

**A REPORT TO KING'S LYNN AND WEST NORFOLK BOROUGH COUNCIL**

**OF THE EXAMINATION**

**OF**

**THE UPWELL NEIGHBOURHOOD DEVELOPMENT PLAN**

**UNDERTAKEN BY**

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**INDEPENDENT EXAMINER**

**JUNE 2020**

## CONTENTS

*(i) SUMMARY AND OVERALL RECOMMENDATION*

- 1.0 INTRODUCTION**
  - 1.1 The Neighbourhood Plan Regime**
  - 1.2 Appointment and Role of the Independent Examiner**
  - 1.3 The Examination Process**
- 2.0 BACKGROUND TO THE UPWELL NEIGHBOURHOOD DEVELOPMENT PLAN**
- 3.0 COMPLIANCE WITH MATTERS OTHER THAN THE BASIC CONDITIONS AND HUMAN RIGHTS**
- 4.0 THE BASIC CONDITIONS AND HUMAN RIGHTS**
  - 4.1 Basic Conditions Statement**
  - 4.2 National Policy, Advice and Guidance**
  - 4.3 Sustainable Development**
  - 4.4 The Development Plan and Strategic Local Policy**
  - 4.5 EU Obligations and Conventions**
- 5.0 ASSESSMENT OF THE UPWELL NEIGHBOURHOOD DEVELOPMENT PLAN POLICIES**
  - 5.1 The Overall Presentation and Form of the Plan**
  - 5.2 Overview and Context to the Policies**
  - 5.3 NDP Policies**
- 6.0 PLAN DELIVERY, IMPLEMENTATION, MONITORING AND REVIEW**
- 7.0 REFERENDUM**
- 8.0 SUMMARY AND RECOMMENDATION**

## APPENDICES

**Appendix A– Documents reviewed in the course of the Examination**

**Appendix B – Examiner's use of Abbreviations**

## **Summary and Overall Recommendation**

*As the Independent Examiner into the Upwell Neighbourhood Development Plan, I have been requested by King's Lynn and West Norfolk Borough Council to present my professional assessment of the Plan, in terms of its compliance with the 'Basic Conditions' as set out in extant legislation, regulations and guidance.*

*I confirm that I am independent of the Qualifying Body, namely the Upwell Parish Council and the Local Planning Authority. Furthermore, I do not have any interest in any land or property that may be affected by the Plan.*

*I hold professional qualifications and have relevant experience of the planning regime, gained over the past 30 years in both the public and private sectors, to enable an independent judgement of the documents before me. I am also a member of the National Panel of Independent Examiners Referral Service, endorsed by the Department of Housing, Communities and Local Government.*

*I have undertaken a thorough examination of the Upwell Neighbourhood Development Plan. This has comprised a review of all documents presented to me in electronic form by the Local Planning Authority plus a review of those documents available for public review on the Parish website. All documents, tables and figures assessed are listed at Appendix A.*

*I am aware that a preliminary submission version of the Plan was the subject of a Health Check undertaken during the summer of 2019. I note that many of the issues raised at that time have been addressed. Some have not and I comment on these within various section of this report.*

*I advise that there are areas where I consider that a number of specific policies should be modified, and where some text could be amended and remove ambiguity, thus making the document clearer for any reader or decision maker. My proposed changes have been made in such a way so as not to detract from the essence of the Plan nor its aim and ambitions, but I consider they should be taken into account before it proceeds to a Referendum.*

*Subject to the recommended modifications being completed I consider that the Upwell Neighbourhood Development Plan will; have regard to national policies and advice contained in current legislations and guidance; contribute to the achievement of sustainable development; be in general conformity with the strategic policies of the development plan for the area; not breach, but be compatible with European Union obligations and the European Convention of Human Rights; and not likely have a significant effect on a European Site or a European Offshore Marine Site either alone or in combination with other plans or projects.*

*I consider that, further to the recommended modifications, the Neighbourhood Plan complies with the legal requirements set out in Paragraph 8(1) and 8(2) of Schedule 4B to the Town and Country Planning Act 1990, as amended, and can proceed to a Referendum.*

*I have no concerns over the defined Plan area or the manner of its confirmation. I have given due consideration whether this should be the defined area for the extent of any Referendum. I am aware of the juxtaposition with the adjacent parish and the proximity of the commercial and community facilities which clearly serve both areas. I am of the view, however, that the extent of the area for any Referendum should replicate the extent of the Plan area alone, and not extend to include the adjacent parish or part thereof.*

*Finally, I refer to a number of abbreviations throughout my Report and for the avoidance of any confusion these, are set out in Appendix B.*

*Dr Louise Brooke-Smith, OBE, FRICS, MRTPI,*

*June 2020*

## **1.0 INTRODUCTION**

### **1.1 NEIGHBOURHOOD PLAN REGIME**

- 1.1.1 The Neighbourhood Planning regime provides local communities with the ability to establish specific land use planning policies which can influence how future development comes forward in their area. It not only provides the opportunity for local people to shape their locality, it also provides guidance for all stakeholders and decision makers, when considering new proposals.
- 1.1.2 Any Neighbourhood Plan should therefore be clear, not only in its goals and ambitions, but also in how any policies are presented. The background behind how policies have emerged should be easy to understand and robust in terms of supporting specific policy.
- 1.1.3 This Report provides the findings of an Examination into the Upwell Neighbourhood Development Plan, which is hereafter referred to as the Plan, the Neighbourhood Plan or NDP.
- 1.1.4 The Plan was prepared by the Upwell Parish Council, working in consultation with the Local Planning Authority, namely King's Lynn and West Norfolk Borough Council and a range of interested parties, statutory bodies, community groups, landowners and other key stakeholders.
- 1.1.5 This Report provides a recommendation as to proceeding to a Referendum. If this takes place and the Plan is endorsed by more than 50% of votes cast, then it would be 'made' by King's Lynn and West Norfolk Borough Council and would be used to assist in the determination of any subsequent planning applications for the area concerned.

### **1.2 APPOINTMENT AND ROLE OF THE INDEPENDENT EXAMINER**

- 1.2.1 In accordance with current regulations, I was appointed by King's Lynn and West Norfolk Borough Council, as the Examiner of the Neighbourhood Plan in January 2020. I was directed to the relevant documentation found on the Parish Council website and formally began the examination in February 2020. Documents and points of clarification were issued to me between February and April 2020.
- 1.2.2 In examining the Plan, I am required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, (TCPA) to establish whether:
- *The Neighbourhood Plan has been prepared and submitted for examination by a Qualifying Body.*

- *The Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the TCPA as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 (PCPA).*
- *The Neighbourhood Plan meets the requirements of Section 38B of the PCPA (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area).*
- *The policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the PCPA.*

1.2.3 My role has also been to consider whether the Plan meets the 'Basic Conditions' and human rights requirements, as 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.

