

Malvern Hills District Council

**Hanley Castle Parish  
Neighbourhood Plan  
2016 - 2030**

**Independent Examiner's Report**

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20 August 2018

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## Summary

I have been appointed as the independent examiner of the Hanley Castle Neighbourhood Development Plan.

The Parish contains the two villages of Hanley Castle and Hanley Swan and a number of smaller settlements. It lies between Great Malvern and Upton-upon-Severn and the eastern boundary of the Parish adjoins the River Severn.

The Plan has a clear vision and detailed objectives. It contains 26 policies that cover a wide range of issues together with a number of Parish Council Responsibilities. It adds a layer of local context and detail to District-level policies. Four sites are allocated for residential development and eight sites support employment uses.

I have recommended a number of modifications to both the policies and their supporting text which, by and large, are to help ensure that the Plan is a workable document that provides a practical and clear framework for decision making. My reasoning is set out in detail in this report.

Subject to those modifications, I have concluded that the Plan does meet the basic conditions and all the other requirements I am obliged to examine. I am therefore pleased to recommend to Malvern Hills District Council that the Hanley Castle Parish Neighbourhood Development Plan, as modified by my recommendations, can go forward to a referendum.

In considering whether the referendum area should be extended beyond the Neighbourhood Plan area I see no reason to alter or extend this area for the purpose of holding a referendum.

Ann Skippers MRTPI  
Director, Ann Skippers Planning  
20 August 2018



## 1.0 Introduction

This is the report of the independent examiner into the Hanley Castle Neighbourhood Development Plan (the Plan).

The Localism Act 2011 provides a welcome opportunity for communities to shape the future of the places where they live and work and to deliver the sustainable development they need. One way of achieving this is through the production of a neighbourhood plan.

I have been appointed by Malvern Hills District Council (MHDC) with the agreement of the Parish Council, to undertake this independent examination.

I am independent of the qualifying body and the local authority. I have no interest in any land that may be affected by the Plan. I am a chartered town planner with over twenty-five years experience in planning and have worked in the public, private and academic sectors and am an experienced examiner of neighbourhood plans. I therefore have the appropriate qualifications and experience to carry out this independent examination.

## 2.0 The role of the independent examiner

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

The basic conditions<sup>1</sup> are:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood 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
- The making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations
- Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation

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<sup>1</sup> Set out in paragraph 8 (2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

and referred to in the paragraph above. Only one is applicable to neighbourhood plans and is:

- The making of the neighbourhood plan is not likely to have a significant effect on a European site<sup>2</sup> or a European offshore marine site<sup>3</sup> either alone or in combination with other plans or projects.

The examiner is also required to check<sup>4</sup> whether the neighbourhood plan:

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

I must also consider whether the draft neighbourhood plan is compatible with Convention rights.<sup>5</sup>

The examiner must then make one of the following recommendations:

- The neighbourhood plan can proceed to a referendum on the basis it meets all the necessary legal requirements
- The neighbourhood plan can proceed to a referendum subject to modifications or
- The neighbourhood plan should not proceed to a referendum on the basis it does not meet the necessary legal requirements.

If the plan can proceed to a referendum with or without modifications, the examiner must also consider whether the referendum area should be extended beyond the neighbourhood plan area to which it relates.

If the plan goes forward to referendum and more than 50% of those voting vote in favour of the plan then it is made by the relevant local authority, in this case Malvern Hills District Council. The plan then becomes part of the 'development plan' for the area and a statutory consideration in guiding future development and in the determination of planning applications within the plan area.

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<sup>2</sup> As defined in the Conservation of Habitats and Species Regulations 2012

<sup>3</sup> As defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

<sup>4</sup> Set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act

<sup>5</sup> The combined effect of the Town and Country Planning Act Schedule 4B para 8(6) and para 10 (3)(b) and the Human Rights Act 1998

### 3.0 Neighbourhood plan preparation

A Consultation Statement has been submitted.

Work on the Plan began in earnest in 2014 with a well-attended launch event in March of that year.

The Consultation Statement sets out four aims for consultation and this is an approach I commend to others. It explains that a “multi-channel” approach was used; regular report backs to monthly parish council meetings, websites, email circulation to both residents and businesses, the Parish magazine, public meetings and consultation with special interest groups.

