

Malvern Town Council

Malvern Neighbourhood Development Plan

A report to Malvern Hills District Council of the Independent
Examination of the Malvern Neighbourhood Development Plan

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Overall Finding

This is the report of the Independent Examination of the Malvern Neighbourhood Development Plan. The plan area comprises the entire administrative area of Malvern Town Council within the Malvern Hills District Council area. The plan period is 2015-2030. The Neighbourhood Plan includes policies relating to the development and use of land. The Neighbourhood Plan does not allocate land for development.

This report finds that subject to specified modifications the Neighbourhood Plan meets the basic conditions and other requirements. It is recommended the Plan should proceed to a local referendum based on the plan area.

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”¹
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The Malvern Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Malvern Town Council (the Town Council). The draft plan has been submitted by the Town Council, a qualifying body able to prepare a neighbourhood plan, in respect of the Malvern Neighbourhood Area which was formally designated by Malvern Hills District Council (the District Council) on 22 August 2014. The Neighbourhood Plan has been produced by the Neighbourhood Plan Working Party made up of Town Councillors and the Town Clerk, supported by a number of Working Groups with volunteers from the local community.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, has been approved by the Town Council for submission of the plan and accompanying documents to the District Council. The District Council arranged a period of publication between 9 November 2018 and 21 December 2018 and subsequently submitted the Neighbourhood Plan to me for independent examination.

Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan.² The report makes recommendations to the

¹ Paragraph 183 National Planning Policy Framework (2012) (See paragraph 214 of the NPPF 2018 for an explanation why this Independent Examination is being undertaken in the context of the NPPF 2012)

² Paragraph 10 Schedule 4B Town and Country Planning Act 1990

District Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. The District Council will decide what action to take in response to the recommendations in this report.

6. The District Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Once a neighbourhood plan has been independently examined, and the decision taken to put the plan to a referendum, it must be taken into account when determining a planning application, in so far as the policies in the plan are material to the application³.
7. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will form part of the Development Plan and be given full weight in the determination of planning applications and decisions on planning appeals in the plan area⁴ unless the District Council subsequently decide the Neighbourhood Plan should not be 'made'. The Housing and Planning Act 2016 requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan⁵. The Framework is very clear that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted⁶.
8. I have been appointed by the District Council with the consent of the Town Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Town Council and the District Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Independent Examiner of Neighbourhood Plans. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years

³ Paragraph 216 of the National Planning Policy Framework 2012 explains full weight is not given at this stage

⁴ Section 3 Neighbourhood Planning Act 2017

⁵ Section 156 Housing and Planning Act 2016

⁶ Paragraph 198 National Planning Policy Framework 2012

professional planning experience and have held national positions and local authority Chief Planning Officer posts.

9. As independent examiner, I am required to produce this report and must recommend either:

- that the Neighbourhood Plan is submitted to a referendum, or
- that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
- that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.

10. I make my recommendation in this respect and in respect to any extension to the referendum area,⁷ in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.⁸

11. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.⁹ The Planning Practice Guidance (the Guidance) states *“it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.”*

12. The examiner has the ability to call a hearing for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary, I proceeded on the basis of written representations.

Basic Conditions and other Statutory Requirements

13. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.¹⁰ A neighbourhood plan meets the Basic Conditions if:

⁷ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁸ Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

⁹ Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

¹⁰ Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
- 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 2017.¹¹

14. As the final basic condition, on 28 December 2018, replaced a different basic condition that had previously been in place throughout the period of preparation of the Neighbourhood Plan I asked the District and Town Councils to jointly confirm the Neighbourhood Plan meets the new basic condition. On 21 December 2018 I received this confirmation.

15. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention Rights.¹² All of these matters are considered in the later sections of this report titled 'The Neighbourhood Plan taken as a whole' and 'The Neighbourhood Plan Policies'.

16. In addition to the Basic Conditions and Convention Rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.¹³ I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 (the

¹¹ This Basic Condition arises from the coming into force, on 28 December 2018, of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 whereby the Neighbourhood Planning Regulations 2012 are amended. This basic condition replaced a basic condition "the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects".

¹² The Convention Rights has the same meaning as in the Human Rights Act 1998

¹³ In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

Regulations) which are made pursuant to the powers given in those sections.

17. The Neighbourhood Plan relates to the area that was designated by the District Council as a neighbourhood area on 22 August 2014. A map of the Neighbourhood Plan boundary is included as Figure 1.1 of the Submission Version Plan. The Neighbourhood Plan designated area is coterminous with the Malvern Town Council boundary. The Neighbourhood Plan does not relate to more than one neighbourhood area,¹⁴ and no other neighbourhood development plan has been made for the neighbourhood area.¹⁵ All requirements relating to the plan area have been met.
18. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;¹⁶ and the Neighbourhood Plan does not include provision about excluded development.¹⁷ I am able to confirm that I am satisfied that each of these requirements has been met.
19. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.¹⁸ The front cover of the Submission Version Plan clearly states the plan period to be 2015-2030.
20. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.¹⁹ It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan, except where this arises as a result of my recommended modifications so that the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention Rights, and the other Statutory Requirements.
21. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include

¹⁴ Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

¹⁵ Section 38B (2) Planning and Compulsory Purchase Act 2004

¹⁶ Section 38A (2) Planning and Compulsory Purchase Act 2004

¹⁷ Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

¹⁸ Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

¹⁹ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the National Planning Policy Framework 2012

policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.

22. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans reflect thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.
23. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the Basic Conditions and the other requirements I have identified.²⁰

Documents

24. I have considered each of the following documents in so far as they have assisted me in determining whether the Neighbourhood Plan meets the Basic Conditions and other requirements:

- Malvern Neighbourhood Plan 2015-2030 Submission Version October 2018
- Malvern Submission Version Neighbourhood Plan Key Diagram
- Malvern Neighbourhood Plan 2015-2030 Basic Conditions Statement October 2018 [*In this report referred to as the Basic Conditions Statement*]
- Malvern Neighbourhood Plan 2015-2030 Consultation Statement October 2018 including Appendices 1.1 – 6.6 inclusive [*In this report referred to as the Consultation Statement*]
- Malvern Neighbourhood Plan 2015-2030 Sustainability Statement Submission Version (incorporating the Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Opinion October 2018, and updates available on the District Council website namely: District Council review of the HRA Screening Opinion in light of the Sweetman rulings dated 25 October 2018, and the District and Town Councils' response to the Independent Examiner relating to the replacement Basic Condition dated 21 December 2018
- Housing Needs Assessment Final Report AECOM February 2016

²⁰ See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

- Malvern Neighbourhood Plan 2015-2030 Evidence Base Report July 2016 Revised March 2017 Cass Associates
- Malvern Neighbourhood Plan information available on the Malvern Town Council Neighbourhood Plan website
- Malvern Heritage and Character Assessment AECOM November 2017
- Malvern Neighbourhood Plan 2015-2030 The Neighbourhood Area: Issues and Considerations June 2018
- Malvern's Neighbourhood Plan Proposed Neighbourhood Heritage Areas August 2018
- Malvern Neighbourhood Plan Visual Study Report Carly Tinkler October 2018 including Figures VS1 and VS2
- Malvern Neighbourhood Plan Proposed Local Green Space Sites October 2018
- Public Health England Local Health Report - Ward 2016: Chase Ward 2016
- Representations received during the Regulation 16 publicity period
- Correspondence between the Independent Examiner and the District and Town Councils, including the Town Council response (dated 18 January 2019) to the representations of other parties
- South Worcestershire Development Plan Adopted February 2016
- Strategic Policies in the South Worcestershire Development Plan for the purposes of neighbourhood planning document
- South Worcestershire Development Plan Review Issues and Options Consultation November 2018
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Permitted development rights for householders' technical guidance DCLG (June 2017) [*In this report referred to as the Permitted Development Guidance*]
- Planning Practice Guidance web-based resource MHCLG (first fully launched 6 March 2014 and subsequently updated) [*In this report referred to as the Guidance*]
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- The Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004 (as amended)
- The Localism Act 2011
- The Housing and Planning Act 2016
- The Neighbourhood Planning Act 2017 and Commencement Regulations 19 July 2017, 22 September 2017, and 15 January 2019
- The Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations. References to*

Regulation 14, Regulation 16 etc in this report refer to these Regulations].

- The Neighbourhood Planning (General) (Amendment) Regulations 2015
- The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016.
- The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

Consultation

25. The submitted Neighbourhood Plan is accompanied by a Consultation Statement which outlines the process undertaken in the preparation of the plan. In addition to detailing who was consulted and by what methods, it also provides a summary of comments received from local community members, and other consultees, and how these have been addressed in the Submission Plan. I highlight here a number of key stages of consultation undertaken in order to illustrate the approach adopted.

26. The Neighbourhood Plan Working Party comprising ten Town Councillors was set up in May 2014. The Working Party has been supported by a number of Working Groups with volunteers from the local community. The Working Groups have explored issues surrounding nine key topic themes. A dedicated 'Malvern's Future' website was established in March 2015. Throughout the Plan preparation process a variety of methods have been used to achieve publicity and obtain views from local people including public meetings; an open day event; a tour of neighbourhoods 'Local Focus Week'; a questionnaire issued to all households; a questionnaire issued to traders; a policy review event; specific consultation on proposed Neighbourhood Heritage Areas and on the Visual Study including drop-in events; use of posters and press releases; and meetings with key stakeholders.

27. Pre-submission consultation in accordance with Regulation 14 was undertaken in a 10-week period between 17 November 2017 and 26 January 2018. The consultation included a launch event; press release and leaflet; deposit of Plan documents at the library and Town Council offices; letters to groups and organisations; making the draft Plan available on the 'Malvern's Future' website; sending a summary document to all households; and an informal consultation with District

Council Officers. The representations arising from the consultation are summarised in Appendix 5.1 and Appendix 5.2 of the Consultation Statement where responses and changes made to the Neighbourhood Plan, are set out. The suggestions have, where considered appropriate, been reflected in a number of changes to the Plan that was approved by the Town Council, for submission to the District Council.

28. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 period of publication between 9 November 2018 and 21 December 2018. Representations from 70 different parties were submitted during the period of publication. I have been provided with copies of each of these representations. In preparing this report I have taken into consideration all of the representations submitted during the Regulation 16 period even though they may not be referred to in whole, or in part. Where representations relate to specific policies, I refer to these later in my report when considering the policy in question.
29. Worcestershire County Council has submitted comments relating to a variety of topics including education; ecology; energy; ultra-low emissions vehicles; water efficiency; climate change; waste and composting; and low carbon. I have referred to these comments when relevant to particular policies of the Neighbourhood Plan. Some suggestions are made for additional elements of policy. It is beyond my remit to recommend modifications in these respects.
30. The Environment Agency has commented as follows: *“We note that future growth and site allocations within the Neighbourhood Plan Area (NPA) have been established through the allocations in the South Worcester Development Plan (SWDP), therefore the MNP is not proposing any new housing allocations. We are currently working with the South Worcester Councils in helping inform the SWDP update, we have recently attended meetings in regard to the SWDP evidence base update - Strategic Flood Risk Assessment (SFRA) and Water Cycle Study (WCS). These are to be finalised in 2019, when these documents come out, you should ensure you utilise the information in the updated evidence base in relation to the MNP. Previously allocated sites, within the NPA, allocated in the SWDP may be updated to have found risk. We would only make substantive further comments on the plan if you were seeking to allocate sites in flood zone 3 and 2 (the latter being used as the 1% climate change extent perhaps). There are several ‘ordinary watercourses’ present in the NPA – some sites where*

a 'ordinary watercourse' is present, may be shown within Flood Zone 1, but may still be at risk from fluvial flooding, as some watercourses have not been modelled on our Flood Maps (Our Flood Maps primarily show flooding from Main Rivers, not ordinary watercourses, or un-modelled rivers, with a catchment of less than 3km²). Therefore such sites may require assessment as part of a detailed flood risk assessment. Such constraints are to be assessed and demonstrated as part of the evidence base within the SWDP evidence base review - SFRA and WCS i.e. to inform the sequential testing of sites and appropriate / safe development." These comments do not necessitate modification of the Neighbourhood Plan.

31. The representation of Network Rail includes support for two policies of the Neighbourhood Plan and important information relevant to development that will result in a material increase or significant change in the character of traffic using any level crossings in the Neighbourhood Area. These representations; the submissions of National Grid; and the general comments made by Sport England do not necessitate any modification of the Plan to meet the Basic Conditions. Where Sport England refer to specific policies, I have considered these later in my report.

32. The Malvern Hills Area of Outstanding Natural Beauty Partnership expresses support for policies of the Neighbourhood Plan which help to conserve and enhance the natural beauty of the AONB and the key features and qualities of the area which people value and enjoy so much. Four representations state general support for the Neighbourhood Plan with some references to individual policies and sections of the plan. A significant number of representations support Local Green Space designations, in particular in relation to Hayslan Fields. One representation refers to the lack of mention of the importance of the Malvern Theatres and the Three Counties Showground. Another representation offers general support for measures to improve provision for cycling, and another requests good standards of parking provision and road layouts. In a representation 'EngageMalvern' promote the establishment of non-profit voluntary charitable trusts for example a Community Land Trust, a Community Transport Trust, or a Community Social Trust, as a factor in building communities. The representation seeks fuller acknowledgement of the importance of developing the 'third' sector. It is beyond my role to recommend the Neighbourhood Plan should be modified to include additional matters or areas of policy. The submissions of the Canal and River Trust and The Coal Authority confirm they have no specific

comments to make²¹.

33. Highways England states its principal interest is in safeguarding the operation of the M5, approximately 11km to the east, and note the Neighbourhood Plan acknowledges the need to be in conformity with the South Worcestershire Development Plan. The representation refers to housing need assessment; levels of housing completions; and support of the Neighbourhood Plan for strategic developments. Highways England state it is not expected the Neighbourhood Plan will have significant impact on the Strategic Road Network.
34. Historic England is supportive of the vision and objectives of the Plan and commend the thorough approach that has been taken in compiling the evidence base and welcome the positive approach to the historic environment which is described as exemplary.
35. A representation on behalf of landowners objects to the designation of Hayslan Fields as Local Green Space. A representation on behalf of a company that controls land within the northwest of the Neighbourhood Area (land at Cales Farm) supports "*the proactive and positive approach to meeting future housing needs outlined in paragraph 4.4 of the MNP*" and proposals for review of the Neighbourhood Plan set out in paragraph 7.8. Another representation submitted on behalf of parties with a land interest in the strategic site allocated by South Worcestershire Development Plan Policy 56 welcomes the intention of the Town Council to work with stakeholders in plan delivery and requests examples of how there will be working with the house building industry to deliver high quality housing development. A further representation submitted on behalf of owners of land north of Malvern draws attention to the land as an area for future development which is being promoted through the review of the South Worcestershire Development Plan, and in particular identifies a site at Grit Lane that could deliver approximately 100 dwellings. It is beyond my role to consider the benefits or disbenefits of development proposals that are not included in the Neighbourhood Plan. It is also beyond my role to consider whether particular parcels of land put forward for development should be allocated in the Neighbourhood Plan. Where representations include comment on specific policies of the Neighbourhood Plan, I have considered these later in my report.
36. The District Council has submitted a substantial representation. This representation in large part relates to the policies of the

²¹ Later in my report I refer to comments made by Natural England in respect of environmental legislation

Neighbourhood Plan. I have taken the comments into account when considering the relevant policies. A number of the District Council representations propose changes to the Plan that are not necessary to meet the Basic Conditions or Convention Rights and are therefore beyond my remit. I have made reference to some of these matters in the annex to my report.

37. I provided the Town Council with an opportunity to comment on the Regulation 16 representations of other parties. I placed no obligation on the Town Council to offer any comments but such an opportunity can prove helpful where representations of other parties include matters that have not been raised earlier in the plan preparation process. On 18 January 2019 the Town Council responded to the opportunity to comment by setting out a statement in respect of some of the Regulation 16 representations. I have taken the Town Council response into account in preparing my report even though I may not have referred to every point made. The District Council has confirmed to me that the Regulation 16 representations and the Town Council response have been posted on their website.

38. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which:

- a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- b) explains how they were consulted;
- c) summarises the main issues and concerns raised by the persons consulted; and
- d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.²²

39. The Consultation Statement and Evidence Base include information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Working Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.

²² Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

The Neighbourhood Plan taken as a whole

40. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and Human Rights requirements; has regard to national policies and advice contained in guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the development plan for the area. Each of the plan policies is considered in turn in the section of my report that follows this. In considering all of these matters I have referred to the submission, background, and supporting documents, and copies of the representations and other material provided to me.

Consideration of Convention Rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and 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

41. The Basic Conditions Statement states *“The MNP, in terms of its preparation and content, has had regard to the fundamental rights and freedoms enshrined under the European Convention on Human Rights and it complies with the Human Rights Act 1998.”* I have considered the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).²³ I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. The Basic Conditions Statement states an Equality Impact Assessment has been undertaken in respect of the Neighbourhood Plan. Appendix 8.1 of the Basic Conditions Statement sets out a schedule of potential impacts on ‘protected characteristics’ and shows the policies of the Neighbourhood Plan will have a neutral or positive impact in respect of every protected characteristic. From my own examination, the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics as identified in the Equality Act 2010.

²³ The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

42. The objective of EU Directive 2001/42²⁴ is “to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.” The Neighbourhood Plan falls within the definition of ‘plans and programmes’²⁵ as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.²⁶
43. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Town Council, as the Qualifying Body, to submit to Malvern Hills District Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.
44. In September 2017 the District Council issued a Strategic Environmental Assessment Screening Opinion which states “Table 2 assesses the likelihood of significant environmental effects arising from the draft Malvern Neighbourhood Plan in its current form. In general, the policies contained within the draft Malvern Neighbourhood Plan are in-line with the strategy of the adopted SWDP, which has been subject to a Sustainability Appraisal incorporating a Strategic Environmental Assessment. The policies of the draft Malvern Neighbourhood Plan seek to avoid or minimise environmental effects through the provision of guidance on issues which are specific to the neighbourhood area. It is therefore likely that the draft Malvern Neighbourhood Plan will have, both directly and indirectly, a positive environmental impact rather than negative, by setting out guidance addressing how developers can minimise impacts on a number of environmental receptors. Based on the preceding screening assessment, it is considered that the draft Malvern Neighbourhood Plan does not require a full Strategic Environmental Assessment.” The Basic Conditions Statement includes confirmation that the Statutory Bodies have been consulted. I am satisfied the requirements regarding Strategic Environmental Assessment have been met.

²⁴ Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

²⁵ Defined in Article 2(a) of Directive 2001/42

²⁶ Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

45. In September 2017 the District Council issued a Habitats Regulations Assessment Screening Opinion which concludes “As a result of the above assessment, it is considered that the policies of the draft Malvern Neighbourhood Plan are in general conformity with those contained in the SWDP. With this in mind, alongside the SWDP AA and the fact that the draft Malvern Neighbourhood Plan does not deviate from the land allocations contained within the SWDP, it is concluded that the draft Malvern Neighbourhood Plan is unlikely to have a negative impact on any internationally designated wildlife sites and as such, the recommendation is made that a full AA is not required.” The Basic Conditions Statement states that Natural England concurs with this view.
46. The Draft Habitats Regulations Assessment Screening Opinion had been prepared by the District Council prior to the EU Court of Justice ruling in *People Over Wind and Sweetman v Coillte Teoranta*. (Judgement of the Court Seventh Chamber 12 April 2018) and the Court of Justice (Second Chamber) judgement of 25 July 2018 *Grace, Sweetman, and National Planning Appeals Board Ireland* (ECLI:EU:C2019:593). The second Judgement relates to how the conclusions of the Appropriate Assessment should be interpreted which in turn determines whether Article 6(3) or Article 6(4) of the Directive applies. The trigger point for the Judgement to apply is once the Screening Stage has concluded that Appropriate Assessment of a plan or project is required. Where an HRA Screening concludes that Appropriate Assessment of a Neighbourhood Plan is not required this second Judgement is not applicable.
47. The District Council has undertaken a review of the HRA Screening Opinion “in the light of the Sweetman rulings” that states “The District Council reviewed the HRA Screening Opinion for the Malvern Town Neighbourhood Plan in light of the judgement of the Court of Justice ruling in the case of ‘People over Wind, Peter Sweetman v Coillte Teoranta’ and the Court of Justice (Second Chamber) ruling in the case of *Grace, Sweetman, and National Planning Appeals Board Ireland*. There are no internationally designated wildlife sites located within the Malvern Town Neighbourhood Area. For the purposes of the HRA screening assessment, internationally designated wildlife sites that fall within 20km were considered. There are two sites identified within this range – Lyppard Grange Ponds SAC and Bredon Hill SAC which are approximately 11km north-east and 15km south-east of the Malvern Town Neighbourhood Area respectively. The HRA screening assessment does not seek to take account of any measures intended

to reduce or avoid any harmful effects of the Plan on any European site due to the fact that the Neighbourhood Plan does not propose any development sites and the distance of the Neighbourhood Area from internationally designated wildlife sites. In light of the above, the District Council consider that the HRA Screening Opinion for the Draft Malvern Town Neighbourhood Plan remains valid.”

