



INDEPENDENT EXAMINER'S REPORT ON THE FOWEY NEIGHBOURHOOD DEVELOPMENT PLAN



Microsoft Office User
DEBORAH MCCANN

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SECTION 2

2.Summary

As the Independent Examiner appointed by Cornwall Council to examine the Fowey Parish Neighbourhood Development Plan, I can summarise my findings as follows:

1. *I find the Fowey Parish Neighbourhood Development Plan and the policies within it, subject to the recommended modifications does meet the Basic Conditions.*
2. *I am satisfied that the Referendum Area should be the same as the Plan Area, should the Fowey Parish Neighbourhood Development Plan go to Referendum.*
3. *I have read the Fowey Consultation Statement and the representations made in connection with this subject I consider that the consultation process was robust and that the Neighbourhood Plan and its policies reflects the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.*
4. *I find that the Fowey Parish Neighbourhood Development Plan can, subject to the recommended modifications proceed to Referendum.*
5. *At the time of my examination the adopted local plan was the Cornwall Local Plan 2016.*

SECTION 3

3.Introduction

3.1. Neighbourhood Plan Examination.

My name is Deborah McCann and I am the Independent Examiner appointed to examine the Fowey Parish Neighbourhood Development Plan.

I am independent of the qualifying body, I do not have any interest in the land in the plan area, and I have appropriate qualifications and experience, including experience in public, private and community sectors.

My role is to consider whether the submitted Fowey Parish Neighbourhood Development Plan meets the Basic Conditions and has taken into account human rights; and to recommend whether the Fowey Parish Neighbourhood Development Plan should proceed to Referendum. My role is as set out in more detail below under the section covering the Examiner's Role. My recommendation is given in summary in Section 2 and in full under Section 5 of this document.

The Fowey Parish Neighbourhood Development Plan has to be independently examined following processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.

The expectation is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, there are two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case. Having read the plan and considered the representations I did require clarification on a number of issues. These points were dealt with by written representations in a question and answer format. This additional information is publicly available on the Cornwall Council website and covered in my report within the relevant policy.

3.2. The Role of Examiner including the examination process and legislative background.

The examiner is required to check whether the neighbourhood plan:

- *Has been prepared and submitted for examination by a qualifying body*
- *Has been prepared for an area that has been properly designated for such plan preparation*
- *Meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one neighbourhood area and that*
- *Its policies relate to the development and use of land for a designated neighbourhood area.*

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

As an independent Examiner, having examined the Plan, I am required to make one of the following recommendations:

1. The Plan can proceed to a Referendum
2. The Plan with recommended modifications can proceed to a Referendum

Where a policy does not meet the basic conditions or other legal requirement I may, on occasion, need to delete wording, including potentially an entire plan policy and/or section of text, although I will first consider modifying the policy rather than deleting it. Where a policy concerns a non-land use matter, advice in the Planning Practice Guidance states “Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.” As such, when considering the deletion of any non-land use matters from the plan, I will consider if I can make a modification to place the relevant proposed actions in a non-statutory annex to the plan, dealing with ‘Wider Community Aspirations’. I will not generally refer back to parties on these detailed revisions. I will make modification either in order to meet the Basic Conditions, to correct errors or provide clarification. However, the focus of my

examination, as set out in legislation is relatively narrow, I must focus on compliance with the Basic Conditions. The main purpose of a neighbourhood plan is to provide a framework for the determination of planning applications, policies in a plan which have elements which either seek to control things which fall outside the scope of the planning system or introduce requirements which are indiscriminate in terms of the size of development or overly onerous and would not meet the Basic Conditions. In these circumstances it will be necessary to make modifications to the plan. In making any modifications I have a duty to ensure that the Basic Conditions are met however I am also very careful to ensure, where possible that the intention and spirit of the plan is retained so that the plan, when modified still reflects the community's intent in producing their neighbourhood plan.

3. The Plan does not meet the legal requirements and cannot proceed to Referendum

I am also required to recommend whether the Referendum Area should be different from the Plan Area, should the Fowey Parish Neighbourhood Development Plan go to Referendum.

In examining the Plan, I am required to check, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, whether:

- the policies in the Plan relate to the development and use of land for a designated Neighbourhood Area are in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act 2004:

- The Plan meets the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 to specify the period for which it has effect - the Plan has been prepared for an area designated under the Localism Act 2011 and has been developed and submitted for examination by a qualifying body.

I am also required to determine whether the Plan complies with the Basic Conditions, which are that the proposed Neighbourhood Plan:

- Has regard to national policies and advice contained in guidance

issued by the Secretary of State;

- Contributes to the achievement of sustainable development; and
- Is in general conformity with the strategic policies contained in the Development Plan for the area.

There is now an additional Basic Condition to be considered. Since the 28th of December 2018, the Neighbourhood Planning (General) Regulations 2012 Such 2 para 1 has stated:

"In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act—

The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017."

The Plan must also not breach, and otherwise be compatible with EU obligations and Human Rights requirements.

Cornwall Council will consider my report and decide whether it is satisfied with my recommendations. The Council will publicise its decision on whether or not the plan will be submitted to a referendum, with or without modifications. If the Neighbourhood Plan is submitted to a referendum, then 28 working days' notice will be given of the referendum procedure and Neighbourhood Plan details. If the referendum results in more than half those voting (i.e. greater than 50%), voting in favour of the plan, then the Unitary Authority must "make" the Neighbourhood Plan a part of its Development Plan as soon as possible. If approved by a referendum and then "made" by the local planning authority, the Neighbourhood Plan then forms part of the Development Plan.