After ‘piggy-backing’ with a community event, The Big Lunch, held in Hanley Swan in July 2014, a survey of both residents and businesses was conducted. As well as encouraging residents and businesses to complete the survey via fairly standard ways of advertising on the village website, posters and so on, volunteers hand delivered the questionnaire to every household in the Parish and collected it too. This resulted in a 38% response rate from households which is commendable and a testament to the approach taken.

An event held later in 2014 shared results and again was well attended. In 2015, another village event was held across three venues to explore the evolving aims of the Plan and its potential policy areas.

Informal consultation on the draft Plan was held between 20 July – 31 August 2016. As well as specific contact with community groups, adjacent Parishes and MHDC were involved.

Pre-submission consultation on the draft Plan took place between 28 April – 12 June 2017. This stage was promoted by banners, notices, the Parish magazine, emails and a press release which incidentally resulted in coverage in the Malvern Gazette. Copies of the Plan were available in the village shop and on websites. Emails were sent to alert those on the mailing list and to consultees.

I consider there has been satisfactory engagement with the community and other bodies throughout the process.

Submission (Regulation 16) consultation was carried out between 16 February – 6 April 2018.

The Regulation 16 stage attracted 14 representations from different people or organisations. I have taken all the representations received into account.

## 4.0 The examination process

I have set out my remit earlier in this report. It is useful to bear in mind that the examiner's role is limited to testing whether or not the submitted neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).<sup>6</sup> Planning Practice Guidance (PPG) confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.<sup>7</sup> Where I find that policies do meet the basic conditions, it is not necessary for me to consider if further amendments or additions are required.

One representation puts forward other sites, others put forward comments that add text or content to the Plan or otherwise improve and enhance the document. The Parish Council may wish to consider these suggestions in the final version of the Plan or when the Plan is reviewed as appropriate, but they are not modifications I need to make in respect of my role and remit.

Where modifications are recommended they appear in **bold text**. Where I have suggested specific changes to the wording of the policies or new wording these appear in ***bold italics***.

PPG<sup>8</sup> explains that it is expected that the examination will not include a public hearing. Rather the examiner should reach a view by considering written representations. Where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.<sup>9</sup> After consideration of all the documentation and representations I decided that it was not necessary to hold a hearing.

Additionally, NPIERS, the Neighbourhood Planning Independent Examiner Referral Service, published guidance to service users and examiners earlier this year. Although I have not been appointed via NPIERS to undertake this examination, I am a member of the NPIERS Panel and consider it appropriate for me to take account of this guidance.

Amongst other matters, the guidance indicates that the qualifying body, in this case, Hanley Castle Parish Council, will normally be given an opportunity to comment upon any representations made by other parties at the Regulation 16 consultation stage should they wish to do so. There is no obligation for the Parish Council to make any comments; it is only if they wish to do so. If a qualifying body wishes to make comments, the guidance indicates that any such comments should be made within two weeks after close of the Regulation 16 stage.

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<sup>6</sup> PPG para 055 ref id 41-055-20180222

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid* para 056 ref id 41-056-20180222

<sup>9</sup> *Ibid*

I therefore wrote to ask whether the Parish Council wished to make any comments on any or all of the representations received at Regulation 16 stage and asked for any comments by 11 May 2018. The Parish Council submitted comments and these are available from MHDC website.

I am very grateful to both Councils and particularly David Clarke of MHDC and Robert Lamb of the Steering Group for the assistance given to me during the course of the examination and for ensuring that it ran smoothly.

I made an unaccompanied site visit to the neighbourhood plan area on 30 May 2018.

## **5.0 Compliance with matters other than the basic conditions**

I now check the various matters set out in section 2.0 of this report.

### **Qualifying body**

Hanley Castle Parish Council is the qualifying body able to lead preparation of a neighbourhood plan. This requirement is satisfactorily met.

### **Plan area**

The Plan area was approved by MHDC on 21 July 2014. The Plan area is coterminous with the Parish administrative boundary. The Plan relates to this area and does not relate to more than one neighbourhood area and therefore complies with the necessary requirements. The Plan area is shown on page 7 of the Plan.

### **Plan period**

The Plan covers the period 2016 – 2030. This is clearly stated on the Plan's front cover and confirmed within the Plan itself. It means that the Plan aligns with the end time period for the South Worcestershire Development Plan.

### **Excluded development**

The Plan does not include policies that relate to any of the categories of excluded development and therefore meets this requirement.

