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and examinations

# **Report on Ellistown and Battleflat Neighbourhood Plan 2018 - 2031**

**An Examination undertaken for North West Leicestershire District Council with the support of the Ellistown and Battleflat Parish Council on the Regulation 15 submission version of the Plan.**

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Date of Report: 28 March 2019

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## Contents

	Page
<b>Main Findings - Executive Summary</b>	3
<b>1. Introduction and Background</b>	3
• Ellistown and Battleflat Neighbourhood Plan 2018 – 2031	3
• The Independent Examiner	4
• The Scope of the Examination	4
• The Basic Conditions	5
<b>2. Approach to the Examination</b>	6
• Planning Policy Context	6
• Submitted Documents	7
• Site Visit	7
• Written Representations with or without Public Hearing	7
• Modifications	7
<b>3. Procedural Compliance and Human Rights</b>	8
• Qualifying Body and Neighbourhood Plan Area	8
• Plan Period	8
• Neighbourhood Plan Preparation and Consultation	8
• Development and Use of Land	9
• Excluded Development	9
• Human Rights	9
<b>4. Compliance with the Basic Conditions</b>	10
• EU Obligations	10
• Main Issues	10
• Topic (a): Housing, Employment and Climate Change	11
• Topic (b): Shopping and Community Facilities	14
• Topic (c): Environment and Heritage Assets	15
• Topic (d): Traffic and Transport	17
<b>5. Conclusions</b>	17
• Summary	17
• The Referendum and its Area	18
• Overview	18
<b>Appendix: Modifications</b>	19

## **Main Findings** - Executive Summary

From my examination of the Ellistown and Battleflat Neighbourhood Plan (the Plan/E&BNP) and its supporting documentation, including the representations made, I have concluded that, subject to the policy modifications set out in this report, the Plan meets the Basic Conditions.

I have also concluded that:

- the Plan has been prepared and submitted for examination by a qualifying body – the Ellistown and Battleflat Parish Council;
- the Plan has been prepared for an area properly designated – the whole of the Parish of Ellistown and Battleflat as shown on page 9 of the submitted Plan;
- the Plan specifies the period in which it is to take effect: 2018 – 2031; and
- the policies relate to the development and use of land for a designated neighbourhood area.

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

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

## **1. Introduction and Background**

### *Ellistown and Battleflat Neighbourhood Plan 2018 - 2031*

- 1.1 Ellistown and Battleflat Parish, with a population of 2,626<sup>1</sup>, is a parish in north west Leicestershire, about 3.5km south of Coalville, 6km west of Junction 22 of the M1 motorway, from which it is a further 14km south east to Leicester. The East Midlands Airport is about 23km to the north. The excellent accessibility is one factor which has resulted in what was, until recently, a rural parish, being developed with extensive industrial estates. In addition, further large-scale development is imminent with planning permissions for around 3,500 dwellings being granted to the immediate north east of Ellistown village, 1,500 of which are within the parish<sup>2</sup>. The Parish is undoubtedly under pressure from both residential and economic development.

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<sup>1</sup> 2011 Census.

<sup>2</sup> See Regulation 16 Consultation response from North West Leicestershire District Council. Intelligent Plans and Examinations (IPE) Ltd, Regency Offices, 37 Gay Street, Bath BA1 2NT

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- 1.2 The process to commence preparation of the E&BNP began in 2013 when the Ellistown and Battleflat Parish Council (E&BPC) applied to North West Leicestershire District Council (NWLDC) for the parish to be designated a neighbourhood area. A Steering Group was established, a questionnaire distributed, focus group meetings held, drop-ins organised with regular updates given to the Parish Council. The E&BPC and officers from NWLDC worked closely together to aim for no conflict between the E&BNP and the North West Leicestershire Local Plan (NWLLP) which was then in the course of preparation. The Local Plan is now adopted. The E&BNP now represents about five years' work by those involved.
- 1.3 The vision for Ellistown and Battleflat, based on local consultation, is "to set out policies for the years up to 2031 that will ensure that our area develops and grows in a way that is sustainable economically, socially and environmentally, and which enhances and improves the Parish in which we live"<sup>3</sup>.
- 1.4 Within the section of the Plan which considers Sustainable Development, statements have been made which are akin to aims or objectives:- safeguard open space; protect existing community facilities; deliver an appropriate mix of housing types and in the right location; protect village identities; conserve the rural nature of the surroundings; protect and, where possible, improve biodiversity and important habitats; improve pedestrian and cycling facilities; support existing business development and expansion where appropriate and encourage start-up businesses and homeworking<sup>4</sup>. The E&BNP policies have been developed to deliver those aims.