48. I have earlier in my report referred to the replacement on 28 December 2018 of the basic condition relating to Habitats that had previously been in place throughout the period of preparation of the Neighbourhood Plan. The District and Town Councils have jointly confirmed the Neighbourhood Plan meets the new basic condition in the following terms *“Thank you for drawing our attention to the changing basic condition relating to the Conservation of Habitats and Species and Planning Regulations which will come into force on 28 December 2018. Officers from the District Council and Town Council have considered the changing condition and in our opinion the Malvern Town Neighbourhood Plan will meet this replacement basic condition without further actions in relation to the HRA Screening Opinion being necessary. The District Council has reviewed the HRA Screening Opinion in light of the Sweetman rulings and considers that the HRA Screening Opinion for the Malvern Town Neighbourhood Plan remains valid and that a HRA AA is not required. The reasons for this are: The distance of the Neighbourhood Area from internationally designated wildlife sites. There are no internationally designated wildlife sites located within the Malvern Town Neighbourhood Area. For the purposes of the HRA screening assessment, internationally designated wildlife sites that fall within 20km were considered. There are two sites identified within this range – Lyppard Grange Ponds SAC and Bredon Hill SAC which are approximately 11km north-east and 15km south-east of the Malvern Town Neighbourhood Area respectively. The HRA screening assessment does not seek to take account of any measures intended to reduce or avoid any harmful effects of the Plan on any European site, in part due to the fact that the Neighbourhood Plan does not propose any development sites. Natural England have confirmed that they do not consider the People over Wind judgement to be relevant to the Malvern Town Neighbourhood Plan because the HRA Screening Opinion does not rely on mitigation to in order to reach the conclusion of no likely significant effects. In relation to the replacement basic condition, our understanding is that the change will allow certain neighbourhood plans to progress to appropriate assessment and allow any mitigation measures needed to be fully considered. Since the HRA Screening Opinion for the Malvern*

Town Neighbourhood Plan does not rely on mitigation to reach the conclusion of no likely significant effects, the District Council and Town Council consider that the Malvern Town Neighbourhood Plan will meet this replacement basic condition without further actions being necessary.” I am satisfied with this response and I conclude the Neighbourhood Plan meets the requirements of the revised Basic Condition relating to Habitats Regulations.

49. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.

50. I conclude that the Neighbourhood Plan is compatible with the Convention Rights, and does not breach, and is otherwise compatible with, EU obligations. I also conclude the making of the Neighbourhood Plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

51. The Guidance states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The District Council as local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations:

- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).²⁷

Consideration whether having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan; and whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development

52. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of

²⁷ Planning Practice Guidance paragraph 080 Reference ID: 41-080-20150209

Local Plans²⁸ which requires plans to be “*consistent with national policy*”.

53. Lord Goldsmith has provided guidance²⁹ that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”

54. The Basic Conditions Statement includes, between paragraphs 5.8 and 5.54, a comprehensive statement how the Neighbourhood Plan has regard to components of the Framework. The Basic Conditions Statement also identifies those policies of the Neighbourhood Plan that align with the policy dimensions of the Framework. I am satisfied the Basic Conditions Statement demonstrates how the Neighbourhood Plan has regard to relevant identified components of the Framework.

55. The revised National Planning Policy Framework was published on 24 July 2018 and sets out the government’s planning policies for England and how these are expected to be applied. This revised Framework replaces the previous National Planning Policy Framework published in March 2012. Paragraph 214 of the revised Framework states “*The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted³⁰ 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.*” I have undertaken this Independent Examination of the Neighbourhood Plan in the context of the Framework published in March 2012.

56. The Neighbourhood Plan includes a positive vision for Malvern Town that refers to future development and growth of the town and includes economic dimensions and social components whilst also referring to

²⁸ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the National Planning Policy Framework 2012

²⁹ The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the House of Lords Grand Committee on 6 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

³⁰ Footnote 69 of the Revised Framework states that “*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.*”

environmental considerations. The vision is underpinned by 12 objectives relating to: retention of the spa town character and surrounding countryside; protection and enhancement of green infrastructure and landscape character; protection and enrichment of heritage assets; support for and encouragement of social facilities; improvement of infrastructure that contributes to wellbeing of individuals; facilitate increased tourism activity; facilitate movement; ensuring infrastructure and utilities keep pace with new development; facilitate economic development; ensure necessary retail and town centre facilities; encourage housing development to meet local needs and be of a necessary quality; and support sustainability. It is stated that the policies of the Neighbourhood Plan have been developed to ensure that the objectives and vision can be realised.

57. The Neighbourhood Plan includes, between paragraphs 6.4 and 6.58, a series of local projects and initiatives relating to: feasibility studies; transport; district centres; design and public realm; green infrastructure; community; non-designated heritage assets; neighbourhood design review panel; community infrastructure; assets of community value; friends of park groups for key green spaces; crematorium; town and district centre car parking; Spring Lane industrial estate; and sustainable transport routes. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The Guidance states, *“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.”* The acknowledgement in the Neighbourhood Plan of issues raised in consultation processes that do not have a direct relevance to land use planning is consistent with this guidance and represents good practice. The 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.”* The District Council has suggested it would be more appropriate to include Chapter 6 of the Neighbourhood Plan as an Appendix. The District Council also state *“The list of actions proposed by Malvern Town Council in paragraphs 6.4 to 6.59 is very ambitious. It is suggested that they are set out in an Appendix to the Neighbourhood Plan to clearly distinguish them from*

the land-use policies.” I am satisfied the approach adopted in the Neighbourhood Plan presenting the projects and aspirations in the plan delivery and implementation section adequately differentiates the community actions from the policies of the Plan and has sufficient regard for the Guidance.

58. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that the need to ‘*have regard to*’ national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.*”

59. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking.³¹ The Guidance states, “*This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions*”³².

60. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some

³¹ Paragraph 14 National Planning Policy Framework 2012

³² Planning Practice Guidance (Ref ID:41-072-20140306)

alternative plan would make a greater contribution to sustainable development.

61. The Framework states there are three dimensions to sustainable development: economic, social and environmental. The Basic Conditions Statement includes a statement that *“The MNP includes an overarching policy seeking to promote and achieve sustainable development throughout the NPA. Policy MSD1 ‘Promoting and achieving Sustainable Development’ provides the context for each of the 27 policies within the MNP and reflects the Plan’s 12 objectives.”* The Basic Conditions Statement confirms the ways in which the Neighbourhood Plan contributes to the achievement of sustainable development. A Sustainability Statement has been prepared as *“it was considered best practice that a statement should be produced to demonstrate how and why the draft MNP contributes to sustainable development.”* In preparing the Sustainability Statement the Town Council has used the same framework used to assess the SWDP. The tables used to present the findings of the appraisal identify sustainability benefits arising from every policy of the Neighbourhood Plan. The appraisal did not highlight any negative impacts on sustainability objectives.

62. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes are of an appropriate quality; will serve economic needs; will protect and enhance social facilities; and will protect important environmental features. In particular, I consider the Neighbourhood Plan seeks to:

- Designate seven Local Green Spaces, and protect identified Neighbourhood Open Spaces;
- Ensure that loss of woodland, trees or hedgerows is carefully controlled;
- Avoid harm to defined exceptional key views;
- Adopt a balanced approach to the protection and enhancement of non-designated heritage assets;
- Designate five Neighbourhood Heritage Areas in which development must respect their significance;
- Support new community and recreation facilities and establish criteria for loss of such facilities;
- Promote healthy communities;

- Ensure the design and accessibility of development is high quality;
- Require development to respect landscape and heritage character;
- Conditionally support microgeneration;
- Ensure car parking provision within the Town Centre and in District Centres is not diminished, and conditionally support new provision;
- Establish conditional support for a transport interchange at the Malvern Link Rail Station Opportunity Area;
- Require provision for electric vehicle charging points to serve new parking spaces;
- Support development of high-speed broadband infrastructure;
- Protect employment generation capacity at allocated employment land;
- Establish conditional support for new micro and small business development;
- Establish criteria for assessment of employment and non-employment development proposals within existing industrial estates and business parks;
- Establish conditional support for new town centre uses in identified town and district centres and neighbourhood parades;
- Establish criteria for support of change of use of shops in neighbourhood parades to other uses;
- Ensure housing schemes of more than five units meet local needs; and
- Establish criteria for support of new residential development both within and outside a defined Development Boundary.

63. Subject to my recommended modifications of the Submission Plan including those relating to specific policies, as set out later in this report, I find it is appropriate that the Neighbourhood Plan should be made having regard to national policies and advice contained in guidance issued by the Secretary of State. I have also found the Neighbourhood Plan contributes to the achievement of sustainable development.

Consideration whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

64. The Framework states that the ambition of a neighbourhood plan should “support the strategic development needs set out in Local Plans”.³³ “Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies”.³⁴

65. The Guidance states, “A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.”³⁵

66. In this independent examination, I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). Malvern Hills District Council has informed me that the Development Plan applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan comprises the South Worcestershire Development Plan adopted February 2016. The District Council has provided me with a document that identifies what are regarded by the Local Planning Authority as strategic policies for the purposes of neighbourhood planning. Allocation Policies SWDP 52, SWDP 53 and SWDP 56 have relevance to the neighbourhood area.

67. I agree that the policies identified by the District Council as strategic are indeed strategic but I regard Policy SWDP25 Landscape Character to also be strategic as this requires all development proposals to be appropriate and integrate with the character of their landscape setting. I have proceeded with my independent examination of the Neighbourhood Plan on the basis that the Development Plan strategic policies relevant to the Neighbourhood Plan are:

- SWDP1 Overarching Sustainable Development Principles
- SWDP2 Development Strategy and Settlement Hierarchy

³³ Paragraph 16 National Planning Policy Framework 2012

³⁴ Paragraph 184 National Planning Policy Framework 2012

³⁵ Planning Practice Guidance Paragraph 077 Reference ID: 41-077-20140306

- SWDP3 Employment, Housing and Retail Provision Requirement and Delivery
- SWDP4 Moving Around South Worcestershire
- SWDP5 Green Infrastructure
- SWDP6 Historic Environment
- SWDP7 Infrastructure
- SWDP8 Providing the Right Land and Buildings for Jobs
- SWDP9 Creating and Sustaining Vibrant Centres
- SWDP10 Protection and Promotion of Centres and Local Shops
- SWDP12 Employment in Rural Areas
- SWDP13 Effective Use of Land
- SWDP14 Market Housing Mix
- SWDP15 Meeting Affordable Housing Needs
- SWDP17 Travellers and Travelling Showpeople
- SWDP21 Design
- SWDP22 Biodiversity and Geodiversity
- SWDP23 The Cotswolds and Malvern Hills Areas of Outstanding Natural Beauty (AONB)
- SWDP25 Landscape Character
- SWDP27 Renewable and Low Carbon Energy
- SWDP28 Management of Flood Risk
- SWDP52 Malvern Allocations
- SWDP53 Malvern Technology Centre (QinetiQ)
- SWDP56 Development at North-East Malvern

68. Malvern Hills District Council is working with Worcester City Council and Wychavon District Council to prepare a South Worcestershire Development Plan Review. This work has proceeded to the stage where an Issues and Options Consultation document has been prepared in November 2018.

69. The Neighbourhood Plan can proceed ahead of preparation of the South Worcestershire Development Plan Review. The Guidance states: *“Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan. A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic*

conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- the emerging neighbourhood plan*
- the emerging Local Plan*
- the adopted development plan*

with appropriate regard to national policy and guidance. The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan. Neighbourhood plans should consider providing indicative delivery timetables and allocating reserve sites to ensure that emerging evidence of housing need is addressed. This can help minimise potential conflicts and ensure that policies in the neighbourhood plan are not overridden by a new Local Plan.”³⁶

70. I am mindful of the fact that should there ultimately be any conflict between the Neighbourhood Plan, and the emerging South Worcestershire Development Plan Review when it is adopted; the matter will be resolved in favour of the plan most recently becoming part of the Development Plan, however the Guidance is clear in that potential conflicts should be minimised.

71. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. The emerging South Worcestershire Development Plan Review is not part of the Development Plan and this requirement does not apply in respect of that. Emerging planning policy is subject to change

³⁶ Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20160211

as plan preparation work proceeds. The Guidance states *“Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood areas. They can be developed before or at the same time as the local planning authority is producing its Local Plan”*. In *BDW Trading Limited, Wainholmes Developments Ltd v Cheshire West & Chester BC* [2014] EWHC1470 (Admin) it was held that the only statutory requirement imposed by basic condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted development plan as a whole.

72. In considering a now-repealed provision that *“a local plan shall be in general conformity with the structure plan”* the Court of Appeal stated *“the adjective ‘general’ is there to introduce a degree of flexibility.”*³⁷ The use of ‘general’ allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

73. The Guidance states, *“When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:*

- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;*
- *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;*
- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy;*
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.”*³⁸

My approach to the examination of the Neighbourhood Plan Policies has been in accordance with this guidance.

74. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

³⁷ *Persimmon Homes v. Stevenage BC* the Court of Appeal [2006] 1 P &CR 31

³⁸ Planning Practice Guidance (ID ref: 41-074 201 40306)

has been addressed through examination of the plan as a whole and each of the plan policies below. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

The Neighbourhood Plan Policies

75. The Neighbourhood Plan includes 28 policies as follows:

Policy MSD1 Promoting and Achieving Sustainable Development

Policy MG1 Local Green Space

Policy MG2 Neighbourhood Open Space

Policy MG3 Woodland, Trees and Hedgerows

Policy MV1 Key Views

Policy MHE1 Non-Designated Heritage Assets

Policy MHE2 Neighbourhood Heritage Areas

Policy MC1 Community Facilities

Policy MC2 Healthy Communities

Policy MD1 Building Design and Accessibility

Policy MD2 Landscaping and Public Realm

Policy MD3 Promoting Sustainable Design

Policy MD4 Microgeneration

Policy MT1 Transport and Development

Policy MT2 Town Centre and District Centres Car Parking

Policy MT3 Malvern Link Rail Station Opportunity Area

Policy MT4 Electric Vehicle Charging Points

Policy MI1 Development and Infrastructure

Policy MI2 High Quality Communications Infrastructure

Policy ME1 Protecting Employment Allocations

Policy ME2 Provision of Micro and Small Business Development

Policy ME3 Employment Development within Existing Industrial Estates and Business Parks

Policy ME4 Non-Employment Development within Existing Industrial Estates and Business Parks

Policy MR1 Town and District Centres

Policy MR2 Neighbourhood Parades

Policy MH1 Housing Mix

Policy MH2 New Residential Development within the Development Boundary

Policy MH3 New Residential Development beyond the Development Boundary

76. The Framework states *“Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.”* *“Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”*³⁹

77. The Guidance 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.”*⁴⁰

78. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence*

³⁹ Paragraphs 184 and 185 National Planning Policy Framework 2012

⁴⁰ Planning Practice Guidance Paragraph 041 Reference ID: 41-041-20140306

should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan".⁴¹

79. *"A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004).*"⁴²

80. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is 'made' they will be utilised in the determination of planning applications and appeals, I have examined each policy individually in turn. I have considered any inter-relationships between policies where these are relevant to my remit.

Policy MSD1 Promoting and Achieving Sustainable Development

81. This policy seeks to establish support for development proposals that promote and achieve sustainable development in accordance with the vision, objectives, strategy, and policies of the Neighbourhood Plan.

82. One representation supports the policy but suggests *"that the wording of the policy is modified slightly to ensure that the policy will support the implementation of objectives of the Framework"*. Another representation suggests that the first sentence is amended *to reflect para 11(c) of the NPPF "...without delay..." rather than simply "...will be supported."* It is not necessary for the policy to include specific reference to the Framework, or to components of the Framework.

83. In a representation the District Council states *"It is not clear how proposals should demonstrate that they have addressed the objectives and policies and it is also considered that it may not be appropriate for all development proposals to do this. It is therefore suggested that the second sentence in Policy MSD1 could be deleted"*.

⁴¹ Planning Practice Guidance Paragraph 040 Reference ID: 41-040-20160211

⁴² Planning Practice Guidance Paragraph 004 Reference ID: 41-004-20140306

84. The Town Council has commented on the representation of other parties stating *“Proposals should demonstrate they meet the requirements of relevant policies within the MNP. In so doing they would help to meet the requirements of the plan’s objectives which seek to promote and achieve sustainable development”* and *“It is considered that the current wording of the policy is in general conformity with the NPPF.”*
85. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include *‘information to accompany the application as specified by the local planning authority on their local list of information requirements’*. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain *‘relevant, necessary and material’*. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The second sentence of the policy is seeking to establish information requirements relating to all development proposals and is outside the statutory framework relating to local lists of information to be submitted in support of planning applications. The second sentence of the policy also mixes plural and singular forms. I have recommended a modification so that the policy has sufficient regard for national policy and provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
86. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the

Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

87. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; ensuring the vitality of town centres; supporting a prosperous rural economy; promoting sustainable transport; supporting high quality communications infrastructure; delivering a wide choice of high-quality homes; requiring good design; promoting healthy communities; meeting the challenge of climate change and flooding; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 1:
In Policy MSD1 delete the second sentence**

Policy MG1 Local Green Space

88. This policy seeks to establish that seven named areas should each be designated as a Local Green Space. I have visited each of these areas.
89. A large proportion of representations made on the Neighbourhood Plan relate to the proposed designation of Hayslan Fields as a Local Green Space. Representations on behalf of the Pickersleigh Residents' Group, and a significant number of other representations submitted by individuals, support the designation of Hayslan Fields as Local Green Space with reference to current recreational use of footpaths away from traffic, and health and wellness benefits. One representation states the Pickersleigh area is densely populated and refers to development near the Grove School. Another representation refers to use as a safe corridor for children walking to and from the Grove School. Another representation refers to use for recreational activities by their family for some 50 years. A further representation refers to the role of the fields as a buffer between Great Malvern and Barnards Green/Malvern Link. Reference is also made in representations to: past planning applications; the SWDP Inspector's Report; a positive independent landscape report; an appeal decision in 2016; a call for sites December 2018; and the role of the area as part of a wider accessibility and wildlife Green Corridor in the Malvern

AONB context. Another representation refers to the fields as a green pocket when viewed from The Hills. One representation states the fields are a treasured community asset enjoyed by people of all ages. Another representation refers to spectacular views from the fields; habitat provided for a wide variety of birds and wildlife; and a belief the fields provide drainage from the hills reducing the risk of flooding in the area. Another representation states private ownership does not negate value as a green asset to the community. One representation identifies the value of the fields to those unable to travel to other areas. Two other representations refer to the condition of the surface of the fields, in particular deep ploughing. Two further representations, in addition to supporting the Hayslan Fields proposed designation, also include support for designation of other areas as Local Green Space. One of these representations specifically refers to Victoria Park, and Priory Park.

90. A representation on behalf of the owners of Hayslan Fields states *“Barwood Land objects to Policy MG1 of the draft NP and specifically the designation of Hayslan Fields site as LGS for those reasons explained below.”* The representation sets out an explanation for each of the following objections to the designation:

“Reason 1: The proposed LGS designation at the Site does not meet all the requirements of paragraph 77/ 100 of the NPPF in full;

Reason 2: The BCS fails to include a robust assessment of Policy MG1 against prevailing national planning policy and guidance;

Reason 3: Policy MG1 does not accord with the strategic objectives of the Development Plan and could preclude the delivery of sustainable development;

Reason 4: No evidence has been provided to support the LGS of the Site;

Reason 5: The land is subject to an existing Green Space designation and the LGS designation is therefore unnecessary;

Reason 6: Lack of notification regarding the proposed LGS.”

The representation also includes the following summary *“This Section clearly demonstrates that the proposed LGS at the Site fails to comply with the requirements of paragraph 100 of the NPPF and in doing so, Policy MG1 fails to meet ‘basic condition (a)’. It has also highlighted that the Town Council has provided no evidence to support its designation, with no assessment whatsoever of the proposed draft NP policies against national planning policy and guidance within the BCS. The designation is also unnecessary as the land is covered by an existing Green Space designation in the adopted SWDP. For those reasons explained above, the proposed LGS ‘Hayslan Fields’ must be*

deleted before the draft NP proceeds to a referendum. The Town Council must provide compelling evidence to support the designation of LGSs and has failed to do so to date”.

91. Sport England state *“whilst it is understood that the intention of the policy is to protect the identified sites through the requirement to demonstrate very special circumstances for any proposed harm to a Local Green Space, in so far as the sites listed include playing fields, this is not consistent with para 97 of the NPPF which sets out the relevant tests to justify loss of open space, sports and recreational buildings or land. The wording of the policy should therefore be revised to address para 97 of the NPPF”.* Whilst paragraph 74 of the Framework (paragraph 97 of the 2018 Framework) sets out circumstances where existing open space, sports and recreational buildings including playing fields may be built on, a designated Local Green Space is subject to the policy regime set out in paragraphs 76 to 78 of the Framework.
92. The District Council representation includes *“The allocation of each Local Green Space within the policy therefore requires robust justification. Appendix 5.2 (on page 110) and the supporting document, ‘Proposed Local Green Space Sites’, set out how the proposed Local Green Spaces meet the criteria in the Framework”* and *“Criterion 2 refers to ‘disproportionate additions.’ It is considered that this is an ambiguous term and greater clarity in terms of whether it relates to size or numbers of buildings would be helpful”* and *“Criterion 3 refers to ‘not materially large’. It is not clear on what basis a decision maker would determine what is materially larger. For example, would it be 10%, 20%, 30%?”*
93. The Town Council comments on the representations of other parties includes *“Malvern Town Council believes that the evidence to support the designation of Hayslan Fields is included with the ‘Proposed Local Green Space Sites’ Report (10/09/18) submitted with the neighbourhood plan. This report, in respect of Hayslan Fields refers to, at Appendix D, the Inspector’s appeal decision ref. APP/J1860/W/15/3016539 (dated 26 July 2016) in relation to an outline planning application for residential development of up to 150 dwellings on Hayslan Fields. It is argued that the Inspector in deciding this appeal examined and assessed the value and contribution of Hayslan Fields to the local community and local area. In this regard the Inspector would have had substantial information before them in the form of written submissions and oral evidence at the Public Inquiry*

to arrive at their decision on these matters.” The Town Council also set out references from the Inspector’s decision letter which they consider to be relevant to the requirements for Local Green Space designation.