### **Development and use of land**

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because 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.<sup>10</sup> Subject to any such recommendations, this requirement can be satisfactorily met.

I note that the Plan already makes this distinction by identifying Parish Council Responsibilities (PCR) and this is explained well in Section 1 of the Plan and they are clearly identified in 'green boxes' throughout the Plan. I see that the word "Policy" appears in bold before the 'orange' box of the policy. In order to have more clarity, I recommend that the word "Policy" is included before the number of the policy within the 'orange box'. Alongside this, the word "Policy" should be removed from the 'green box' on page 64 of the Plan.

With these modifications, I consider this to be sufficient differentiation for the style of the Plan presented.

- **Move the word "Policy" that appears before each 'orange box' to within the 'orange box' on each policy in the Plan so that it appears "*Policy [XXXX]*"**
- **Delete the word "Policy" from before the 'green boxes' on page 64 of the Plan**

## 6.0 The basic conditions

### Regard to national policy and advice

The Government published a National Planning Policy Framework (NPPF) in 2012. On 24 July 2018, a revised NPPF was published. Paragraph 214 in Annex 1 of that document explains that:

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

Footnote 69 explains that for neighbourhood plans "submission" 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.

It is therefore clear that it is the previous NPPF published in 2012 that is relevant to this particular examination. Any references to the NPPF in this report refer to the NPPF published in 2012.

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<sup>10</sup> PPG para 004 ref id 41-004-20170728

The NPPF is the main document that sets out national planning policy. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the strategic development needs set out in Local Plans, plan positively to support local development, shaping and directing development that is outside the strategic elements of the Local Plan and identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with the neighbourhood plan to proceed.<sup>11</sup>

The NPPF also makes it clear that neighbourhood plans should be aligned with the strategic needs and priorities of the wider local area. In other words neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. They cannot promote less development than that set out in the Local Plan or undermine its strategic policies.<sup>12</sup>

The NPPF indicates that plans should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.<sup>13</sup>

On 6 March 2014, the Government published a suite of planning guidance referred to as Planning Practice Guidance (PPG). This is an online resource available at [planningguidance.communities.gov.uk](http://planningguidance.communities.gov.uk) which is regularly updated. The planning guidance contains a wealth of information relating to neighbourhood planning. I have also had regard to PPG in preparing this report.

PPG indicates that a policy should be clear and unambiguous<sup>14</sup> to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the context and the characteristics of the area.<sup>15</sup>

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.<sup>16</sup> It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.<sup>17</sup>

Whilst this has formed part of my own assessment, the Basic Conditions Statement sets out how the Plan has responded to national policy and guidance through a simple table and commentary on how the Plan's policies align with the NPPF's twelve core planning principles and its sustainable development themes.

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<sup>11</sup> NPPF paras 14, 16

<sup>12</sup> *Ibid* para 184

<sup>13</sup> *Ibid* para 17

<sup>14</sup> PPG para 041 ref id 41-041-20140306

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid* para 040 ref id 41-040-20160211

<sup>17</sup> *Ibid*

## **Contribute to the achievement of sustainable development**

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development. The NPPF as a whole<sup>18</sup> constitutes the Government's view of what sustainable development means in practice for planning. The Framework explains that there are three dimensions to sustainable development: economic, social and environmental.<sup>19</sup>

Whilst this has formed part of my own assessment, the Basic Conditions Statement contains a short section that maps how the Plan aligns with each of the three components of sustainable development outlined in the NPPF.

## **General conformity with the strategic policies in the development plan**

The development plan relevant to this examination includes the South Worcestershire Development Plan (SWDP) adopted on 25 February 2016. Helpfully, the South Worcestershire Councils have produced a list of what policies are considered 'strategic' for the purposes of neighbourhood planning.

The Basic Conditions Statement contains a table that shows the relationship between the Plan and those SWDP policies considered to be relevant to this Plan together with a commentary. This has provided a useful context for my own consideration of this basic condition and is comprehensive in its coverage and commentary.

## ***Emerging plans at MHDC level of relevance to this examination***

In addition I note that a review of the SWDP started in late 2017.

## **European Union Obligations**

A neighbourhood plan must be compatible with European Union (EU) obligations, as incorporated into United Kingdom law, in order to be legally compliant. A number of EU obligations may be of relevance including Directives 2001/42/EC (Strategic Environmental Assessment), 2011/92/EU (Environmental Impact Assessment), 92/43/EEC (Habitats), 2009/147/EC (Wild Birds), 2008/98/EC (Waste), 2008/50/EC (Air Quality) and 2000/60/EC (Water).