SECTION 4

4.The Report

4.1. Appointment of the Independent examiner

Cornwall Council appointed me as the Independent Examiner for the Fowey Parish Neighbourhood Development Plan with the agreement of Fowey Parish Council.

4.2.Qualifying body

I am satisfied that Fowey Town Council is the Qualifying Body.

4.3. Neighbourhood Plan Area

The designated Fowey Parish Neighbourhood Area covers the Parish of Fowey.

Fowey Town Council applied for designation as a Neighbourhood Plan area on 8th December 2014 and this was confirmed in writing by Cornwall Council on 24th February 2015.

The Basic Conditions Statement submitted with the Fowey Parish Neighbourhood Development Plan confirms there are no other Neighbourhood Plans covering the Area of the Fowey Parish Neighbourhood Development Plan.

4.4. Plan Period

It is intended that the Fowey Parish Neighbourhood Development Plan will cover the period 2019-2030. The cover of Basic Conditions Statement refers to 2018-2030 for the Plan period, whilst all the other documents refer to the Plan period as being 2019-2030. I assume this is just a minor error, but all the documents should be consistent. I have taken the Plan period to be 2019- 2030

4.5. Cornwall Council initial assessment of the Plan (Regulation 15).

Fowey Parish Council submitted the draft Fowey Parish Neighbourhood Plan to Cornwall Council for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012. Cornwall Council made an initial assessment of the Neighbourhood Development Plan and the supporting documents and is

satisfied that these comply with the specified criteria.

4.6 Site Visit

I carried out an unaccompanied site visit on the 3rd of May 2019 to familiarise myself with the Neighbourhood Plan Area.

Questions for Clarification

I made an initial assessment of the plan and decided that I needed to request further clarification from the Qualifying Body in respect of the following policies:

Policy 3: Housing within the Fowey Development Boundary

Policy 4: Small-scale affordable Housing on Rural Exception Sites

Policy 5: Principal Residence Requirement

Policy 10: Open Spaces – of Heritage/Landscape Value

My questions and the response from the Qualifying Body and Cornwall Council are available to view on the Cornwall Council website but I will make further reference to these matters in my report at the relevant policies.

4.7. The Consultation Process

The Fowey Parish Neighbourhood Development Plan has been submitted for examination with a Consultation Report which sets out the consultation process that has led to the production of the plan, as set out in the regulations in the Neighbourhood Planning (General) Regulations 2012.

The Statement describes the approach to consultation, the stages undertaken and explains how the Plan has been amended in relation to comments received. It is set out according to the requirements in Regulation 15.1.b of the Neighbourhood Planning (General) Regulations 2012):

(a) It contains details of the persons and bodies who were consulted about the

proposed neighbourhood development plan;

(b) It explains how they were consulted; (c) It summarises the main issues and concerns raised by the persons consulted; and

(d) It describes how these issues and concerns were considered and, where relevant, addressed in the proposed neighbourhood development plan.

Examination of the documents and representations submitted in connection with this matter have led me to conclude that the consultation process was thorough, well conducted and recorded.

A list of statutory bodies consulted is included in the Consultation Statement.

4.8. Regulation 16 consultation by Cornwall Council and record of responses.

The Cornwall Council placed the Fowey Parish Neighbourhood Development Plan out for consultation under Regulation 16 for the statutory six-week period from the 7th of March 2019 to the 18th of April 2019.

A number of representations were received during the consultation period and these were made available by Cornwall Council as part of the supporting information supplied for the examination process. I considered the representations, have taken them into account in my examination of the plan and made reference to them where appropriate.

4.9. Compliance with the Basic Conditions

A Basic Conditions Statement was produced for the Fowey Parish Neighbourhood Development Plan. The purpose of this statement is to set out in detail how the Neighbourhood Development Plan, as submitted meets the Basic Conditions. It is the Examiner's Role to take this document into consideration but also make take an independent view as to whether or not the assessment as submitted is correct.

I have to determine whether the Fowey Parish Neighbourhood Development Plan:

1. *Has regard to national policies and advice*
2. *Contributes to sustainable development*

3. *Is in general conformity with the strategic policies in the appropriate Development Plan*
4. *Is not in breach and is otherwise compatible with EU obligations and Human Rights requirements.*
5. There is now an additional Basic Condition to be considered. Since the 28th of December 2018, the Neighbourhood Planning (General) Regulations 2012 Such 2 para 1 has stated:

"In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act—

The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017."

Documents brought to my attention by the Unitary Authority for my examination include:

(a) The Fowey Parish Neighbourhood Development Plan:

This is the main document, which includes the policies developed by the community.

(b) The Consultation Statement:

This is a statement setting out how the community and other stakeholders have been involved in the preparation of the Fowey Parish Neighbourhood Development Plan and is supported by an evidence base, which arose from the consultation.

(c) Basic Conditions Statement.