#### *The Independent Examiner*

- 1.5 As the Plan has now reached the examination stage, I have been appointed as the examiner of the Ellistown and Battleflat Neighbourhood Plan by NWLDC, with the agreement of the E&BPC.
- 1.6 I am a chartered town planner and former government Planning Inspector with previous experience of examining neighbourhood plans. I am an independent examiner and do not have an interest in any of the land that may be affected by the draft Plan.

#### *The Scope of the Examination*

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

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<sup>3</sup> Page 12 of the Plan.

<sup>4</sup> Pages 12 - 13 of the Plan.

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

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

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

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

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

### *The Basic Conditions*

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

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

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

1.11 Regulation 32 and Schedule 2 to the 2012 Regulations prescribes a further Basic Condition for a neighbourhood plan. This requires that 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<sup>5</sup>.

## **2. Approach to the Examination**

### *Planning Policy Context*

- 2.1 The development plan for NWLDC, not including documents relating to excluded minerals and waste development, is the NWLLP adopted in November 2017. Work is now in progress on a review of the Local Plan which is at the early stage of consulting on Emerging Options.
- 2.2 The planning policy for England is set out principally in the National Planning Policy Framework (NPPF). The Planning Practice Guidance (PPG) offers guidance on how this policy should be implemented. A revised NPPF was published on 24 July 2018 (and a further revised version on 19 February 2019), replacing the previous NPPF 2012. The transitional arrangements for local plans and neighbourhood plans are set out in paragraph 214 of the NPPF 2018 (and subsequent 2019 version), which provides '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'. A footnote clarifies that for neighbourhood plans, 'submission' in this context means where a qualifying body submits a plan to the local planning authority under Regulation 15 of the 2012 Regulations. The E&BNP was submitted to NWLDC in September 2018. Thus, it is the policies in the previous NPPF that are applied to this examination and all references in this report are to the March 2012 NPPF and its accompanying PPG.

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<sup>5</sup> This revised Basic Condition came into force on 28 December 2018 through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

### *Submitted Documents*

- 2.3 I have considered all policy, guidance and other reference documents I consider relevant to the examination, including those submitted which comprise:
- the Ellistown and Battleflat Neighbourhood Plan 2018 – 2031;
  - the map on page 9 of the Plan which identifies the area to which the proposed Neighbourhood Plan relates;
  - the Consultation Report, August 2018;
  - the Basic Conditions Statement, August 2018;
  - all the representations that have been made in accordance with the Regulation 16 consultation;
  - the Strategic Environmental Assessment (SEA) & Habitats Regulations Assessment (HRA) Screening Report prepared by NWLDC, April 2018; and
  - the requests for additional clarification sought in my letter of 28 January 2019 and the response on 1 February 2019 provided by the District Council, which is available on the District Council website<sup>6</sup>.

### *Site Visit*

- 2.4 I made an unaccompanied site visit to the Neighbourhood Plan Area on 6 February 2019 to familiarise myself with it, and visit relevant sites and areas referenced in the Plan and evidential documents.

### *Written Representations with or without Public Hearing*

- 2.5 This examination has been dealt with by written representations. I received one request for a hearing session<sup>7</sup>. However, I considered a session on any topic raised in representations would be unnecessary as the consultation responses clearly articulated the objections to the Plan and presented arguments for and against the Plan's suitability to proceed to a referendum. As noted in paragraph 2.3 above, NWLDC helpfully answered in writing the questions which I put to them in my letter of 28 January 2019.

### *Modifications*

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

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<sup>6</sup> View at: [https://www.nwleics.gov.uk/pages/ellistown\\_neighbourhood\\_plan](https://www.nwleics.gov.uk/pages/ellistown_neighbourhood_plan)

<sup>7</sup> Representations prepared by Pegasus Group on behalf of Harworth Group PLC: paragraph 5.3.

