of Church Street and High Street. The appeal development would generate additional movements so that there was some potential for additional congestion at peak hours but the transport assessment did not support the high traffic estimates claimed by some objectors which were typically based on car ownership and parking provision rather than car use. Not all cars would be used every day or at the same time of day. Moreover, should excessive queuing occur then alternative routes were available which had wider and higher capacity junctions with the main road. Some drivers were likely to divert to those routes if congestion increased. Those features would themselves serve to keep traffic speeds to safe levels. He rejected the suggestion that the diversion routes were not suitable to carry extra traffic. Accordingly, there was before him a lack of evidence to demonstrate that the Church Street junction would become unsafe or that the congestion or other effects of extra traffic would be severe in terms of the NPPF. He clearly dismissed the arguments of the parish council and individual objectors on highways and sustainability grounds. Neither the district council nor the county highway authority objected to the development on highway grounds (paragraphs 55 and 56 of the decision letter). He concluded that the Barratt development would be a sustainable development and the presumption in favour of such development should be applied.
57. The Sandgate Nursery site was the subject of an application for planning permission in March 2014 for 72 dwellings. Officers recommended approval. Members rejected that recommendation and refused planning permission on 25 November 2015 including highways grounds. As set out that refusal has been the subject of an appeal.
58. During the course of the appeal a highways statement of common ground was agreed between the appellants and West Sussex County Council, the relevant highways authority. That included agreement that the Sandgate Nursery site was accessible by foot to many of Henfield's facilities and services located about 1.2 kilometres east of the site within a maximum "acceptable" walking distance for pedestrians without mobility impairment of 2 kilometres. The parties agreed that the proposal should not be refused on traffic or transport grounds with the consequence that the highways reason for refusal was withdrawn.

59. The claimants contend that the primary basis for rejecting alternative option C in the HNP was unsustainable pressure on the local road system which was clearly inconsistent with the inspector's decision in the Barratt appeal. No reference in the plan making process was made to the Barratt appeal decision letter nor to the position of the highways authority in that appeal or in the Sandgate appeals where the highway authority withdrew the highways reason for refusal. The outcome of the Barratt appeal was clearly known both to the parish council and to the defendant. It had been brought to the attention of the independent examiner who was obliged to deal with it.
60. In her first report dated 10 July 2015 the independent examiner in dealing with matters under the heading 'European Convention on Human Rights and European Union Obligations' expressed "satisfaction that the neighbourhood plan did not breach nor is it in anyway incompatible with the ECHR". She continued "I am satisfied that a fair and transparent process has been undertaken in the seeking of and the selection of development sites within the neighbourhood plan area. There is a clear rationale to the allocations where presumption is in favour of development within the allocated settlement boundaries close to facilities both to the benefit of future occupants and to continue sustaining those facilities." She continued that it had been determined that an SA/SEA would be required as policies may have significant environmental effects, in particular site allocations. She said:
- "The SA/SEA demonstrates its policies will have no significant social, economic or environmental effects. I am satisfied that the proposals have been significantly assessed and raise no negative impact in either summary (as per Table 3: Summary Assessment of Objectives) nor in the detail of the assessment."
61. In her second report dated 25 February 2016 under the heading 'Subsequent changes to policy context since an examination July 2015' the examining inspector said:
- "There had been no subsequent alterations to the European Convention on Human Rights under European Union obligations to impact upon this NDP ... I am satisfied that the neighbourhood plan does not breach nor is in anyway incompatible with the ECHR. ...the SA/SEA demonstrates the revised NDPs policies will have no significant social, economic or environmental effect ... I am therefore satisfied that the neighbourhood plan is compatible with EU obligations and, as modified, will meet the basic conditions in this respect."
62. Section 5 of her report dealt with representations received. In that she said:
- "Concern is raised about failing to assess housing needs for local and wider community and providing a sufficient allocation of land for housing and unfair exclusion of land on the western side of the village, no objective assessment to support the evidence of 137 unit allocation is correct in terms of numbers, need to provide an opportunity to revisit the other candidate sites to make up the shortfalls. Most of these points were raised on the previous plan. ...the rationale for not supporting development on the western boundary is clearly

stated in NDP para 4.19. The rationale for supporting or otherwise is clearly stated in the site allocation paper and there is no reason to reopen these issues with no conflicts arising with meeting the basic conditions.”