1.2.4 In order to meet the Basic Conditions, the making of any Neighbourhood Plan must:

- *Have regard to national policies and advice contained in guidance issued by the Secretary of State;*
- *Contribute to the achievement of sustainable development;*
- *Be in general conformity with the strategic policies of the development plan for the area; and*
- *Not breach, and must be otherwise compatible with, European Union (EU) and European Convention on Human Rights (ECHR) obligations.*

1.2.5 Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out a further basic condition for Neighbourhood Plans, in addition to those set out in primary legislation and referred to in the paragraph above;

- *The making of the Neighbourhood Plan is not likely to have a significant effect on a European Site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European Offshore Marine Site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) either alone or in combination with other plans or projects.*

1.2.6 Having examined the Plan against the Basic Conditions, as set out above, and as the Independent Examiner, I am required to make one of the following recommendations:

- a) that the Plan should proceed to Referendum, on the basis that it meets all legal requirements;*

*b) that the Plan should be subject to modification but will then meet all relevant legal requirements and should proceed to Referendum;*

*c) that the Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.*

1.2.7 If recommending that the Plan should go forward to Referendum, I am also required to consider whether or not the Referendum Area should extend beyond the defined Upwell Neighbourhood Development Plan Area.

1.2.8 As noted above, the role of any Independent Examiner is to assess a Plan in terms of compliance with the Basic Conditions. While it is not to specifically comment on whether the Plan is sound, I consider that where changes can be made that would result in removing ambiguity and make the document more user friendly for all parties, this should be considered. This reflects paragraph 41 of the PPG and the first basic condition.

1.2.9 I have adopted this approach and have suggested some modifications which the Parish and Borough Councils should consider and which, in my opinion, need to be addressed for the Plan to be compliant.

### 1.3 THE EXAMINATION PROCESS

1.3.1 I am aware that this examination is being undertaken during the lockdown period regulations associated with the Covid19 pandemic. I have had regard to the relevant amendments to the salient Neighbourhood Planning regulations, brought into affect in April 2020 by the MHCLG. (Paragraph: 107 Reference ID: 41-107-20200407)

1.3.2 These have implications for the decision-making and referendum process associated with any neighbourhood plan. The amendments to planning guidance supersedes paragraphs 007, 056, 057, 061 and 081 of the NPPG.

1.3.3 Clearly in this case, public consultation on the submission version of the NDP was completed before the Covid19 social distancing rules were brought into play and so it has been appropriate to continue to examine the Plan. However all neighbourhood planning referenda scheduled to take place, between 16 March 2020 and 5 May 2021, are postponed in line with the [Local Government and Police and Crime Commissioner \(Coronavirus\) \(Postponement of Elections and Referendums\) \(England and Wales\) Regulations 2020](#) until 6 May 2021.

1.3.4 Where a local planning authority issues a decision statement (as set out under Regulation 25 of the Neighbourhood Planning (General) Regulations 2012), detailing its intention to send a neighbourhood plan to referendum, that plan can be given significant weight in decision-making, so far as the plan is material to an application.

- 1.3.5 The general rule remains that examinations should be conducted by written representations. If an examiner considers that oral representations are necessary, these should not take place in person. Where feasible, oral representations should still take place using video conferencing or other suitable technologies.
- 1.3.6 In this case, however, and further to review and consideration of the evidence before me, I have been able to consider the Plan by way of the key documents, salient background information, supporting reports and written representations. I have not considered it necessary to hold a Hearing to complete my findings.
- 1.3.7 My examination findings reflect the documents noted at Appendix A to this report which includes the written submissions from interested parties and are in addition to my reference to the following documents, which set out extant legislation, regulation and guidance;
- National Planning Policy Framework (The Framework) (Revised as at 2018 and 2019)
  - Town and Country Planning Act 1990 (as amended)
  - The Planning and Compulsory Purchase Act 2004 (as amended)
  - The Localism Act (2011)
  - The Neighbourhood Planning (General) Regulations (2012) and additions
  - The Neighbourhood Planning Act 2017 and associated guidance and all salient amendments.
- 1.3.5 Finally, I confirm that I undertook a series of unaccompanied site visits to the Plan area in February and March 2020 prior to Covid19 restrictions coming into force.

## **2.0 BACKGROUND TO THE UPWELL NEIGHBOURHOOD DEVELOPMENT PLAN**

- 2.1. King's Lynn and West Norfolk Borough Council confirmed Upwell Parish Council as the relevant Qualifying Body in 2015 following a formal and appropriate application. The NDP area, comprising the entire parish of Upwell, incorporating the village of Upwell, the smaller settlement of Three Holes and outlying hamlets, was duly confirmed. I note that the Parish abuts that of Outwell and indeed the commercial and community facilities in both the villages of Outwell and Upwell lie within close proximity, and are shared by both communities. I am also aware that a Neighbourhood Plan is currently being prepared for the Parish of Outwell.
- 2.2 I note that the area subject to this examination has not been the subject of any other NDP proposal.



- 2.3 I am advised that a Neighbourhood Plan Steering Group was established by the Parish Council and, with assistance from appointed consultants, engaged with the community and stakeholders with respect to the vision of the NDP from the Spring of 2016.
- 2.4 Following a Policy Ideas Workshop in the Autumn of 2017, key areas were highlighted which formed the basis of the Vision of the NDP. In the Spring of 2018 a call for sites was made, inviting landowners to present sites for potential new residential development. After review by the QB, a draft plan was issued for Pre-Submission consultation.
- 2.5 In September 2019, the draft was the subject of a Health Check by an independent assessor, ie a review of the approach and nature of the NDP at that point in its preparation. I note that the Health Check report raised a number of matters which were assessed by the QB. Most recommendations were taken on board.
- 2.6 The draft version of the NDP was the subject of a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) screening by King's Lynn and West Norfolk Borough Council. Confirmation was issued on 25<sup>th</sup> May 2019 that given the nature of the policies proposed and the development that was likely to ensue, an SEA would be required. Formal correspondence from the LPA at the same time confirmed that an HRA was not required. No internationally designated nature conservations sites lie within or close to the NDP area, with the exception of the Ouse Washes. As effect on these was considered to be insignificant, no HRA was requested and I have no grounds to question that stance or the process undertaken.
- 2.7 The consultation background to the Plan is set out in the Statement of Community Consultation, prepared in compliance with Section 15(2) of Part 5 of the Neighbourhood Plan Regulations 2012. I note that different forms of community liaison with appropriate local and statutory parties, were pursued.
- 2.8 I have reviewed the approach taken by the QB and the evidence base which supports the vision and the policies that have developed through the NDP preparation period. The Plan was subject to changes as a result of the consultation process, the Reg 14 submissions by third parties, the SEA Statement and indeed the Health Check. A Submission Version was duly prepared and submitted to the Borough Council October 2019. After a formal period of public consultation to comply with Reg 16 of the regulation, it was confirmed that the Plan should proceed to Examination at the end of 2019.
- 2.9 Between February and April 2020, I was presented with a number of documents, including a summary of representations to the Draft Submission and Submission Version of the Plan. I note that some of the Regulation 16 parties had made previous representations at the Draft stage of proceedings. From the documents now before me, I can advise that few if any matters have been raised over, and above those raised previously. Nevertheless, I have reviewed all comments made and find that

the majority support the approach and policies within the NDP. Some have made specific objections or have presented amendments to the proposed policies. I consider that the points made by either Reg 14 or Reg 16 parties, are either addressed within this report or raise issues that do not warrant modifications to the NDP proposals.