### **3. Procedural Compliance and Human Rights**

#### *Qualifying Body and Neighbourhood Plan Area*

- 3.1 The E&BNP has been prepared and submitted for examination by the E&BPC, which is a qualifying body. It extends over the whole of the Ellistown and Battleflat Parish which constitutes the area of the Plan designated by NWLDC on 27 February 2014.
- 3.2 It is the only neighbourhood plan for Ellistown and Battleflat Parish and does not relate to land outside the designated Neighbourhood Plan Area.

#### *Plan Period*

- 3.3 The Plan specifies clearly the period during which it takes effect, which is between 2018 and 2031. The date aligns with the end date of the NWLLP, which is also 2031.

#### *Neighbourhood Plan Preparation and Consultation*

- 3.4 The comprehensive Statement of Consultation dated August 2018 indicates that the Parish Council first considered producing a neighbourhood plan in 2013. Throughout the preparation of the Plan, the Parish Council has been updated on progress and reports were made to Annual Parish Meetings in 2014 and 2015.
- 3.5 In early 2014, a questionnaire, nine pages in length, was delivered to every household in the Parish<sup>8</sup> and a member of the Neighbourhood Plan Steering Group spoke on a local radio station, Hermitage Radio, about the Plan and answered phone-in questions. 75 responses were received to the questionnaire. A Focus Group session was held with children from Ellistown Primary School in May 2014 and the Neighbourhood Plan was promoted at the School Fete during the next month. Young people in Ellistown were specifically engaged in aspects of the need for community facilities and the need for services. The various focus group meetings, drop-ins, structured sessions and site visits are listed in Appendices CS6 and CS7 of the Statement of Consultation.
- 3.6 Regular meetings were held with planning officers of NWLDC and with developers who had expressed an interest in development in the Parish. Updates on the preparation of the Plan have been placed regularly on the Parish Council website. An open event was held at the Primary School in February 2015 to promote the Plan which showed how policies were being developed and on 8 November 2015 a final public consultation event took place to display the draft policies which had been developed to include in the Plan.

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<sup>8</sup> Statement of Consultation: Appendix CS1.

- 3.7 The formal consultation on the Draft E&BNP under Regulation 14 of the 2012 Regulations took place over a period of just over six weeks between 7 August and 20 September 2017. Ten responses were received to the consultation. The Draft E&BNP was then submitted to NWLDC in September 2018 and was subject to consultation under Regulation 16 between 27 September and 8 November 2018. Eleven representations were received, one of which, on behalf of a major landowner/developer claimed that the company had not been directly consulted during the preparation of the Plan. The application for designation of the Neighbourhood Plan Area was publicised, as was its designation on 27 February 2014 in accordance with the 2012 Regulations. Similarly, there is no reason to doubt the adequacy of the Regulation 14 public consultation, albeit I note that there is no evidence of a response from that party at that stage. A comprehensive and informative response was submitted at Regulation 16, which I have considered as part of my examination. I see no evidence of any substantive prejudice. There was a reasonable expectation that anyone with a particular professional, landowner/developer interest would be proactive in following the progress of the emerging Plan, following the initial Regulation 6 (Publicising an area application) and 7 (Publicising a designation of a neighbourhood area) publicity undertaken by NWLDC. Therefore, I am satisfied that a transparent, fair and inclusive consultation process has been followed for the E&BNP that has had regard to advice in the PPG on plan preparation and is procedurally compliant in accordance with the legal requirements.

#### *Development and Use of Land*

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

#### *Excluded Development*

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

#### *Human Rights*

- 3.10 The Basic Conditions Statement (BCS) comments that the Plan has regard to and is compatible with fundamental rights and freedoms guaranteed under the European Convention on Human Rights. The BCS states that considerable care was taken to ensure that the views of the whole community were embraced to avoid any unintentional negative impacts on particular groups. NWLDC states in the Regulation 16 consultation response that it is satisfied that the E&BNP does not breach, and is compatible with, EU Obligations and Convention rights (within the meaning of the Human Rights Act 1998). I have considered the matter independently and I have found no reason to disagree with that position.