94. Designation of Local Green Space can only follow identification of the land concerned. For a designation with important implications relating to development potential it is essential that precise definition is achieved. The proposed Local Green Spaces are presented on Figures 5.1.1 to 5.1.7 within Appendix 5.2 at a scale that is sufficient to identify the precise boundaries of each Local Green Space proposed for designation. Whilst I recognise electronic versions of the Key Diagram can be expanded in order to examine particular areas this is not an option when viewing a paper copy of the Key Diagram and is in any case less convenient than viewing Figures 5.1.1 to 5.1.7. I recommend a modification so that Policy MG1 refers to these detailed maps. This will ensure that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
95. The wording of the policy does not adequately reflect the terms of the designation of Local Green Spaces set out in paragraph 76 of the Framework where it is stated communities will be able to rule out development other than in very special circumstances. The Neighbourhood Plan is not able to designate Local Green Spaces on terms that are different to those set out in the Framework.
96. I have noted the policy sets out examples of development that could be considered appropriate on a Local Green Space. The term “*could include*” is imprecise. I have given consideration to the possibility of the policy including a full explanation of “*very special circumstances*”. Such circumstances may be that development is proposed that would clearly enhance the Local Green Space for the purposes for which it was designated, or proposals are made for essential infrastructure that cannot be located elsewhere. I have concluded such explanation would necessarily be incomplete and that decision makers must rely on paragraph 78 of the Framework that states “*local policy for managing development within a Local Green Space will be consistent with policy for Green Belts*” and the part of the Framework that relates to ‘Protecting Green Belt land’, in particular paragraphs 87 to 91 inclusive. The terms “*considered appropriate to its function*”, “*appropriate facilities*”, “*disproportionate*”, and “*unacceptable*” are imprecise. I have recommended a modification in these respects.

97. The Framework states *“Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them” and “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.”*

98. In respect of the areas intended for designation as Local Green Space I find the Local Green Space designations are being made when a neighbourhood plan is being prepared, and I have seen nothing to suggest the designations are not capable of enduring beyond the end of the plan period. The intended designations, which are being made in the context of the adopted South Worcestershire Development Plan, have regard to the local planning of sustainable development contributing to the promotion of healthy communities, and conserving and enhancing the natural environment, as set out in the Framework.

99. The Framework states that Local Green Space 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.”*⁴³

100. With respect to the final criterion a representation states the proposed designation at Hayslan Fields is considered to be an extensive tract of land. The Guidance states *“There are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed. However, paragraph 100 (paragraph 77 NPPF 2012) of the National Planning Policy Framework is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land. Consequently, blanket designation of open countryside adjacent to settlements will not be appropriate. In*

⁴³ Paragraph 77 National Planning Policy Framework 2012

particular, designation should not be proposed as a 'back door' way to try to achieve what would amount to a new area of Green Belt by another name".⁴⁴ The Proposed Local Green Space Sites Report states the area of the proposed Hayslan Fields designation is 8.5 hectares. I do not regard this to be an extensive tract of land. I find that in respect of each of the intended Local Green Spaces the designation relates to green space that is in reasonably close proximity to the community it serves, is local in character, and is not an extensive tract of land.

101. The 'Proposed Local Green Space Sites' report dated October 2018 is an example of good practice in that evidence that the areas proposed for designation as Local Green Space are *"demonstrably special to a local community and hold a particular local significance"* is well structured presenting the areas concerned as valued assets. The 'Proposed Local Green Space Sites' report provides sufficient evidence for me to conclude that each of the areas proposed for designation as Local Green Space is demonstrably special to a local community and holds a particular local significance. A number of Regulation 16 representations confirm this view with respect to the Hayslan Fields designation.

102. The representation on behalf of the landowners objecting to designation of Hayslan Fields states access is limited to public rights of way. The Guidance states land can be considered for designation even if there is no public access. The representation objecting to designation of Hayslan Fields also states *"Savills has been advised that the landowners, and Barwood Land, have not been notified of the proposed LGS at the Site until a very late stage in the preparation of the Neighbourhood Plan – Malvern St James' School was only notified in September 2018 when the Visual Study was consulted upon and Barwood Land was only consulted when this consultation was published. As a result, Barwood Land have had limited time to prepare their representations and no opportunity to discuss this with the Neighbourhood Plan Group. The Town Council has therefore failed to follow PPG advice and so the application of Policy MG1 of the draft NP fails to meet 'basic condition (a)' for this reason."* The Guidance states *"A Local Green Space does not need to be in public ownership. However, the local planning authority (in the case of local plan making) or the qualifying body (in the case of neighbourhood plan making) should contact landowners at an early stage about proposals to*

⁴⁴ National Planning Policy Guidance Paragraph: 015 Reference ID: 37-015-20140306

designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan".⁴⁵ On 31 December 2018 I wrote to the District Council and Town Council to request clarification of contact by the Town Council, during the period of Neighbourhood Plan preparation, with landowners regarding the proposed designation of Hayslan Fields as Local Green Space. The joint response of the District and Town Councils dated 17 January 2019 states "*The Town Council consulted Malvern St James during the following stages of the preparation of the Neighbourhood Plan: • Policy review event at Lyttelton Rooms - 18 July 2017 • Regulation 14 draft plan - 17 November 2017 - 26 January 2018 • Visual Study - 11 September - 9 October 2018. At all three of the above stages Hayslan Fields was proposed as a Local Green Space*". The comments of the Town Council on representations of other parties also draw attention to the fact that the proposed designation of Hayslan Fields as Local Green Space was raised in the planning appeal relating to the site. I have earlier in my report referred to public consultation undertaken during the plan preparation process. I have noted particular reference to the proposals to designate Hayslan Fields as a Local Green Space in the Regulation 14 publicity. I am satisfied that having regard to the Guidance it is appropriate that Hayslan Fields should be designated as a Local Green Space.

103. I find that the areas proposed as Local Green Space are suitable for designation and have regard for paragraphs 76 and 77 of the Framework concerned with the identification and designation of Local Green Space.
104. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
105. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting healthy communities. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 2:

⁴⁵ National Planning Policy Guidance Paragraph: 019 Reference ID: 37-019-20140306

Replace Policy MG1 with “The following areas (identified on the Key Diagram, Figure 5.1, and on Figures 5.1.1 to 5.1.7) are designated as Local Green Space where development will be ruled out other than in very special circumstances:

**Malvern Vale Community Centre Playing Fields, Swinyard Road;
Lower Howsell Road playing fields, Lower Howsell Road;
Victoria Park, Pickersleigh Avenue;
Dukes Meadow, Pickersleigh Road;
Hayslan Fields, Hayslan Road;
Priory Park, Priory Road; and
Rosebank Gardens, Wells Road.”**

Policy MG2 Neighbourhood Open Space

106. This policy seeks to establish that proposals for development on identified Neighbourhood Open Space sites will be supported where relevant stated criteria are met.

107. The District Council representation includes *“The status of Neighbourhood Open Spaces, and their relationship between Open Space (as defined in the Framework) and Green Spaces (as identified in SWDP 38) is unclear. It is considered that the boundaries of the Neighbourhood Open Spaces need to be more clearly mapped. The District Council has not assessed the 84 sites proposed as Neighbourhood Open Spaces but note that some sites are not public open space, for example, Malvern RUFC. It is considered that criteria 1 and 2 in Policy MG2 are consistent with the criteria in paragraph 74 of the Framework (paragraph 97 of the revised Framework). In relation to criterion 3, it is considered that the policy cannot require a visual improvement of a nearby Neighbourhood Open Space unless there is a planning obligation that links the sites and the improvement is required as a mitigation of the development. Criterion 3ii refers to providing an ‘overall benefit’ to the character of the local area. It is not clear what kind of benefit the policy refers to. Presumably this is visual benefit rather than community benefit? It is considered that criteria 4 in MG2 is more onerous than the Framework and may not be achievable. Also, some of the Neighbourhood Open Spaces may not have links to other areas, in which case they cannot retain the link. Paragraph 5.2.5 says that a number of the larger Neighbourhood Open Spaces are designated as Green Space for the purposes of SWDP 38, but that Policy MG2 also captures smaller amenity spaces and play areas which are considered important locally and which are not protected by SWDP 38. It is not clear which Neighbourhood Open Spaces are*

designated as Green Spaces under SWDP 38 or which are additional open spaces. The relationship between Policy MG2 and SWDP 38 is therefore unclear. It is considered that Policy MG2A, which requires 4 criteria to be met would be more onerous than SWDP 38B (Green Space) which requires criteria i, ii or iii to be met. Part B of Policy MG2 proposes that the provision of green space and outdoor community uses in new development should be in accordance with the standards set out in SWDP 39. It is questioned whether Part B of the policy is necessary. It is suggested that it would be helpful if the Reasoned Justification acknowledged the South Worcestershire Playing Pitch Strategy 2015 - 2030 (reference provided) and the emerging Public Open Space Assessment to 2041.”

108. Sport England states *“In respect of MG2, whilst the policy wording addresses parts a) and b) of paragraph 97 it does not address part c) in respect of the development of alternative sports and recreation facilities, the benefits of which clearly outweigh the loss. The policy should therefore be amended to address this point. The reasoned justification should make reference to the evidence in the South Worcestershire Playing Pitch Strategy and Malvern Hills District Sport and Leisure Strategy which are relevant to the application of policies MG1 and MG2 in so far as development affects existing sports and recreational facilities including playing fields, as this provides the evidence referred to in paragraph 96 of the NPPF. The existing PPS was adopted in 2015 covers the plan period until 2030, and therefore provides an analysis that considers the needs for playing pitches to address the planned housing growth in the existing adopted South Worcestershire Development Plan for that plan period. The adopted Malvern Hills District Sport and Leisure Strategy covers the period from 2014 until 2024 and is also relevant”.*

109. Another representation states *“Having considered the wording of the policy Gladman consider that there is a contradiction between parts A1 and A2. If it was determined there was a surplus of open space provision in the area it is unclear why development would be expected to provide an equivalent or better provision in terms of quantity. This could easily be remedied with the inclusion of the word ‘or’ between relevant parts of the policy.”* I agree this modification is necessary to avoid an internal contradiction.

110. The Town Council comments on the representations of other parties includes an explanation the policy complements Policy SWDP38 by picking up incidental open spaces too small to include in the higher-level plan. The Town Council also suggests an additional

criterion; however, this would merely repeat national policy which is unnecessary.

111. I am satisfied the Key Diagram, Figure 5.2, and listing in Appendix 5.3 are sufficient for the purposes of the policy, namely to identify existing facilities. Part A2 of the policy refers to equivalent or better provision. It is not necessary for the policy to refer to specific reports. On the first occasion the term “*where relevant*” is used it not only introduces uncertainty but also results in the policy not having sufficient regard for national policy set out in paragraph 74 of the Framework. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework, and so that the policy has sufficient regard for national policy.

112. I consider compensatory measures referred to in part A3ii) of the policy may be able to be achieved through a legal agreement, however the term “*overall benefit*” is imprecise. The term “*equivalent or better location relative to the existing site*” seeks to expand on the term “*suitable location*” in the Framework but is imprecise. The term “*retain, where relevant*” in Part A4 of the policy introduces uncertainty and the term “*integrity*” is imprecise. The Town Council comments on the representations of other parties includes “*Part B of the policy is included for completeness...*”. There is no requirement for completeness. Part B of the policy is unnecessary in that it does not add any additional level of detail, nor introduce any distinct local approach, to that set out in the SWDP, in particular non-strategic policy SWDP38. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

113. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

114. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting healthy communities, and

conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 3:

In Policy MG2

- in part A delete “, where relevant,”
- in part A1 delete “there is a surplus of open space provision in the area” and insert “that any net loss of open space is surplus to requirements; or”
- in part A2 delete “relative to” and insert “for users of”
- in part A3 delete “an overall” and insert “a”, and delete “which will” and insert “that may”
- renumber parts A1 and A2 as A1a) and A1b)
- renumber parts A3i) and A3ii) as A2a) and A2b)
- replace part A4 with “3. They do not diminish the connectivity of the local network of Green Infrastructure”
- delete part B

Policy MG3 Woodland, Trees and Hedgerows

115. This policy seeks to establish criteria for the loss of woodland, trees and hedgerows, and in the case of loss to require compensatory measures.

116. One representation refers to the importance of woodland, trees and hedgerows in their contribution to street scene in softening the built environment. Malvern Community Forest recommend inclusion of additional aspects of policy. Malvern Community Forest recommend use of the term ‘appropriate’ rather than ‘like-for-like’; reference to the preferred location for replacement planting; and use of different terminology.

117. Another representation states “*Policy MG3, as drafted, is not in general conformity with the SWDP, specifically Policy SWDP22, and consequently does not meet the Basic Conditions 2(e). As drafted the wording could be interpreted as meaning that all trees and hedgerows, regardless of value, quality or significance, would be expected to be replaced in all instances. If so, this goes beyond the provisions and remit of the development plan, in particular Policy SWDP2 (criterion E), which requires compensatory provision, “...commensurate with the ecological/ geological value of the site...” Furthermore, plans should also distinguish between internationally, nationally, and locally designated sites, in line with para 171 of the NPPF. As presently*

drafted, it could be construed that the MNP seeks to apply a blanket protection contrary to the development plan and national policy, which ignores situations where it is acceptable and/or appropriate to remove or reduce the coverage of trees and/or hedgerows for sound planning reasons in order to facilitate appropriate development. It is acknowledged that the reasoned justification does refer to "...trees, woodlands and hedgerows of local value..." at para 5.2.9 of the MNP, but this is not made sufficiently explicit in the policy."

118. Worcestershire County Council states *"The Neighbourhood Plan articulates protection of woodland, trees and hedgerows which is fully supported. The principle of 'no net loss' and 'net gain' of woodlands and trees through compensatory measures is welcomed. However, the caveat 'of local significance' appears too open to interpretation. The policy does not address aged trees nor the additional protection afforded to them through the National Planning Policy Framework1 (NPPF) paragraph 175.c. Similarly, net gain 'to the overall quality of the environment' is equally capable of interpretation in a number of different ways, not necessarily addressing the net reduction in tree canopy cover (nor any associated change to street or townscape character) nor loss of any ecological function"*.

119. In a representation the District Council states *"Paragraph 109 of the Framework (paragraph 170 of the revised Framework) says that the planning system should minimise impacts on biodiversity and provide net gains in biodiversity where possible. To provide some clarity about the trees and hedgerows that the policy applies to, the Reasoned Justifications makes specific reference to the hedgerows defined within the Hedgerows Regulation 1997 and trees covered by the TPO of the T &CP Act 1990 and the T&CP (Tree Preservation) (England) Regulations 2012. The Reasoned Justification helpfully makes the link between Policy MG3 and SWDP 22C and D. There are, however, aspects of Policy MG3 that require clarification if the policy is to be applied consistently and with confidence by decision makers. The first paragraph of the Policy MG3 refers to a 'net gain to the overall quality of the environment'. How is 'net gain' to be measured? Is it gain in terms of visual improvement or perhaps increased number of trees? The second paragraph of Policy MG3 refers to replacement trees and hedgerows on a 'like-for-like' basis. This would imply that leylandii be replaced by leylandii, 100-year-old oaks should be replaced by 100-year-old oaks etc. Presumably, this is not what is intended. The third paragraph implies that where trees and hedgerows are not to be retained on site they should be replaced on another*

landowner's site and that this be secured by planning condition or legal agreement. It is considered that this would be contrary to national planning policy and would not meet the tests associated with CIL compliance."

120. The Town Council comments on the representations of other parties includes *"The rationale for the third paragraph is to ensure that the NPA retains its overall stock of trees and hedgerows. If the development site cannot accommodate all of the replacement planting on site then the proportion that can't should be accommodated elsewhere."*

121. It is beyond my remit to recommend additional aspects of policy are included. The policy includes the term *"will not be allowed"*. It is not appropriate for a policy to indicate that proposals will be permitted or not permitted as all planning applications *"must be determined in accordance with the development plan, unless material considerations indicate otherwise"*.⁴⁶ All material considerations will not be known until the time of determination of a planning proposal. The term *"trees of local significance"* is imprecise and does not reflect national policy in the Framework which refers to *"aged or veteran trees"*. The policy includes provision relating to hedgerows. The Hedgerows Regulations 1997 establish a balanced regime to protect hedgerows in specified locations but exclude any hedgerow which is within, or borders, a domestic garden. It is appropriate for the Neighbourhood Plan to seek to introduce an additional regime of protection to apply in the context of development proposals, however the term *"significant lengths"* is imprecise. The term *"a net gain to the overall quality of the environment"* is imprecise. The term *"like-for-like basis"* does not have regard for paragraph 173 of the Framework which requires plans to be deliverable and pay careful attention to viability. The policy assumes a *"wider planting scheme"* when this may not be the case and includes off-site requirements that may not be possible. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework, and so the policy has regard for national policy.

122. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and

⁴⁶ Paragraph 196 National Planning Policy Framework 2012

relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

123. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 4:
In Policy MG3**

- **delete “trees of local significance” and insert “aged or veteran trees”**
- **delete “significant lengths of”**
- **delete “allowed” and insert “supported”**
- **delete “which will result in a net gain to the overall quality of the environment”**
- **replace all text after “replaced on” with “the site, or if this is not possible, elsewhere, as close as possible to the site, unless it can be demonstrated off-site provision is not deliverable”**

Policy MV1 Key Views

124. This policy seeks to establish that identified “*Exceptional Key Views*” should not be adversely affected by development proposals, and where possible should be enhanced. The policy also encourages consideration of effect on other “*Key Views*”.

125. The Malvern Hills Area of Outstanding Natural Beauty Partnership expresses support for the policy and states “*In a recent visitor survey on the Malvern Hills and Commons 48% of all respondents cited the great/beautiful views when asked what they particularly liked about the area, making it the most popular response. The next most popular response was mentioned by just 24% of respondents. Policy MV1 should help to safeguard such valued views for the future*”. Three other representations state general support for the policy. Two of these representations refer to the importance of identified views to tourism as well as for residents to enjoy with particular reference to the approach to Malvern along the Guarlford Road, which one of the representations states should be kept largely development free and of a rural nature.

126. In a representation the District Council states *“It is noted that the Visual Study Report identifies 70 Exceptional Key Views - 35 are described as “Key Viewpoints”, 18 are “Key Focal Points”, 12 are “Key View Routes”, 1 is a “Key View Zone” and 4 are “Key Gateways”. Additionally, Policy MV1 encourages development proposals to consider another 104 key views (64 Special and 40 Representative) identified in the Visual Study Report. Paragraph 109 of the Framework (paragraph 170 of the revised Framework) says that the planning system should protect and enhance valued landscapes. As background, Policy SWDP 25 requires development proposals to take account of the latest Landscape Character Assessment and requires a Landscape & Visual Impact Assessment (LVIA) or similar for major development proposals which are likely to have a detrimental impact on a significant landscape attribute or irreplaceable landscape feature. Planning policies can seek to protect specific views where this is justified in the wider public interest (for example from a public footpath, right of way, roadside, or other publically accessible land). It is considered that the Visual Study Report (September 2018) is a comprehensive and potentially helpful evidence source to underpin Policy MV1. However, it is considered that draft Policy MV1 (Key Views), in conjunction with the Visual Report Study, does not currently provide a practical framework which would enable decision makers to apply the policy consistently and with confidence as required by paragraph 16 of the Framework. The reasons for this are as follows: The Visual Study Report identifies 70 “exceptional” key viewpoints, key focal points, key view routes, key view zones and gateways. It is considered that the identification and protection of 70 key views would not be proportionate for a town the size of Malvern. Further, the designation of 70 key views would be an excessive constraint on development and has no regard for the strategic role Malvern plays as a main town in the SWDP. To provide clarity for decision makers the proposals map should indicate the direction and, extent of any key views. If the direction and extent of views cannot be mapped spatially then it will not be possible for decision makers to apply the policy consistently and with confidence. There is a lack of clarity on precisely which key views draft Policy MV1 would relate to. On the one hand, the policy title refers to “Key Views”. On the other hand, the Visual Study Report, refers to “key viewpoints”, “focal points”, “view routes”, “view zones” and “gateways”. Further, whilst the Visual Study Report categorises the view types according to whether they are “exceptional”, “special” or “representative”, the wording of Policy MV1 indicates that it would apply to “exceptional” views only. It is not clear from the draft Policy how applicants should demonstrate that they*

have complied with the policy. With the proposals map not showing the direction or extent of the key views it is not possible to determine the extent to which Policy MV1 might undermine and jeopardise the delivery of strategic allocations in the SWDP or where the Neighbourhood Plan might support sustainable development. In light of the above, it is considered that Policy MV1 does not currently provide a practical framework for decision makers and should be deleted unless the direction and extent of the proposed views are clearly mapped and the policy includes clear criteria setting out how it would be assessed whether a development proposal is likely to have an adverse impact”.

127. A representation includes *“RPS objects to this policy insofar as it relates to SWDP 56”* and *“RPS therefore recommend that it is made clear in the MNP that the landscape evidence base underpinning the MNP should not be used in determining future applications which relate to Policy SWDP 56. Additionally, the wording of the policy states that the landscape should not be compromised. This goes beyond NPPF and in particular para 170 which merely refers to recognising the intrinsic character and beauty of the countryside and only protecting and enhancing valued landscapes.”*
128. Another representation includes *“HLM strongly maintain that not all visual change is harmful; and where considering potential development proposals, a professional and technical assessment of potential future changes to views, including whether those changes would be of an adverse or beneficial nature, should be undertaken to ensure that future opportunities for growth in Malvern are not unreasonably restricted without adequate assessment, and of course that assessment having regard to appropriate masterplanning design. This approach is supported in the revised Visual Assessment report (para 3.8 ii).”*
129. A further representation states *“Policy MV1 and the associated Figure 5.3 recognises the importance of the AONB as it affects the setting of Malvern but we have a number of concerns. Firstly, it seeks to go beyond the boundary of the Neighbourhood Plan. This could mean that the findings of this NP could be at odds of those found within adjoining areas. We therefore suggest that the diagram should only relate to the NP area. Secondly, the study seems to follow the roads into Malvern without reflecting the position or topography. Some parts of these roads offer no views in or out and Figure 5.3 should be amended to reflect this.”*

130. The Town Council comments on the representations of other parties includes *“The direction and extent of the views are described in the Key View tables as far as possible, but clearly, the extent of the view is dependent on the High value factors / features that are visible within that view. And, it is the location of any proposed change that will determine which of the value factors / features are present in a development’s likely area of visual influence. As the Visual Study makes clear, the objective is to ensure that where proposed change may affect an area’s visual amenity - especially where the quality / value of the views is ‘Exceptional’ - that the various factors which contribute that the area’s high value (and which are therefore likely to be visible from certain locations - much depends on where the proposed change is located) are considered. Sometimes loss of a valuable feature is inevitable, in which case mitigation / compensation may be appropriate. But in all cases, the Visual Study provides a comprehensive evidence-base that should be used to ensure that new development respects and reflects an area’s local distinctiveness and sense of place, and takes into account what is valuable. If it does, then it will have complied with the policy”* and *“The draft policy is not intended to ‘inhibit the growth potential of the town’; rather, its aim is to ensure that growth does not harm the qualities that deliver important benefits to the area / community e.g. economic benefits from tourism due to area’s high-quality landscapes and townscapes.”*

131. The term *“should not”* is without consequence. The term *“, and where possible, should enhance,”* is imprecise. A requirement to not have any adverse effect is too restrictive in that it could limit almost any development in views from identified locations. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

132. In a letter dated 31st December 2018 I asked the District and Town Councils to respond to a request for clarification as follows *“Figure 5.3 includes indicators outside the Neighbourhood Plan Area which it may not. Could you please clarify that it is not intended to extend the Neighbourhood Plan Area, which would of course involve considerable delay”*. On 17 January 2019 I received a joint response from the District and Town Councils which stated *“The District Council and Town Council confirm that there is no intention to extend the designated Neighbourhood Area. To address the issue of indicators outside the Neighbourhood Plan Area, it is suggested that*

consideration could be given to inserting the following text at the end of Policy MV1: ‘This policy will only apply to land within the Neighbourhood Plan area.’ The policies of the Neighbourhood Plan can only apply within the Neighbourhood Area. Figure 5.3 is misleading in this respect. It would be confusing for a policy to state it only applies within the Neighbourhood Plan area when all of the policies can only apply within the Neighbourhood Plan area. I have recommended a modification to make it clear this is the case.