## ***Strategic Environmental Assessment***

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment is relevant. Its purpose is to provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes. This Directive is commonly referred to as the

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<sup>18</sup> NPPF para 6 which indicates paras 18 – 219 of the Framework constitute the Government's view of what sustainable development means in practice

<sup>19</sup> *Ibid* para 7

Strategic Environment Assessment (SEA) Directive. The Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004.

A Screening Opinion dated September 2017 has been submitted. This explains the sequence of events and includes earlier Screening Opinions. A Screening Opinion of February 2017 indicated that SEA might be required because of four proposed site allocations. The requisite consultation with the statutory consultees was undertaken. The Environment Agency (EA), and Natural England (NE) responded indicating that a SEA would not be required, but Historic England (HE) concurred with the view that a SEA may be required.

An updated Screening Opinion was published in June 2017 for consultation with HE following additional work. HE agreed that a SEA would not be needed. I therefore take the view that the submitted Plan can be said to be compatible with EU obligations in relation to the need for a SEA.

I note that the updated Screening Opinion was based on the Plan being in general conformity with the SWDP and that the impact of four sites proposed for allocation in the Plan “would be afforded a level of protection or mitigation by policies BHN1, BHN2 and the Building Design Guide”. It should be noted that I have made some recommendations in respect of those policies and if the recommendations of this examination report were to be accepted, this then in my view would mean that it would be prudent for the local planning authority to explore again the question of whether a SEA be needed.

In reaching this view, I am also mindful that ultimately PPG advises that it is the responsibility of the local planning authority to decide whether the Plan is compatible with EU obligations.<sup>20</sup>

### ***Habitats Regulations Assessment***

Directive 92/43/EEC on the conservation of natural habitats, commonly referred to as the Habitats Directive, is also of relevance to this examination. A Habitats Regulations Assessment (HRA) identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects.<sup>21</sup> The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

The Screening Opinion of February 2017 confirmed that there are no European sites within the Plan area. It went on to consider those falling within a 20km radius of the Plan area. The nearest are the Bredon Hill Special Area of Conservation (SAC) (some 10km east), the Lyppard Grange SAC (some 13km northeast) and the Dixon Wood SAC (some 18km southeast).

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<sup>20</sup> PPG para 031 ref id 11-031-20150209

<sup>21</sup> *Ibid* para 047 ref id 11-047-20150209

The Screening Opinion concluded that the Plan would not have likely significant effect on any European sites alone or in combination with other plans and concluded that a full HRA would not be needed. This was because the Plan is considered to be in general conformity with the SWDP which itself has undergone Appropriate Assessment (AA) and although the Plan seeks to allocate other and additional sites for development, their scale and distance from the European sites is not likely to result in significant effects.

NE was consulted and advised “...that the Hanley Castle Neighbourhood Plan is unlikely to result in any significant effect on any European sites either alone or in combination and therefore no further assessment work...is required”.<sup>22</sup>

Given the nature, characteristics and distance of the European sites and the nature and contents of the Plan, I consider that a full HRA is not required and that the further basic condition set out in Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended) is complied with.

I have also considered any implications arising from the judgment in the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*<sup>23</sup> and asked the local planning authority to do the same. My letter to MHDC is attached at Appendix 2. MHDC have confirmed they do not consider any further HRA work is needed. I have also independently considered this matter and consider that the Screening Opinion is legally compliant in the light of the judgment and that no further action is required as a result of this judgment in relation to this particular Plan.

### ***European Convention on Human Rights (ECHR)***

The Basic Conditions Statement includes a section on this. There is nothing in the Plan that leads me to conclude there is any breach of the Convention or that the Plan is otherwise incompatible with it.

PPG<sup>24</sup> confirms that it is the responsibility of the local planning authority, in this case MHDC, to ensure that all the regulations appropriate to the nature and scope of the draft neighbourhood plan have been met. It is MHDC who must decide whether the draft plan is compatible with EU obligations when it takes the decision on whether the plan should proceed to referendum and when it takes the decision on whether or not to make the plan.