This is a statement setting out how Fowey Parish Neighbourhood Development Plan Working Group considers that the Neighbourhood Development Plan meets the Basic Conditions. This statement also includes

the screening report for the Strategic Environmental Appraisal and Habitats Regulations Assessment and addresses how the plan contributes to the achievement of sustainable development.

(d) Fowey Parish NDP Consultation Statement Appendices A – K

(e) Fowey Parish NDP Consultation Statement Appendices L – V

Comment on Documents submitted

I am satisfied having regard to these documents and other relevant documents, policies and legislation that the Fowey Parish Neighbourhood Development Plan does, subject to the recommended modifications, meet the Basic Conditions.

4.10 Planning Policy

4.10.1. National Planning Policy

National Policy guidance is set out in the National Planning Policy Framework (NPPF). At the time of the preparation of the Neighbourhood Plan the relevant NPPF was the National Planning Policy Framework (NPPF) 2012. During the course of my examination the government published the revised NPPF.

The revised NPPF provides for transitional arrangements as follows:

“214. The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.

(69) For neighbourhood plans, ‘submission’ in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.

(22) During the transitional period for emerging plans submitted for examination (set out in paragraph 214), consistency should be tested against the previous Framework published in March 2012.”

The Plan was formally submitted to Cornwall Council under regulation 15 of the Neighbourhood Planning (General) Regulations 2012 on the 23rd of January 2019. Therefore, for the purposes of my examination the relevant national policy document is the NPPF (2012).

To meet the Basic Conditions, the Plan must have “regard to national policy and advice”. In addition, the NPPF requires that a Neighbourhood Plan “must be in general conformity with the strategic policies of the local plan”. Paragraph 16 states that neighbourhoods should “develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development; plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan”.

The Fowey Parish Neighbourhood Development Plan does not need to repeat these national policies, but to demonstrate it has taken them into account.

I have examined the Fowey Parish Neighbourhood Development Plan and consider that, subject to modification, the plan does have “regard for National Policy and Advice” and therefore the Plan does meet the Basic Conditions in this respect.

4.10.2. Local Planning Policy- The Development Plan

Fowey is within the area covered by Cornwall Council. The relevant development plan is the Cornwall Local Plan 2016.

I have considered the Strategic policies of the Development Plan and the Policies of the Fowey Parish Neighbourhood Development Plan and consider that, subject to the recommended modifications, the Plan does meet the Basic Condition in this respect and is in general conformity with the Strategic policies of the Cornwall Local Plan 2016.

4.11. Other Relevant Policy Considerations

4.11.1 European Convention on Human Rights (ECMR) and other European Union Obligations

As a ‘local plan’, the Neighbourhood Development Plan is required to take

cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC Office.

In the case of Directive 2001/42/EC a screening opinion was obtained from Cornwall Council in terms of the need for Strategic Environmental Assessment (SEA) whereby it was concluded that a SEA was not required. I have been provided with the detailed screening opinion and the responses of the Statutory Consultees who concur with the Council's conclusion.

Directive 92/43/EEC and Directive 2009/147/EC seek to protect and improve Europe's most important habitats and species. As part of the screening request for the SEA a Habitats Regulations Assessment Screening request was also submitted to Cornwall Council. Based on the scale and location of development proposed in the draft plan Cornwall Council concluded that the Fowey NDP is unlikely to have significant effects on the environment or on European Sites and that SEA and HRA was therefore not required.

Natural England, the Environment Agency and Historic England were consulted as part of the screening process. The screening opinion concluded that a SEA and HRA was not required for the Neighbourhood Plan.

I am satisfied with this conclusion.

4.11.2 Sustainable development

The Basic Conditions Statement sets out how the plan addresses achieving sustainable development. I am satisfied having regard to this document and other relevant documents, policies and legislation that the Fowey Parish Neighbourhood Development Plan does, subject to the recommended modifications, meet the Basic Conditions in this regard.

European Convention of Human Rights and to comply with the Human Rights Act 1998.

The Neighbourhood Development Plan is required to take cognisance of the European Convention of Human Rights and to comply with the Human Rights Act

1998.

The Basic Conditions Statement confirms that the policies in the plan accord with EU Human Rights obligations:

“for example, the policies in the plan are equal to all individuals, and all residents in the Parish have had the right to a “fair hearing” through an effective and proportionate consultation process to reach out to different groups potentially affected. Consultation responses have been taken into account in a satisfactory manner during the processing of the plan.”

I am satisfied with this conclusion.

Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out a further basic condition for a Neighbourhood Development Plan in addition to those set out in the primary legislation. Being that:

- 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). (See Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 (as amended) in relation to the examination of neighbourhood development plans.)

Through the Submission of the Screening request for the SEA and the HRA it has been established that the STANDP is not likely to have a significant effect on a European site or a European offshore marine site.

I am therefore satisfied that the Fowey Parish Neighbourhood Development Plan, subject to modification meets the basic conditions on EU obligations.

4.11.3 Excluded development

I am satisfied that the Fowey Parish Neighbourhood Development Plan does not cover County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in

Section 61K of the Town and Country Planning Act 1990.

4.11.4 Development and use of land

I am satisfied that the Fowey Parish Neighbourhood Development Plan covers development and land use matters.