133. A requirement for proposals to positively demonstrate they will not adversely affect a key view would represent an unacceptable burden and would be contrary to the ‘Guidance on Information Requirements and Validation’. The policy does not include such a requirement but instead seeks to identify locations where an Exceptional Key View will be a factor in the assessment of a proposal. In this context I am satisfied the “Exceptional Key Viewpoints” are adequately identified on Figure 5.3 and that supporting information contained within the Visual Study Report relating to those Exceptional Key Viewpoints, in photographs and descriptions of visual attributes and in particular relating to direction, provides sufficient detail to guide the preparation and determination of development schemes. I am satisfied the selection of Exceptional Key Viewpoints has been adequately explained and their local significance has been tested through extensive consultation. Planning policy must operate in the public interest. I am satisfied the Exceptional Key Viewpoints are in locations to which the general public have free and unrestricted access. I have recommended a modification so that the policy refers to the Exceptional Key Views seen from Exceptional Key Viewpoints that are to be considered in the assessment of development proposals so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
134. In a letter dated 31st December 2018 I asked the District and Town Councils to respond to a request for clarification as follows. I have set out the joint response of the District and Town Councils I received on 17 January 2019 in respect of these points.

- Please clarify which evidence base statements define views, in terms of direction and extent, to be considered within the Exceptional Key View Zone. Joint response – “*Table 4 of the Visual Study Report (page A61) includes a photograph illustrating the proposed Exceptional Key View Zone and*

describes a number of high value attributes within the proposed zone. The Visual Study Report does not, however, define the direction or extent of views from within the Exceptional Key View Zone. The Town Council wish to point out that the Exceptional Key View Zone contains multiple viewpoints. Paragraph 2.22 of the Visual Study Report explains that the category of 'Exceptional' applies to views within which very high / high value factors / attributes are present, either singularly or in combination and that the factors which contribute to high levels of local visual value are set out in paragraph 4.4 of the Visual Study Report. In light of this, there is no single focus, or specific direction of, views from within the Exceptional Key View Zone".

- Please clarify which evidence base statements define the direction and from what distance views of Exceptional Key Focal Points are to be considered. Joint response - *"Table 2 of the Visual Study Report (pages A35 to A40) includes photographs which illustrate the proposed 18 Exceptional Key Focal Points and provides a commentary on attributes within the focal points. The Visual Study Report does not, however, define the direction or distance from which views at the Exceptional Key Focal Points are to be considered. The Town Council wish to point out that the Exceptional Key Focal Points are the subject of multiple viewpoints, as explained in paragraph 2.44 of the Visual Study Report. In light of this, the commentaries on pages A35 to A40 of the Visual Study Report, do not define the direction of, or distance from which, views of Key Focal Points to be considered.*
- Whilst descriptions in the Visual Study Report of Exceptional Key View Routes refer to views in the direction, or both directions of the route, where is there a definition: regarding extent of view to be considered; and the approach to be adopted with respect to view of sites adjacent to both sides of the route." Joint response – *"Table 3 of the Visual Study Report (pages A47 to A52) includes photographs which illustrate the proposed 12 Exceptional Key View Routes and describes a number of visual attributes from within the proposed routes. The Visual Study Report does not, however, define the extent of the views to be considered. The Visual Study Report does not define the approach to be adopted with respect to views of sites adjacent to both sides of a route. The Town Council wish to point out that they consider that paragraph 4.4 of the Visual Study Report sets*

out high value factors which are visible within a given view at a given location”.

- In that all four Exceptional Key Gateways include Exceptional Key View Routes and at least one Exceptional Key Viewpoint, what additional development management approach is introduced by the Exceptional Key Gateway designation and what is the significance of the radius of the Exceptional Key Gateway indicator? Joint response – *“Paragraph 4.19 of the Visual Study Report says that the extent of the Key Gateways “area of influence” varies depending on their specific landscape / townscape context. The Town Council consider that the radius of the Exceptional Key Gateways reflects their approximate ‘area of influence’. The District Council note that the radii / areas of influence appear to be equi-distance in all directions for the four proposed Exceptional Key Gateways. The District Council and Town Council confirm that no additional development management approach is introduced by the Exceptional Key Gateway designation”.*

135. It is unclear from which direction and from what distance views of key focal points are to be considered. It is also unclear which views in terms of direction and extent are to be considered along key view routes; within the key view zone; and at key gateways. Views that are to be protected by the policy in respect of the key focal points, key view routes, key view zone, and key gateways are not sufficiently precisely identified to provide a basis for the determination of planning applications. I have recommended the key focal points, key view routes, key view zone, and key gateways are not included in the policy and are deleted from Figure 5.3. I have also recommended Figure 5.3 is amended to identify the direction of Exceptional Key Views from Exceptional Key Viewpoints. I have made these recommendations so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

136. With respect to the second paragraph of the policy which deals with *“other Key Views”* the term *“are encouraged”* is without consequence and the term *“where relevant”* introduces uncertainty. The inclusion of *“special”* and *“representative”* views in the policy undermines the significance of the *“exceptional views”* and results in an overly complex framework that cannot practically be applied by decision makers. The second part of the policy does not provide a

practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended the second part of the policy is deleted and the policy title is adjusted to refer to exceptional key viewpoints only.

137. I have taken into consideration the Development Management implications of designation of Conservation Areas within the Neighbourhood Area. Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides for the District Council to designate *"areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance"* as Conservation Areas. I have noted in particular the proposed Key View Zone lies entirely within designated Conservation Areas (principally the Great Malvern Conservation Area, with a small part in the Malvern Wells Conservation Area). I have also noted significant lengths of Key View Routes lie within designated Conservation Areas.

138. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan, and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

139. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 5:

- **Replace Policy MV1 with "To be supported development proposals must demonstrate they are sited, designed, and of a scale so as not to significantly harm the Exceptional Key Views described in the Visual Study Report, from the Key Viewpoints identified in Figure 5.3."**
- **Replace the policy title with "Exceptional Key Views"**
- **Amend Figure 5.3 to identify Exceptional Key Viewpoints only, and identify the direction of Exceptional Key Views from Exceptional Key Viewpoints**

- Amend Figure 5.3 so that no indicator lies outside the Neighbourhood Area

Policy MHE1 Non-Designated Heritage Assets

140. This policy seeks to establish protection for non-designated heritage assets.
141. In a representation Historic England commend the policy approach adopted. Another representation suggests the word ‘extent’ is replaced by ‘scale’ in the last paragraph of the policy, to make it consistent with the wording in para 197 of the NPPF, and thus consistent with Basic Condition 2(e). I have recommended a modification in this respect so that the policy has regard for national policy.
142. The District Council representation includes *“Paragraph 5.4.3 lists 6 proposed Non-Designated Assets outside Conservation Areas. However, there is no evidence provided in the Reasoned Justification or an Appendix to justify any of the proposed non-designated heritage assets. It is suggested that the list of 6 proposed non-designated assets in paragraph 5.4.3 is deleted because listing them potentially gives them a status they may not merit. Their inclusion also risks predetermining the Local Listing process. It is considered that it would be appropriate to list the proposed non-designated heritage assets in an Appendix. This would be helpful because it allows for the possibility that some nominated assets may not be adopted on the Local List and would allow for the possibility that additional assets may be listed by the District Council. Further, Policy MHE1 proposes that the policy applies to non-designated heritage assets (including those on the Local List). This would imply that Policy MHE1 would apply equally to non-designated heritage assets not on the Local List, but does not specify what these assets are or provide a justification for their protection under the policy. It is suggested that the word ‘consent’ in the first paragraph of Policy MHE1 is replaced with ‘planning permission’. In light of the above, it is suggested that the first sentence of Policy MHE1 be amended to read: ‘Proposals requiring planning permission which affect a building or structure on the Local Heritage List (following adoption by Malvern Hills District Council) must demonstrate how they protect or enhance the heritage asset.’ Since the renovation or alteration of some non-designated heritage assets may not require planning permission, it is suggested that the first sentence of the second paragraph of Policy MHE1 be amended to*

read ‘Proposals requiring planning permission for the renovation or alteration of ...’. Paragraph 3 of Policy MHE1 refers to ‘the benefits’ of the proposal. It is not clear what kind of benefits are alluded to. Is the policy referring to public benefits? For clarity, it is suggested that the words ‘an asset’ in paragraph 3 of Policy MHE1 be replaced with ‘a non-designated heritage asset’. It is also suggested that the proposed non-designated heritage assets listed in paragraph 5.4.3 are listed in an Appendix, together with a schedule seeking to justify each of the proposed non-designated heritage assets based on the Local List criteria”.

143. The Town Council comments on the representations of other parties includes *“It may be considered at the planning application stage that a building or structure could be considered a non-designated heritage asset and as such this policy would then apply”*. The Guidance states *“Where it is relevant, neighbourhood plans need to include enough information about local heritage to guide decisions and put broader strategic heritage policies from the Local Plan into action at a neighbourhood scale.”*⁴⁷ The Guidance also states *“Local Planning Authorities may identify non-designated heritage assets”*⁴⁸ and *“Local lists incorporated into Local Plans can be a positive way for the local planning authority to identify non-designated heritage assets against consistent criteria so as to improve the predictability of the potential for sustainable development.”*⁴⁹ It is appropriate for a community to use the neighbourhood plan preparation process to identify buildings and structures of local interest and to include policies to require particular consideration of assets that have been formally recognised by the District Council in the determination of planning applications. It is not appropriate to imply particular locally identified assets will be recognised by the District Council as heritage assets. The policy, and the reasoned justification presented below the policy, are clear in this respect. However, the status of the six properties listed in paragraph 5.4.3 is not entirely clear and their inclusion does not provide reasoned justification for Policy MHE1. I have recommended the list of properties is transferred to an Appendix to the Neighbourhood Plan where their status as properties identified to be nominated by the Town Council for inclusion by the District Council on the local list of heritage assets should be made clear.

⁴⁷ Planning Practice Guidance Reference ID: 18a-007-20140306

⁴⁸ Planning Practice Guidance Reference ID: 18a-039-20140306

⁴⁹ Planning Practice Guidance Reference ID: 18a-041-20140306

144. Paragraphs 131 to 136 of the Framework establish a policy regime for the determination of proposals that affect designated and non-designated heritage assets. The balancing of considerations is a part of the judgement necessary in the determination of proposals. In the case of harm to non-designated heritage assets the Framework states it is necessary to balance the scale of any harm or loss and the significance of the asset. Paragraph 135 of the Framework states “*The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*” I am satisfied the requirement of the policy to consider “*the benefits of the scheme*” has regard for the approach set out in paragraph 135 of the Framework. Policy MHE1 provides an additional level of detail or local approach to guide the determination of planning applications and reflects the balanced judgement required by national policy.

145. It is unnecessary and confusing for a policy to state “*proposals requiring consent*” as all the policies of the Neighbourhood Plan only apply to development proposals that require planning permission or a consent. The first and second paragraphs of the policy are without consequence. Use of the term “*including*” introduces uncertainty. Reference to “*an asset*” in the third paragraph is imprecise. The term “*should be balanced*” does not provide a basis for the determination of proposals. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

146. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan, in particular Policy SWDP6, and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

147. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with conserving and enhancing the historic

environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 6:

In Policy MHE1

- delete “Proposals requiring consent” and insert “To be supported proposals”
- delete “including”
- commence the second paragraph with “To be supported”
- in both the second and third paragraphs delete “should” and insert “must”
- in the third paragraph delete “an asset the extent” and insert “a non-designated heritage asset the scale”

Transfer the list of properties in paragraph 5.4.3 of the Reasoned Justification to an Appendix to the Neighbourhood Plan where their status as properties identified to be nominated by the Town Council for inclusion by the District Council on the local list of heritage assets should be made clear.

Policy MHE2 Neighbourhood Heritage Areas

148. This policy seeks to establish that five areas should be designated as Neighbourhood Heritage Areas in which proposals must recognise, and make a positive contribution to, local character.

149. A representation is critical of detailed aspects of the Heritage Character Assessment, in particular what is described as the disjointed analysis of the Guarlford Road area. In a representation Historic England commend the policy approach adopted. The District Council representation includes “*Paragraph 5.4.7 of the Reasoned Justification helpfully summarises the key characteristics of the proposed Neighbourhood Heritage Areas and their historic significance. For accuracy, it is suggested that the words “reflect and retain the architectural vernacular” in the first sentence be replaced with “contain some important architectural features”*”. I have referred to this latter point in the annex to my report.

150. The Framework states it is “*proper to seek to promote or reinforce local distinctiveness.*” As the policy is proposing a designation of specific areas it is necessary to be able to identify whether specific properties subject to development proposals lie within the designated area. The proposed Neighbourhood Heritage Areas are presented on Figures 5.4.1 to 5.4.5 within Appendix 5.4 at a scale that

is sufficient to identify the precise boundaries of each area proposed for designation. Whilst I recognise an electronic version of Figure 5.4 can be expanded in order to examine particular areas this is not an option when viewing a paper copy, and is in any case less convenient than viewing Figures 5.4.1 to 5.4.5. I recommend a modification so that the policy refers to these detailed maps. The second part of the policy is without consequence. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

151. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

152. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with requiring good design, and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 7:

In Policy MHE2

- after “5.4” insert “and on Figures 5.4.1 to 5.4.5 in Appendix 5.4”
- commence the final paragraph with “To be supported”

Policy MC1 Community Facilities

153. This policy seeks to establish conditional support for proposals for new, extended, or redeveloped community and recreation facilities, and establish criteria for loss of such facilities. I am satisfied Figure 5.5, and listing in Appendix 5.5, are sufficient for the purposes of the policy, namely to identify existing facilities.

154. Sport England support the policy but consider it would be appropriate to reference the District Sport and Leisure Strategy in the reasoned justification. I have not recommended a modification in this respect as it is not necessary to meet the basic conditions or other

requirements that I have identified. I have however referred to this matter in the annex to my report.

155. In a representation the District Council states *“Paragraph 70 of the Framework says planning policies should plan positively for community facilities and guard against the unnecessary loss of valued facilities and services. In relation to criteria 1, 2, 3 and 5 we note: If the development proposal is for a new type of community facility then it will not be possible to demonstrate that it is of equivalent or better quality than another facility because there is nothing to compare it with. Further, the “management” of a community facility is not a planning issue. There is no criteria number 2 listed. It is not clear what sequential test is being referred to. 5. Given that Malvern is a town, it is unlikely that a community facility would not be accessible to the community it serves. As currently worded, Part A of the policy does not make clear what existing community facilities the policy would apply to. In light of the above, it is suggested that Part A of Policy MC1 could be simplified to say “The provision of new community and leisure facilities or the enhancement of existing facilities (identified on Figure 5.5 and listed in Appendix 5.5) is supported. Development proposals that provide community and leisure facilities will be required to demonstrate that: The siting, scale and design respects the character of the surrounding area, including any historic and natural assets; The impact on the residential amenity is acceptable; There is no adverse impact on traffic generation; and Adequate parking is provided on the site.” Part B of Policy MC1B resists the loss of all or any part of the 86 existing community and recreation facilities identified in Appendix 5.5 and shown on Figure 5.5 unless it can be demonstrated that the existing use is no longer economically viable or equivalent or better provision of the facility to be lost is made in an equally or more accessible location. It should be noted that Policy MC1(B) would not be able to prevent the closure of the existing community and recreation facilities or moves within main use class orders. It is considered that the protection of all 86 community and recreation facilities may not be appropriate in a town the size of Malvern. For example, the loss of a public house in a small rural village may be considered to be a significant loss to the community, but in a town the size of Malvern there are often alternative facilities available to meet the needs of the community. It is considered that Part B of Policy MC1 is generally consistent with SWDP 37 (Built Community Facilities.”*

156. The comments of the Town Council in respect of representations of other parties includes *“agree to the suggested*

change. Although MTC would wish to include a criterion relating to the town centre uses sequential test as the policy refers to leisure facilities. The loss of a facility may still be important to sections of the local community and seen as a significant loss to them”.

157. It is beyond my remit to recommend a modification to introduce new dimensions of policy. The Framework states planning policies should “*guard against the unnecessary loss of valued facilities and services particularly where this would reduce the community’s ability to meet its day-to-day needs*”. Existence of alternative equally or more accessible facilities should be considered. I have recommended a modification so that the policy has regard to national policy in this respect. It is inappropriate for the policy to refer to “*management*” without this being linked to a land use dimension. The terms “*the residential amenity*”, “*no adverse impact on traffic generation*”, and “*adequate parking*” are imprecise. The Framework states “*Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*”. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
158. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan, and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
159. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport; requiring good design; promoting healthy communities; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 8:
In Policy MC1**

- **replace part A with “The provision of new community and leisure facilities, or the enhancement of existing facilities**

(identified on Figure 5.5 and listed in Appendix 5.5), will be supported where it is demonstrated that:

1. the siting, scale and design respects the character of the surrounding area, including any historic and natural assets; and
 2. there will not be significant adverse impact on residential amenity, and there will be no additional on-street parking”
- in part B after “lost is” delete “is made” and insert “will be available”

Policy MC2 Healthy Communities

160. This policy seeks to establish that new major residential development will be served by sufficient capacity in General Practices and Dental Practices. The policy also seeks to establish health and well-being principles for major development proposals.

161. Sport England supports this policy. In a representation Worcestershire Acute Hospitals NHS Trust states the policy should also relate to the provision of secondary healthcare facilities. I have explained earlier in my report that my role is to consider whether the submitted Neighbourhood Plan meets the basic conditions and other requirements that I have identified. It is beyond my role to recommend modification of the Plan to introduce additional areas of policy.

162. Another representation states *“This policy seeks ‘appropriate contributions’, by way of legal agreement or CIL payment, to improve the capacity of NHS facilities, where necessary. RPS object to this policy approach, on a number of grounds. Firstly, it is uncertain as to which development plan this policy is in ‘general conformity’ with. There would appear to be no adopted, up to date policies in the SWDP that provide a strategic policy relating specifically to the provision of GP Surgeries and Dental Practices and the need for that requirement to be viable and deliverable. The MNP therefore does not meet Basic Conditions 2(a) or 2(e). Secondly, the policy as drafted is contrary to the remit of plans in that planning policies should seek to address potential barriers to investment, such as inadequate infrastructure and services, in line with paragraph 81(c) of the NPPF, rather than seeking to apply current shortfalls in provision as a reason for potentially resisting schemes at the planning applications stage. Consequently, the MNP does not meet Basic Conditions 2(a). Thirdly, and related to the previous objection, it is not for the MNP to seek to address existing*

shortfalls in the provision of local infrastructure and facilities as this also goes beyond the remit of planning policy. The MNP therefore does not meet Basic Condition 2(a) or 2(e). Fourthly, there would appear to be no evidence to justify the making of a specific policy seeking health facility contributions as part of new major residential development. In particular, this would include evidence to demonstrate that such an approach would ensure the viability and deliverability of new development sufficient to negate the need for viability appraisals at the planning application stage, in line with NPPF paragraph 57. To do this requires viability evidence to be up to date in relation to policies seeking contributions in support of new development. Such evidence would appear to be absent from the MNP and supporting documentation. The MNP therefore does meet Basic Condition 2(a) or 2(e). And lastly, the policy as drafted is overly prescriptive and onerous with respect to the provision of, or contribution towards, specific health facilities identified in the policy. If the policy were to be made, then we would suggest that it reflects the need to ensure that development remains viable and deliverable. This could be done by deleting the wording, "...where necessary..." at the end of the first paragraph of Policy MC2, and replacing this with "...subject to viability considerations." This would make the policy consistent with other policies in the MNP and elsewhere across the adopted development plan that include similar references to viability considerations (Policy MH1 Housing Mix; Policy SWDP 14 Market Housing Mix; Policy SWDP 15: Meeting Affordable Housing Needs; Policy SWDP 5: Green Infrastructure). Consequently, unless the policy is either deleted or substantially amended in line with our suggestions, we consider that the policy does not meet the basic conditions in that: • MNP does not have appropriate regard to national policy (contrary to para 81c of the NPPF) and goes beyond the remit of plan policy (Basic Condition 2e); and • MNP is not in general conformity with the strategic policies of the development plan (2a)".