## 4. Compliance with the Basic Conditions

### *EU Obligations*

- 4.1 The E&BNP was screened for SEA by NWLDC, the report of which was submitted with the Plan in accordance with the legal requirement under Regulation 15(e)(i) of the 2012 Regulations. The Council found that it was unnecessary to undertake SEA. Neither Historic England (HE), Natural England (NE) nor the Environment Agency (EA), when consulted, disagreed with that assessment. Having read the SEA Screening Opinion, and considered the matter independently, I agree with that conclusion.
- 4.2 The E&BNP was further screened by NWLDC for HRA, which concluded that there were no habitats or circumstances which would trigger HRA. NE agreed with the NWLDC's conclusions of no likely significant effect upon the River Mease Special Area of Conservation. NE had no further comments in its Regulation 16 consultation response. Based on my independent consideration on the information provided and noting that the E&BNP does not include site allocations for development, I support the above conclusions.

### *Main Issues*

- 4.3 Following the consideration of whether the Plan complies with various procedural and legal requirements, it is now necessary to deal with whether it complies with the Basic Conditions; particularly the regard it pays to national policy and guidance, the contribution it makes to the achievement of sustainable development and whether it is in general conformity with strategic development plan policies. I test the Plan against the Basic Conditions by considering specific issues of compliance with all the Plan's policies.
- 4.4 As part of that assessment, I consider whether the policies are sufficiently clear and unambiguous, having regard to advice in the PPG. The E&BNP 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<sup>9</sup>.
- 4.5 Accordingly, having regard to the E&BNP, the consultation responses, written evidence<sup>10</sup> and the site visit, I consider that the main issues for this examination are whether the Plan policies (i) have regard to national policy and guidance, (ii) are in general conformity with the adopted

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<sup>9</sup> PPG Reference ID: 41-041-20140306.

<sup>10</sup> The other evidence includes my letter of 28 January 2019 to the Ellistown and Battleflat Parish and North West Leicestershire Councils seeking clarification and the reply of 1 February 2019.

strategic planning policies and (iii) would contribute to the achievement of sustainable development? I shall assess these issues on the basis of grouping the topics which have been identified in the E&BNP into: (a) housing, employment and climate change; (b) shopping and community facilities; (c) environment and heritage assets; and (d) traffic and transport.

Topic (a): Housing, Employment and Climate Change (Policies S1, S2, S3, H1, H2, H3, E1, E2, E3 and CC1)

- 4.6 Policy S2 of the NWLLP defines a settlement hierarchy of a Principal Town (Coalville), two Key Service Centres, three Local Service Centres, seventeen Sustainable Villages, sixteen Small Villages and, finally, hamlets. Sustainable Villages are settlements which have a limited range of services and facilities where a limited amount of growth will take place within the defined Limits to Development. Ellistown is one of them.
- 4.7 However, under Policy H1h, the NWLLP also delineates "Land north and south of Grange Road, Hugglescote" for 3,500 dwellings. Part of this land lies within the E&BNP area and adjoins the built-up area of Ellistown. NWLDC comments that about 1,500 of the 3,500 dwellings will be accommodated here and were granted outline planning permission on 26 September 2016, with just over 600 to be constructed in the Plan period<sup>11</sup>.
- 4.8 Policy S1 of the E&BNP defines Limits to Development as shown on Figure 2 of the Plan. Policy S2 then states that land outside the Limits to Development will be treated as countryside. These policies generally conform with NWLLP Policies S2 and S3, the former of which establishes the principle of Limits to Development; the latter stating that land outside the Limits is defined as countryside. The policies also have regard to the requirement in national guidance that neighbourhood plans should support the strategic needs set out in Local Plans, including housing and economic development<sup>12</sup>. I note the representation seeking the allocation of land outside the Limits of Development on the western edge of Ellistown<sup>13</sup>. However, notwithstanding the merits of the proposal, Policies S1 and S2 of E&BNP meet the Basic Conditions and so I have no reason to extend the Limits of Development to include the site, nor to recommend the land be allocated for housing outside the Limits.
- 4.9 However, I am concerned that the map at Figure 2 is not sufficiently clear for effective development management or to enable others with an interest in the land to identify which land lies within the Limits of

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<sup>11</sup> Regulation 16 response from NWLDC.

<sup>12</sup> NPPF: paragraph 16.

<sup>13</sup> Regulation 16 Representation from Gladman.