63. The issue then is whether the inspector was under an obligation to grapple with the implications of the finding of the Barratt appeal inspector on the parish council’s assessment of reasonable alternatives and the subsequent development of highways issues in the Sandgate Nursery appeal. Her failure to do so is contended to be in breach of the legal principles established in the **Powergen** and **North Wiltshire** line of cases.
64. I have no hesitation in rejecting the application of the **North Wiltshire** line of cases to the circumstances before the independent examiner and the defendant, namely, that the decision made in the HNP needed to be consistent with the decision on the individual planning decision on the Barratt appeal. **North Wiltshire** was dealing with an entirely different context to a plan-making exercise in which comparative judgments have to be made within the plan boundary. That exercise is distinct from determining, on an individual basis, whether a planning application is acceptable on a particular site. An individual case is entirely distinguishable from reaching a decision on the spatial dispersal of prospective development in a broader geographical area. That is the case also in **Fox Strategic Land & Property** which, again, was dealing with two planning appeals after the refusal of planning permission. There, the issue was whether the decisions of the Secretary of State were inconsistent with the established spatial vision for the area. In the current context the issue was the establishment of the spatial vision for the HNP and how it is to be realised through objectives in the NDP. It is, in my judgment, a materially different exercise. That does not mean, however, that the Barratt decision may not be a material consideration for the plan making process but there was no obligation on the part of the plan making authority to follow it.
65. Again, none of the **Powergen** line of cases are dealing with plan-making decisions and the comparative exercise which is part of that process. In **Evans** Lord Neuberger reviewed the cases of **Powergen** and **Bradley** amongst others and continued at paragraph 66 and 67:

“66. Such comparisons with other cases can, however, only be of limited assistance: what is of more importance is to seek to identify the relevant principles. In **Bradley** at para 70, Sir John Chadwick did just that and suggested that there were five applicable propositions. At least for present purposes, I would reformulate and encapsulate those propositions in the following two sentences. In order to decide the extent to which a decision-maker is bound by a conclusion reached by an adjudicative tribunal in a related context, regard must be had to the circumstances in which, and the statutory scheme within which, (i) the adjudicative tribunal reached its conclusion, and (ii) the decision-maker is carrying out his function. In

particular, the court will have regard to the nature of the conclusion, the status of the tribunal and the decision-maker, the procedure by which the tribunal and decision-maker each reach their respective conclusions (eg, at the extremes, (i) adversarial, in public, with oral argument and testimony and cross-examination, or (ii) investigatory, in private and purely on the documents, with no submissions), and the role of the tribunal and the decision-maker within the statutory scheme.

67. Although Sir John expressed his propositions so as to apply to “findings of fact”, it seems to me that they must apply just as much to opinions or balancing exercises. The issue is much the same on an appeal or review, namely whether the tribunal was entitled to find a particular fact or to make a particular assessment. Anyway, it is clear from Powergen that an assessment as to whether an access onto a highway would be safe fell within the scope of his propositions. Indeed, the ombudsman’s decision in Bradley itself seems to me to have involved issues as to which she had to make assessments or judgements, such as whether the department concerned should have done more and whether some failures amounted to maladministration – see at para 27 of Sir John’s judgment.”

66. That makes it clear that a decision-maker can have regard to a balancing exercise carried out by another in a related context but the extent to which he is bound by it requires a consideration of the circumstances and the statutory scheme within which the decision-maker is reaching its conclusion and carrying out its function. Given the different nature of the exercises which an inspector on an appeal under section 78 is concerned and those with which an independent examiner or a plan-making authority is concerned it would be difficult to conclude that the latter were bound by the decision of an inspector on an individual site such as that at West End Lane. But that is not to say that the Barratt decision and the current state of knowledge on the highways network should have been disregarded in the plan making system. The Barratt decision letter was issued on 2 June 2014. The parish council were clearly aware of it, as Mr Osgood, who has filed a witness statement in the current proceedings, attended the Barratt inquiry as a local resident and as a member of the Henfield Parish Council, as also did a Mr P Hill. They were aware also of the comments at the planning workshop on the 7 July 2014.
67. The basis for the claim in the HNP that sites on the western boundary consolidating the recent consent at West End Lane would place unsustainable pressure on the local road system is thus, in my judgment, entirely obscure. Mr Osgood, in his witness statement of 29 July 2016, refers to the planning workshop on 7 July whose purpose was to determine the preferred spatial plan for the parish and, specifically, the approach to be taken to distributing new houses to be allocated by the plan. He says, in paragraph 8 of his witness statement:

“It was open to the parish council and the examiner to determine where development should go and to rule out development to the west on the basis that the community felt ‘it would place unsustainable pressure on the local road system and infrastructure’ based upon the following:

1. The western side of the village is further from the High Street as a matter of facts;
2. Although some facilities are to the west of the High Street, these are all on the eastern side of the village bar one;
3. Those travelling from the west would therefore be less likely to travel on foot and more likely to come by car; and
4. Travel by car from the western side of the village is more likely to cause pressure because of pinch points in the road system.

This was discussed at length at the planning workshop in 7 July 2014 and at the site visits thereafter and the essence of this reasoning appeared in many residents’ representations.”

68. His following paragraph refers to the statement of common ground submitted at the West End Lane inquiry where agreement was reached that, in highways terms, the roads and junctions local to the site were adequate in terms of safety and capacity to cope with site traffic during the construction period but he goes on to say that local residents were still of the opinion that the increase in traffic would have an adverse effect on highways safety. That was revealed in various consultation responses.
69. The difficulty with the basis upon which Mr Osgood says that the decision was reached that sites on the west would place unsustainable pressure on the local road system and infrastructure is that, firstly, the record of the planning workshop of 7 July says nothing of the sort. Its full terms are set out above. Sites to the east are said to have less of an impact in terms of traffic movement but the difference between east and west was marginal in terms of commuting, shopping and leisure trips. That does not amount to an evidence base for concluding unsustainable pressure on the local road system and infrastructure. Secondly, the other points that Mr Osgood makes in paragraph 8 of his witness statement, as set out above, and that he attributes to other consultation responses do not provide a basis for the conclusion in the HNP either. They are unsupported by any technical or expert evidence which, in so far as it exists, goes the other way. Mr Osgood’s views are based on opinion and an opinion that had been rejected in the Barratt appeal. As the claimants submit, the reason given for the rejection of sites on the western boundary was because they would place unsustainable pressure on the local road system. That conclusion and the evidence base for it, was therefore, fundamental to the choice of strategy for the HNP.
70. The question then is whether such evidence as there was, based upon local opinion and, as Mr Osgood says, “what the community felt”, was sufficient to meet the

standard required under the SEA Directive? As **Ashdown Forest Economic Development Llp v Secretary of State for Communities and Local Government & Others** [2015] EWCA Civ 681 confirmed, "...the identification of reasonable alternatives is a matter of evaluative assessment for the local planning authority, subject to review by the court on normal public law principles [42]."

71. Article 5(2) of Directive 2001/42/EC says:

"2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."

72. Guidance on the implementation of the Directive by the EU advises that:

"The essential thing is that likely significant effects of the plan or programme when the alternatives are identified, described and evaluated in a comparable way. ...it is essential that the authority ... responsible for the plan as well as the authorities and public consulted are presented with an accurate picture of what reasonable alternatives there are and why they are not considered the best option."

73. Here, anyone reading the HNP would be of the view that significant development on the western side of Henfield would lead to unsustainable pressure on the local road system. Beyond assertion by local residents who had made the same point at the West End Lane appeal when it had been rejected, there was no evidence to support the view expressed for the rejection of option C in the HNP. Although the Office of the Deputy Prime Minister's Practical Guide to Strategic Environmental Assessment Directive advises that predictions do not have to be expressed in quantitative terms as quantification is not always practicable and qualitative predictions can be equally valid and appropriate it goes on to say in paragraph 5.B.11:

"However, qualitative does not mean 'guessed'. Predictions need to be supported by evidence, such as references to any research, discussions or consultation which helped those carrying out the SEA to reach their conclusions."