163. The District Council states *"The Reasoned Justification for Policy MC2 highlights a number of health challenges in Malvern related in particular to a growing aged population. The Reasoned Justification indicates the list sizes for General Medical Practices and numbers of people treated at dental practices in Malvern but does not provide evidence that GP lists are oversubscribed. Further, if the Reasoned Justification is suggesting a lack of health facilities then the draft Neighbourhood Plan has not taken the opportunity to propose sites to accommodate an increase in facilities and services within the neighbourhood area. SWDP 7 (Infrastructure) requires development to*

provide or contribute towards the provision of infrastructure needed to support it. The SWDP Developer Contributions Supplementary Planning Document (SPD), adopted in July 2018, addresses health contributions. Policy MC2 does not refer to SWDP 7 or the Developer Contributions SPD and conflicts with the SPD. Paragraphs 2.6.11 to 2.6.13 of the SPD (reference provided) say: Contributions for developments of 50 dwellings or less will only be sought where there is significant existing over subscription of GP lists, i.e. GPs with over 110% of the recommended maximum number of patients. The potential to increase capacity at the relevant health centres without breaching the pooling restrictions for developer contributions will be considered on a case by case basis. For developments of between 50 and 100 dwellings the Clinical Commissioning Group will consider the current surplus places, if any, at the relevant health centres and how this compares to the expected impact of the development. Developments of over 100 dwellings will normally be expected to contribute to the provision of additional primary healthcare infrastructure unless there is more than enough spare capacity at the nearest GP surgery to accommodate the additional number of residents likely to require primary healthcare registration arising as a result of the development. It is considered that there would be insufficient grounds to refuse an application in a town on the grounds that there was insufficient health care. It is also considered that it would be more appropriate for the health authority to ask for contributions based on their specific information, rather than seeking developers to obtain such information. In relation to the second part of Policy MC2, it is considered that as currently worded it does not provide sufficient clarity that a decision maker could apply it consistently and with confidence when determining planning applications. It is also noted that that the numbering of principles 7 – 9 need correcting (they are currently numbered 2 – 4). It is noted that the first part of the policy applies to major “residential” development whereas the second part of the policy relates to major development (ie. includes non-residential development). It is suggested that the Glossary includes the revised Framework definition for major development. It is noted that the 9 health and well-being principles replicate the principles outlined in the Planning for Health in South Worcestershire SPD but there is no mention of the SPD in the Reasoned Justification. Further, the Planning for Health in South Worcestershire SPD requires a Health Impact Assessment for residential and mixed-use sites of 25+ dwellings, employment sites of 5+ ha and retail developments of 500+ square metres. Policy MC2 relates to major development (without specifying the threshold) and

does not explain how applicants should demonstrate that proposed development would demonstrate benefits to the 9 principles. In light of the above, it is suggested that Policy MC2 should be aligned to the Planning for Health in South Worcestershire SPD or deleted”.

164. South Worcestershire Clinical Commissioning Group (CCG) states *“Unless development is supported by additional infrastructure then development cumulatively will have an unacceptable impact on existing provision of GP services. The possible funding streams for GP infrastructure are extremely limited, and the CCG would therefore seek to obtain contributions from developers towards the costs of any necessary expansion in GP premises, either through a legal agreement or by a CIL payment.”*

165. The term *“major”* is imprecise and can be confused with other uses of the term. In response to a request for clarification that I sent to the District and Town Councils I received the following written joint responses on 17 January 2019 *“In relation to the first paragraph, which relates to applicants demonstrating that there is sufficient capacity in General Practices and Dental Practices, it is considered that the threshold should be 100+ dwellings. This would align with paragraph 2.6.13 of the SWDP Developer Contributions SPD (July 2018) which says ‘developments of over 100 dwellings will normally be expected to contribute to the provision of additional primary healthcare infrastructure unless there is more than enough spare capacity at the nearest GP surgery to accommodate the additional number of residents likely to require primary healthcare registration arising as a result of the development’”* and *“In relation to the second paragraph, it is considered that the threshold should be aligned to the Planning for Health in South Worcestershire SPD (September 2017). This SPD requires, at Table 1 (page 32), a Health Impact Assessment for residential and mixed-use sites of 25+ dwellings, employment sites of 5+ ha and retail developments of 500+ square metres.”* I have recommended a modification on this basis so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

166. The second paragraph of the policy is without consequence. The stated principles are imprecise; however, the policy makes reference to the Planning for Health in South Worcestershire Supplementary Planning Document. Whilst it is normally inappropriate to refer to other documents in a policy, in this instance it is a convenient mechanism of capturing the detail of the principles without

the need for extensive text. In this respect the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. Paragraph 173 of the Framework requires “*careful attention to viability and costs in plan-making and decision taking*” and development “*should not be subject to such a scale of obligations, and policy burdens that their ability to be developed viably is threatened.*” The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include ‘*information to accompany the application as specified by the local planning authority on their local list of information requirements*’. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain ‘*relevant, necessary and material*’. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The District Council Local Area Planning Application Requirements list of November 2017 includes at section 14 requirements relating to health impact assessments. The policy is seeking to establish information requirements that are outside the statutory framework relating to local lists of information to be submitted in support of planning applications.

167. In commenting on the representation of other parties the Town Council has suggested an alternative wording for the policy but this extends the scope of the policy. It is not within my role to recommend modifications that introduce new areas of policy. The alternative policy wording suggested by the Town Council does not overcome the other reasons that the policy does not meet the Basic Conditions that I have identified. I have recommended a modification so that the policy has sufficient regard for national policy and provides a practical framework

within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

168. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

169. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport; requiring good design; and promoting healthy communities. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 9:

In Policy MC2

- **replace the first paragraph with “Proposals for more than 100 dwellings that would result in the capacity of General Practices and Dental Practices within the Neighbourhood Plan area being exceeded must, subject to viability considerations, contribute to the provision of additional capacity.”**
- **replace the second paragraph before the list of principles with “Proposals for new large-scale development (in respect of residential and mixed-use sites of more than 25 dwellings; employment sites of more than 5 hectares; or retail developments of more than 500 square metres) will be supported where they deliver positive health and well-being benefits in respect of the following principles:”**
- **number the principles consecutively.**

Policy MD1 Building Design and Accessibility

170. This policy seeks to establish that development proposals should demonstrate they achieve high quality inclusive design, and requires schemes over a specified size to use masterplans and design codes.

171. A representation states “*Policy MD1 promoting the highest standard of design is welcomed but point 4 is unclear. Interpreted the*

wrong way this could mean that all new proposals would be of 'pastiche' in nature and not offering the best of modern design. This could be at odds with the ambition to build energy efficient housing as new technologies emerge. We would suggest that the point is rephrased to encourage the highest standard of modern design."

172. Another representation states "In relation to clause B, there is no requirement to undertake masterplanning or design codes as part of the preparation or submission of planning applications, nor do they replace the need for robust up to date plan policies. RPS would therefore suggest that wording is amended, as follows "...masterplans and/or design codes should be used as appropriate to help..." so the policy meets Basic Condition 2(a)."

173. In a representation the District Council includes "a clearer version of the map showing the location of the 6 Local Character Areas on page 144 should be included with the Policy" and "a summary of the key characteristics of the Local Character Areas would be helpful as part of the Reasoned Justification. It is considered that criteria 3 and 4 are vague". "It is suggested that the Reasoned Justification could usefully include a link to SWDP 21 (Design) and the SWDP Design Guide SPD which was adopted in March 2018." "It is suggested that the term 'major development' is applied consistently in the Plan or that variations from the Framework definition are explained in the Reasoned Justification". "It should be noted that masterplans would only be required for outline planning applications. Policy MD1(4) refers to key components of building design being integrated into the overall design. Does this, for example, include things like pipework? It is considered that the policy lacks clarity. Paragraph 5.6.6 refers to detailed design elements that should be considered early in the design process. It is considered that some elements, for example, fire hydrants, would be covered by Building Regulations."

174. Another representation states "Criteria B of Draft Policy MD1 requires masterplans and design codes to be prepared for major development (over 100 dwellings). HLM consider that this blanket imposition of design prescription is not helpful as it draws no distinction between the particular forms and scales of development some forms of which may need limited design guidance. The National Planning Policy Framework considers that design codes may be an appropriate design tool but does not suggest that this should be the only one. For these reasons, HLM consider that an amendment to the policy wording should be made that refers to the role that Design and Access Statements can make and that if further design prescription is needed

one such approach could be in the form of design guides and masterplans, but in appropriate circumstances.”

175. Part A of the policy is without consequence. The Policy should refer to the Local Character Areas presented in Appendix 5.6. I do not consider it necessary to summarise the assessment in the reasoned justification. I am satisfied the map in Appendix 5.6 is adequate to identify the Local Character Areas. The terms “*appropriate*”, “*unacceptably*”, “*efficient*”, and “*minimise*” are imprecise. Use of the term “*effective*” in place of “*efficient*” has the advantage of reference points in strategic and national policy. It is unnecessary and confusing to include imprecise reference to other guidance documents. Parts 3 and 4 of the policy are imprecise. Part A4 of the policy does not provide guidance to decision makers that is not already established by other parts of the policy. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
176. Part B of the policy is without consequence. The term “*major*” can be confused with other uses of the term. The Framework refers to Local Planning Authorities using design codes. The term “*masterplans*” is imprecise. Part B of the policy is seeking to establish information requirements relating to all development proposals and is outside the statutory framework relating to local lists of information to be submitted in support of planning applications. I have recommended Part B of the policy is deleted. In commenting on the representations of other parties the Town Council has suggested an alternative wording for the policy but this does not overcome the obstacles I have identified that prevent the policy meeting the Basic Conditions.
177. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
178. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with requiring good design. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 10:

In Policy MD1

- delete “Development proposals should” and insert “To be supported development proposals must”
- in part A1 delete “Heritage Character Assessment” and insert “Local Character Areas (presented in Appendix 5.6)”
- in part A2 delete “an appropriate scale and mass to” and insert “a scale and mass that reflects”
- in part A2 delete “unacceptably” and insert “significantly”
- in part A2 delete “efficient” and insert “effective”
- in part A3 replace the text after “environment” with “for all highway users”
- delete part A4
- delete part B

Policy MD2 Landscaping and Public Realm

179. This policy seeks to establish that development proposals demonstrate that they are fully integrated into the existing area in terms of landscape character and public realm by meeting specified criteria.

180. A representation states general support for the policy. Another representation states *“It is absolutely vital that new developments do not destroy the uniqueness and beauty of our hills and commons as well as the view to and from them. In my view these must be protected at all costs.”* The District Council states *“The purpose of Policy MD2, and its distinction from Policy MD1, is unclear. It is also considered that Policy MD2 could not be applied consistently and with confidence by decision takers when determining planning applications. Criterion 1 of Policy MD2 appears to duplicate Policy MD1A1. Criterion 2 appears to propose that development proposals within and adjacent to the Malvern Hills AONB should have regard to design guidance prepared by the AONB Partnership but there is a lack of clarity. Criterion 3 proposes that development proposals demonstrate that they have taken account of, and will reinforce, not only the existing landscape character but also biodiversity assets on the site and surroundings. It is not clear how an applicant would achieve this. Generally, it is considered that Policy MD2 is not clear and unambiguous and could therefore be deleted.*

181. The policy is without consequence. The policy is confusing in that it repeats aspects of Policy MD1. The term *“locally important key*

views” is imprecise. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

182. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
183. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with requiring good design, and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 11:

In Policy MD2

Replace the policy with “To be supported development proposals must be fully integrated into, and contribute to, their landscape character and public realm setting, and must not result in any net biodiversity loss.”

Policy MD3 Promoting Sustainable Design

184. This policy seeks to establish that development proposals must demonstrate they achieve high quality sustainable design.
185. In a representation Severn Trent Water (STW) state support for sustainable design criteria particularly relating to use of SuDS to manage surface water runoff and reduce flood risk. STW also support the use of water efficient design standards to ensure per person water use should not exceed 110 litres per day. STW has also provided information on its position regarding drainage and water usage. Another representation proposes the 10% target should be considerably raised to relate to the commitment in the Climate Change Act 2008 and states there is a need to build homes that are near net zero carbon.
186. The District Council representation includes “*The intention of Policy MD3 is laudable. However, it is considered that the policy cuts*

across, and potentially conflicts, with SWDP 29 (Sustainable Drainage Systems) and SWDP 27 (Renewable and Low Carbon Energy). In relation to MD3(1), SWDP 29 requires all development (as appropriate to their nature and scale) to manage surface water through SuDS and secure long-term maintenance of SuDS. The application of SWDP 29 is outlined in the SWDP Water Management and Flooding SPD, adopted in July 2018. In relation to MD3(2), all development proposals already have to incorporate energy efficiency measures to meet Building Regulations. The proposed requirement that new development incorporate renewable or low carbon energy to meet at least 10% of the developments predicted energy requirements is in general conformity with SWDP 27 which is a strategic policy. However, whilst SWDP 27 requires that the target be met unless it has been demonstrated that it would make the development unviable, Policy MD3(2) only requires it “where relevant”. Unlike SWDP 27, MD3(2) does not explain what applicants must do to demonstrate that the requirement will be met. Should there be a conflict between MD3(2) and SWDP 27, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan. It is considered that Policy MD3(2) is weaker than SWDP 27 and may lead to less renewable or low carbon energy being installed which is presumably not the intention of the policy. It is considered that Policy MD3 is less precise than SWDP27 and SWDP 29 and potentially conflicts with the policies. It is suggested that the policy should be deleted.”

187. The term “*where relevant*” introduces uncertainty. Local planning authorities may use nationally recognised optional technical standards where there is evidence to show these are required. However, Neighbourhood Plans may not be used to apply these.⁵⁰ The Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 included the following: “*From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings*”. Whilst the policy relates to all development types these include dwellings which are likely to be the most common type of development occurring in the plan area over the

⁵⁰ <https://www.gov.uk/guidance/housing-optional-technical-standards>

plan period. It is also necessary to recognise the need for attention to viability and deliverability as required by paragraph 173 of the Framework, and the need for design policies to avoid unnecessary prescription as required by paragraph 59 of the Framework. Whilst Policy MD3 could be modified to relate to design approaches that will be supported rather than imposing technical standards or requirements the policy does not provide an additional level of detail or distinct local approach to that set out in the strategic policies SWDP 27 and SWDP29. I have considered the comments of the Town Council made in respect of the representations of other parties but these do not overcome the deficiencies of the policy. This policy does not meet the Basic Conditions. I have recommended it is deleted.

**Recommended modification 12:
Delete Policy MD3**

Policy MD4 Microgeneration

188. This policy seeks to establish that proposals for microgeneration schemes will be supported subject to specified criteria.
189. In a representation the District Council states “*The title of Policy MD2 is Microgeneration, but the policy does not relate to the generation of energy from renewable or low carbon sources. Rather, Policy MD4 relates solely to the visual impact of renewable and low carbon energy schemes which should already be covered by MD1. It is considered that Policy MD4 cuts across, and potentially conflicts with, both SWDP 27 and MD3 which require all new development over 100sq m to incorporate renewable or low carbon energy to meet at least 10% of the developments predicted energy requirements. In most cases, the installation of microgeneration schemes (such as solar panels and heat pumps) are permitted development, unless the installation is within the grounds of a Listed Building or is in a Conservation Area. Para 5.6.21 is very unclear. On the one hand, the paragraph acknowledges that many types of microgeneration are permitted development. On the other hand, it implies that Policy MD4 would apply where SWDP27 (and presumably MD3) is applied – which in most cases, permitted development will also apply. It is unclear what microgeneration schemes Policy MD4 would be applied to and how it would be determined whether it would have an unacceptable adverse impact. It is also considered that MD2 could conflict with SWDP27 and MD3. Further, it seems illogical that Policy MD4 would apply to microgeneration schemes but not to large stand-alone renewable and*

low carbon energy schemes (such as solar farms, CHP or wind turbines) where the visual impact would be far greater. In light of the above concerns it is considered that Policy MD4 should be deleted.”

190. The scope of the policy is limited to microgeneration which is defined in the reasoned justification. There is no requirement for the policy to relate to additional forms of development. All policies of the Neighbourhood Plan only have effect in respect of proposals requiring planning permission. The term “*unacceptable*” is imprecise and does not offer guidance to decision makers or parties preparing development schemes. I have recommended a modification in respect of each use of the term so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

191. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Policy SWDP27.

192. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with meeting the challenge of climate change and flooding. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 13:

In Policy MD4 points 1, 2, and 3 delete “an unacceptable” and insert “a significant”

Policy MT1 Transport and Development

193. This policy seeks to establish transport related criteria that all new major development must meet.

194. In a representation the District Council states “*National Planning Practice Guidance (NPPG) says that the level of detail in a Design and Access Statement should be proportionate to the complexity of the application, but should not be long. Similar to a number of other policies, Policy MT1 does not define the thresholds for “major*

development”. Much of Policy MT1 is already covered by SWDP 4 (Managing Travel Demand) and therefore adds no added value: MT1(1), MT1(2), MT1(3) and MT1(5) are covered by SWDP 4C and 4K. MT1(4) is covered by SWDP 4B”.

195. Another representation states *“Draft Policy MT1 relates to transport and development and sets out a list of criteria for which development proposals for major development should comply with. Part 2 requires development to be ‘appropriate’ in terms of its impact on local highway network but gives no further clarification on what might be deemed ‘appropriate’. The wording to this MNP policy should therefore be amended to be consistent with the approach to the assessment of transport impact as presented in the NPPF which states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe (para 32).”*

196. The policy is without consequence. It is unnecessary and confusing for the policy to refer in an imprecise way to standards set elsewhere. The terms *“major”, “adequate”, “appropriate”, “appropriately”, and “relevant”* are imprecise. The term *“unacceptable”* does not provide sufficient guidance to decision makers in determining acceptability. The final paragraph is not formed as a policy statement. In these respects, the policy does not provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

197. The Framework states *“Development should only be refused or prevented on transport grounds where the residual cumulative impacts of development are severe.”* The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include *‘information to accompany the application as specified by the local planning authority on their local list of information requirements’*. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain *‘relevant, necessary and material’*. The DMPO states that validation requirements imposed by local planning

authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The policy is seeking to establish information requirements relating to all development proposals and is outside the statutory framework relating to local lists of information to be submitted in support of planning applications. In these respects, the policy does not have regard for national policy.

198. The policy does not provide an additional level of detail or distinct local approach to that set out in the strategic policies, in particular Policy SWDP4. I have considered the comments of the Town Council made in respect of the representations of other parties but these do not overcome the deficiencies of the policy. This policy does not meet the Basic Conditions. I have recommended it is deleted.

**Recommended modification 14:
Delete Policy MT1**

Policy MT2 Town Centre and District Centres Car Parking

199. This policy seeks to establish that proposals resulting in loss of town centre or district centre car parking land must include equivalent replacement. The policy also seeks to establish conditional support for new town or district centre car parking provision.
200. In a representation the District Council supports the policy and suggests *“that it would be helpful if the Reasoned Justification acknowledged the existing Malvern Hills Car Park Strategy 2017 – 2021”* Whilst I would have no objection to such a reference, I am unable to recommend this modification as it is not necessary to meet the Basic Conditions or other requirements I have identified.
201. The District Council has also commented *“Whilst we support quality and accessible car parking in appropriate locations, the existing car parking provision is not used to its full capacity and we would suggest that replacement parking should not automatically be a requirement if it could be demonstrated that the remaining provision would be sufficient. Paragraph 5.7.6 relates to the management and*

pricing structure of car parks which is not a land use planning issue and is not addressed in Policy MT2. It is therefore suggested that the paragraph is deleted. In relation to MT2B(7) it is considered that a 20% requirement for electric charging points may be too prescriptive, with the risk that there could often be unused car parking spaces. It is also considered that there is a lack of evidence to justify the 20% requirement. It is considered that the final paragraph of Policy MT2 relating to a proportion of parking spaces for larger cars is vague and could not be applied consistently and with confidence by decision makers. Also, if there were parking spaces for larger cars, how would it be possible to prevent smaller cars using those spaces?"

202. A representation on behalf of Grammont Group states *"We do not oppose to the Council's strategy to include electrical vehicle charging points (EVCP's), however it must be ensured that the quantity is evidenced based. The requirement that 20% of car parking spaces should have EVCP's is contrary to Worcestershire County Council's (WCC) requirement that initially 5% of the total parking spaces provided should have EVCP's with a further 5% of the total parking spaces at an agreed trigger (i.e. 10% in total). This is outlined in WWC's "Streetscape Design Guide" (Page 35). We request that the standard set out within the NP should be minimised to mirror the standards set out within WCC's Streetscape Design Guide, and be reduced to 10%."*

203. The specific requirement for 20% of parking spaces to have an electric vehicle charging point has not been sufficiently justified. The policy refers to Appendix 5.7 which includes Figures rather than a listing. The terms *"adequate"* and *"appropriate"*, are imprecise. The final paragraph of the policy includes the term *"should be encouraged, where possible"*. This does not provide a basis for the determination of planning applications. The term *"unacceptable"* does not provide sufficient guidance to decision makers in determining acceptability. The policy must accommodate a possible future situation where it can be demonstrated replacement of parking spaces proposed to be lost is not necessary. Reference to parking spaces in part B6 of the policy should include car spaces. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. The Framework states *"Development should only be refused or prevented on transport grounds where the residual cumulative impacts of development are severe."* I have made a

recommendation for a modification in this respect so that the policy has sufficient regard for national policy.

204. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

205. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 15:

In Policy MT2

- **in part A delete “listed” and after “basis” insert “(unless it can be demonstrated this is not necessary)”**
- **in part B delete criterion 1**
- **replace criterion 2 with “The development will not result in severe residual cumulative impacts on the transport network;”**
- **in criterion 4 delete “appropriate to” and insert “in keeping with the distinctive local character of”**
- **in criterion 5 delete “provides” and insert “provide” and after “efficient” insert “access and”**
- **in criterion 6 delete the first “cycle” and insert “car”**
- **in criterion 7 delete “20% of” and insert “They include”; delete “should” and insert “that”; and delete “and”**
- **in criterion 8 delete “unacceptable” and insert “significant”, and replace the full stop with “; and”**
- **replace the final paragraph with criterion 9 in part B “They demonstrate that the mix of sizes of parking spaces meets local needs.”**

Policy MT3 Malvern Link Rail Station Opportunity Area

206. This policy seeks to establish conditional support for a transport interchange at the Opportunity Area identified on Figure 7 and the Key Diagram.