Development. Therefore, I recommend that Figure 2 is either replaced or supplemented by two maps at the scale of Figure 4 of the Plan, one map to cover Ellistown village which would show the boundary of the Plan area and the Limits of Development; the other map to show the east area of the Plan area near the Charnwood Arms where the Plan area boundary and Limits of Development should be identified. The map(s) should be based on those attached to the email response dated 1 February 2019 in response to my request to the E&BNP and NWLDC of 28 January 2019.

**(PM1)**

- 4.10 E&BNP Policy S3 describes requirements to be applied to the South East Coalville Development Scheme. Policy H1 of the NWLLP identifies land (site H1h) with the benefit of planning permission for housing south east of Coalville. Site H1h is shown to good effect on the NWLLP Proposals Map Inset Map 10 (Coalville Urban Area, Coleorton, Ellistown, Ravenstone and Swannington). I consider that the requirements have regard to national guidance on sustainable development and mostly, generally conform with the implementation of strategic policies for the distribution of housing in the NWLLP.
- 4.11 Representations have queried the need for and details of requirements (b), (d) and (e) in Policy S3. Requirement (b) seeks to mitigate the harm caused by traffic and generally conforms with NWLLP Policies IF1(c) and IF4. Requirement (d) generally conforms with NWLLP Policy EN1 (nature conservation). Requirement (d) would also generally conform with NWLLP Policy D1 Design. However, I appreciate that the detail of requirement (d) seeking to maintain existing woodland, trees and hedgerows could be exacting if applied literally. Therefore, I shall amend the policy by the inclusion of the phrase "where possible" and the inclusion of the sentence suggested in representations about replacements being of equal landscape and ecological benefit. **(PM2)**
- 4.12 Requirement (e) of Policy S3 generally conforms with NWLLP Policy H6 House types and mix, other than the use of the phrase "... to meet the current and future needs of people in the Parish and the wider area". The Plan should not seek to influence planning policies outside its area, which it is not able to do. Also, "and the wider area" is too ambiguous to be effective in development management and I shall recommend its deletion. **(PM3)**
- 4.13 I realise that planning permission has been granted for development on most, if not all, of the land within the Plan area which constitutes part of the South East Coalville Development Scheme. However, that does not cause the policy to fail a Basic Condition. It is possible for permissions to be renegotiated, or subsequent applications submitted, and for which the Plan, when made, together with this policy, will form part of the development plan against which applications will be considered.

- 4.14 I also note the comments made by the highway authority in the Regulation 16 Consultation response and appreciate the impact of traffic from the South East Coalville Development would have been taken into account when planning permission was granted, including the effect on Ellistown. Nevertheless, signing of traffic away from Ellistown, where possible, is a laudable aim and, for example, should the increase in numbers of HGVs become intolerable and dangerous, the policy will be a backdrop to any negotiations about lorry routeing.
- 4.15 Policy H1 does not allocate further land for housing in the Plan area, but it supports proposals for windfall sites within the Limits of Development, subject to criteria described in the Plan, all of which appear reasonable and have regard to national policy.
- 4.16 Policies H2 and H3 consider affordable housing and the mix of housing within development proposals. I accept that if Policy H1 only supports windfall sites of up to five houses, the mix of types of affordable housing sought under Policy H2 might be unrealistic on one development, particularly as the minimum thresholds in NWLLP Policy H4 for providing affordable housing are 11 dwellings, or 1000sqm gross floorspace on greenfield sites, or 30 dwellings or 1ha on brownfield sites. Nevertheless, there may be more than one housing proposal within the Limits of Development within the period of the Plan and Policy H2 would enable an accumulation of affordable house types and sizes when seen overall. In addition, as the NWLLP explains, where large scale housing permissions exist with Section 106 (S106) agreements and renegotiation is possible, Policy H2 would inform those discussions.
- 4.17 Policies H2 and H3 include phrases repeated in each policy, but such repetition does not make either policy contrary to a Basic Condition. Both policies have regard to national guidance<sup>14</sup>. Furthermore, subject to the comments above in relation to thresholds, both policies generally conform with the NWLLP<sup>15</sup>.
- 4.18 Policy E1 aims to support existing employment opportunities by resisting the loss of premises which provide employment or future potential employment opportunities. The policy would generally conform with NWLLP Policy Ec3, subject to the exclusion of the reference to the loss of retail premises (Class A) and the deletion of the need for a valuation report, both of which I shall recommend as modifications. **(PM4)** The policy would also have regard to national guidance<sup>16</sup>.