74. The problem here is that the absolute nature of the rejection of option C is unsupported by anything other than guesswork. At the very least, having received the Barratt decision letter the plan-making authority, the parish council could have contacted the highways authority to obtain their views on the capacity of the broader local highways network in the western part of Henfield. There is no evidence that that was done. There is no evidence that anything was done when the highways objections to residential development on the Sandgate Nursery site was withdrawn either. Until it is, the outcome of significant development on the western side of Henfield on the local road network is unknown. What is known is that the permitted

site and the appealed site together do not provide any insuperable highways objections. Without further highways evidence though, the reason for rejecting option C as set out in paragraph 4.19 of the HNP is flawed, based as it is upon an inadequate, if that, evidence base. The requirement, under the Directive, that the alternatives are to be assessed in a comparable manner and on an accurate basis was simply not met.

75. The Sandgate Nursery appeal in which the highways reason for refusal was withdrawn would not have been available to the independent examiner in 2015 but it would have been known to the defendant when it received the second report from the independent examiner in February 2016. That combination of factors, namely, the West End Lane appeal decision letter and the highways stance at Sandgate Nursery mean that questions ought to or should have been raised on the part of the defendant on the adequacy of the SEA process for the determination of the spatial strategy in the HNP.
76. Further, the position on Sandgate Nursery was made known to the independent examiner in 2016 through further representations made by the claimants as part of the revised plan process. Given that, and her knowledge of the outcome of the Barratt appeal, her conclusion on compliance of the HNP with EU obligations was wrong. It was insufficient on her part to say that the matter had been raised before and refer back to paragraph 4.19 of the HNP. That paragraph, in so far as it deals with the rejection of Option C, I have found was based on what appears to be an erroneous conclusion and certainly had not been reached based upon an accurate appraisal of alternative C. The obligation under the SEA Directive is to ensure that the consideration of reasonable alternatives is based upon an accurate picture of what reasonable alternatives are. That was not done here. Not only was the conclusion wrong but, in the circumstances, it was irrational, given the absence of an evidence base. Her flawed report then tainted the decision on the part of the defendant.
77. But the defendant knew the position and had the relevant information. It is under an independent duty to set out its decision under regulation 19 of the Neighbourhood Planning (General) Regulations 2012 as to why it made the plan. It was clearly unable to make a lawful decision given, as I have found, that the plan breached and was incompatible with EU obligations.
78. It follows that, in my judgment, the assessment of reasonable alternatives within the SEA process was flawed and that the making of the HNP was incompatible with EU obligations. The decision on the part of the defendant to make the plan was thus irrational.
79. This ground succeeds.

Ground 1(b): Lack of any evidential foundation for conclusions

80. I have largely dealt with this under ground 1(a). I deal with it more shortly as I do also ground 1(c).
81. It is of note that in the representations made on behalf of the claimants on 16 November 2015 on the HNP it was said in terms that there was no objective assessment to support the contention in the draft neighbourhood plan that locations on the western edge of the village were unsustainable in highways terms. In that

representation, not only is there reference to the Barratt inspector's findings but there is also reference to the fact that in the then current ongoing appeal in relation to Sandgate Nursery the council had now withdrawn its highways grounds for refusal.

82. On 24 March 2016 the solicitors acting for the claimants wrote a pre-action protocol letter to the defendant. In that letter the solicitors repeated the contention that there was no objective assessment to support the contention that there was unsustainable pressure on the local road system, that the reason advanced was contrary to the inspector's report on the Barratt appeal and that the defendant had withdrawn its highways reason for refusal in relation to Sandgate Nursery.
83. Both the parish council and the independent examiner had before them in February 2016 a clear dispute as to the adequacy of the reason advanced in the draft HNP at 4.19 for rejection of Option C which they failed to address. But the defendant failed to apply its mind to its own independent duty as to whether the plan complied with EU obligations. At no stage did it seek further evidence or recognise any concern. Its Regulation 19 statement dated 31 May 2016 simply states that the HNP complies with the legal requirements and basic conditions without further explanation or identifying the evidence upon which it relies for such a statement.
84. It follows that this ground succeeds also.