### **3.0 COMPLIANCE WITH MATTERS OTHER THAN THE BASIC CONDITIONS AND HUMAN RIGHTS**

3.1 Given the above, I now report on the procedural tests, as set out earlier in this Report, and find as follows;

- **The Qualifying Body**

3.2 From the documentation before me, I conclude that Upwell Parish Council is a properly constituted body, i.e. a Qualifying Body for the purposes of preparing a Neighbourhood Plan, in accordance with the aims of neighbourhood planning as set out in the Localism Act (2011) and recognised in the National Planning Policy Framework (2018) and accompanying Planning Practice Guidance. Accordingly, I find this addresses the necessary requirements.

- **The Plan Area**

3.3 The Upwell Neighbourhood Area reflects the boundary of the Upwell Parish. No other Neighbourhood Plan has been proposed for this area.

3.4 I am advised that an appropriately made application was submitted to the Borough Council and duly endorsed. I have not been informed by the LPA that the appropriate protocol and process were not followed. Hence I have no reason to question that the requirement relating to the purposes and identification of a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended) and salient regulations of the Neighbourhood Planning (General) Regulations 2012 have not been met.

- **The Plan Period**

3.5 Any neighbourhood plan must specify the period during which it is to have effect. The Upwell Neighbourhood Plan clearly states on its front cover and in its introductory sections that it addresses the period between 2015 and 2038. I note that this reflects

a period that extends beyond the proposed plan period covered by the King's Lynn and West Norfolk Borough Local Plan review and the Call for Sites Document. I further note that this matter had been identified previously by the Health Check Examiner and the Local Planning Authority. I have not been advised why the period extends beyond the emerging Local Plan period and no clear rationale has been provided in the papers before me.

- 3.6 In the absence of such clarification, and to avoid unnecessary confusion, I consider that the Plan Period should align with the end date of the emerging Local Plan and extant SADMP period and be modified accordingly;

**The Plan Period should run until 2036 and reference should be made as such on the front cover of the NDP and within the ensuing text.**

- **Excluded Development**

- 3.7 From my review of the documents before me, the proposed policies within the NDP do not relate to any of the categories of excluded development, as defined by statute and extant regulations, or to matters outside the Neighbourhood Area. While I find there are some areas which would benefit from improved clarity or amended text, and I note these later in this report, in terms of any excluded development, I find that the Plan meets legal requirements.

- **Development and use of land**

- 3.8 Any neighbourhood plan's policies, in accordance with current regulations, should only contain policies relating to development and/or use of land. While supporting text can reflect the goals and ambitions of any community, unless directly relating to development or use of land, this should not be included within or be confused with specific policies.
- 3.9 I note that reference is made to projects or aspirations through the Plan but which reflect activities or initiatives that will be pursued by the Parish Council, either independently or in conjunction with other bodies / organisations. These cannot be specific policies under the Neighbourhood Plan. I note that these initiatives are presented as Community Actions and that reference is made within the NDP to the fact these are not presented as formal policies. However, I advise that this needs to be reiterated through the document to avoid confusion.
- 3.10 Where I consider that a policy or part of a policy is ambiguous, duplicates other policies or statutory regulations or concern matters that do not relate to the

development or use of land or property, I have recommended that it be modified or clear explanation is provided within the text of the Plan.

- **Public Consultation**

- 3.11 Planning legislation requires public consultation to take place during the production of neighbourhood plans. Any public consultation should be open and accessible and any information presented should be easy to understand and to comment upon. It should enable all sectors of the local community the ability to comment on and hence shape the policies which may have bearing on where they live, work or spend their leisure time.
- 3.12 I have reviewed the Statement of Community Involvement (Sept 2019) and the supporting documentation and evidence base used by the QB. All stakeholders including statutory bodies appear to have been given the opportunity to take part in proceedings although the response rate at the outset was low and additional consultation approaches were made by the QB. This was a positive move and, overall, I consider that the consultation exercise was appropriate.
- 3.13 I note that one party held that they had not seen some of the publicity relating to later stages of the plan preparation, I consider that the general approach adopted by the QB was sufficiently inclusive and robust.
- 3.14 My role as Examiner is not to undertake a detailed analysis of the consultation details but moreover review the general process and approach taken and assess whether any anomalies make the Plan incompatible with the Basic Conditions. In general, I consider that the response to representations made to the Plan as it progressed through its draft stages was adequate, although a more comprehensive table of responses to the Reg 14 stakeholder comments could have improved the Statement of Community Involvement. Indeed, I note that matters raised by different parties were repeated but in some cases, dismissed with only a cursory explanation given. While not ideal, on balance, however, I believe changes to the draft version of the NDP were assessed and then implemented where critical.
- 3.15 As will be apparent from my comments through this report, some matters raised within the Health Check report have not been adopted. Where I feel these detract from the clarity of the Plan, or indeed make the Plan incompatible, I raise these specifically as necessary modifications.
- 3.16 As noted elsewhere in this Report, I did not feel it necessary to hold a public hearing as the comments made by Regulation 16 parties and the stance of the LPA and QB was clear.

- 3.17 I conclude in summary that an appropriate consultation exercise was undertaken and that stakeholders had the opportunity to input into the Plan's preparation and as such, Regulation 15 and 16 have been addressed.

## 4.0 THE BASIC CONDITIONS AND HUMAN RIGHTS

### 4.1 BASIC CONDITIONS STATEMENT

- 4.1.1 I have reviewed the Basic Conditions Statement and find it to be a comprehensive document, written in a clear style. It addresses the Basic Conditions in a logical manner and I highlight these as follows;

### 4.2 NATIONAL POLICY, ADVICE AND GUIDANCE

- 4.2.1 As noted earlier, the NDPPF (2018 and revised publication in 2019) explains that a presumption in favour of sustainable development means that Neighbourhood Plans should support the strategic development needs set out in Local Plans and plan positively to support local development.
- 4.2.2 The Framework is clear that Neighbourhood Plans should be aligned with the strategic needs and priorities of the wider local area, i.e. they must be in general conformity with the strategic policies of the development plan. The NDPPF advises that they should not promote less development than is set out in the Local Plan or undermine its strategic policies. Neighbourhood Plans should provide a practical framework within which decisions on planning applications can be made with predictability and efficiency. It is stressed that the examination has been of the Plan, as a whole.
- 4.2.3 The Basic Conditions Statement explains at Table 1 how the NDP responds to specific matters, as set out in the NDPPF and makes appropriate cross reference to specific NDP policies. I note that the NDP does not specifically address some issues that perhaps are commonly found in many neighbourhood plans, including specific attention to heritage and culture. This is entirely at the discretion of the QB. If they so wished they could have simply addressed housing issues. Given the consultation process undertaken and the responses from the community, the content with the Plan is justified.
- 4.2.4 Given the guidance found within Planning Practice Guidance (PPG) which accompanies the NDPPF, I have considered the extent to which the NDP meets this first basic condition. **Subject to some modifications to individual policies, detailed below in Section 5 of this report, I find the Plan compliant.**