4.11.5 The Neighbourhood Plan Vision Strategic Aims and Policies

VISION

“To maintain and enhance Fowey Parish as a sustainable and vibrant community with a unique coastal and rural landscape”

4.11.6. Fowey Parish NDP: Objectives

A. General Development:

- General criteria which any new development proposals will be expected to meet in Fowey Parish.
- Good design to reflect the local identity of Fowey Parish.

B. Housing:

- Support small scale, new development to provide affordable housing for local need.
- Accommodate the changing requirements of full-time residents in Fowey Parish.

C. Natural Environment, Heritage and the Built Environment

- Protect and enhance Fowey Parish’s unique landscape, estuary and coastline; habitats and open spaces from inappropriate future development.
- Protect and enhance buildings and spaces of heritage and community value, ensuring Fowey remains a culturally rich place to live and visit.

D. Business, Employment and Transport

- Provide opportunities for economic growth and employment.

- Support the opportunity for sustainable modes of transport including walking and cycling.
- Reduce the amount of through traffic in the town during the summer season, leading to a safer, less polluted environment.

E. Community facilities, health and well-being:

- Support the development of infrastructure to meet future needs.
- Support services and amenities which provide community health and well-being.

F. Renewable Energy and Climate change:

- Support appropriate energy reduction/carbon reduction and energy production technologies that are of a scale and design that do not erode the character of the landscape, the estuary and coastline of Fowey Parish.
- To prevent flood risk and minimise other impacts arising from climate change.

COMMENT

I am satisfied that the Fowey Parish NDP vision and objectives were developed from the consultation process and that the policies within the plan reflect the vision and objectives.

4.12. Fowey Parish Neighbourhood Development Plan Policies

General comments

Planning Guidance on preparing neighbourhood plans and policies is clear, it states:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to

the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.

Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”

In order to provide clarity and to ensure that the policies in the Fowey Parish Neighbourhood Plan meet the Basic Conditions it has been necessary for me to make modifications to a number of policies. This includes modifications where:

- Policies have sought to introduce controls outside the scope of the planning system or where existing policy already sets out the scope of control.
- A policy has not been drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications.

The details of these modifications are set out within my comments on the related policies. My comments on policies are in blue with the modified policies in red.

Housing and Community Facilities

4.12.1 Policy 1 – Sustainable Development

1. To ensure that new build development, supports a building’s resilience to climate change and energy efficiency while being sensitive to local character and distinctiveness.
2. All development proposals should consider the need to design out crime, disorder and anti- social behaviour to ensure ongoing community safety and cohesion.

COMMENT

Point 1 is not written as a policy. For clarity and to meet the Basic Conditions it should be modified as follows:

- 1. Where appropriate new build development should demonstrate how the proposal supports a building's resilience to climate change and energy efficiency whilst being sensitive to local character and distinctiveness.***

4.12.2 Policy 2 – Design and Character of Fowey Parish

- Proposals for new development must be sited and designed so as to promote and support the distinctive character of the AONB in Fowey Parish and the Fowey Parish Conservation Areas.
- The scale, massing, character, appearance and density of development should relate sympathetically to the built and natural environment of Fowey Parish, including any impact on the skyline, visually exposed plateaus, ridges or steep sided valley sides as identified in the Fowey Settlement Edge Assessment, Local Landscape Character Assessment (2018).
- Public spaces and routes should be attractive, accessible and easy to move through and function effectively for all in society, especially those with mobility difficulties.
- As part of the evidence of compliance with this policy, planning applications should include, where appropriate, a clear visual representation of the final form of the proposed buildings in the context of their immediate neighbourhood and wider protected landscape.

COMMENT

I have no comment on this policy

4.12.3 Policy 3 – Housing within the Fowey Development Boundary

- Proposals for small scale infill, rounding off and development of previously developed land will be supported within the Development Boundary for Fowey (see

Figure 4).

2. Proposals for residential development, outside of the Fowey Development Boundary will be considered as Rural Exception Sites in line with Policy 9 of CLP.

COMMENT

During the course of my examination I sought clarification from the Qualifying Body in respect to how and where the opportunities for infill and rounding off had been identified and how the development boundary as proposed has been drawn to be in general conformity with strategic policy 3 of Cornwall Local Plan.

The Qualifying Body's response:

“As a steering group we made the decision early on that we did not want to allocate specific areas within the development boundary as opportunities for infill and rounding off, but to specify our criteria for housing. Cornwall's LP apportions 900 dwellings to be delivered in the 3 parishes of St Blazey, Fowey and Lostwithiel CNA. Fowey Parish has no housing allocation to deliver 2018-2030, because it is within the AONB.”

Cornwall Council commented:

“The latest monitoring figures show that the rural area of the Fowey, St Blazey and Lostwithiel CNA is on track to deliver the Local Plan apportionment of housing and there were sufficient commitments and completions to meet and exceed this figure, if all are delivered.

Fowey is within the AONB and therefore it is correct to say that CC would not look to allocate housing here but prioritise local needs housing. We therefore support the NDP strategy which has a tightly drawn development boundary, informed by landscape character assessment. This strategy maximises the provision of housing to meet local needs and the affordable housing team confirm their support.”

I am satisfied with this response and have no further comment on this policy.