Ground 1(c): Premature fixing of the spatial strategy

85. The claimants contend that, in the circumstances, there was a predetermined view on development to the western edge of Henfield.
86. Reference in the HNP to the sequential test, the claimants contend, is reference to screening out those sites on the western edge of Henfield. That stance remained the position of the parish council and the defendant notwithstanding the Barratt decision in June 2014. The SA in December 2014 and the SA/SEAs published in March, August and October 2015 and February 2016 were after spatial strategy appears to have been decided upon. What the parish council was doing, therefore, was not pursuing an iterative process which informed choices being made in the plan.
87. The defendant submits that, although there is no requirement that a plan and environmental report proceed in parallel, the first iteration of the SA was produced in December 2014 and was published at the same time as the draft plan. That reflected the consultations and evidence from 7 July 2014 workshop. That eventually became the SA/SEA and was considered by the independent examiner. The plan was not adopted until April 2016 following the positive recommendation of the independent examiner.

Discussion and conclusions

88. This part of ground 1 is interrelated with the other two which I have already dealt with. It is right that the SA/SEA process needs to be iterative so that it can inform the development plan as it evolves. The problem here is that in relation to sites on the western part of Henfield the SA/SEA document did not change to reflect what I have found to be changed circumstances. Even when first published in December 2014 it

did not accurately reflect the contents of the workshop on 7 July or deal with the issues raised as a result of the Barratt appeal.

89. The defendant has submitted that the use of planning workshops was a sensible approach. It was only after that in July 2014 that the first version of the SA/SEA was produced.
90. I agree that planning workshops can be a sensible approach and can perform a valuable contribution to the development plan process; they are part of the way in which the public can participate in the local plan-making process. However, that does not mean to say that they should be run according to an entirely local agenda. They feed into a process which needs to comply with EU obligations. Although the workshop did provide a forum for indicating that the difference between sites on the west and east was marginal for shopping, commuting and leisure it did not provide a basis for supporting a contention that sites on the west would lead to unsustainable pressure on the local road network. None of that was incorporated into the SA/SEA. As I have found, the process was flawed because it did not present an accurate picture of the alternatives so that they could be considered on a comparable basis. The real problem here was that the parish council failed to grapple with the changing highways information in relation to sites on the west of Henfield.
91. It follows this ground also succeeds.

Ground 2: Was the BUAB of Henfield unfairly fixed?

92. The claimants submit that the BUAB is integral to the spatial strategy of the HNP. By policy 1 development proposals located inside the BUAB will be supported where they accord with other provisions of the development plan. In contrast, outside the BUAB the policy is more restrictive so that minor development only is permitted outside the BUAB.
93. The claimants submit that there is no assessment of the environmental impact of the proposed BUAB or any reasonable alternatives. There was no explanation for the delineation of BUAB or why it should be preferred to any alternatives.
94. In particular, no consideration was given to the inclusion of land to the north of West End Lane (the Barratt site) which had extant permission for 160 residential dwellings and which abutted the western edge of the BUAB but the inclusion of land on the eastern side of Henfield, namely land east of Manor Close which had also been granted permission on appeal. It was irrational to exclude the Barratt site on the west but to include land east of Manor Close on the east. That led to the HNP proceeding on a false basis.
95. The defendant submits that the claimants are relying upon the same approach as they did in relation to ground 1.
96. The key is that the policy guides where development is to go. As planning permission had been granted for the Barratt site there was no need to include it. It was not irrational to do so.

97. Even if there was an error of law, the defendant submits it would not be material given that the rationale for the spatial strategy at 4.13 of the HNP is to identify sites that immediately join the eastern boundary of the village because they are considerably closer to the majority of village services located on or around High Street. Accordingly, the key consideration for where development should go in the HNP is the sustainability of its location in relation to the majority of services.

Discussion and conclusions

98. Paragraph 4.13 of the HNP sets out the rationale for the choice of the BUAB, namely, proximity to services for sites on the eastern edge of Henfield.
99. It follows that whether sites were granted planning permission on an appeal is not determinative as to where the BUAB should be drawn. The decisions on appeal may contribute as to where the line should be drawn but, in themselves, would not be conclusive.
100. The real problem is that there does not appear to have been any assessment of the environmental impact of the BUAB which appears inextricably linked, understandably, with the chosen spatial strategy. There is no explanation in the SA/SEA as to why the proposed delineation is preferred to any alternatives. The line was amended to take into account the consent granted for land to the east of Manor Close but no explanation is given for not extending it to the west to include the Barratt site. The issue was raised by the claimants in their representations on the draft HNP in November 2015 but, apparently, ignored by the independent examiner, the defendant and the interested party in the plan making process. It follows that approach, too, was in breach of EU obligations.