## **7.0 Detailed comments on the Plan and its policies**

In this section I consider the Plan and its policies against the basic conditions. Where modifications are recommended they appear in **bold text**. As a reminder, where I have

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<sup>22</sup> Letter from Natural England of 13 March 2017 included in Appendix 2 of the Screening Opinions September 2017

<sup>23</sup> Case C-323/17

<sup>24</sup> PPG para 031 ref id 11-031-20150209

suggested specific changes to the wording of the policies or new wording these appear in ***bold italics***.

The Plan is presented to a good standard and has a helpful contents page. I found the document easy to read and use.

### **Section 1: Introduction**

This well written and helpful section is a useful lead in to the Plan. As well as setting out basic information, it indicates that the Plan may be updated in full or in part if needed and I consider this to be good practice and to be encouraged. In addition it refers to Parish Council Responsibilities which capture the issues raised during community engagement, but which could not form a planning policy.

### **Section 2: The Hanleys – Our Villages**

This well written section explains that the Parish contains the two villages of Hanley Castle and Hanley Swan and the small settlements of Cross Hands, Blackmore End, Oakmere Park and Gilbert’s End. It provides the context for the Plan setting out a lot of information about the Parish’s characteristics.

### **Section 3: The Process for Producing the Plan**

Setting out the process and signposting further sources of information such as the Consultation Statement, this well written section summarises the work to date on the Plan. Some parts of this section will require some natural updating as the Plan progresses towards being made.

### **Section 4: Aims & Objectives**

Five aims are identified for the Plan derived from engagement with both residents and businesses and which form the basis for each section of the Plan. Each aim is supported by a number of objectives and a cross reference to the relevant policies is also indicated. This provides a clear link between the aims, objectives and policies. All the aims and objectives are clearly articulated.

In the interests of consistency, it is recommended that reference to “settlement boundaries” in objective 3. of Aim 1 is amended to “development boundaries”.

- **Amend the reference to “settlement boundaries” in objective 3. of Aim 1 to “*development boundaries*” on page 18 of the Plan**

## Section 5: Managed Growth Policies

### Policy MnGr 1 Housing Mix

The supporting text on page 23 has two paragraphs blocked out in grey. It is not clear to me what, if any the significance of this is and so in the interests of clarity, this colour block should be removed.

Page 24 refers to Appendix E which does not appear to exist. As a result the reference should be deleted.

Policy MnGr 1 supports a mix of house types, sizes and tenures in line with the NPPF's encouragement for a wide choice of high quality homes and a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community.<sup>25</sup> The supporting text explains that the Parish has a wide range of housing stock, but there is an identified need for homes suitable for young families and older people. It reflects Policy SWDP 14 in particular which seeks a market housing mix for sites of five or more units. The policy is clearly written and meets the basic conditions. No modifications are therefore recommended to the policy itself.

- **Remove the grey colour block from paragraphs 2 and 3 on page 23 of the Plan**
- **Delete the reference to “...(see Appendix E)...” from paragraph 13 on page 24 of the Plan**

### Policy MnGr 2 Affordable Housing

Policy MnGr 2 seeks to achieve three things; first of all it encourages all affordable housing to be built to Lifetime Home Standards. Secondly, it seeks a minimum of 25% to be shared ownership unless viability or other factors indicate a different mix. Thirdly, it supports rural exception sites and brownfield sites. The policy is clearly written and has an appropriate degree of flexibility within it. It will help to ensure that a wide range of housing is provided in line with the NPPF and will help to achieve sustainable development. It is a local expression of Policies SWDP 15 and 16. It meets the basic conditions and no modifications are recommended.

There is a 'rogue' paragraph 22 on page 28 that should be deleted.

- **Delete paragraph 22 on page 28 of the Plan**
- **Consequential renumbering will be needed**

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<sup>25</sup> NPPF para 50

### Policy MnGr 3 Allocation of Affordable Housing

This policy seeks to ensure that any affordable housing is first offered to people with a local connection. Local connection is defined in the Malvern Hills Rural Lettings Policy. The SWDP is clear that rural exception sites must meet local needs and although the policy does not only refer to such sites, it is evident that most, if not all, of the affordable housing in the Parish will be provided through such sites. The policy aims to meet local needs and the NPPF<sup>26</sup> indicates that housing development should be responsive to local circumstances. In this particular case, then the policy reflects the NPPF, Policy SWDP 15 and helps to achieve sustainable development. It is written flexibly.