### 4.3 SUSTAINABLE DEVELOPMENT

- 4.3.1 Any Neighbourhood Plan should contribute to the achievement of sustainable development. The NDPPF explains that there are three dimensions to sustainable development: economic, social and environmental. I consider that the approach taken in the Statement of Basic Conditions is robust.
- 4.3.2 Whilst there is no legal requirement for any Plan to be accompanied by a separate Sustainability Appraisal, it is helpful for it to acknowledge and explain how its policies have reflected sustainability matters in all forms as expressed in the NDPPF. Given the papers before me and Section 4 of the Statement of Basic Conditions, **I consider that the NDP has achieved this and is compliant.**

### 4.4 THE DEVELOPMENT PLAN AND STRATEGIC LOCAL POLICY

- 4.4.1 I note that the strategic planning policies relevant to preparation of the NDP comprise the Core Strategies which form part of the Local Development Framework (LDF) for the Borough of King's Lynn and West Norfolk. These were adopted in 2011 and guide development up to 2026.
- 4.4.2 A further document forming the LDF, is the Site Allocations and Development Management Policies Plan (SADMP) adopted in 2016. As part of the adoption of the SADMP the Borough Council agreed to review both documents to create one single plan document that would look over the longer term, to 2036. The review began towards the end of 2016 when a call for sites was made for, inter alia, housing and employment purposes. These sites were assessed and policies within the CS and SADMP reviewed. Some have been removed, new ones have been added and most have been updated. A draft of the Local Plan review was issued for public consultation in 2019 but it has not yet been subject to Inquiry or formal adoption.
- 4.4.3 Notwithstanding the progress of the Local Plan review, I consider that the extant Core Policies (2011) and the SADMP (2016) document is relevant to the Upwell NDP and hence am content with Table 2 within the Statement of Basic Conditions. This provides details of how the proposed NDP policies are in general conformity with strategic policies in both the Core Strategy document and the SADMP. I consider this to be a fair reflection of the conformity of the NDP policies with salient adopted policies.
- 4.4.4 **Further to the minor modifications, as set out later in this report, I find that the NDP policies are in general conformity with the relevant strategic policies of the Development Plan.**

## 4.5 EUROPEAN UNION (EU) OBLIGATIONS AND CONVENTIONS

4.5.1 Regardless of the decision by the UK to leave the EU, currently, any Neighbourhood Plan must still be compatible with European Union (EU) obligations, as incorporated into UK law, to be legally compliant.

### - Strategic Environment Assessment

4.5.2 Directive 2001/42/EC, often referred to as the Strategic Environment Assessment (SEA) Directive, relates to the assessment of the effects of certain plans and programmes on the environment, and has relevance here. Similarly, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds (referred to as the Habitats and Wild Birds Directives respectively) aim to protect and improve Europe's most important habitats and species and can have bearing on neighbourhood plans.

4.5.3 I note that a screening opinion of the draft NDP was requested by the QB and subsequently undertaken by the LPA which confirmed in writing in May 2018 that a SEA was required. This followed the preparation of a Screening Report and consultation with the relevant statutory parties; Natural England, The Environment Agency and Historic England.

4.5.4 I am aware of various legal challenges to the need or otherwise of SEAs across England and the respective judgements passed down. Hence, I have given particular regard to how the Upwell NDP was screened and how the subsequent SEA was scoped.

4.5.5 To this end I have reviewed the documents before me and am of the opinion that the relevant work was undertaken professionally and an appropriate SEA was completed. I note that an Addendum to the initial SEA report was prepared and Appendix A within the Statement of Basic Conditions sets out some the key comments presented by Regulation 14 parties and the relevant statutory parties. In light of the documents before, including the additional copies of correspondence from statutory parties issued during the Plan preparation period, I find that the submission version of the NDP has taken the SEA on board in the nature and extent of proposed policies.

4.5.6 **The reference to 'not' in the opening text should be amended to 'none' to provide clarity.** Further to this, I find that the NDP meets the legal requirements of the EU's SEA Directive and conclude that in respect of this EU obligation, the Plan is compliant.

### - Habitat Regulations

4.5.7 A Habitat Regulations Assessment screening was also prepared in respect to the Draft NDP. I note that with the exception of the Ouse Washes, few if any internationally

significant habitat sites lie within or in close proximity to the NDP area. In light of this the LPA held that a full Habitat Regulations Assessment was not deemed necessary. I have reviewed this stance and even given the proximity of the Ouse Washes, I concur with the stance of the LPA and agree that a Habitat Regulations Assessment is not required.

4.5.8 I therefore find that the NDP meets the legal requirements of the EU and HRA Regulations and conclude that, in this respect, the Plan is compliant.

- **Human Rights**

4.5.9 The Basic Conditions Statement makes reference to compliance with the ECHR and Human Rights Act 1998 in para 3.13 to 3.14.

4.5.10 I am unaware of any matters proposed in the NDP that challenges issues of human rights and little if any evidence has been put forward through the public consultation period, to indicate that this is not the case. I conclude that the Plan does not breach and is otherwise compatible with the ECHR.

4.5.10 I am not aware of any other European Directives which apply to this particular Neighbourhood Plan, and hence am satisfied that the Plan is compatible with EU obligations.

## **5.0 ASSESSMENT OF THE UPWELL NEIGHBOURHOOD DEVELOPMENT PLAN POLICIES**

### **5.1 THE OVERALL PRESENTATION AND FORM OF THE PLAN**

5.1.1 The NDPPF advises that plans should provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and efficiency. I consider that this can be interpreted as 'having a clear document'.

5.1.2 I am conscious that the Plan has been the culmination of considerable input from a number of people across the Parish and as such the style of text varies throughout the document. While this is completely understandable, in places, however, the style, use of grammar and syntax has been difficult to follow. As noted earlier, the role of any Examiner is to use a 'light touch' in assessing the Plan before them and ensuring compliance with the Basic Conditions, or otherwise. It should not be to comment on writing style or syntax unless it is erroneous or confusing to the point that it risks being misunderstood. In this context, I have commented on specific sections of the Plan. Nevertheless, I feel it necessary to suggest that should the Plan



proceed to Referendum, that the final document is subject to very careful proof reading and that there is consistency in the use of capital letters.

- 5.1.3 That said, I find the Upwell Neighbourhood Plan is reasonably straightforward, and generally well explained and expressed. However, some matters could be addressed which would enable it to be clearer for any user and remove ambiguity. I comment on these below.
- 5.1.4 I am aware that some consultees during the preparation of the Plan suggested additional initiatives and sites that are not covered in the Submission Version of the NDP. I reiterate the stance of the QB in that it is its prerogative to identify the vision for the Plan and then include or exclude policies. There is, therefore, no onus to address conservation matters and the QB's rebuttal to Reg 14 parties on this matter is endorsed.
- 5.1.5 The NDP does however refer to a number of aspirational activities, classed as Community Actions. I have commented elsewhere on these but confirm that these have not been assessed as formal policies and **I suggest that improved explanation / annotation to indicate that these are aspirational matters, should be included whenever they arise in the document.**
- 5.1.6 I am content with the general extent and nature of Figures and Tables within the NDP. I have made specific comment on the need for improved referencing of one map and it would assist any reader if a **List of Figures could follow the Contents page.**
- 5.1.7 It would also be helpful if a Proposals Map is included, at an appropriate scale, which could identify all site allocations. I should stress that given the other figures and tables presented, the Plan is compliant without a comprehensive Proposals Map – but it would greatly assist the reader.
- 5.1.8 In order to present a robust and unambiguous Plan and hence be compliant with the first Basic Condition, and to reflect some of the issues raised during its preparation, I highlight specific policies and supporting text, that I consider require modification so they offer '*sufficient clarify that the decision maker can apply it consistently and with confidence when determining a planning application*'.
- 5.1.9 I stress that I consider that, generally, the policies are well constructed and clear. While a couple add little to the strategic policies found in the Development Plan, I consider that these are accompanied by relevant supporting text and provide a useful context for the overall vision of the Plan. They do not breach the Basic Conditions and, accordingly, I have accepted that they should remain in the NDP. Other policies, that simply replicate the Local Plan policies or indeed other statutory regulations, are suggested to be omitted.