Ground 3: Reasons

101. The claimants acknowledge that since the judicial review has been issued the defendant has issued a regulation 19 decision statement. That, however, it is still contended, is inadequate as it fails to provide adequate reasons.
102. The claimants accept that there is a duty on local planning authorities to make a neighbourhood development plan following a positive result in the referendum. The only circumstances in which the duty is disapplied are by virtue of section 38A(6), "...if they consider that the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights."
103. The claimants submit that the regulation 19 decision notice should address the referendum result and whether the making of the plan would breach or otherwise be incompatible with any EU obligation or Convention rights. It is submitted that the duty is heightened in circumstances where the decision maker is aware of concerns that the making of the plan would not be compatible with EU obligations.
104. In this case the decision statement makes no reference to compliance with EU obligations. Nor is the defendant able to cure the defect by reliance on the council's report on its decision statement.

105. The defendant submits that it is important to bear in mind the context in which this challenge is brought. The independent examiner's report has not been the subject of legal challenge. The defendant upheld its approach and there has been no change in circumstances since those decisions. In that context it was acceptable for the defendant to deal with matters as it did.
106. The defendant accepts that the independent examiner did not go into detail in her recommendations but she had flagged-up the rationale to the strategy which favoured development on the eastern side of Henfield in her first report. In February 2016 she said that she was satisfied that the HNP was compatible with EU obligations and, as modified, would meet the basic conditions in that respect as there had been no subsequent alterations to the ECHR and EU obligations to impact upon the HNP.

Discussion and conclusions

107. It follows from the flaws identified in ground 1, in particular, that both the independent examiner and the defendant were proceeding on a false basis. At no stage did the independent examiner give the slightest hint as to why rejection of option C caused unsustainable pressure on the local road system. Likewise, the defendant failed to address that issue. Both the independent examiner's report and the defendant's decision statement fail to explain why they reached the conclusions that they did on compliance with EU obligations with appropriate rigour or particularity or how they concluded that their assessment of reasonable alternatives was compliant with the SEA Directive and Regulations.
108. The absence of reasons, even bearing in mind the context, which is a point fairly made by the defendant, means that this ground, too, must succeed.
109. Although the claimants did not challenge the independent examiner's report or the defendant's dealing with it they are still entitled to challenge, under section 61N, the consequences of the referendum which lead to the making of the HNP on the statutory grounds contained within that section.
110. As the flaws identified in the plan-making system in grounds 1 and 2 were that the HNP was in breach of the SEA Directive and Regulations, for reasons that I have already set out, the reasons given by the defendant in its decision statement were bound to be and were inadequate. They came nowhere close to dealing with the principal controversial issues of why the HNP complied with EU obligations.
111. This ground succeeds also.
112. This claim is allowed.

The Neighbourhood Planning (General) Regulations 2012
Regulation 16 – Publicising a plan proposal

COMMENT FORM

For Office Use only:	
Date	
Ref	

**PUBLICATION OF THE BURLEY-IN-WHARFEDALE NEIGHBOURHOOD DEVELOPMENT PLAN PROPOSAL
SUBMITTED TO BRADFORD METROPOLITAN DISTRICT COUNCIL FOR EXAMINATION**

MONDAY 12TH JUNE TO MONDAY 24TH JULY 2017

The Burley-in-Wharfedale Neighbourhood Development Plan, prepared by Burley Parish Council, has been submitted to Bradford Council for examination. The Council must now publicise the plan proposal and supporting documents and seek comments.

Please use this comment form to submit your views on the proposal. Details of how to view the proposed plan and supporting documents are available on the Council's website: <https://www.bradford.gov.uk/consultations>.

PART A: PERSONAL DETAILS

Response forms must include a name and address otherwise your comments will not be taken into account.