4.12.4 Policy 4 – Small scale Affordable Housing on Rural Exception sites

Proposals for small-scale, affordable housing led schemes to meet local housing needs on Rural Exception Sites' in Fowey Parish and in line with relevant policies within this Plan will be supported provided that:

1. There are no more than 15 dwellings on individual development sites;
2. They comprise 100% affordable housing, unless it can be clearly shown that a scheme will not be viable without the inclusion of a limited amount of open market housing to enable the provision of affordable houses for local needs and comprising no less than 50% affordable housing.
3. The development is adjacent to or well-related to the existing boundaries of the built-up area identified in Policy 3.
4. It is demonstrated that development of the site would conserve and enhance the settlement's special historic, architectural and landscape character, in particular within or adjacent to the AONB, and the Conservation Areas and their settings.
5. Development should avoid land and those settlement edges identified as 'Critical' or 'Sensitive' (see Fowey LLCA).
6. Such development is not used to extend the development boundary.

COMMENT

During the course of my examination I sought clarification from the Qualifying Body in respect to how the number of 15 dwellings has been arrived at and how this policy meets the Basic Conditions in terms of having regard to national policy and being in general conformity with the strategic policies of the Cornwall Local Plan. In response the Qualifying Body provided a modification to Policy 4 which removes the 15 dwellings restriction. This modification is supported by Cornwall Council. In addition, paragraph 4 should reflect national policy and the Development Plan.

In order to meet the Basic Conditions, the policy should be modified as

follows:

Policy 4 – Small scale Affordable Housing on Rural Exception sites

Proposals for affordable housing led schemes to meet local housing needs on Rural Exception Sites’ in Fowey Parish and in line with relevant policies within this Plan will be supported provided that:

- 1. The development is small scale.**
- 2. It comprises 100% affordable housing, unless it can be clearly shown that a scheme will not be viable without the inclusion of a limited amount of open market housing to enable the provision of affordable houses for local needs and comprising no less than 50% affordable housing.**
- 3. The development is adjacent to or well-related to the existing boundaries of the built-up area identified in Policy 3.**
- 4. Proposals for the site conserve and enhance the AONB, the Conservation Areas and their settings and reflect the settlement’s special historic, architectural and landscape character.**
- 5. Development should avoid land and those settlement edges identified as ‘Critical’ or ‘Sensitive’ (see Fowey LLCA).**
- 6. Such development is not used to extend the development boundary.**

4.12.5 Policy 5 – Full time Principal Residence Housing

1. Due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing will only be permitted where there is a condition restricting occupancy as a Principal Residence. Principal residences are defined as those occupied as the residents’ sole or main residence, where the resident spends the majority of their time when not working away from home or living abroad.
2. The condition placed on new open market homes will require that they are occupied by the owner or their tenants as their primary (principal) residence. Owners

of homes with a Principal Residence condition will be required to keep proof that they are meeting the condition and be willing to provide this proof if/when CC requests this information. Proof of Principal Residence is via verifiable evidence including (but not limited to) residents being registered on the local electoral register and being registered for and attending local services (such as healthcare, schools, etc.).

COMMENT

I have given very serious consideration as to whether or not I can find that this policy meets the Basic Conditions. My concerns relate to how the policy can meet the Basic Conditions particularly having regard to the NPPF – “delivering a wide choice of quality homes” and “delivering sustainable development” together with how the policy meets the requirements of the Human Rights Act 1988 and other European Legislation.

I have considered the evidence provided in support of this policy and during the course of my examination I sought clarification of the evidence base for this policy. I received a detailed response from both the Qualifying Body and Cornwall Council and the full responses can be viewed on the Council’s website.

I accept that it is not easy to pull together the various information and statistics relating to ownership/ occupation of houses within any parish area however the imposition of a Principal Residence policy has serious implications and it is necessary to ensure that there is strong evidence to support the imposition of such a restriction.

The evidence base for the policy clearly shows that there is community support for this policy. Cornwall Council states that the level of vacant properties is around 26%, with confirmed second home ownership running at around 16%. Considering the additional evidence, I am satisfied that this level of empty /second homes is having a negative impact on the community and local economy.

I have also considered in detail Mr. Justice (now Lord Justice) Hickinbottom’s

judgment in R (RLT Environment Ltd) v Cornwall Council in relation to Policy H2 of the St. Ives Neighbourhood Development Plan. He concluded:

“that Policy H2 is in pursuit of legitimate public interests identified in article 8(2), namely the interests of the economic well-being of the country, and for the protection of the rights and freedoms of others.”

I have also considered carefully the potential for unforeseen consequences on the local housing market and the future delivery of affordable housing.

My decision is one of planning balance and I conclude that due to the adverse impact on the local community and economy of the uncontrolled growth of second homes on the Fowey Parish Neighbourhood Development Plan area the restriction of further second homes does in fact contribute to delivering sustainable development. In terms of “delivering a wide choice of quality homes”, I consider that the restriction could in fact be considered as facilitating the delivery of the types of homes identified as being needed within the community.

4.12.6 Policy 6 – The Landscape and Natural Environment

Proposals for development, will only be permitted where they are compliant with NPPF, the CLP and have appropriately demonstrated that they meet the Strategic and Local Section policies of the Cornwall AONB Management plan;

1. Development will only be supported where it safeguards the significance, conserves and enhances the natural beauty and special quality of the AONB and its setting.

COMMENT

I have no comment on this policy.