207. Network Rail has stated support for this policy. Worcestershire County Council states *“We welcome proposals that all new development, including change of use, should provide an electric vehicle charging point (EVCP), either in an active or passive form, with each car parking space to be provided in line with the adopted parking standards as a result of the development. We are also supportive of proposals for EV chargepoints at Malvern Link Rail Station. This is in line with the UK Government’s ‘Road to Zero’ Strategy³ which outlines the intention to consult on proposals for all new UK homes to have an electric vehicle charge point, where appropriate.”* In a representation the District Council states *“The Reasoned Justification does not explain why the land is proposed as an ‘opportunity area’ rather than a site allocation to prevent the land being used for other purposes. The policy provides no indication about whether the landowners would be willing to make the land available for car parking. Paragraph 5.7.15 says that proposals should not prejudice the operation of the adjacent Malvern Fire Station. It is suggested that this should be a required criterion.”*

208. Another representation, made on behalf of the Grammont Group whose land interests are stated to coincide with the Opportunity Area, states *“We support the principle of the policy and consider that in order to ensure it is fully deliverable the nature of the policy should be amended as set out below. Car Parking - Within WCC’s Local Transport Plan (LTP) 2018-2030, Malvern Link Station Car Park is identified for ‘potential future expansion’ to the north of the existing car park, using land formerly occupied by the rail industry. Paragraph 5.7.10 of the NP states that the vacant land to the north of the railway station has been identified in the LTP, however it does not provide details as to how many spaces should be provided on this land. This is further highlighted in Paragraph 5.7.14 of the NP which states that the policy does not provide an indication of the total number of parking spaces to be provided but then states that ‘it is important to achieve as a high number of spaces as possible’. This provides further uncertainty as to how many car parking spaces must be provided as part of the Policy. In the absence of any quantified evidence of future demand, Grammont Group engaged with West Midlands Trains in Summer 2018, who indicated, based on their forecasts of the use of Malvern Link Rail Station, that car parking capable of accommodating in the region of 90 spaces in total by 2030 is what they will recommend to WCC. This would mean expanding the existing car parks by around 30 spaces. We request that this number be put forward into Policy MT3 based on quantifiable evidence provided by West Midlands Train*

and replace the wording “as high number of spaces as possible”. It is also worth noting that the lease for the car park owned by Grammont Group is due to expire in less than three years (April 2021), therefore we consider that there is a growing need for a pragmatic solution that works for all parties to ensure ongoing parking provision at the station. Residential development at the site will ensure that the proposed expansion of car parking provision to the north of Howsell Road is both viable and deliverable in the short term. Grammont Group is also happy for conditions to be imposed on any planning permission at this site, or to enter into a Section 106 Agreement, that ensures the retention of the car park in the long-term. Sustainable Development - The site is located in a highly sustainable location, located adjacent to Malvern Link Rail Station and located in close proximity to a wide variety of services in Malvern Town. At the heart of the National Planning Policy Framework (NPPF) (2018), is the presumption in favour of sustainable development. Paragraph 38 of the NPPF also states that decision- makers at every level should seek to approve applications for sustainable development where possible. We consider the addition of a residential element on this site and therefore on this policy, could promote sustainable development in the area. Paragraph 106 of the NPPF highlights that the density of developments should be maximised and optimised in locations that are well served by public transport. We consider that this site has the potential to provide more than just parking, as the site is located in a perfect position for residential dwellings. The NPPF also states that planning policies and decisions should support development that makes efficient use of land. We consider that allocating this site wholly for parking purposes, does not promote the efficient use of land, in a highly sustainable location, such as land at Howsell Road, Malvern. South Worcestershire’s Development Plan Review (SWDPR), Objective 4 suggests that the SWDP should allocate most development in locations where there is good access to local services and where transport choice is optimised. The site is located in good access to local services in Malvern Town and also provides a variety of transport options in immediate proximity. In order to ensure that the Town Council’s aspirations for the site can be delivered it is essential that the policy allows for an element of residential development. This will ensure that the expanded parking area can be delivered holistically alongside much needed new homes. This will ensure that this vacant site can be turned to good use and improve the urban fabric of Malvern Town. Given the above, we propose the following change (underlined) to the policy: ‘Proposals for a transport interchange including bus facilities and park and ride facilities with car, motorcycle and cycle parking, and supporting

residential development, at the Opportunity Area identified on the Key Diagram and at Figure 5.7 will be supported provided they meet all the following criteria.”

209. It is acceptable for a Neighbourhood Plan to identify land uses and types of schemes that will be supported in particular locations within the Neighbourhood Area. There is no requirement for a Neighbourhood Plan to include site allocations. In commenting on the representations of other parties the Town Council has suggested use of a symbol rather than a site boundary to reflect the current uncertainties with respect to details of development, not least the level of future car parking provision. I consider this approach would not be appropriate as it would introduce uncertainty and would result in the policy not providing a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. Whilst a representation has proposed the addition of residential development to the list of land uses to be supported in the policy, the benefits or disbenefits of any particular additional use are not a matter for my consideration. A modification to introduce an additional land use into the policy wording at this late stage of plan preparation would not have been subject to consultation. Whilst the policy seeks to establish support, subject to criteria, for specified land uses this would not prevent consideration and approval of proposals that included additional elements of land use so long as any planning application is *“determined in accordance with the development plan, unless material considerations indicate otherwise”*.⁵¹

210. The terms *“adequate”* and *“appropriate”* are imprecise. The term *“unacceptable”* does not provide sufficient guidance to decision makers in determining acceptability. Reference to parking spaces in criterion 5 of the policy should include car spaces. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. The Framework states *“Development should only be refused or prevented on transport grounds where the residual cumulative impacts of development are severe.”* It is clear from the reasoned justification that it is intended the operations of Malvern Fire Station should not be prejudiced. The Framework states planning policies should plan positively for local services that enhance the sustainability of local

⁵¹ Paragraph 196 National Planning Policy Framework 2012

communities. The specific requirement for 20% of parking spaces to have an electric vehicle charging point has not been sufficiently justified. Although imprecise, paragraph 5.7.14 of the reasoned justification seeks to introduce requirements not included in the policy, which it may not. I have made a recommendation for a modification in these respects so that the policy has sufficient regard for national policy.

211. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

212. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 16:

In Policy MT3

- **replace criterion 1 with “They do not prejudice the operation of the Malvern Fire Station”**
- **replace criterion 2 with “The development will not result in severe residual cumulative impacts on the transport network;”**
- **in criterion 3 delete “appropriate to” and insert “in keeping with the distinctive local character of”**
- **in criterion 4 after “efficient” insert “access and”**
- **in criterion 5 delete the first “cycle” and insert “car”**
- **in criterion 6 delete “20% of” and insert “They include”; delete “should” and insert “that”**
- **in criterion 7 delete “an unacceptable” and insert “a significant”**

In Paragraph 5.7.14 delete reference to “as high a number of spaces as possible” and refer to quantified assessment of future demand for parking spaces and to viability considerations.

Policy MT4 Electric Vehicle Charging Points

213. This policy seeks to establish that parking spaces provided as part of development proposals should include an electric vehicle charging point.
214. A representation states *“Gladman objects to this policy and considers that before pursuing such a policy requirement the Town Council should engage with the main energy suppliers in order to determine network capacity to accommodate any adverse impacts if a proportion of, or all dwellings are required to have an electric charging facility. If charging demand became excessive there may be constraints to increasing the electric loading in an area because of the limited size and capacity of existing cables and new sub-station infrastructure may be necessary. The cost of such infrastructure may adversely impact on housing delivery. If electric vehicles are to be encouraged by the Government then a national standardised approach implemented through the Building Regulations would be more appropriate.”* Another representation states *“whilst the provision of electric charging points is generally supported, it would not always be practical or viable to provide an active point for every parking space proposed”* and states there is no requirement in the SWDP.
215. Another representation states *“It is recognised at national policy level that Neighbourhood Plan Policies are by definition, non-strategic. Policy MT4, as drafted, is too prescriptive and is not supported by either a strategic policy in the development plan or by the NPPF, or indeed by any robust evidence base that has been submitted in support of the MNP. More flexibility should be built into the policy to reflect the long-gestation likely in any transition towards a mature electric-vehicle market. Concerns exist that such an onerous policy could undermine the delivery of much needed new housing to meet local needs and the need to address acknowledged issues including housing unaffordability, which is a pressing issue in Malvern. Consequently, the policy needs to be sufficiently balanced and based on evidence. Given the lack of evidence, the policy should be deleted or additional wording along the lines of “...where appropriate...” or “...subject to viability considerations...” as per our comments made earlier, given that no evidence is presented to support the policy as drafted. Consequently, as drafted, Policy MT4 does not meet Basic Conditions 2(a) or 2(e).*
216. Worcestershire County Council states *“We welcome proposals that all new development, including change of use, should provide an*

electric vehicle charging point (EVCP), either in an active or passive form, with each car parking space to be provided in line with the adopted parking standards as a result of the development. We are also supportive of proposals for EV chargepoints at Malvern Link Rail Station. This is in line with the UK Government's 'Road to Zero' Strategy³ which outlines the intention to consult on proposals for all new UK homes to have an electric vehicle charge point, where appropriate.” In a representation the District Council states “The principle of the policy seems to have regard to paragraph 35 of the Framework (paragraph 110 of the revised Framework). However, it is considered that an EVCP for each car parking space may not be proportionate or reasonable. For example, it may not be proportionate that a new dwelling with 3 car parking spaces be required to have 3 EVCP’s. Also, any car parking developed under Policies MT2 and MT3 would be required to provide 20% active and 80% passive spaces which could lead to an under-utilisation of car parking spaces. It is considered that there is a lack of evidence to justify the 20% / 80% split. It is not clear that the potential technical and viability implications of Policy MT4 have been considered. It is therefore suggested that any policy requirement for electric vehicle charging points include the caveat “unless it has been demonstrated that it would not be technically feasible or would make the development unviable. It is also suggested that the policy should be more specific about what types of development proposals the policy would apply to.”

217. The term “appropriate” is imprecise. The final sentence of the policy is without consequence. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

218. Local planning authorities may use nationally recognised optional technical standards where there is evidence to show these are required. However, Neighbourhood Plans may not be used to apply these.⁵² The Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 included the following: “From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction,

⁵² <https://www.gov.uk/guidance/housing-optional-technical-standards>

internal layout or performance of new dwellings". Whilst the policy relates to all development types these include dwellings which are likely to be the most common type of development occurring in the plan area over the plan period. I consider provision of an electric vehicle charging point is not a requirement relating to the construction, internal layout or performance of new dwellings. It is however necessary to recognise the need for attention to viability and deliverability as required by paragraph 173 of the Framework. I have recommended a modification in this respect.

219. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

220. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 17:

In Policy MT4

- **after "use," delete "should" and insert "must, subject to technical feasibility and viability considerations,"**
- **commence the final sentence with "To be supported"**
- **delete "should be appropriate to the" and insert "must not detract from the visual appearance and"**

Policy MI1 Development and Infrastructure

221. This policy seeks to establish circumstances where development will be required to provide or contribute to the provision of infrastructure, and to require timely provision.

222. In a representation it is suggested that an Infrastructure Delivery Statement is required for all major development. Network Rail has stated support for the policy. The District Council state *"It is considered that the adequacy of infrastructure requirements, such as highways capacity, sewerage, drainage etc would be picked up by in consultation with service providers without the need for an Infrastructure Delivery Statement. The need to provide necessary*

infrastructure would form the basis of Section 106 agreements. The purpose of Policy MI1 appears to be the same as SWDP 7 (Infrastructure) which is to bring forward the appropriate and proportionate infrastructure that is required to support development in a timely manner. Paragraph 2 of Policy MI1 refers to the required infrastructure not having an adverse impact of the amenity of residents and occupiers adjacent to the development. It is considered that this is not the appropriate test. Paragraphs 5.8.4 - 5.8.5 indicate that a justification for Policy MI1 is community concern over site allocations in the SWDP, including SWDP 53 (QinetiQ), and SWDP 56 (North East Malvern). It should be noted that paragraph 184 of the Framework (paragraph 29 in the revised Framework) clearly states that Neighbourhood Plans should not promote less development than set out in the Local Plan or undermine its strategic policies.”

223. Another representation states “Draft Policy MI1 explains that for development proposals of over 200 dwellings, it will be necessary to submit an Infrastructure Delivery Statement alongside a planning application. However, the emerging MNP would require applicants to identify capacity issues and confirm a strategy for addressing any shortfall prior to the submission of an application. This is likely to lead to significant delays in the preparation and submission of applications whilst these details are agreed. Indeed, whilst discussions with relevant authorities would take place prior to the submission of an application, agreeing an appropriate strategy for delivering infrastructure needs will be confirmed as part of the consultation process. Delivery will then ordinarily come forward through the discharge of relevant planning conditions. There is no requirement for an Infrastructure Delivery Statement as part of the District Council’s Validation Checklist – either as a national or local requirement. Furthermore, provision of such a detailed document does not accord with either national or local guidance. As such, draft Policy MI1 is not considered to accord with basic condition (a) or (e) and should be deleted.”

224. A further representation states “We note the concerns highlighted in the MNP regarding the provision of existing infrastructure (set out in paragraph 5.8.4) and the proposed response in Policy MI1. When planning for the provision of infrastructure, the starting point for any non-strategic policy dealing with infrastructure provision in the NPA is the development plan, in this case the SWDP, and specifically Policy SWDP7: Infrastructure. Without restating the policy in full, Policy SWDP7 refers to; “...appropriate and proportionate

infrastructure that is required to deliver the plan...Development will be required to provide or contribute towards the provision of infrastructure needed to support it...” (our emphasis). Rightly, as drafted, no reference is made in Policy SWDP7 to the requirement to seek provision for infrastructure from new development that would otherwise address issues or concerns arising from deficiencies in existing infrastructure in an area, either perceived or actual. Any developer contribution sought from new development must specifically meet all three of the tests set out in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010, being; necessary to make the development acceptable in planning terms; fairly and reasonable related in scale and kind to the development; and (most importantly here) directly related to the development. However, there is no reference to the three tests in either Policy MI1 or the reasoned justification to it. In fact, Policy MI1 actually states specifically, in the first paragraph, that: “...development will be required to provide or contribute to the provision of infrastructure made necessary by that development or where it gives rise to the need for additional or improved infrastructure to mitigate its impact on existing provision...” (our emphasis). The policy as drafted does not have appropriate regard to national policy and is not in general conformity with the strategic policies in the development plan. Furthermore, the policy is not legally compliant with the relevant obligations set out in the CIL Regulations (2010). Consequently, we consider that Policy MI1 fails Basic Condition 2(a) and 2(e) on these grounds. We suggest that the relevant policy wording and reasoned justification is either deleted or amended to ensure that any future contributions sought within the MNP area meet the three tests and ensure that the Policy MI1 accords with the strategic policies of the development plan for the local area, so as not to cause inconsistency or uncertainty in how the development plan policies for infrastructure are to be applied to the MNP area. Policy MI1(b) requires the submission of an Infrastructure Delivery Statement (IDS) to support planning applications on schemes over 200 dwellings. However, there is no reference to any such requirement within any adopted SWDP policies, in particular no reference to this in Policy SWDP7 of the SWDP. Nor is there any such requirement set out in the revised NPPF. Furthermore, there would appear to be no evidence in support of criteria b within the MNP or supporting documentation. The adopted SWDP sets out the policy approach to securing appropriate and proportionate infrastructure contributions, alongside other policy-related standards and requirements in support of new development. The submission of additional documentation as suggested in the MNP is not necessary to

ensure that infrastructure provision is properly addressed at the planning application stage in accordance with the adopted development plan when read as whole. It places additional and unnecessary burdens on the development sector and in the case of extant planning applications, it is likely to slow the delivery of housing development. Accordingly, the policy as drafted fails Basic Condition 2(a) and 2(e). The proposed requirement for separate statements as proposed in point a. and b. should be deleted from the MNP.”

225. Sport England supports the policy but considers there should be reference to both indoor and outdoor sport and recreation facilities, including playing fields in paragraph 5.8.2. I have not recommended a modification as it is not necessary to meet the Basic Conditions and other requirements I have identified.

226. The first paragraph of the policy is without consequence and its overlap with the final paragraph does not provide a clear basis for decision making in respect of planning proposals. The terms “*appropriate*” and “*normally*” are imprecise. The requirement to mitigate impact on existing provision does not have regard for national policy.

227. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include ‘*information to accompany the application as specified by the local planning authority on their local list of information requirements*’. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain ‘*relevant, necessary and material*’. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The third

paragraph of the policy is seeking to establish information requirements relating to all development proposals.

228. The policy does not provide an additional level of detail or distinct local approach to that set out in the strategic policies in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan, in particular Policy SWDP 7. In commenting on the representations of other parties the Town Council has stated the policy provides a local perspective to policy SWDP7; has suggested amendments to thresholds and other adjustments; and stated *“The intention of the policy is not to promote less development within the Local Plan or undermine its strategic policies. It is seeking to ensure through the requirements of the policy that appropriate infrastructure is brought forward to support development in a timely manner. This is no different to the objectives of policy SWDP7.”* These comments do not overcome the barriers to this policy meeting the Basic Conditions that I have identified. This policy does not meet the Basic Conditions. I recommend the policy is deleted.

**Recommended modification 18:
Delete Policy MI1**

Policy MI2 High Quality Communications Infrastructure

229. This policy seeks to establish conditional support for new telecommunications infrastructure, and requires new development to make provision for broadband connections.

230. In a representation the District Council states *“The policy is considered to be consistent with SWDP 26.”*

231. The term *“Where planning permission is required”* is confusing and unnecessary as all Neighbourhood Plan Policies only apply where planning permission is required. The term *“unacceptable”* does not provide sufficient guidance to decision makers in determining acceptability. Criterion 4 would only apply should a new freestanding mast be proposed. It is not appropriate for criterion 5 to merely re-state national policy set out in the Framework. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be

made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

232. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

233. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with supporting high quality communications infrastructure. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 19:

In Policy MI2

- **in paragraph 3 delete “Where planning permission is required”**
- **in criterion 1 and 2 delete “unacceptable” and insert “significant”**
- **in criterion 3, after “designed” insert “and”**
- **in criterion 4 after “Where” insert “freestanding”**
- **delete criterion 5**

Policy ME1 Protecting Employment Allocations

234. This policy seeks to establish support for employment land allocations within the South Worcestershire Development Plan and protects them for future employment development. The policy also seeks to establish criteria for the support of non B1, B2, and B8 proposals on those allocated employment sites.

235. In a representation the District Council states *“Policy ME1 conflicts with SWDP 53 which is a strategic policy. SWDP 53 specifically allocates 4.5 hectares for B1(b) (or associated land uses) to promote high technology businesses that complement the work of QinetiQ or the Science Park. Policy ME1 proposes to widen the range of employment uses to include not only B2 and B8 uses, but also potentially to non-B1, B2 and B8 uses. Wider employment uses would undermine the purpose of the SWDP 53 allocation. SWDP 56 (North East Malvern) allocates 10ha for “employment-generating uses”. The*

first part of Policy ME1 is considered to be consistent with SWDP 56. We have significant concerns about the second part of Policy ME1. It is considered that some of the criteria in the second part of ME1 would not be appropriate. In relation to criterion 1, any employment land will generate employment opportunities, but the creation of apprenticeships and training are not land-use issues and could, in theory, be met by providing a single apprenticeship. In relation to criterion 2, it is considered that any use other than B1(b) (or associated uses) would undermine the purpose of SWDP 53. The “sequential test” referred to in criterion 3 would appear to relate to paragraphs 24 – 27 of the Framework (paragraphs 86 – 90 of the revised Framework) which seeks to ensure the vitality of town centres. This would not be necessary or appropriate if the employment allocations were protected for B1, B2 or B8 uses. Similarly, for criterion 4, the criterion would not be necessary or appropriate if the employment allocations were protected for B1, B2 or B8 uses. It is also considered that the second part of ME1 would be contrary to the evidence set out in paragraph 5.9.4. Paragraph 5.9.3, third sentence – says the Town Council will work with landowners, developers etc to develop the employment land allocated at SWDP 53 and SWDP 56. Should this be the District Council / local planning authority?”

236. *Another representation states “Policy ME1, as drafted, seeks to safeguard the SWDP adopted employment land allocations for future employment development. However, the policy also needs to recognise that economic circumstances might change in the future, meaning that adopted employment allocations may not come forward as anticipated. The policy is contrary to para 120 of NPPF which advises where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan, then alternative uses can be considered in specified circumstances. This is recognised in Policy SWDP8 of the SWDP, which supports (criterion A) the provision of other uses that clearly demonstrate the potential for job creation. Policy SWDP8 (criterion E) also allows for other, non-allocated sites to come forward for employment use that can assist in mitigating delays or non-delivery of allocated employment sites elsewhere in the area. Consequently, Policy ME1 of the MNP, as drafted, is overly prescriptive and inflexible to potential changes in circumstances and so should be either amended to allow for situations where allocated sites do not come forward as anticipated, or more appropriately given the presence of SWDP8, this is policy duplication and should be deleted. This would ensure that the policy is more in general conformity with the strategic*

policies of the development plan (at Policy SWDP8) and would therefore meet Basic Condition 2(e)."

237. The Policy title is imprecise. It is unnecessary and confusing for the first paragraph of the policy to support strategic policies SWDP53 and SWDP56 as the policies of the Development Plan should be read as a whole. The conditional support of proposals for non-B1 uses at the Malvern Technology Centre (QinetiQ) is contrary to strategic policy SWDP53. The requirement for proposals to generate apprenticeships and training opportunities is not a land use matter. In commenting on the representations of other parties the Town Council has suggested amendments to the policy but these do not overcome all of the identified deficiencies of the policy in meeting the Basic Conditions, also the proposed terms "*They are of a size and scale appropriate to its location*" and "*where appropriate*" are imprecise. The Framework states "*Planning policies should avoid the long-term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities*". I have recommended a modification in these respects so that the Policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework and has regard for national policy.
238. As recommended to be modified the policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan, in particular Policy SWDP 8, part E, and provides an additional level of detail or distinct local approach to that set out in the strategic policies.
239. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; ensuring the vitality of town centres; promoting sustainable transport; and requiring good design. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 20:

In Policy ME1

- delete the first paragraph
- replace the second paragraph with “Proposals for uses other than B1(b) employment uses at Malvern Technology Centre (QinetiQ) will not be supported unless it is demonstrated there is no reasonable prospect of the site being used for that purpose.