	PERSON / ORGANISATION DETAILS*	AGENT DETAILS (if applicable)
Title		Mr
Full Name		
Job Title <small>(where relevant)</small>		Darley
Organisation <small>(where relevant)</small>	CEG Land Promotions Ltd	Lichfields
Address	c/o Agent	
Post Code		
Email Address		
Telephone Number		

Please return completed comment forms by **5pm on Monday 24th July 2017** to:

- **E-mail:** planning.policy@bradford.gov.uk
- **Post:** Neighbourhood Plans, Development Plans Team, Bradford Council,
4th Floor Britannia House, Broadway, Bradford, BD1 5RW

Any comments received after this date will not be accepted.

How we will use your personal details

Personal information provided as part of a representation cannot be treated as confidential as the Council is obliged to make representations available for public inspection. However, in compliance with the Data Protection Act 1998, the personal information provided will only be used for Council purposes associated with the Local Plan and Neighbourhood Planning consultations. If at any point in time you wish for your details to be removed from the Local Plan database, please contact the Development Plans Team by E-mail planning.policy@bradford.gov.uk or phone (01274) 433679.

The Neighbourhood Planning (General) Regulations 2012

Regulation 16 – Publicising a plan proposal

Burley-in Wharfedale Neighbourhood Development Plan

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PART B – YOUR COMMENTS

Please use a separate Part B sheet for each comment. Additional forms can be downloaded from the web page.

1. To which document does your comment relate? Please place an 'X' in one box only

Submission Neighbourhood Development Plan	X	Basic Conditions Statement	
Consultation Statement		Other (please specify)	

2. To which part of the document does your comment relate?

Whole document	X	Section		Policy	
Page Number		Appendix			

3. Do you wish to? Please place an 'X' in one box only

Support		Object	X	Make an observation	
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4. Please use the box below to give reasons for your support / objection or to make your observation and give details of any suggested modifications.

Please see accompanying statement which provides comments on various aspects of the Submission Draft Plan and accompanying Basic Conditions Statement

5. Please place an 'X' in the box if you would like to be notified whether the plan proposal is made (adopted) by the Council or not:

X

6. Signature:

[Redacted Signature]

Date:

21/7/17

Thank you for taking the time to complete this Comment Form.

The Neighbourhood Planning (General) Regulations 2012

Regulation 16 – Publicising a plan proposal

Burley-in Wharfedale Neighbourhood Development Plan

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PART B – YOUR COMMENTS

Please use a separate Part B sheet for each comment. Additional forms can be downloaded from the web page.

1. To which document does your comment relate? Please place an 'X' in one box only

Submission Neighbourhood Development Plan	<input type="checkbox"/>	Basic Conditions Statement	<input checked="" type="checkbox"/>
Consultation Statement	<input type="checkbox"/>	Other (please specify)	<input type="checkbox"/>

2. To which part of the document does your comment relate?

Whole document	<input checked="" type="checkbox"/>	Section	<input type="checkbox"/>	Policy	<input type="checkbox"/>
Page Number	<input type="checkbox"/>	Appendix	<input type="checkbox"/>		

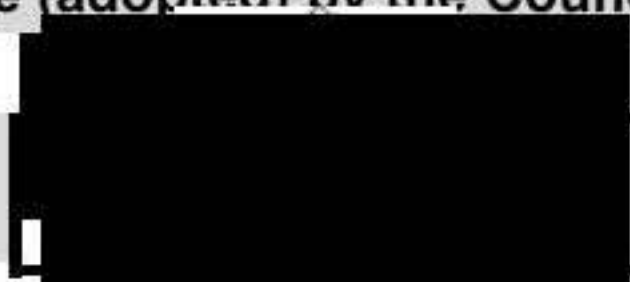
3. Do you wish to? Please place an 'X' in one box only

Support	<input type="checkbox"/>	Object	<input checked="" type="checkbox"/>	Make an observation	<input type="checkbox"/>
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4. Please use the box below to give reasons for your support / objection or to make your observation and give details of any suggested modifications.

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5. Please place an 'X' in the box if you would like to be notified whether the plan proposal is made (adopted) by the Council or not:	<input checked="" type="checkbox"/>
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6. Signature:		Date:	21.7.17
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Thank you for taking the time to complete this Comment Form.