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<sup>14</sup> NPPF: paragraph 50.

<sup>15</sup> NWLLP Policies H4 and H6.

<sup>16</sup> NPPF: paragraph 22.

- 4.19 Policy E2 aims to support new employment opportunities. The policy lists criteria a) to h) and then two further requirements a) and b). I have no issue with the inclusion of leisure and tourist activities in this policy as demonstrated by NPPF paragraph 28 (bullet point 3) and NWLLP Policy Ec13. Nor do I object to the first set of criteria, all of which have regard to national guidance. However, the implied requirement b) for new build development within the Limits of Development to be small scale appears to be wholly unjustified and unrealistic, especially as the major industrial estates to the east of the village are within the Limits of Development. I shall recommend the deletion of that item. **(PM5)**
- 4.20 I note that the NWLDC Regulation 16 response expresses concern about the definition of "small scale" within the policy. However, I consider that there is a danger in attempting to be precise and that, for this element of the policy, development management decisions should be made on a case by case basis such as, for example, when implementing NWLLP Policy S3(k)<sup>17</sup>.
- 4.21 Policy E3 supports and encourages actions aimed at maximising opportunities for local people to access jobs and meet the needs of the economy and which has regard to a core planning principle in national advice<sup>18</sup>. The policy would also generally conform with strategic local policies to minimise journey to work distances and enhance employment prospects.
- 4.22 Policy CC1 addresses climate change by seeking sustainable design and construction. The policy has regard to national guidance<sup>19</sup>. The policy also generally conforms with NWLLP Policy D1(5).
- 4.23 Therefore, overall, on the evidence before me, with the recommended modifications PM1, PM2, PM3, PM4 and PM5, I consider that the housing, employment and climate change policies of the E&BNP are in general conformity with the strategic policies of the NWLLP, have regard to national guidance, would contribute to the achievement of sustainable development and so would meet the Basic Conditions.

#### Topic (b) Shopping and Community Facilities (Policies SCF1, SCF2 and SCF3)

- 4.24 Policies SCF1 and SCF2 aim to safeguard existing shops and community facilities and support proposals for new shops or facilities or their enhancement. Both policies have regard to national guidance<sup>20</sup>. They also

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<sup>17</sup> NWLLP Policy S3 "(k) Small-scale employment generating development or farm diversification".

<sup>18</sup> NPPF: paragraph 17 bullet point 3.

<sup>19</sup> NPPF: paragraphs 93, 56 and 65.

<sup>20</sup> NPPF: paragraph 28 bullet point 4.

conform generally with Policy IF2 of the NWLLP. Policy SCF3 seeks the listing of assets of community value which, when listed, should have their longevity supported. This policy also has regard to national guidance and generally conforms with NWLLP Policy IF2<sup>21</sup>. Therefore, I consider that, in addition to having regard to national guidance and generally conforming with the adopted Local Plan, the policies for shopping and community facilities would contribute to the achievement of sustainable development and so would meet the Basic Conditions.

#### Topic (c) Environment and Heritage Assets (Policies NE1, NE2, NE3 and HBE1)

- 4.25 Policy NE1 defines two Local Green Spaces (LGS): Beveridge Lane Open Space and Penny Wakefield Community Woodland. The evidence in support of the designation is within Appendix 5 of the Plan (Environmental Inventory) and I consider it is sufficient to justify both sites as LGS. The 6.6 ha Penny Wakefield Community Woodland is located to the west of the recently built distribution warehouse and is on land defined in the NWLLP as Policy Ec3 Existing Employment Areas, where land will be retained for employment generating uses within Use Classes B1, B2 and B3. However, as I saw on my visit to the area, the land has been landscaped to help to screen the industrial estate from the built-up area of Ellistown. It is being operated as a community woodland and is secured by a S106 Agreement. Therefore, I consider there would be no conflict with the Local Plan designation. NWLDC did not claim there would be a conflict when I raised the issue in my request for further information<sup>22</sup>.
- 4.26 The policy would have regard to national guidance<sup>23</sup>. The NWLLP does not include a specific policy on LGS, but states that such designations will be considered as part of neighbourhood plans<sup>24</sup>. The designations will generally conform with objectives 1, 10 and 11 of the NWLLP and will form part of the green infrastructure, the benefits of which are listed in the Local Plan<sup>25</sup>.
- 4.27 In the Regulation 16 response, NWLDC sought clarification of what would constitute “very special circumstances”, the phrase used in Policy NE1. Paragraph 78 of NPPF states that the policy for managing development within a LGS should be consistent with policy for Green Belts, which uses the same phrase in paragraph 87. Such “very special circumstances” are not generally defined and can only be judged on a case by case basis.