Proposals for non B1, B2 and B8 employment uses on the employment land allocated at North East Malvern will only be supported if it can be demonstrated that there is no reasonable prospect of the site being used for B1, B2 or B8 employment uses, and proposals for other uses meet the following criteria:

1.They generate local employment opportunities and do not undermine the primary purpose of the employment allocation to meet the needs of businesses within South Worcestershire, the District and the NPA;

2. Retail and leisure uses must satisfy the sequential test for main town centre uses within NPPF and must not harm the vitality and viability of Town and District Centres and Neighbourhood Parades within the Neighbourhood Area.”

Replace the Policy title with “Protecting Employment Allocations at Malvern Technology Centre and North East Malvern”

Policy ME2 Provision of Micro and Small Business Development

240. This policy seeks to establish conditional support for new and expanded employment development, and for conversion of buildings for micro and small sized enterprises outside identified employment sites.

241. In a representation the District Council states “*Generally, policy ME2 conforms with SWDP 8E which supports the provision of employment land and the conversion of existing buildings to support job creation providing it is of a scale appropriate to the location... In the context of Malvern, it is suggested that businesses employing up to 49 employees are probably not particularly small.*”

242. Criterion 1 does not include support for expansion of an existing business contrary to the opening statement of the policy. The terms “*appropriate*”, “*context*” and “*biodiversity interest*” are imprecise. *The*

terms “acceptable” and “unacceptable” do not provide guidance to decision makers in determining acceptability. Exceptional key views are dealt with in Policy MV1. It is confusing for another policy to refer to key views. The meaning of criterion 6 is unclear. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

243. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan, in particular Policy SWDP 8, part E, and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

244. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; ensuring the vitality of town centres; supporting a prosperous rural economy; promoting sustainable transport; and requiring good design. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 21:

In Policy ME2

- **in criterion 1, before “business”, delete “a new” and insert “an expansion of an existing”**
- **replace criterion 2 with “They reflect the scale and design of surrounding buildings;”**
- **in criterion 3 delete “They are acceptable in terms of” and insert “They do not have significant adverse”**
- **in criterion 3 delete “biodiversity interest and key views” and insert “or on biodiversity”**
- **replace criterion 4 with “They include safe access arrangements and will not result in additional on-street car parking or on-street deliveries;”**
- **in criterion 5 delete “an unacceptable” and insert “a significant”**
- **in criterion 6 delete “on sites” and insert “in the case of a relocation to a site” and replace “the existing” with “any existing”**

Policy ME3 Employment Development within Existing Industrial Estates and Business Parks

245. This policy seeks to establish conditional support for proposals for employment development within identified industrial estates and business parks.
246. In a representation the District Council states *“It is considered that Policy ME3 is in general conformity with SWDP 8 (Providing the Right Land and Buildings for Jobs) and SWDP 12 (Employment in Rural Areas). Criterion 6 is considered to be in general conformity with SWDP 8D.”*
247. Another representation states *“There is an inconsistency between the proposed extent of the industrial estate shown on Figure 5.8 of the MNP, the boundary of the Mixed-Use Allocation in the SWDP (Policy SWDP56 North East Malvern), and the extent of the site currently the subject of a planning application (15/01625/OUT). It is apparent that there is an overlap between the adopted and proposed designations covering the site and the planning application site plan. This is illustrated on the extracts below (see representation for illustrations). We suggest that the designation of the existing industrial estate under Policy ME3 of the MNP should recognise the adopted SWDP Mixed Use Allocation under Policy SWDP56 and the planning application site plan boundary. Therefore, the portion of the industrial estate designation that overlaps the adopted Mixed-Use Allocation should be deleted and shown as being part of the adopted allocation. This would ensure that there is no potential for conflict between Policy SWDP56 (which allows for infrastructure provision in this location as well as mixed uses) and Policy ME3. This would also helpfully remove any potential inconsistency with Policy ME4 of the MNP. It is also noted that the annotation for SWDP 56 on the MNP Key Diagram, does not cover the full northern extent of the SWDP allocation within the MNP boundary and should be amended to address this.*
248. In a letter dated 31 December 2018 sent to the District and Town Councils I sought clarification *“whether a modification to both policies ME3 and ME4 with the insertion of an additional criterion as follows ‘Or they are development forming part of a scheme for implementation of a strategic allocation of the South Worcestershire Development Plan’ would satisfactorily resolve the issue raised in the Regulation 16 representation of RPS.”* and *“what mapping adjustments would ensure the Neighbourhood Plan is not promoting less development than that included in strategic policy SWDP 56”*. In a joint

reply the District and Town Councils stated “SWDP 56 (North East Malvern) allocates 56.84 hectares (gross) of land for a mixed-use urban extension, including 10 hectares of land for employment-generating purposes. RPS identifies, at paragraph 2.29 of its representation, a potential conflict between Policy SWDP 56 and Policies ME3 and ME4. This is due to part of the Newland Depot and Recycling Centre, designated as an Existing Industrial Estate in paragraph 5.9.14 and identified in Figure 5.8, overlapping with the SWDP 56 site allocation. In light of the above, it is considered that the suggested additional criterion would help to resolve this issue. In addition, it is suggested that the part of the Newland Depot and Recycling Centre which overlaps with the SWDP 56 allocation could be deleted from Figure 5.8. The amended boundary of the Newland Depot and Recycling Centre in Figure 5.8 would be as shown below (a map was attached)” and “RPS identifies, at paragraph 2.31 of its representation, that the mixed-use allocation relating to SWDP 56 is not correct on the Key Diagram to the draft Neighbourhood Plan because it does not include the northern extent of the SWDP 56 allocation. It is accepted that this is a cartographical error that needs to be amended to align with the SWDP56 allocation.” I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

249. The policy refers to ‘County Matter’ development. County Matter planning applications are most usually concerned with minerals or waste proposals. These are matters that are ‘excluded development’ for the purposes of neighbourhood planning. I have recommended a modification in this respect so that the policy meets the Basic Conditions.

250. The terms “appropriate”, “of a scale compatible with the Industrial Estate or Business Park and adjacent uses” and “provide opportunities to travel” are imprecise. The term “unacceptable” does not provide guidance to decision makers in determining acceptability. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

251. Part 6 of the policy does not have regard for national policy as set out in paragraph 24 of the Framework. In comments submitted by the Town Council in respect of representations of other parties an

alternative wording for this provision is suggested. The Framework states “*Development should only be refused or prevented on transport grounds where the residual cumulative impacts of development are severe.*” I have made a recommendation for a modification in these respects so that the policy has sufficient regard for national policy.

252. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

253. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; ensuring the vitality of town centres; and promoting sustainable transport; Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 22:

In Policy ME3

- **in criterion 1 delete “or defined as a County Matter”**
- **in criterion 2 delete “and of a scale compatible with the Industrial Estate or Business Park and adjacent uses”**
- **replace criterion 3 with “They include safe access arrangements and will not result in additional on-street car parking or additional on-street deliveries;”**
- **in criterion 4 delete “an unacceptable” and insert “a significant”**
- **in criterion 5 delete “provide opportunities to travel” and insert “demonstrate provision for travel”**
- **replace criterion 6 with “For office development a sequential test should be submitted. This should demonstrate that there are no preferable sites for the development within or on the edge of Town and District Centres within the Neighbourhood Area.”**
- **continue the policy with “Or they are development forming part of a scheme for implementation of a strategic allocation of the South Worcestershire Development Plan.”**

Adjust Figure 5.8 and the Key Diagram so that they accurately show the boundaries of the industrial estates and business parks and the extent of Policy SWDP 56.

Policy ME4 Non-Employment Development within Existing Industrial Estates and Business Parks

254. This policy seeks to establish that non-employment development within existing industrial estates and business parks will only be allowed where relevant criteria are met.
255. In a representation the District Council states “*Generally, Policy ME4 is considered to be general conformity with SWDP 8 and SWDP 12. Criterion 1, for instance, is consistent with SWDP 8Fi and SWDP 12B. Criterion 5 is consistent with SWDP 8E. Criterion 7 is broadly consistent with SWDP10C. It is considered that there may be some overlap between criteria 3 and 4. Further, it may be difficult for proposed non-B1, B2 or B8 uses to demonstrate that they would be ancillary, complementary and supporting to principal B1, B2 and B8 uses unless they support existing businesses on the site. In effect, is the intention of the criterion to apply to proposed retail and leisure uses? It is suggested that criterion 8 would be unnecessary if other criteria are met.*
256. In a letter dated 31 December 2018 sent to the District and Town Councils I sought clarification “*whether a modification to both policies ME3 and ME4 with the insertion of an additional criterion as follows ‘Or they are development forming part of a scheme for implementation of a strategic allocation of the South Worcestershire Development Plan’ would satisfactorily resolve the issue raised in the Regulation 16 representation of RPS.*” and “*what mapping adjustments would ensure the Neighbourhood Plan is not promoting less development than that included in strategic policy SWDP 56*”. In a joint reply the District and Town Councils stated “*SWDP 56 (North East Malvern) allocates 56.84 hectares (gross) of land for a mixed-use urban extension, including 10 hectares of land for employment-generating purposes. RPS identifies, at paragraph 2.29 of its representation, a potential conflict between Policy SWDP 56 and Policies ME3 and ME4. This is due to part of the Newland Depot and Recycling Centre, designated as an Existing Industrial Estate in paragraph 5.9.14 and identified in Figure 5.8, overlapping with the SWDP 56 site allocation. In light of the above, it is considered that the suggested additional criterion would help to resolve this issue. In addition, it is suggested that the part of the Newland Depot and Recycling Centre which overlaps with the SWDP 56 allocation could be deleted from Figure 5.8. The amended boundary of the Newland Depot and Recycling Centre in Figure 5.8 would be as shown below (a map was attached)*” and “*RPS identifies, at paragraph 2.31 of its*

representation, that the mixed-use allocation relating to SWDP 56 is not correct on the Key Diagram to the draft Neighbourhood Plan because it does not include the northern extent of the SWDP 56 allocation. It is accepted that this is a cartographical error that needs to be amended to align with the SWDP56 allocation.” I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

257. The policy includes the term “*only be allowed*”. It is not appropriate for a policy to indicate that proposals will be permitted or not permitted as all planning applications “*must be determined in accordance with the development plan, unless material considerations indicate otherwise*”.⁵³ All material considerations will not be known until the time of determination of a planning proposal. All proposals will limit the choice of employment land available to meet future employment needs. The terms “*sufficient*”, “*appropriate*”, and “*provide opportunities to travel*” are imprecise. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

258. The requirement that proposals relating to an existing non-B1, B2, and B8 established use should be for the same use class as that existing established use has not been sufficiently justified. I have recommended a modification in this respect.

259. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

260. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; ensuring the vitality of town centres; and promoting sustainable transport. Subject to the recommended modification this policy meets the Basic Conditions.

⁵³ Paragraph 196 National Planning Policy Framework 2012

Recommended modification 23:

In Policy ME4

- **delete “allowed” and insert “supported”**
- **in criterion 2 delete “, choice”**
- **replace criterion 6 with “They have safe access and would not result in additional on-street parking or additional on-street servicing”**
- **delete criterion 8**
- **in criterion 9 delete “provide opportunities to travel” and insert “demonstrate provision for travel”**
- **continue the policy with “Or they are development forming part of a scheme for implementation of a strategic allocation of the South Worcestershire Development Plan.”**

Policy MR1 Town and District Centres

261. This policy seeks to establish conditional support for proposals for new town centre uses in town and district centres and neighbourhood parades.

262. In a representation the District Council states *“It should be noted that Figure 5.9 does not show the neighbourhood parades. The location of the neighbourhood parades are shown on Figure 5.10. The intention of MR1 appears to be to encourage mixed use developments with elements of residential and commercial use as a part of a town centre. The intention of MR1 is laudable and reflects local priorities.”*

263. The terms *“are of an appropriate scale to that centre or parade”* and *“unacceptable”* do not provide sufficient guidance to decision makers in determining acceptability. The term *“appropriate”* in criterion 3 is imprecise. Reference to *“relevant policies of the statutory development plan”* is imprecise, and unnecessary as the Development Plan should be read as a whole. There is a confusing overlap between this policy and policy MR2 with respect to neighbourhood parades. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

264. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted

February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

265. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; ensuring the vitality of town centres; promoting sustainable transport; requiring good design; and promoting healthy communities. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 24:

In Policy MR1

- **delete “and neighbourhood parades”**
- **delete “comply with relevant policies of the statutory development plan and”**
- **delete criterion 1**
- **in criterion 3 delete “appropriate” and insert “safe”; and after “access,” insert “and where possible, achieve”**
- **In criterion 5 delete “an unacceptable” and insert “a significant”**

Policy MR2 Neighbourhood Parades

266. This policy seeks to establish that change of use of shops within identified neighbourhood parades should meet specified criteria.

267. In a representation the District Council states *“As currently worded, proposals for a change of use would be supported if they met criteria 1 and 2 or they could demonstrate that the proposal would not have an unacceptable adverse impact on the amenity of those living within or adjacent to the neighbourhood parade. It is suggested that this is an oversight and that the word “or” at the end of criterion 2 should be an “and”. This suggested change would be consistent with paragraph 5.10.13. For consistency with MR2(1), it is suggested that criteria MR2(2a) and MR2(2b) should be MR2(2i) and MR2(2ii) respectively. Policy MR2 is considered to be a local interpretation of SWDP 10 (Protection and Promotion of Centres and Local Shops). Criterion 1 is considered to be in general conformity with SWDP 10I. Criterion 2 is considered to be in general conformity with SWDP 10H. It is considered that paragraph 5.10.15 may be unnecessary. It is noted that Policy MR1 also applies to Neighbourhood Parades. It is*

considered that there could be a conflict between MR2 and MR1 if, for example, development proposals met the criteria in MR1, but not MR2. It is therefore suggested that Policy MR1 apply to town and district centres, but not neighbourhood parades.”

268. The policy is without consequence. The terms “that or any other suitable retail use” and “an alternative equivalent facility” are imprecise. I am satisfied parts 1(i) and 1(ii) of the policy are intended to be alternative acceptable circumstances and that the contents of paragraph 5.10.13 in the reasoned justification is referring to the policy as a whole. The final paragraph does not offer a reasonable alternative to parts 2a and 2b of the policy. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

269. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

270. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong, competitive economy; ensuring the vitality of town centres; promoting sustainable transport; and promoting healthy communities. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 25:

In Policy MR2

- **commence the policy with “To be supported”**
- **in the first and final paragraphs delete “should” and insert “must”**
- **in criterion 1a delete “that or any other suitable”**
- **in criterion 1b delete “facility” and insert “retail unit”**
- **in part 2b delete “or” and insert “and”**
- **number the final paragraph as criterion 3**
- **in the final paragraph delete “an unacceptable” and insert “a significant”**

Policy MH1 Housing Mix

271. This policy seeks to establish that all new housing developments over 5 units meet local housing needs.
272. In a representation the District Council states *“Policy MH1 seeks to have regard to paragraph 50 of the Framework (paragraph 61 in the revised Framework). Policy MH1 is considered to be broadly consistent with SWDP 14 (Market Housing Mix) which seeks a mix of types and sizes in developments of 5+ units. Evidence in paragraph 5.11.4 supports the need for a mix of housing. The SHMA (2014) also supports the need for a mix of housing. It is considered that Policy MH1 provides flexibility but also provides a strong steer for decision makers when determining planning applications”*.
273. Another representation states *“Whilst Draft Policy MH1 provides an element of prescription in relation to housing mix, HLM do however, support the flexibility offered by the wording that requires development to take into account both current and future housing need based upon the most up to date SHMAs, and local housing needs assessments. However, the MNP could be made more effective by the inclusion of reference to site specific circumstances, such as scale, location and viability, having regard to market intelligence and developer assessment. This is the approach taken to identifying market mix in the adopted SWDP.”* There is no requirement for the policy to include site specific circumstances.
274. A further representation states *“We welcome the objective to ‘Support and encourage new housing of high quality and sustainable design that responds to local character adding to the overall quality of the Area and meets local housing need for both market and social sectors at an affordable price.’ However, Policy MH1- Housing Mix seems to put an over reliance on the large allocated sites within the current SWDP and does not appear to recognize the valuable contribution that small sites can make to meet local housing needs. Indeed, paragraph 4.5 seems to suggest that ‘windfall sites’ would be subject to a higher level of scrutiny than other schemes. This is at odds with the fundamental premise of the planning system where all proposals should be considered on their merits. Malvern needs appropriately located housing within the town to meet current and future needs of residents and the plan should better reflect this Vision (it is noticeable that the Vision does not refer to new housing). The proposed mix of housing does not represent the opportunity for intergenerational housing from new development or conversion. With*

greater demands on care budgets, we consider that this may be a new form of housing need that is not currently reflected in the draft Plan.”

275. *Another representation states “The guidance contained within draft Policy MH1 is generally supported as it does not specify a housing mix that would be required to come forward on residential developments. Instead, it notes the type of accommodation where there is a particular shortage but will require developers to accord with the latest evidence base or their own assessment of housing need. Given the timeframe of the Plan period (2016 to 2041), this is considered to be an appropriate approach as housing need can change significantly over time. However, it is considered that the requirement for ‘specialist housing for the elderly’ should be deleted from draft Policy MH1, as it does not accord with national or local planning guidance. Indeed, it would not always be appropriate or necessary to provide specialist elderly accommodation on a residential- led development. Elderly accommodation is usually brought forward by specialist operators on individual developments given that the needs are different to traditional market and affordable accommodation.”*

276. *Another representation states “It is noted that Policy MH1 identifies ‘particular needs’ for certain types and tenures of housing, and the reasoned justification seeks to discourage the provision of larger properties (particularly five-bed dwellings). The MNP should have regard to national policy, which (at paragraph 62b of the NPPF) refers to the objective of ‘creating mixed and balanced communities. The Housing Needs Assessment evidence base produced by Aecom in 2016 references on page 11 the largest detached units (5 bedroom plus) are not in significant demand and should be discouraged. However, this should not fetter the markets ability to create balanced communities, particularly on a large strategic site. In addition, Policy SWDP14: Market Housing Mix (criterion A) seeks a mix of housing informed by the latest evidence. Policy MH1 is too prescriptive and does not recognise that the housing needs of an area can change over time and should be responsive to such changes and that larger strategic sites such as SWDP 56 should create and allow for a mix of residential properties, which may/will include larger dwellings as part of that mix. Accordingly, Policy MH1 should be more flexible and responsive with regards to addressing the needs of the NPA at the point at which schemes are determined. Furthermore, references to the exclusion or discouragement of certain dwellings types within the reasoned justification to the policy is not justified given that the*

strategic policies of the development plan do not advocate any such approach, nor is there any substantive evidence to justify it. Consequently, the policy as drafted fails Basic Condition 2(a) with regard to national policy and Basic Condition 2(e) with regards to general conformity with the strategic policies of the development plan.”

277. I have taken into consideration the comments of the Town Council submitted in respect of the representations of other parties. It is appropriate for the policy to identify local housing needs. The policy is however without consequence. I have recommended a modification in this respect so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

278. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out what is required from applicants when submitting planning applications. The ‘Guidance on Information Requirements and Validation’ document published by the Department for Communities and Local Government Department (DCLG) in 2010 provides more information on the mandatory national information requirements and states that a valid planning application should include *‘information to accompany the application as specified by the local planning authority on their local list of information requirements’*. The use of local lists of information was again promoted in the Framework requiring that local lists be reviewed on a frequent basis to ensure that they remain *‘relevant, necessary and material’*. The DMPO states that validation requirements imposed by local planning authorities should only be those set out on a local list which has been published within 2 years before the planning application is made to ensure information requirements are robust and justified on recent research. The Growth and Infrastructure Act 2013 makes clear that local planning authority information requirements must be reasonable having regard to the nature and scale of the proposed development and the information required must be a material consideration in the determination of the application. The policy is seeking to establish information requirements in support of specified types of planning applications that are not included in the District Council Local Area Planning Applications Requirements List dated November 2017. I have made a recommendation in this respect so that the policy has sufficient regard for national policy.

279. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

280. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with delivering a wide choice of high-quality homes. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 26:

In Policy MH1

- **commence the policy with “To be supported”**
- **in the first sentence delete “Should” and after “considerations,” insert “must demonstrate that they”**
- **delete the final sentence**

The policy should be referred to in the housing section of Chapter 6 (Plan Delivery and Implementation) where process to establish planning application validation requirements should be explained.