4.12.7 Policy 7 – Views, panoramas and vistas

1. Development proposals must ensure that key views, (as described in Appendix 2), of the distinct buildings, heritage assets, areas of landscape, coast and open

countryside can continue to be enjoyed.

2. Where appropriate, proposals within the areas identified should submit a visual impact assessment showing how their development will impact on relevant views.

3. Proposals will be supported where there is no significant adverse impact on these views.

COMMENT

I have no comment on this policy

4.12.8 Policy 8 – Historic Environment and Cultural Heritage

Conserving and enhancing the historic environment of Fowey Parish, proposals for development must;

1. Preserve and enhance the special character of the area and be designed to respond to existing scale, height, form and massing, respecting the traditional frontages, detailing and materials.

2. Where they affect designated and non-designated heritage assets in the Conservation Areas of Fowey and Polkerris, proposals must be supported by an appropriately detailed assessment of their heritage significance and the impact of the proposals on that significance.

3. Support the sustainable re-use, maintenance and repair of listed buildings and other heritage assets, particularly those identified as being at risk.

4. Support the re-use of key, listed and unlisted heritage assets (either in public or private use) as community facilities or for small-scale economic purposes

COMMENT

The wording of this policy lacks clarity and appears seeks to extend the policy requirements for Heritage Assets and Conservation Areas more widely. The policy regime for Heritage Assets and Conservation Areas already exists at National and Local level and does not need to be repeated within this Plan. For

clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy 8 – Historic Environment and Cultural Heritage

1. Proposals affecting designated, non-designated heritage assets or the Conservation Areas of Fowey and Polkerris, must comply with national policy and the Development Plan.

2. Proposals should reflect the special character of the area and be designed to respond to existing scale, height, form and massing, respecting the traditional frontages, detailing and materials.

3. The sustainable re-use, maintenance and repair of listed buildings and other heritage assets, particularly those identified as being at risk will be supported.

4. The re-use of key, listed and unlisted heritage assets (either in public or private use) as community facilities or for small-scale economic purposes will be supported.

4.12.9 Policy 9 – Marine Heritage

Proposals which will affect the ability to operate or affect the fabric of a quay, slipway, jetty, wharf or public landing place will only be supported where:

1. Such proposals should not detract from the local character through inappropriate scale, appearance or use.
2. Proposed development will maintain and enhance pedestrian access to the water and launching facilities.
3. Development should not result in the loss of land used for port/harbour related use unless it can be demonstrated that the port/harbour use is no longer viable (see Figure 10).
4. Development will not reduce or compromise any existing facilities or services.

COMMENT

For clarity the policy should be modified as follows:

Policy 9 – Marine Heritage

Proposals which will affect the ability to operate or affect the fabric of a quay, slipway, jetty, wharf or public landing place will only be supported where:

- 1. the local character is protected and is of an appropriate scale, appearance and use.**
- 2. pedestrian access to the water and launching facilities will be maintained and where possible enhanced.**
- 3. there is no loss of land used for port/harbour related use unless it can be demonstrated that the port/harbour use is no longer viable (see Figure 10).**
- 4. development will not reduce or compromise any existing facilities or services.**

4.12.10 Policy 10 – Open Spaces- of Heritage/Landscape Value

Development that results in the loss of the following open spaces (see Figure 11) currently enjoyed by the public, during the lifetime of the Plan, or that results in any harm to their character, setting, accessibility, appearance, general quality or amenity value will not be supported.

- Station Woods
- Castle Fields
- Brewery Field
- Allday's Fields
- St Catherine's Parade
- Grammar School Gardens

- Lostwithiel Street Garden
- Place House gardens and estate grounds

COMMENT

“The NPPF states:

76. Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed and be capable of enduring beyond the end of the plan period.

77. The Local Green Space designation will not be appropriate for most green areas or open space. The designation 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.”*

It is unclear from the wording whether this policy is intended to designate Local Green Space. Although there are areas identified in the evidence base and included on maps within the NP itself there is no detail relating directly to these areas. I asked the Qualifying Body to provide clarity on this matter, including whether or not there are areas included in Policy 17 which were

intended to include in any Local Green Space designation.

The Qualifying Body response made it clear that the intention was to designate Local Green Spaces and I was provided with the Local Green Space Assessment Tables which support the inclusion of these spaces. I am also satisfied that the consultation process supports the inclusion of this policy and the lack of clarity is a policy drafting error.

In reviewing the evidence, the Qualifying Body have withdrawn the request to designate Alldays Field and the Treffry Estate at Place House.

The Qualifying Body also clarified that the Policy 17 sites were not intended for designation as Local Green Space.

I also received representation in connection in relation to the inclusion of the Brewery Fields with concern relating to whether or not the land proposed for designation has been correctly identified on Figure 11. I am unclear as to whether or not this matter has been resolved however, I have concluded that the Brewery Fields site does not meet the NPPF tests and should therefore be removed from the proposed designations. In addition to the sites withdrawn by the Qualifying Body I have assessed the remaining sites mindful of the evidence provided and conclude that the following sites do not meet all of the NPPF tests and should therefore be removed from the list:

- • Brewery Fields – having considered this site carefully I am not satisfied that it “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;”. I have not been provided with evidence which persuades me that the area identified is demonstrably different in character or nature to the adjacent fields which have not been selected for designation.