## 5.2 OVERVIEW and CONTEXT TO THE POLICIES

- 5.2.1 The statutory context, background to Upwell Parish and the key issues, vision and aims of the Upwell NDP are set out in Sections 1 through to 4 of the Plan. These acknowledge that appropriate new development in and around the main settlements of Upwell and Three Holes will be supported and accordingly set out general development principles in the context of the Local Plan and the National Planning Policy Framework.
- 5.2.2 I feel it is relevant to add that while sufficient governance context is presented, a considerable and potentially overly extensive amount of historic background is set out. While it is acknowledged that the tone of any neighbourhood plan is at the discretion of the QB, in this case, it appears to be at the expense of a clear and factual description of the Parish in terms of the nature of residential accommodation and the location and extent of relevant local retail or commercial offer. There is little, if any, reference to the relationship with Outwell. Given the very close proximity of Outwell village and the location of retail outlets, this is an unfortunate omission, albeit not making the NDP non-compliant.
- 5.2.3 I note that Appendix A to the NDP presents character details of the Parish but this comprises very basic lists. These could be more relevant had they been supplemented by numerical information and data which could have provided a clearer context to the NDP and the proposed policies. This information, such as formal road classifications and numbering; number of residential properties, extent of and nature of statutory listed properties etc is available in the public domain, is part of the evidence base, and clearly has been assessed by the QB through the Plan preparation stages.
- 5.2.4 Bringing some of this data and context into the main body of the Plan and reducing the extensive historic text within Section 2, could have provided a clearer context for the subsequent policies. This may have been discussed by the QB or its professional advisers but dismissed. **I should stress that as written, the Plan is not erroneous or non-compliant and this is merely an observation.**
- 5.2.5 Sections 3 and 4 are clear. However, little cross reference is made in Section 3 to any background information or the evidence base and some bullet points are unclear and unsubstantiated. It should be noted that some readers of the Plan will not have an extensive local knowledge and it would help in producing a more accessible Plan if some matters that are apparent to the QB, be explained in full.
- 5.2.6 Accordingly, I consider it would help any reader if the following were addressed in Section 3;

- 
- list the evidence assessed by the QB in preparing the NDP and present as an Appendix to the document or to the Statement of Community Involvement. If the later, cross reference should be made to the main NDP text at the start of Section 3.
  - bullet 1; identify the 'larger towns'
  - bullet 4; the 30% reference is ambiguous and as written could refer to national, regional or local indices. This needs clarifying.
  - bullet 9; the reference to 'needing' smaller dwellings should be cross referenced to relevant market evidence
- 5.2.7 Section 4 is helpful in that it sets out the overall vision and aims of the NDP but it would assist if subsequent policies are cross referenced back to the vision. This section makes reference to 2038. The fact this this date does not correspondence with the end date of the emerging Local Plan has been raised by others. The QB is correct in suggesting that it is at their discretion to pursue this date. However, I have not been provided with any explanation of why this is the case and why a date that clearly falls beyond the end of the emerging revised LP is being presented. In the absence of any such explanation, I feel this matter could be confusing.
- 5.2.8 I do not consider that the start date of the NDP need correspond to the Core Strategy document and I appreciate that 2015 has been chosen to reflect when work started on the NDP by the QB. Hence, I am comfortable with this date.
- 5.2.9 In terms of the end date, however, I consider that there would no detraction from any of the proposed policies should the Plan period accord with the life of the emerging LP. **Accordingly, I recommend that the date of the NDP concern 2015 to 2026 and modification of relevant reference through the NDP be made.**
- 5.2.10 The NDP Objectives note that policies and 'Community Actions' are sets out in the Plan. To accurately reflect the context and stage of the NDP proceedings, the word 'will' should be omitted from the first paragraph of the objections section. I suggest that the word 'and' has been inadvertently omitted from bullet point 4; 'which complements existing development *and* the surrounding environment...'
- 5.2.11 While the list of 10 objectives reflects the issues raised through the community consultations, I consider it is necessary to very clearly set out the difference between policies and community actions. The latter, as explained elsewhere in this report, do not constitute formal policies, subject to this examination. Moreover, they are aspirational and in places relate to operational matters.
- 5.2.12 I note that the third paragraph of Section 5 highlights this but I consider this reference is better placed in Section 4 and it made clear that community actions have been included within the NDP for information only and have not been subject to examination. My concern is that as written they may inadvertently influence decisions when they are clearly not planning policies which will constitute the Development Plan for the area.
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- 5.2.13 Hence, I recommend that this matter be clarified by clearer referencing within Section 4 of the NDP and **for the avoidance of any confusion on the part of the reader, they should be clearly annotated as such through the NDP.**
- 5.2.14 On a point of clarity, I assume that the word 'developed' has been used instead of 'development' in the first sentence of paragraph 5 of Section 5.1 and should be amended.
- 5.2.15 Section 5 of the Plan sets out specific policies. I consider it would be helpful to insert subheading of the objectives / vision of the Plan, as set out in Section 4. While this is clearly a matter of style and at the discretion of the QB, it would help the reader.
- 5.2.16 Before I comment on specific NDP policies, I wish to comment on the evidence used to support their preparation. I have been provided with formal correspondence relating to the process. I have also been able to review the technical data and surveys prepared by, or on behalf of, the QB. I have a list of the third parties and statutory consultees who were approached during the preparation of the draft and submission version of the Plan and have reviewed the comments received by the QB. I have noted the responses to comments made through the Plan preparation, by the QB, and the changes made to the draft Plan, where appropriate, in light of the comments received.
- 5.2.17 A reasonable amount of background information and an adequate evidence base has been used by the QB to prepare policies to address the vision of the Plan. Overall, I find this to be proportionate and in most places this is sufficiently robust. However, in places, this is insufficient or poorly referenced and needs to be addressed. Where this is the case or where I feel the Plan could be clearer and to avoid ambiguity, I have commented accordingly below.
- 5.2.18 In this context, I now consider the specific NDP policies against the Basic Conditions and for ease of reference follow the structure and headings as adopted in the Plan. As I have set out above, I find that the Plan is generally compliant with Basic Conditions 4 and 5 but that the following section of my Report highlights modifications which I consider would allow the Plan to fully comply with;
- Basic Condition 1 (Compliance with National Policy);
  - Basic Condition 2 (Delivery of Sustainable Development); and
  - Basic Condition 3 (General Conformity with the Development Plan).
- 5.2.19 I wish to stress that my examination has comprised a review of the policies and supporting text in the context of their compliance with the Basic Conditions. It has not comprised a forensic review of the rationale behind each policy. However, where I am aware that the evidence base has been poorly or erroneously interpreted policies have been suggested that conflict with extant statute or are

ultra vires, or indeed are superfluous given other policy or statutory regulations in place, then these are highlighted.