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<sup>21</sup> NPPF: paragraph 70.

<sup>22</sup> Email dated 1 February 2019 in response to my question of 28 January 2019.

<sup>23</sup> NPPF: paragraph 76.

<sup>24</sup> NWLLP: paragraphs 10.5 and 10.6.

<sup>25</sup> NWLLP: paragraph 10.3 and 10.4.

- 4.28 Policy NE2 seeks to conserve, restore or enhance biodiversity and would generally conform with Policies EN1 and D1 of the NWLLP and have regard to national guidance<sup>26</sup>. However, I note that the Ellistown Tip is referred to in the policy as a site to be enhanced and that Schedule 4 of the S106 Agreement, completed as part of the permission to develop the South East Coalville Development Scheme, requires the developer to agree the specification of the biodiversity mitigation land. I agree that the emphasis on the Ellistown Tip within the policy may prejudice the deliverability of the Development Scheme. Other than the reference to the Ellistown Tip, no other sites are mentioned in the policy. Moreover, the terms of the policy are general rather than specific. Therefore, the reference should be deleted. **(PM6)** Furthermore, I agree that the sentence suggested in representations would add the flexibility sought in national guidance by mitigating unavoidable impacts<sup>27</sup>. **(PM7)**
- 4.29 Policy NE3 aims to encourage planting trees and hedgerows and to protect them. The policy has regard to national guidance<sup>28</sup> and generally conforms with NWLLP Policies En1(1) Nature Conservation and En3 The National Forest.
- 4.30 Policy HBE1 lists buildings and structures described in the Plan as non-designated heritage assets and identified on Figure 6. The list in the Plan is justified by evidence in Appendix 6. In the policy, it is expected that the historic and architectural interest of the buildings and structures and their settings would be conserved when considering proposals for development. The Regulation 16 response from NWLDC suggests that local heritage assets can only be identified by the local planning authority<sup>29</sup>. Therefore, I consider that the policy should be modified by the deletion of the phrases implying that the buildings and structures are the subject of such a definition. But the policy may still recognise their importance. **(PM8)** In addition, there is also a need for a balanced judgement such as advised in the NPPF for non-designated heritage assets<sup>30</sup>. I shall remedy that defect by a suggested modification. **(PM9)** The policy will then have regard to national guidance and generally conform with NWLLP Policy He1(4).
- 4.31 Accordingly, with the recommended modifications PM6, PM7, PM8 and PM9, I consider that the E&BNP policies for the environment and heritage assets (or important buildings) are in general conformity with the strategic policies of the NWLLP, have regard to national guidance, would contribute to the achievement of sustainable development and so would meet the Basic Conditions.

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<sup>26</sup> NPPF: paragraph 109.

<sup>27</sup> NPPF: paragraph 118.

<sup>28</sup> NPPF: paragraph 117.

<sup>29</sup> NPPF, Annex 2 Glossary: Heritage asset.

<sup>30</sup> NPPF: paragraph 135.

## Topic (d) Traffic and Transport (Policies GA1, GA2 and GA3)

- 4.32 Policy GA1 considers road safety and congestion. One of the aims of the policy is to minimise conflicts between traffic and pedestrians and this has regard to national advice<sup>31</sup> and generally conforms with NWLLP Policy IF4. However, the central paragraph of the policy, which explains how the Parish Council will work with other parties to achieve certain schemes is an aspiration or intention, rather than a policy, and I shall recommend the section is moved into the preceding written justification. **(PM10)**
- 4.33 Policy GA2 seeks to protect the provision of parking spaces when development is proposed and also requires funding in lieu of spaces where none are to be provided. The second part of the policy would only be applicable where highway safety is an issue and I shall modify it by the inclusion of an appropriate phrase. **(PM11)** The policy has regard to national guidance to improve road safety and generally conforms with the NWLLP.
- 4.34 The provision of new footpaths and the enhancement of those which already exist is provided for in Policy GA3. The policy has regard to national guidance<sup>32</sup> and generally conforms with the NWLLP place making objectives, which underpin Local Plan Policy D1.
- 4.35 Accordingly, with the recommended modifications PM10 and PM11, I consider that the E&BNP policies for traffic and transport are in general conformity with the strategic policies of the NWLLP, have regard to national guidance, would contribute to the achievement of sustainable development and so would meet the Basic Conditions.