MHDC points out in their representation that paragraph 6 on page 29 of the Plan is not correct and therefore in the interests of accuracy, a modification is recommended to address this.

- **Change paragraph 6 on page 29 of the Plan to read: “SWDP 15 Meeting Affordable Housing Needs. *Local connections for villages in the rural areas in Malvern Hills are defined in the Malvern Hills Rural Lettings Policy.*”**

### Policy MnGr 4 Infill / Backland Housing in the Parish

Development on infill and backland sites is supported where it meets this criteria-based policy. The first criterion defines an infill plot, the second prevents the outward extension of the built-up area of the village, the third ensures that any backland development is appropriate both in relation to its impact on amenity and character and the fourth and fifth limit development to three bedrooms or support self-build. The policy resists development on gaps that are visually important to the local character.

The policy is generally well written and has an appropriate degree of flexibility whilst seeking to ensure that development of this nature is appropriate. It particularly takes into account the NPPF’s aim of ensuring development functions well and adds to the overall quality of the area and responds to local character<sup>27</sup> as well as helping to achieve sustainable development. It reflects Policy SWDP 2.

However, the current wording of criteria v. would mean that self-build development is acceptable per se and I do not consider this was the intention of the policy. Accordingly, a modification is suggested to make this element of the policy clear.

Please note that I have recommended modifications to the definitions of “backland” and “infill” in the Plan’s glossary which are consistent with this policy.

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<sup>26</sup> NPPF para 54

<sup>27</sup> *Ibid* para 58



- **Change criterion iv. and v. by amalgamating them together so that it reads: “iv. provides homes to a maximum size of three bedrooms or provides plots for self-build homes to a maximum size of three bedrooms.”**

### **Policy MnGr 5 Scale of New Development**

This policy seeks to limit the number of dwellings on any one site at any one time to 10. It specifically excludes any allocated sites in the SWDP and provides flexibility in indicating that more could be agreed on any one site, but subject to a phasing programme.

The supporting text explains that historically the Parish has had smaller developments and this is now sought to ensure that the Parish “retains its rural atmosphere and friendliness” and “allow new residents to integrate into life in the Parish”.<sup>28</sup> The Plan explicitly acknowledges the policy is not seeking to constrain growth and seeks to allocate additional sites to those in the SWDP.

This policy does not constrain growth, but seeks to support how that overall growth might be most appropriately delivered recognising the Parish’s local character and the community’s desire to address the connections between people and places and the integration of new development in the existing villages as put forward in the NPPF.<sup>29</sup> Furthermore, there is strong community support for this policy. The policy is clearly written. It meets the basic conditions and no modifications to it are recommended.

### **Policy MnGr 6 Incremental Growth**

Policy MnGr 6 supports the development of “up to” 50 dwellings over the Plan period with no more than 30 dwellings to be granted planning permission in any rolling five-year period.

Whilst I appreciate the community’s desire to ‘spread’ development throughout the Plan period to allow integration and to avoid overloading local resources, the Plan cannot impose a maximum growth figure. In addition the phasing element of the policy would have the potential to constrain the delivery of housing both in the Parish but also at a more strategic level across the District. Furthermore, this policy may potentially limit the NPPF’s position to “boost significantly” the supply of housing.

I consider that Policy MnGr 5 will help to achieve the aims of this policy. I also note that the SWDP recognises that the provision of infrastructure is a challenge and seeks to achieve a synergy between the timely provision of infrastructure needed to support

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<sup>28</sup> Page 32 of the Plan

<sup>29</sup> NPPF para 61

development. I am also mindful of Policy SWDP 7. The provision of infrastructure which in itself will support the other aims of the policy can be integrated into the policy.

Therefore a modification to the policy is recommended so that it meets the basic conditions.

- **Reword the policy to read: “*The development of approximately 50 new dwellings is supported over the Plan period. It is expected that the provision of infrastructure required to support the development proposed will be provided in a timely manner and no later than the appropriate phase of development for which it is required.*”**

### Policy MnGr 7 Preferred Site Allocations

As this policy seeks to allocate a number of sites for development, I consider it would be clearer to remove the word “Preferred” from the title of the policy and any other areas where this appears.