The owners of the Old Grammar School Garden have raised an objection to its designation as a Local Green Space. Whilst I note this objection the

designation is based on whether the site in question meets the tests laid out in the NPPF and not on whether or not there is an objection from the owner. In the case of the Old Grammar School Garden I am satisfied that the site meets the tests and should be included as a Local Green Space designation.

The justification for policy 10 the modified policy should be modified to reflect the policy modification. For clarity and in order to meet the Basic Conditions, Policy 10 should be modified as follows:

10 Policy 10 – Local Green Space Designation

The following sites, identified on Figure 11 are designated as Local Green Spaces

- Station Woods**
- Castle Fields**
- St Catherine’s Parade**
- Grammar School Gardens**
- Lostwithiel Street Garden**

Inappropriate development within any designated LGS will only be permitted in very special circumstances.

Figure 11 should also be modified to reflect the changes to the policy.

4.12.11 Policy 11 – Jobs and the economy

Proposals for new employment uses or the change of use from or to employment uses will be supported where they would:

1. Safeguard existing commercial/business sites; Windmill Industrial Estate, Hill Hay workshops, Passage Lane, in line with Policy 5 of the CLP (see Figure 12).
2. Policy 4 of CLP considers shopping, services and community facilities. In applying

this policy to Fowey, the defined town centre, primary shopping area is identified in Figure 12.

3. Support the development and improvement of the slipway at Caffa Mill and Caffa Mill shopping area.
4. Support small-scale start-ups within the parish located on existing employment sites.
5. Support training and apprenticeship opportunities.

COMMENT

Elements of this policy are not land use and these should be relocated to the community aspirations/projects section of the plan. Element 2 would be better as a separate policy. Overall the policy lacks clarity and should be modified as follows:

Policy 11 – Jobs and the economy

Proposals for new employment premises or the change of use to employment uses will be supported where they would:

- 1. Safeguard existing commercial/business sites; Windmill Industrial Estate, Hill Hay workshops, Passage Lane, in line with Policy 5 of the CLP (see Figure 12).**
- 2. develop and improve the slipway at Caffa Mill and Caffa Mill shopping area.**
- 3. provide units for small-scale start-ups within the parish located on existing employment sites.**

Policy 11a Primary Shopping Area

The primary shopping area is identified in Figure 12. In this area Policy 4 of CLP will apply and proposals in compliance with this policy will be supported.

4.12.12 Policy 12 – Business development

1. Within Fowey development boundary and Polkerris, proposals will be supported that promote economic development and the creation of job opportunities including:

- i. the construction of business premises;
- ii. adaptations to suitable existing buildings, renovations or re-use of farm buildings and/or
- iii. other improvements in infrastructure, communications or other utilities.

2. Outside the development boundary of Fowey and Polkerris, proposals will be supported that promote economic development and the creation of job opportunities where these are for:

- i. new business development on land already in commercial use; or,
- ii. the reuse of farm and/or rural buildings.

3. In all instances, proposals must be;

- i. of an appropriate scale and not detract from the appearance and character of their immediate neighbourhood; and
- ii. not reduce or compromise any existing facilities or services for which there is a proven need.

COMMENT

For clarity and to meet the Basic Conditions paragraph 3.i. of the policy should be modified as follows:

i. of an appropriate scale, conserve and enhance the AONB and not detract from the appearance and character of their immediate neighbourhood; and

4.12.13 Policy 13 – Transport

1. In order to reduce traffic congestion and parking problems in Fowey, the development of a 'Park and Ride' facility at the Hill Hay housing estate will be

supported (see Figure 4).

2. Proposals which improve signage within the town and reduce 'through traffic' in Fowey will be supported; and

3. Support changes to New Road Hill which will allow provision of a pavement, where at present there are only white hatched lines to denote pedestrian walkway.

COMMENT

Paragraphs 2 and 3 are not policies and should be deleted from this section of the plan. However, the issues addressed could form part of the community project/ aspiration section of the plan.

4.12.14 Policy 14 – Cycle ways and Public Rights of way

1. Proposals which contribute towards the provision of a network of cycle ways and footpaths, especially if they link up with the existing cycle ways and the cycle hub at Lanhydrock, will be looked upon favourably.

2. Wherever possible, new development should seek to provide links to the existing network of foot and cycle ways.

COMMENT

In paragraph 1. For consistency and clarity should be modified as follows:

1. Proposals which contribute towards the provision of a network of cycle ways and footpaths, especially if they link up with the existing cycle ways and the cycle hub at Lanhydrock, will be supported.

Policy 15 – Provision of adequate parking in Fowey

1. Development proposals that will result in an increase in the availability of either private or publicly accessible parking facilities will be supported provided that they are of a scale and design that will have no significant adverse effect on the traffic flows, landscape or the character of the settlement within which they are located. Proposals which involve the loss of car parking facilities used by the public in Fowey

will not be supported, unless:

i. alternative provision of equal value can be made elsewhere within the application site or within a reasonable distance from this.

COMMENT

I have no comment on this policy.

4.12.16 Policy 16 – Fowey Parish Infrastructure

Proposals for development will be supported where there is financial support through the (25%) Local Element of the Community Infrastructure Levy income or Section 106 money which must be spent on enhancing community health and well-being projects particularly for young people within Fowey Parish.