Policy MH2 New Residential Development within the Development Boundary

281. This policy seeks to establish criteria for support of new residential development within the development boundary.

282. A representation supports *“the location of the development boundary”*. Another representation states *“Policy MH2 emphasises that new developments do not affect the landscape character is protected. In my view it is absolutely vital for the protection of the beauty of this town. The key map identifies our beautiful commons, unique to our tone which must be protected. I believe that brown field site within the boundary should be developed as a priority even though it may be more costly.”* A further representation states *“Policy MH2 as currently drafted seems to place an increased weight on the consideration of the impact of new development on the amenity of adjacent residents and occupiers. Any planning proposal will be considered against many factors, including the potential impact on residential amenity. However, this policy as currently drafted, may be*

*interpreted by some as a mandate to oppose **all** development. As it is in effect, a non sequitur, we suggest its removal from the policy.”*

283. In a representation the District Council states *“It is considered that the draft Policy MH2 would provide flexibility and support development within the development boundary, providing it accords with other policies in the Plan and SWDP. It is considered that the principle of Policy MH2 would be in general conformity with the strategic policy SWDP 2 (Development Strategy and Settlement Hierarchy). Malvern is identified as a main town in the hierarchy. In relation to main towns, SWDP 2B says infill development within the defined development boundaries is acceptable in principle. However, to provide sufficient clarity that a decision maker could apply Policy MH2 consistently and with confidence when determining planning applications, it is suggested that the Plan should include a map showing the location of the development boundary. In relation to criterion 1, it is considered that it would be unreasonable to expect all development proposals to protect biodiversity interest and landscape character. As currently worded, criterion 2 implies that to be supported development proposals should include the conversion, re-use or extension of an existing building which is clearly not what is intended. It is suggested that Policy MH2 may be more appropriately worded along the following lines: “New infill housing development, and conversion, re-use or extension of an existing building for residential use, will be supported within the development boundary (shown on Figure X) provided it: Is land that is not of high environmental value; Does not have an adversely harmful impact on the amenity of adjacent residents and occupiers; and Accords with other relevant policies of the statutory development plan.”*

284. One representation disagrees with the distribution of development across South Worcestershire that will result from strategic policy SWDP3 depriving local people the ability to make a home in their local community. Another representation states the draft plan *“fails to identify any sites outside the settlement boundary for potential housing allocations”*. The representation states Policy MH2 is unsustainable and appears to be incompatible with policies SWDP2 and SWDP3 and compromises delivery of strategic policies and proposals. The representation proposes consideration be given to development, forming part of an urban extension, to the north of Malvern off the Leigh Sinton Road at Half Key identified on a submitted plan. The representation states the proposal would not prejudice, if policy continues to require it, retaining some strategic gap

between Malvern and Leigh Sinton. I have given consideration to development beyond the settlement boundary when considering Policy MH3 later in my report.

285. Another representation states *“Policy MH2 supports new residential development within the Development Boundary, provided the location is ‘environmentally acceptable’. There is no clarification as to what would be considered ‘acceptable’ from an environmental perspective. The policy could be made more precise and therefore more effective if this were further defined.”* A further representation states *“MNP should provide flexibility in order to accord with any resultant changes to the SWDPR”*.

286. I have taken into consideration the comments of the Town Council submitted in respect of the representations of other parties. The term *“development boundary”* is imprecise. The policy should refer to the Key Diagram where the development boundary is defined. The term *“other relevant policies of the statutory development plan”* is imprecise and it is confusing and unnecessary for a policy to refer to other relevant policies as the Development Plan should be read as a whole. The terms *“adversely”, “effectively and efficiently”, and “accessible and environmentally acceptable land”* are imprecise. The terms of condition 1 do not provide a basis for the determination of planning applications. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

287. The limitation of support to proposals that include the conversion, re-use or extension of an existing building does not have sufficient regard for national policy which seeks to significantly boost the supply of housing. The policy includes the imprecise term *“appropriate space standards.”* Local planning authorities may use nationally recognised optional technical standards where there is evidence to show these are required. However, Neighbourhood Plans may not be used to apply these.⁵⁴ The Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 included the following: *“From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any*

⁵⁴ <https://www.gov.uk/guidance/housing-optional-technical-standards>

additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings". I have recommended a modification in this respect so that the policy has sufficient regard for national policy.

288. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

289. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with delivering a wide choice of high-quality homes, and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 27:

Replace Policy MH2 with "New infill housing development, and conversion, re-use or extension of an existing building for residential use, will be supported within the development boundary (defined on the Key Diagram) provided it does not harm land that is of high environmental value, and does not significantly harm the amenity of adjacent residents and occupiers."

Policy MH3 New Residential Development beyond the Development Boundary

290. This policy seeks to establish circumstances where housing development outside the development boundary will be considered favourably.

291. Two representations support the policy. I have when considering Policy MH2 earlier in my report referred to a representation that proposes consideration be given to development, forming part of an urban extension, to the north of Malvern off the Leigh Sinton Road at Half Key identified on a submitted plan. Another representation states "*Gladman are concerned with the restrictive nature of this policy regarding development beyond the existing development boundary and suggest this policy is modified to allow more flexibility to any future*

development proposals. Gladman suggest that demonstrably sustainable development adjacent to the existing development boundary should also be considered as this would allow the MNP to respond flexibly to any changing needs over the plan period or should any issues arise with the sites allocated within the SWDP. This would also help to support the longevity of the plan following the work that has gone in to creating the plan.”

292. Another representation states “Notwithstanding the acknowledgement within the MNP that refers to the need to review the NP to reflect the SWDP review, HLM considers that an amendment should be made to Policy MH3, either in the policy, or within the explanatory text that acknowledges that development boundaries can be reviewed within the lifetime of the MNP to plan positively for housing growth and to support sustainable development options.” A further representation states “It is noted that the emerging MNP does not allocate sites for housing and instead relies on those contained within the adopted SWDP. However, as set out above, these allocations are to be shortly updated as part of the SWDPR to accommodate development up to 2041. Whilst it is appreciated that this extends beyond the Plan period of the MNP, it is likely to result in additional development coming forward on the edge of Malvern that is not currently considered as part of the Neighbourhood Plan. To ensure that the emerging MNP accords with wider strategic policies, it is considered that draft Policy MH3 should be amended as follows: “3. A replacement of an existing dwelling with established use rights and where the replacement dwelling does not exceed the original footprint by 30%; or and 4. Unless otherwise updated by the South Worcestershire Development Plan Review, development accords with other relevant policies of the MNP and SWDP. particularly in relation to the Malvern Hills Area of Outstanding Natural Beauty and the Leigh Sinton Significant Gap.” This representation also states “In the first instance, it is necessary to replace the ‘and’ set out at criterion (3) with ‘or’ as it is unlikely for a development proposal to accord with all of the requirements of draft Policy MH3. Furthermore, the amended wording at criterion (4) ensures that it is clearly demonstrated that the Development Boundaries contained within the MNP and SWDP are likely to be amended and provides sufficient flexibility for additional development to come forward. As part of this, it is considered appropriate to delete reference to the Malvern Hills AONB and Leigh Sinton Significant Gap as the effect on these designations is a strategic issue which should be considered as part of the SWDPR”.

293. In a representation the District Council states *“Policy P2 seeks to strictly control new housing development in the open countryside. The policy provides some flexibility for new development e.g. rural workers housing, rural exception sites, replacement dwellings, house extensions, conversions and subdivisions of existing residential dwellings. Paragraph 55 of the Framework (paragraph 79 of the revised Framework) says that local planning authorities (and this applies to neighbourhood plans) should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work. Policy MH3 provides a clear local interpretation of SWDP 2C as it relates to housing development in the open countryside. Reference is appropriately made in the supporting text to SWDP 16 (Rural Exception Sites), SWDP 18 (Replacement Dwellings in the Open Countryside), SWDP 19 (Dwellings for Rural Workers). In relation to criterion 4, it is suggested that the criterion is amended as follows to address the mass of the dwelling and to be consistent with SWDP18Aiii - A replacement of an existing dwelling with established use rights and where the replacement dwelling is not disproportionately larger than the existing dwelling and does not exceed the original footprint by 30%. In relation to criterion 4, it is not considered necessary to highlight specific NDP or SWDP policies that a proposal should accord with. In relation to the subdivision of an existing residential dwelling, it is considered that criteria related to outdoor amenity and impact on visual amenity and landscape character are not relevant because none of these factors should be affected by subdividing an existing residential dwelling.*

294. I have taken into consideration the comments of the Town Council submitted in respect of the representations of other parties. The policy refers to *“the development boundary”* but does not identify the boundary. It is unnecessary and confusing for one policy to refer to *“relevant policies in the MNP and SWDP”* as the Neighbourhood Plan and the Development Plan should be read as a whole. It is necessary to include provision regarding mass, and not just footprint, of a replacement dwelling. The term *“includes sufficient outdoor amenity space and off-road parking”* is imprecise. I have recommended a modification in these respects so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

295. A development boundary is used in the Neighbourhood Plan as a policy tool to define where plan policies are to apply, and in particular where development proposals will normally be supported and where proposals will be carefully controlled. Proposals are subject to other policies of the Neighbourhood Plan including those which establish design principles. Whilst it is not within my role to test the soundness of the Neighbourhood Plan it is necessary to consider whether the Plan meets the Basic Conditions in so far as it will not promote less development than set out in the Local Plan, as required by paragraph 184 of the Framework.

296. The reasoned justification for the policy states in paragraphs 5.11.6 and 5.11.7 *“The HNA undertaken by AECOM (February 2016) identifies a requirement for 1,988 dwellings within the NPA for the period 2006-2030. Between 2006-2016, 1,200 dwellings have been completed within the NPA leaving an outstanding requirement of 788 dwellings. The SWDP allocates two strategic sites at North Eastern Malvern (SWDP 56) for 800 dwellings and at Malvern Technology Centre (QinetiQ) for approximately 300 dwellings. This provision will more than meet the remaining requirement for the plan period”*. I am satisfied the Neighbourhood Plan does not promote less development than set out in the Local Plan, as required by paragraph 184 of the Framework. Whilst representations have put forward proposals that land outside the development boundary is, or may become, suitable for development I find that the settlement boundary defined in the policy meets the Basic Conditions and the existence of any sites outside that boundary, whether they are suitable for development or not, as additional sites to any within the development boundary, is not a matter against which the Neighbourhood Plan is to be examined.

297. The Guidance states *“Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development.”* The South Worcestershire Development Plan Review has reached Issues and Options Consultation stage but does not consider housing requirements for the Neighbourhood Plan area. Clearly if there is a future conflict between a policy of the Local Plan and the Neighbourhood Plan then the conflict is resolved in favour of the Plan that last became part of the Development Plan,

however the Guidance is clear in that potential conflicts should be minimised.

298. The contribution arising from completions and the two identified strategic sites amounts to a significant boost to the supply of housing. Whilst no total figure can be assumed there is undoubtedly potential for a significant number of additional dwellings to be provided on infill plots or through the redevelopment of sites within the proposed village envelope. The Neighbourhood Plan places no cap or limit on the number of homes that can be provided within the Malvern development boundary. I conclude Policy MH3 will not lead to the Neighbourhood Plan promoting less development than set out in the Local Plan, as required by paragraph 184 of the Framework.

299. Paragraph 55 of the Framework states “*Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: • the essential need for a rural worker to live permanently at or near their place of work in the countryside; or • where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or • where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or • the exceptional quality or innovative nature of the design of the dwelling. Such a design should: – be truly outstanding or innovative, helping to raise standards of design more generally in rural areas; – reflect the highest standards in architecture; – significantly enhance its immediate setting; and – be sensitive to the defining characteristics of the local area.*” Policy MH3 refers to some of these circumstances in the numbered points and in the final paragraph, but is silent with respect to others. I have recommended a modification in this respect so that the policy has sufficient regard for national policy.

300. The policy is in general conformity with the strategic policies included in the South Worcestershire Development Plan (adopted February 2016) applying in the Malvern Neighbourhood Area and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies. I have recommended a modification to ensure alignment of the two plans with respect to replacement dwellings.

301. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. As recommended to be modified the policy has regard to

the components of the Framework concerned with delivering a wide choice of high-quality homes; requiring good design; promoting healthy communities; conserving and enhancing the natural environment; and conserving and enhancing the historic environment. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 28:

In Policy MH3

- **after “boundary” insert “identified on the Key Diagram”**
- **in point 3 after “replacement dwelling” insert “is not disproportionately larger than the existing dwelling and”, and delete the final word, and insert “or”**
- **replace point 4 with “representing the optimum viable use of a heritage asset or it would enable the future of a heritage asset to be secured; and”**
- **insert point 5 “of exceptional quality or innovative nature.”**
- **In paragraph 3 delete “includes sufficient outdoor amenity space and off-road” and insert “does not result in additional on-road”**

Summary and Referendum

302. I have recommended 28 modifications to the Submission Version Plan. I have also made a recommendation of modification in the Annex below.

303. I am satisfied that the Neighbourhood Plan⁵⁵:

- is compatible with the Convention Rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the Statutory Requirements set out in paragraph 8(1) of schedule 4B of the Town and Country Planning Act 1990 and meets the Basic Conditions:

⁵⁵ The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
- 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 2017.⁵⁶

I recommend to Malvern Hills District Council that the Malvern Neighbourhood Development Plan for the plan period up to 2030 should, subject to the modifications I have put forward, be submitted to referendum.

304. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.⁵⁷ I have seen nothing to suggest that the policies of the Plan will have “*a substantial, direct and demonstrable impact beyond the neighbourhood area*”⁵⁸. I conclude the referendum area should not be extended beyond the designated Neighbourhood Area.

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Malvern Hills District Council as a Neighbourhood Area on 22 August 2014.

⁵⁶ This basic condition arises from the coming into force, on 28 December 2018, of the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 whereby the Neighbourhood Planning Regulations 2012 (5) are amended

⁵⁷ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁵⁸ Planning Practice Guidance Reference ID: 41-059-20140306

Annex: Minor Corrections to the Neighbourhood Plan

305. A number of consequential modifications to the general text, and in particular the ‘reasoned justification’ of policies sections, of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies. Reasoned justification text must not introduce any element of policy that is not contained within the Neighbourhood Plan Policies. At the fact checking stage of the preparation of my report the District and Town Councils have jointly identified instances where consequential modification of reasoned justification sections of the Neighbourhood Plan is necessary. I agree those identified changes and recognise other consequential modifications of general text may be necessary. I have recommended the general text of the Neighbourhood Plan should be modified to achieve consistency with the modified policies.
306. A number of Policies, and parts of Policies, will require re-numbering as a result of recommended deletions of Policies or parts of Policies. I have recommended this should occur.
307. A representation states there are reprographic errors in the key diagram and states “*Features marked A and C on the ‘Sites of Regional or Local Wildlife Importance’ overlay should align with points B and D on the underlying map. There are similar registration errors in the ‘development boundary’ overlay as is obvious in the north east part of the left-hand extract shown above.*” I recommend the points made are checked and any necessary corrections made.
308. Another representation asks for clarification of the meaning of the term “*neighbourhood green space*”. I recommend the necessary clarification should be made.
309. The District Council has provided an update to footnote 38 on page 76, and footnote 46 on page 92, of the Neighbourhood Plan as follows “Application 15/01625/OUT was granted planning permission subject to the signing of a S106 legal agreement at the District Council’s Southern Area Planning Committee on 16th January 2019.” The footnotes should be updated in this respect.
310. I am able to recommend modification of the Neighbourhood Plan in order to correct errors.⁵⁹ The following should be corrected:

The reasoned justification in paragraph 5.9.2 should be completed

⁵⁹ Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990

Para 2.8, bullet 10 – “Table X” should be replaced by “Table 5”.

Para 2.10 – replace the second sentence by the following text – “Non-strategic policies in the Neighbourhood Plan would take precedence over existing non-strategic policies in the SWDP where they are in conflict unless they are superseded by strategic or non-strategic policies that are adopted subsequently.”

Para 4.16 refers to the Key Diagram “which is on a separate document”. The key diagram is included in the supporting documents for the Regulation 16 consultation. To provide clarity for decision makers and planning applicants the Key Diagram should be included in the final version of Neighbourhood Plan or a weblink to where the diagram can be viewed should be provided.

Paragraph 5.6.6(11), second sentence – “It is” to be replaced with “It is”

In Policy MT2 B (6) the second reference to “cycle” should be deleted

Paragraph 5.9.2 insert missing text at the end of the paragraph

Paragraphs 5.9.21 – 5.9.23 require some editing. Reference is made in several places to “employment related uses” and “non-employment related uses”. For accuracy, the policy is seeking to protect land for “B1, B2 and B8 uses” and resist “non-B1, B2 and B8 uses”. The relevance of this is that non-B1, B2 or B8 uses are still employment uses. Reference is also made in the Reasoned Justification to ME3C and ME3A the references should relate to criteria in Policy ME4.

Paragraph 5.11.12 – The final sentence of the paragraph should be deleted as the Development Plan should be read as a whole.

Paragraphs 5.11.13 and 5.11.14 – Reference to extensions to existing dwellings not exceeding 30% of the original “volume” (should this be footprint?) is repeated. One of the references should be deleted.

Paragraph 5.9.15, first sentence – reference to ME3A should be amended to ME3.

To provide clarity for decision makers the Reasoned Justification to Policy ME4 and/or Glossary should define “main town centre use”.

Paragraph 6.3 states “there will be three principal sectors of activity which will direct the delivery of the MNP.” This is misleading because the principal way through which the Plan will be implemented is

through the application of the land-use policies by the local planning authority to determine planning applications. Paragraph 6.3 should be deleted.

Appendix 2.1: SWDP56 Development at North East Malvern – Worcestershire County Council advise this site will no longer deliver a primary school on site and instead will provide a S106 contribution towards off-site provision to integrate with the existing development at Malvern Vale.

311. I recommend minor change only in so far as it is necessary to correct an error or where it is necessary so that the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

**Recommended modification 29:
Modify general text to achieve consistency with the modified policies, and to correct identified errors including those arising from updates. Renumber policies and parts of policies arising from deletions.**

312. The District Council and other parties have made some suggestions for changes to the Neighbourhood Plan that are not necessary to meet the Basic Conditions or Convention Rights nor necessary to correct errors. I would have no objection to these changes being made (set out below). Indeed, a number of the suggestions would positively improve the plan. However, I cannot recommend modifications as this would be beyond my remit.

It is noted that the Plan is titled “Malvern Neighbourhood Plan”. It is suggested that it may be helpful if the Plan was titled “Malvern Town Neighbourhood Plan” to be consistent with the neighbourhood area designation and to avoid possible confusion with neighbouring parishes which also include the Malvern name, including Malvern Wells who are also preparing a neighbourhood plan.

Para 1 – Sentence 2 implies that the South Worcestershire Development Plan is not appropriate for Malvern Town. It is suggested that the word “appropriate” is replaced by “locally distinctive”.

Para 1.6 – it is suggested that the word “checked” be replaced by “considered”.

Para 1.23, bullet points 4 and 5 – if successful at Examination, it is anticipated that a Referendum could be held in May 2019, with the making of the Plan in May / June 2019

Objective 1 refers to retaining the character of Malvern. This implies that there should be no change. It is considered that it may be appropriate to replace “retain” with “protect and enhance”.

Para 4.5, sentence 2 – “sustainably” should be replaced with “sustainability”. Sentence 3 refers to future housing provision meeting local needs. It needs to be recognised that housing provision in Malvern is not just to meet the needs of the Malvern Neighbourhood Area. As a main town, Malvern is the focus for growth to meet a significant element of the housing and employment needs of the district.

Paragraph 4.12 explain high value relates to visual amenity, biodiversity, and ecosystem.

It is noted that the 12 Objectives on pages 24 and 25 duplicate the 12 objectives on pages 19 and 20.

In Appendix 5.2. It is suggested that the word “Local” is inserted in the headings in Figures 5.1.1 – 5.1.7 on pages 111 – 117.

Sport England considers it would be appropriate to reference the District Sport and Leisure Strategy in the reasoned justification for Policy MC1.

For accuracy, it is suggested that the words “reflect and retain the architectural vernacular” in the first sentence be replaced with “contain some important architectural features”.

The Town Council’s detailed monitoring and review proposals are also very ambitious. It is considered that they may raise expectations that might be difficult to resource or achieve.

Paragraph 5.6.6 (Reasoned Justification to Policy MD1). RPS would suggest that the list of detailed designs set out (as 11 factors) is adequately dealt with within the SWDP policies and the Design Guide

SPD. We suggest that this paragraph is more appropriately placed in a supplementary document in support of the MNP.

The “sequential test” referred to in criterion 6 of policy ME3 and criterion 7 of policy ME4 would appear to relate to paragraphs 24 – 27 of the Framework (paragraphs 86 – 90 of the revised Framework) which seeks to ensure the vitality of town centres. It is suggested that this could be made clear in the Reasoned Justification

To be consistent references a and b in part 2 of Policy MR2 should be replaced with (i) and (ii)

Whilst paragraph 7.6 is factually correct, it is not relevant to monitoring and review and will be historic following the examination of the Neighbourhood Plan. It is therefore suggested that paragraph 7.6 is deleted.

Paragraph 7.7 says that the Town Council will undertake a review of the Neighbourhood Plan Policies against the revised Framework within 6 months of the Neighbourhood Plan being made. It is suggested that this may not be helpful. It should be noted that Planning Practice Guidance (PPG) says there is no requirement to review or update a neighbourhood plan. Policies in a neighbourhood plan may become out of date, for example if they conflict with policies in a Local Plan that is adopted after the making of the neighbourhood plan. In such cases, the more recent plan policy takes precedence. In addition, where a policy has been in force for a period of time, other material considerations may be given greater weight in planning decisions as the evidence base for the plan policy becomes less robust. Communities in areas where policies in a neighbourhood plan that is in force have become out of date may decide to update their plan, or part of it.

PPG distinguishes between “minor” (non-material) updates to a neighbourhood plan that would not materially affect the policies in the plan and “substantive” updates. If the Town Council wished to make substantive neighbourhood plan updates (modifications) that materially affect the policies in the plan, it would be necessary to follow the process set out in guidance – ie, Regulation 14 consultation, Regulation 16 consultation, Examination and, possibly a Referendum. Whether a Referendum would be required depends on whether the modifications are so significant or substantial as to change the nature of the plan.

Whether modifications change the nature of the plan is a decision for an independent examiner.

In light of the above, it is suggested that paragraph 7.7 could be replaced with text along the following lines: “When new issues are identified, or policies are found to be out of date, or in need of change, for example due to changing national or strategic planning policy, the Town Council, in consultation with Malvern Hills District Council, may decide to update the NDP, or part of it.”

Paragraph 7.8 indicates that the Town Council will produce a report on the general conformity of strategic policies in the emerging SWDP Revision with Neighbourhood Plan at various stages. To avoid any misunderstanding, it should be noted that neighbourhood plans must be in general conformity with strategic policies in the development plan, not vice versa.

It is suggested that the glossary is expanded to cover additional terms used in the Neighbourhood Plan, including major development, neighbourhood open spaces, micro businesses, micro generation, main town centre uses, active travel etc.

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REPORT ENDS