## **5. Conclusions**

### *Summary*

- 5.1 The Ellistown and Battleflat Neighbourhood Plan has been duly prepared in compliance with the procedural requirements. My examination has investigated whether the Plan meets the Basic Conditions and other legal requirements for neighbourhood plans. I have had regard to all the responses made following consultation on the Neighbourhood Plan, and the evidence documents submitted with it.
- 5.2 I have made recommendations to modify a number of policies to ensure the Plan meets the Basic Conditions and other legal requirements. I recommend that the Plan, once modified, proceeds to referendum.

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<sup>31</sup> PPG Reference ID: 26-008-20140306.

<sup>32</sup> NPPF: paragraphs 35 and 74.

### *The Referendum and its Area*

- 5.3 I have considered whether or not the referendum area should be extended beyond the designated area to which the Plan relates. The Ellistown and Battleflat Neighbourhood Plan, as modified, has no policy which I consider significant enough to have an impact beyond the designated Neighbourhood Plan boundary, requiring the referendum to extend to areas beyond the boundary of the Plan.
- 5.4 I recommend that the boundary for the purposes of any future referendum on the Plan should be the boundary of the designated Neighbourhood Plan Area.

### *Overview*

- 5.5 In conducting the examination, I enjoyed reading the Plan and visiting the Ellistown area. The Plan is concise and thorough. The Consultation Statement and Basic Conditions Statement were extremely helpful. The Parish Council and the supporting Steering Group are to be commended for their efforts in producing the document which, incorporating the modifications I have recommended, will make a positive contribution to the development plan for Ellistown and Battleflat and will assist in creating sustainable development.

*Andrew Mead*

Examiner

## Appendix: Modifications

Proposed modification number (PM)	Plan reference	Modification
PM1	Page 17 Figure 2	Supplement Figure 2 with a map(s) showing the Limits of Development at the scale of Figure 4. This could be achieved by either one map covering the whole area or two separate Inset maps, one for the west and one for the east.
PM2	Policy S3 d)	Add: <b>"... trees and hedgerows, where possible. Where existing trees and hedgerows of good arboricultural, biodiversity and amenity value are removed, these should be replaced with others of at least equivalent landscape and ecological benefit."</b>
PM3	Policy S3 e)	Delete: "... and the wider area."
PM4 <sup>33</sup>	Policy E1	Rephrase first sentence to: <b>"There will be a presumption against the loss of commercial premises or land (Class B) which provides employment or future potential employment opportunities."</b>  Rephrase the final part of the second sentence to: <b>"... and as demonstrated through the results of a marketing campaign lasting for a continuous period of at least six months."</b>
PM5	Policy E2	Delete: "b) Small-scale new build development within the Limits to Development."
PM6	Policy NE2	Delete: "(especially Ellistown Tip)".

<sup>33</sup> This Report has been reissued on 28 March 2019 (original issue date 8 March 2019) to make an addition to **PM4**. This is not a substantive revision: it is effected to correctly implement the unamended terms of paragraph 4.18 of the Report.

PM7	Policy NE2	Add final sentence: <b>“Where this is unavoidable, harmful effects on sites of biodiversity importance should be minimised and suitable mitigation and enhancement should be included as part of the proposals.”</b>
PM8	Policy HBE1	Reword the first sentence as follows: <b>“Development proposals that affect the buildings and structures listed below, or their setting, will be expected to conserve the significant features which make them important.”</b>
PM9	Policy HBE1	Add the following sentence: <b>“In weighing applications that affect directly or indirectly a building or structure in the list below, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the building or structure.”</b>
PM10	Policy GA1	Move the second sentence of the policy into the preceding text of justification.
PM11	Policy GA2	Add to the second sentence: <b>“Where highway safety is an issue and</b> where it is not possible to provide car parking, etc...”.