COMMENT

This is not a land use policy and should be deleted from this section of the plan. A Community Infrastructure priority list however can be included in the overall plan.

4.12.17 Policy 17 – Protection of Open Space Play/sports and Recreational spaces in Fowey Parish

1. The following open spaces - play/sports and recreational spaces are valued by the community for their social, recreational value, health and well-being and as such should be maintained and enhanced.

- Fowey River Academy School playing fields.
- Fowey River Academy Sports Hub
- Fowey primary School playing fields
- Squires Field and children's playground
- Squires Fields Community Centre green
- Lankelly Rugby Club

- Readymoney Allotments
- The sea pool at Whitehouse

2. Development that results in the loss of these open spaces currently used by the public for sports or recreation, during the lifetime of the Plan, or that results in any harm to their character, setting, accessibility, appearance, general quality or amenity value will not be supported unless equivalent or better facilities are provided at a suitable alternative location.

COMMENT

I have no comment on this policy.

4.12.18 Policy 18 – To retain the site of Fowey Community Hospital for the future health needs of Fowey Parish’s elderly population

Proposals for development which will result in the loss of the health services from the Fowey Community Hospital site, particularly for the elderly, will not be supported unless replacement facilities can be provided in a location appropriate for Fowey Parish.

COMMENT

As currently worded this policy does not read as a land use policy, for clarity it should be modified as follows:

Policy 18 – Fowey Community Hospital site

Proposals for the redevelopment of the Fowey Community Hospital Site for an alternative use will not be supported unless replacement facilities can be provided in a location appropriate for Fowey Parish.

4.12.19 Policy 19 – Renewable Energy

1. Developers are encouraged to accompany proposals with a statement setting out how the development promotes renewable energy, water conservation and energy reduction where:

- i. New development should aim to maximise passive solar gain.
 - ii. New development should include roof mounted solar panels wherever possible.
 - iii. The incorporation of facilities for charging low emission vehicles is supported.
 - iv. To include grey water storage where possible.
2. Large scale wind and solar PV developments within the AONB are not supported.

COMMENT

For clarity policy 19 should be modified as follows:

4.12.19 Policy 19 – Renewable Energy

1. Developers are encouraged to accompany proposals with a statement setting out how the development promotes renewable energy, water conservation and energy reduction and where:

- i. solar gain is maximised.**
- ii. roof mounted solar panels are included, where possible.**
- iii. facilities for charging low emission vehicles are included.**
- iv. grey water storage is included, where possible.**

Large scale wind and solar PV developments within the AONB are not supported.

4.12.20 Policy 20 – Ground mounted solar panels

Proposals for the installation of small ground-mounted solar arrays will be supported where it can be demonstrated that development will:

- 1. Be restricted to brown field sites and no more than 1 hectare in size.
- 2. Take into account the recommendations from the LLCA for Fowey parish regarding visually exposed plateaus, ridges or skylines or on steep sided valley

sides.

3. Not involve building on land subject to statutory and non-statutory designations for wildlife and geological value or semi-natural habitat.

COMMENT

I have no comment on this policy.

Policy 21: Tidal and surface water flooding

1. Support will be given recognising Polkerris as a Coastal Change Management Area.
2. Support will be given to proposals for development that will improve existing flood protection in Polkerris.
3. Support will be given for proposals to improve existing flood protection at Albert Quay and Town Quay, Fowey by improving existing walls, and installing flood gates at Fowey in order to reduce the flood risk in this area.

COMMENT

Paragraph 1 is not policy but a community project/aspiration and should be included in a separate section of the Plan. Policy 26 of the Cornwall Local Plan says that Development should take account of and be consistent with and strategic and local flood and coastal management strategies, including the Shoreline Management Plan. The Shoreline Management Plan identifies the area around Fowey as 'hold the line' in the short, medium and long term and therefore for the NDP to support improvements to flood protection is in general conformity with that policy. However, I have been informed by Cornwall Council that it hasn't been demonstrated that improving existing walls, and installing flood gates is the right approach, so this could be too prescriptive.

For Polkerris the Shoreline Management Plan approach is 'no active intervention' in the short, medium and long term. Therefore, improving flood

protection may not be in general conformity with Policy 26.

For clarity and to meet the Basic Conditions, the policy should be modified as follows:

Policy 21: Tidal and surface water flooding

1. Proposals that will improve existing flood protection at Albert Quay and Town Quay, Fowey in order to reduce the flood risk in this area will be supported.

2. Support will be given to proposals for development that enables the intent of the shoreline management plan to be achieved at Polkerris.

SECTION 5

Conclusion and Recommendations

- 1. I find that the Fowey Parish Neighbourhood Development Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012. (as amended)*
- 2. The Neighbourhood Plan does not deal with County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.*
- 3. The Fowey Parish Neighbourhood Development Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Development Plans in place within the Neighbourhood Area.*
- 4. The Strategic Environmental and Habitats Regulations Assessment screening meet the EU Obligation.*
- 5. The policies and plans in the Fowey Parish Neighbourhood Development Plan, subject to the recommended modifications would contribute to achieving sustainable development. They have regard to national policy and to guidance, and generally conform to the strategic policies of the Cornwall Local Plan 2016.*
- 6. I therefore consider that the Fowey Parish Neighbourhood Development Plan subject to the recommended modifications can proceed to Referendum.*

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18th September 2019