5.2.20 I confirm again that I have reviewed all comments made as part of the Regulation 16 process, particularly where they have raised matters relating to compliance with national policy, sustainability and general conformity with the strategic policies of the Development Plan.

5.2.21 I consider that some modifications are required for the Plan to comply with the Basic Conditions. In places, this has resulted in the omission of the policy or part thereof. In others it has resulted in changes to specific policies. I wish to emphasise that wherever possible these have been made to complement the tone and language of the Plan – but as noted earlier I strongly advise that the final version of the Plan is subject to a full and thorough proof read to pick up a number of grammatical errors.

### 5.3 NDP Policies

#### Economy and Tourism

5.3.1 I find the approach taken in **POLICY ET1: Communications** to be clear in terms of reflecting community comment, the evidence base and the vision of the Plan. However, I consider that as presented it replicates much already in place under statutory permitted development rights. Furthermore;

- **the reference to 'development' in the second paragraph is ambiguous and needs to be defined. It is unclear whether this relates to the provision of new communication infrastructure, residential and/or commercial development. I suggest this should be explicit.**

- **The list of mitigation actions should be clarified either within the text of the policy or in the accompanying text to explain the context for identifying 'unacceptable adverse impacts'. How and who will measure these?**

- **The reference in (f) and impact on protected species is covered under extant environmental legislation and hence is superfluous and can be omitted.**

**Subject to these modifications, policy ET1 is considered compliant.**

5.3.2 **Policy ET2 : Economic Development** is clear and the context is explained in the accompanying text. While it reflects the community strength of feeling and avoids being overly prescriptive, this is at the expense of guiding new development to any specific location. Instead the policy presents a very general approach that simply advises against any adverse impact.

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5.3.3 I consider that little in this policy adds to policy already found within the adopted Local Plan and as such Policy ET2 could be deemed to be superfluous.

**- (b) duplicates extant statutory environmental regulations which take precedence and hence could be omitted.**

5.3.4 However, I feel that the policy reflects the vision, strength of feeling from stakeholders, and the evidence base. Reference to the use of lorry routing is rightly placed in the supporting text and is simply presented as an example of potential action. As written, this is acceptable.

**Accordingly, I conclude that with the removal of (b) Policy ET2 presents policy that is compliant, even if does not provides explicit guidance for new development.**

5.3.5 **Community Action 2: Tourism Assets** is aspirational and, as noted above, is not a planning policy and subject to examination, and should be annotated as such.

5.3.6 **Policy ET3: Tourism** is clear and makes specific reference to Welle Creek and other waterways that are locally relevant and reflect the nature and character of the Parish. Hence **I find Policy ET3 compliant without modification**

#### **Leisure and Recreation**

5.3.7 **It would assist if cross reference is made to the evidence relied upon for this section of the NDP to substantiate some of the text, eg 'health deprivation being in the bottom 30% nationally'**

**Policy LR1: Leisure, Recreation and a Marina** refers in the concluding paragraph to a '*business plan*'. **This would be better expressed as a 'viability case'. The policy would be clearer by including an OS base map at an appropriate scale to indicate the location of Dovecoat Farm.**

**With these modifications, I find Policy LR1 is compliant.**

5.3.8 **Policy LR2: Open and Recreational Space** addresses the intent of supporting the improvement of extant facilities. I appreciate that it has been amended to take into account comments from the LPA but, as written, I consider it adds little to national statute or the Local Plan and the accompanying text is confusing. However, it does provide guidance to any decision maker reader that new development should liaise with the Parish Council in terms of identifying priorities within the NDP area. **It would be important to make reference in the supporting text that contributions would need reflect the Community Infrastructure Levy Regulations and the guidance within the NPPF.**

**With this modification, I find Policy LR2 acceptable and hence compliant.**

**5.3.9 Policy LR3: Cycling** is well presented and clear. The supporting text is also instructive, although it would be helped further if a map was included, indicating supported cycle routes through the NDP area. This isn't paramount **as I find the policy compliant as written.**

#### **Natural Environment**

**5.3.10** The introductory paragraph for section 5.4 of the NDP refers to the Borough Council's Strategic Flood Risk Assessment. It would assist if the date of this document is included in the text. Reference is made to the Ouse Washes and again, additional information in terms of an annotated map, would assist any reader. This could be incorporated into the map indicating the Agricultural Land Classifications. This map should be cross referenced into the opening text for section 5.4. It would also assist if it were referenced eg Figure 3 and added to a list of figures at the start of the document.

**I consider that these modifications would remove potential confusion.**

**5.3.11 Policy EN1: Flood Risk and Prevention** is clear and unambiguous and is deemed compliant. While the supporting text emphasises the need to consult with appropriate stakeholders, this is potentially superfluous as it is endorsed through the Local Plan and through standard consultation practice. However, I understand that that 'Internal Drainage Board' may not be a statutory consultee but nevertheless, encouragement to liaise with that body is acceptable.

**5.3.12 Community Action 3: Maintenance and Flood Defences** is aspirational and is not subject to this examination. However, the subsequent text is useful for scene setting.

**5.3.13 Policy EN2: Agricultural Land** reflects the national approach to using Grade1 classified land for development purposes and advises that a sequential review is undertaken to justify any development proposal. **However, the reference to 'overriding community benefits' is vague. It would assist the reader and decision maker to clarify in the supporting text what could constitute such benefits. I further suggest that the reference to 'surveyors' is changed to 'professionals' in the last sentence.**

**With these modification, I find Policy EN2 compliant.**

#### **Housing**

**5.3.14** I note that the calculation of housing need by the Borough Council has changed during the NDP preparation and the suggested need for the combined settlements of and Outwell and Upwell (as Key Rural Service Centres) has reduced. Footnote 2 is

therefore helpful, but the text within the first paragraph of Section 5.5 is confusing as written and **this should be redrafted to reflect updated circumstances.**

5.3.15 Nevertheless, it is clear that the principle of supporting new housing development across the NDP area is supported by the Borough Council and reflects extant strategic policy. The general nature of new housing is discussed in the second paragraph of this section, and cross reference is made to Appendix A. I have commented on this earlier and find Appendix A would benefit from the addition of empirical data. I note that this is contained within the evidence base but could add valuable context to the NDP if key facts were included within Appendix A.

5.3.16 Furthermore, reference is made to the Conservation Area and listed buildings lying within the Plan area. I note that the QB did not consider the need for specific policies within the NDP as these would not have added further to extant local or national policy. However, I consider that an OS base map at an appropriate scale indicating both the Conservation Area and listed properties would assist the reader.

5.3.17 The reference to affordable housing provision is potentially misleading. Para 63 of the NPPF states that 'Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). **To avoid confusion;**

- **the NDP text should explain that 10 dwelling or above constitute a major development**
- **the use of 'cannot' be replaced with 'should not'**
- **the reference to the Local Plan Policy CS09 and 0.165 should be accurately rewritten to avoid ambiguity as *'The thresholds over which affordable housing provision will be sought in rural areas are for sites of 0.165 of ha or 5 or more dwellings.'***

#### **Policy H1: Scale and Location**

5.3.18 I understand from the supporting documents before me that this policy refers to additional housing allocations over and above extant allocations confirmed in adopted SADMP. However, I do not consider this is clear in the text of the policy or supporting paragraphs. Furthermore;

- **The tense of this policy is confusing and should be amended to be in the present as opposed to the future.**
- **The reference to 2038 should be amended to accord with the emerging Local Plan, as noted previously.**



- **The reference to 'allocations' is confusing. Allocations are being presented within the NDP and it is assumed that residential development will emerge on these sites. In places, however, the words 'allocation' and 'development' may have been transposed.**
- **The phrase 'estate type' development is vague and need explaining.**
- **Given the progress of the NDP, the word 'potential' should be omitted from the third sentence of the supporting text following the policy.**

**Further to the above modifications, Policy H1 is compliant**

- 5.3.19 **Policy H2: Housing Mix** refers in the first section to a provision of 20% of sites comprising over 5 units to be suitable for particular occupiers and to have at least 20% of units of '2 bedrooms or fewer'. It is unclear from the evidence base presented how these figures have been confirmed. It would be important to include cross reference to the evidence base for these prescriptive figures, within the supporting text.
- 5.3.20 In the section addressing affordable housing provision lying beyond a settlement boundary, reference is made in (b) to schemes in excess of 10 units being supported if within 50m of the boundary. I fully appreciate the need for occupiers to be within an appropriate distance from sustainable transport services but, again, I am unable to find the justification for this specific distance in the evidence base.
- 5.3.21 Similarly while the intent of (e) is understood, it is important to have clarification of what constitutes 'local need' and 'affordable cost'. This clarification should be within the supporting text.
- 5.3.22 The final element of Policy H2 refers to treatment of separate proposals on contiguous sites. There is no clarification in the policy or supporting text as to whether this applies regardless of schemes being pursued at the same time or over a period a time. To avoid ambiguity this needs to be clarified.
- 5.3.23 The supporting text should include reference to the evidence base where necessary, as noted above. It should also include the addition of 'or other similar incentives' following 'the national Right To Buy scheme'.

**Further to modifications to address the above, I find Policy H2 compliant.**

- 5.3.24 **Policy H3: Design** is understandable and the reference to 50% of plot coverage to include outbuildings provides some clarity – but only if sites are developed comprehensively. If ancillary buildings are added at later date, there could be confusion as these could be pursued under extant Permitted Development regulations. This would conflict with the policy as written. If the reference to a

specific plot coverage is to remain, and the ability to apply PD rights is to be removed, then an Article 4 Directive would need to be agreed with and applied by the LPA.

- 5.3.25 While this is an option, it would be clearer to combine (a) and (b) and advise that *'New residential development plots should not be over-developed and should ensure that the building footprint, including any outbuildings, provides for sufficient amenity space'*

**Further to modifications to address the above, I find Policy H3 compliant.**

- 5.3.26 **Policy H4: Residential Car Parking Standards** accords with the NPPF, even though the proposed minimum requirements do not align with the extant Highway Authority standards and embedded in local policy. I note that the latter refer to maximum values and reflect historic NPPF guidance. Having reviewed the evidence base and the data obtained through the consultation process, I am content that an amended standards can be proposed.

- 5.3.27 The proposal for streets to accommodate parking, if this cannot be provided on individual sites, is less acceptable. It is acknowledged that street parking was a critical issue raised during the consultation process but the phrasing of this policy implies that existing streets should be adapted to accommodate parking.

- 5.3.28 It may be that the requirement for on street design can apply to larger sites where internal road layouts can be designed accordingly as part of a comprehensive scheme prior to any formal adoption of the highway. However, if the intent is for the existing public highway to be adapted, this needs to be specifically expressed as it would require the potential use of traffic orders and the need to include agreement from the Highway Authority.

- 5.3.29 Given this, I suggest that the text following the table of bedrooms / min parking spaces is removed from the formal policy and is presented as supporting text and supplemented with clarification as to impact on the public highway and need to liaise with the Highway Authority.

**Further to these modifications I find Policy H4 compliant**

Physical and Community Infrastructure

- 5.3.30 **Section 5.6** presents context for a series of community policies and is clear and helpful.
- 5.3.31 **Policy P1: Physical Infrastructure** and the supporting text is well expressed and is **deemed compliant.**

5.3.32 **Policy P2: Primary School** reflects comments through the consultations process but **I have not been presented with evidence of dialogue with and support from the County Education Authority. For this policy to be deliverable, it would be important to refer to this in supporting text. Furthermore, the reference to pre-school provision in the last paragraph is operational and also should be expressed in supporting text.**

**With these modifications, Policy P2 is compliant.**

5.3.33 **Policy P3: Walking** refers to an expectation for developers to improve existing footpaths and footways where these are deemed to be not 'acceptable'. Clarification in the supporting text is presented to define 'acceptable' in terms of space to push two children's buggies, which is helpful. As is the reference to involve the relevant Risk Management Authorities , i.e Highway Authority

5.3.34 **To avoid the reference to 'developments' being a catch-all, it should also be expressed in terms of 'proposals that generate pedestrian footfall'.**

**Subject to this minor modification, Policy P3 is compliant.**

5.3.35 **Policy P4: Local Green Spaces** sets out 10 specific sites and the supporting text explains how the QB feels they comply with the NPPF. While it is noted that the sites have strong local support, I am concerned that some do not accord with national policy or guidance and some may not be deliverable.

5.3.36 For ease of reference, I consider that the plans and details for each of the sites, which are set out in Section 7 of the NDP, need to be positioned next to Policy P4. **I comment on the individual sites later in this report.**

5.3.37 **Community Action 4; Community Infrastructure Levy** is helpful in setting out the nature of projects that could benefit from CIL, but as noted earlier in this report, is not a specific planning policy and hence subject of examination. While I have no issue in it remaining within the text of the NDP, improved clarification of its rationale should be expressed in the supporting text.

### **Allocation Sites**

5.3.38 Section 6 provides details of sites that have been assessed through the NDP process and considered appropriate to identify for new housing development. It is understood from other documents before me that these allocations are in addition to land already identified within the SADMP. However, the reference used is to the '2016 local plan' which is misleading. Furthermore, I consider these sites should be

presented in the NDP immediately following the supporting text for Policy H1. This would be the more logical position for any reader or decision maker.

5.3.39 I have a number of comments on individual site allocations;

**Policy A1 – Low Side**

**(c) the reference to 30% of new dwelling to be affordable subject to evidence, and 10% to be available for affordable home ownership appears to be arbitrary. I note that the justification is that smaller allocated sites may not contribute sufficient affordable accommodation. However, to be transparent and avoid confusion with other policies, relevant cross reference to the evidence base would help.**

**(e) clarification of what constitutes 'sufficient stand-off distances' would be important to include in the supporting text.**

**i) refers to matters already covered in the Local Plan and hence is superfluous and can be omitted.**

**Policy A2 – Adjacent to Lode House – is considered compliant**

**Policy A3 – St Peter's Road**

**(b) similar to comment for Policy A1 in that there needs to be justification for the 10% figure proposed.**

**Policy A4 – Pinfold Road**

**(c) and (d) refer to works to the highway where there will need to be involvement by the Highway Authority. This should be explicit.**

**(g) the reference to '*modest sized*' is subjective and the intent of this point could be achieved with its omission.**

**Policy A5 -Adjacent to Three Holes Village Hall**

**(b) to avoid confusion, this should simply refer to vehicular access to properties within the site preferably being to and from Squires Drove.**

**However, the supporting text explains that this would involve third party land. This could be potentially ultra vires if appropriate agreement is withheld. I have not noted any specific comment from the Charity involved and hence this allocation for new development might not be deliverable. Clarification should be given as to whether the Charity are supportive of the allocation. If this cannot be obtained then the ability to access the site directly onto the A1101 should not be restricted.**

**Only with the modification suggested, Policies A1 through to A5 are compliant.**

### Local Green Spaces (LGS)

- 5.3.40 Section 7 sets out a number of specific sites proposed as Local Green Space. I have reviewed the approach taken and assessment by the QB during the NDP preparation. I have also noted the advice within the NPPF and associated national guidance which is that such allocations should only be used: where the green space is in reasonably close proximity to the community it serves; where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and where the green area concerned is local in character and is not an extensive tract of land.
- 5.3.41 I am also aware of the number of challenges brought by stakeholders against Neighbourhood Plans proceeding to Referendum where LGS allocations have been cited. In undertaking my duty to assess the policies of this NDP in compliance with the Basic Conditions, and with a view to remove ambiguity which might result in challenge, I comment as follows;

**LGS1 – Blunt's Orchard;** accords with the criteria set out in the NPPF and is deemed compliant.

**LGS2 – Lakesend Playing Field;** although this is an extensive area, the site appears to have been in use for recreational use for some time. However, the allocation should only comprise the open space, and not the physical building. The hall should be omitted from the designation. Furthermore, there is no clarification of ownership or agreement to a formal allocation. It would be helpful to have clarification on this matter in advance of this site being confirmed as LGS to ensure that continued access can be achieved.

LGS3 – Lode Avenue and Hallbridge Road Greens; it is unclear why these sites have been grouped together. It would be more logical to have them under two separate references. Otherwise they are appropriate allocations and compliant.

**LGS4 – Methodist Church Gardens;** appears to be an appropriate allocation. However, I have not noted any comment from the Methodist Church who it is assumed, own the land. It would be important to have clarification that there is support from the church/owner in advance of this site being confirmed as LGS to ensure that continued access can be achieved.

**LGS5 - Small Lode;** this is a long extent of land adjacent the highway and described as a 'soft road'. This is not common terminology but implies potential statutory designation. This should be clarified before formal designation as LGS.

LGS6 – Three Holes River Bank; this land lies adjacent to the Middle Level Main Drain and is appropriate for designation as a LGS. While I note objections from the Middle Level Commissioners, designation as LGS would allow access to waterway.

LGS7 – Three Holes Bridge Village Sign; these are two very small designations and are deemed compliant.

**I find that the designation of LGS1, LGS3, LGS6 and LGS7 are compliant and should be designated as Local Green Spaces. However, further clarification needs to be given to LGS2, LGS4 and LGS5 prior to designation.**

## **6.0 PLAN DELIVERY, IMPLEMENTATION, MONITORING AND REVIEW**

6.1 Other than a very broad reference, no specific indications is given within the NDP as to monitoring or the future review of the Plan. This should be added and preferably relate to a review in 5 years, with an annual monitoring exercise to be undertaken by the Parish Council.

## **7.0 REFERENDUM**

7.1 Further to my comments above, I recommend to King's Lynn and West Norfolk Borough Council that, subject to the recommended modifications being undertaken, the Upwell Neighbourhood Plan should proceed to a Referendum. I am required, however, to consider whether the Referendum Area should reflect the approved Neighbourhood Area or whether it should extend beyond this, in any way.

7.2 As noted earlier, the Neighbourhood Area reflects the whole of the Upwell Parish and that a similar exercise is being conducted for the adjacent Parish of Outwell. Had this not been the case I would have considered the potential extension of the referendum area, given the location of commercial and community facilities serving both Parishes. In the event, I am content that the referendum area for the Upwell NDP should reflect the designated area for the Plan, namely the Parish of Upwell alone.

## **8.0 SUMMARY AND RECOMMENDATION**

8.1 I find that the Upwell Neighbourhood Plan is an effective document, clearly written with passion and has been the subject of appropriate consultation. The resulting vision and ensuing policies reflect the findings of those consultations and drafts of the NDP have been the subject of appropriate amendments to take on board relevant comments from statutory consultees and key stakeholders.

- 8.2 I have suggested modifications to some of the proposed policies and explanatory text, to remove ambiguity and ensure that policies are clear and do not duplicate extant policy or other regulations. I have also advised where reference to the evidence base is required. My modifications have been suggested to reflect the tone and language of the document and if addressed, would provide for a robust and compliant document.
- 8.3 In summary, subject to the suggested changes, the Plan would comply with the legal requirements set out in Paragraph 8(1) and 8(2) of Schedule 4B to the Town and Country Planning Act 1990 and the relevant regulations relating to the preparation of a Neighbourhood Development Plan.
- 8.4 I do not have any concerns over the defined Plan Area nor with that area forming the basis for any Referendum.
- 8.5 Hence further to the modifications proposed within this submission, I recommend that the Upwell Neighbourhood Development Plan should proceed to a Referendum.

**Louise Brooke-Smith, OBE, FRICS, MRTPI**

**June 2020**

## Appendix A - Documents reviewed by the Examiner

- National Planning Policy Framework (The Framework) (2018) and subject to MHCLG clarification in 2019
- Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004 (as amended)
- The Localism Act (2011)
- The Neighbourhood Planning (General) Regulations (2012) and additions/amendments
- The Neighbourhood Planning Act 2017 and associated guidance and regulations.
- King's Lynn and West Norfolk Borough Council Local Development Framework Core Strategy 2011
- Site Allocations and Development Management Policies Plan (SADMP) 2016
- Draft Version of the Upwell Neighbourhood Plan
- Regulation 14 submissions and analysis
- Allocation Assessment Proforma, submissions and analysis.
- Health Check Report 2019
- Submission Version of the Upwell Neighbourhood Plan and associated supporting documents
- Statement of Basic Conditions (Oct 2019)
- Statement of Community Consultation and all Appendices (Sept 2019)
- Regulation 16 correspondence and submissions
- Evidence Base pack presented by the QB
- LGS Site Assessment evidence
- Relevant Screening correspondence from LPA
- Strategic Environmental Assessment, Addendum Report plus relevant correspondence from statutory bodies



## Appendix B – Examiner's use of Abbreviations

- Upwell Neighbourhood Development Plan; NDP
- The Plan / The Neighbourhood Plan; NDP
- Upwell Parish Council; PC
- Qualifying Body; QB
- King's Lynn and West Norfolk Borough Council; BC
- Local Planning Authority; LPA
- National Planning Policy Framework; NPPF
- National Planning Practice Guidance; NPPG
- Strategic Environmental Assessment ; SEA