Policy SWDP 2 provides the development strategy and settlement hierarchy context for the Plan. Hanley Swan is identified as a ‘Category 1’ village and Hanley Castle as a ‘Category 3’ village in the SWDP where there is an expectation that locally identified housing and employment needs will be met. The policy is clear that development proposals should be of an appropriate scale and type in regard to the size of the village, location, landscape character and the availability of infrastructure. The SWDP supports proposals promoted through neighbourhood planning as long as they would not compromise delivery of strategic policies and proposals. The proposed site allocations represent the community’s preferred options for the Parish and would contribute to the achievement of the SWDP’s strategy.

Policy SWDP 59 allocates a number of sites for new housing in Category 1, 2 and 3 villages. In addition, it permits housing within defined development boundaries, local initiatives including neighbourhood plans and rural exception sites. In Hanley Swan, land between the School and Westmere (SWDP59/6) is proposed for about 20 dwellings. This is called “Extension to Chapmans Orchard” in the Plan.

Seven further sites for housing development were identified and considered. Development boundaries for Hanley Castle (in three parts) and Hanley Swan are shown on pages 36 and 37 of the Plan respectively. The policy identifies five sites indicating that the sites will form the basis of extensions to the development boundaries, but where the site is not coterminous it will not be included in the boundary. This approach is consistent with Policy SWDP 2.

The policy uses, rather confusingly to my mind, the original site numbers so that now they are not sequential. Given the stage the Plan has now reached I consider it would be best to identify these sites as A – E and if desired, the original numbering can be

retained so that the supporting documentation still makes sense. The Plan also refers to the site identification used by MHDC.

Site 1 (Extension to Chapmans Orchard) is included in the Hanley Swan development boundary. This site forms part of the MHDC allocation for 20 units, four of which are already under construction. I saw at my site visit that the site has a tree and hedge boundary, but there are few other constraints.

Site 2 (Welland Road/Picken End Corner) is not included in the Hanley Swan development boundary, but lies adjacent to it. The boundaries to the north and west of trees are important to the character of the area.

Site 3 (Land between Hillview Close and St Gabriels Church) is not included within the Hanley Swan development boundary, but lies adjacent to it. The Plan promotes it as a rural exception site. However, this is problematic; if the site is allocated for development then it is not a rural exception site. Nonetheless it is clear from the Plan that it is promoting this site, and that the community has supported this site, on the basis that it provides affordable housing. Paragraph 16 on page 42 of the Plan requires revision to reflect this position.

Site 4 (Land on West Side of Worcester Road) is not included within the Hanley Swan development boundary, but lies adjacent to it.

In order for the development boundaries to be consistent with the approach set out in the Plan itself and the SWDP, and to be consistent with the inclusion of site 1, I consider it would provide a practical framework if these other sites were also included in the development boundary for Hanley Swan. This approach also takes its lead from the last paragraph of the policy which would then be redundant if the modification was actioned. However, an explanation of why the development boundaries are being revised and what those revisions are would be needed in the Plan. To facilitate this, a new paragraph in the supporting text is suggested.

In addition, updates to Map 4 will be needed and some consequential changes made to the supporting text.

Turning now to Site 7 (Albion Lodge Care Home), this site lies partly in and partly outside the Hanley Swan development boundary. The supporting text indicates that as discussions were already taking place with MHDC about further development it was not considered “appropriate to perform a full site evaluation”.<sup>30</sup> This is to misunderstand the importance of site appraisal in allocating sites for development. Page 46 of the Plan also references a planning application in 2017 and shows a site plan that has a broken line around part of the site and an unbroken line around the remainder.

It is not clear to me why this site was not assessed or what is being sought on this site.

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<sup>30</sup> Page 46 of the Plan

In addition, the Parish Council have in their comments on the representations received at submission stage, indicated that planning permission has now been granted for Phases 1 and 2 and “the NDP is not allocating land as the decision has already been taken to proceed...”.

For all these reasons, the site should be removed as a site allocation. If desired the land subject to the planning permissions could be included in the development boundary for completeness but this is not a modification I need to make in respect of my role.

The policy itself does not allocate the sites for anything. This then needs to be remedied. The information is to be found in the supporting text and maps that sit alongside the policy. In order to recommend this modification, I have taken my lead from the supporting text. In addition, all of the accompanying maps should be titled and include a key.

There is a “n.b” after the policy; it is not clear to me what this refers to and in any case it is no longer necessary given the stage the Plan is at to retain this here.

Subject to these modifications, the policy will meet the basic conditions.

- **Delete the word “Preferred” from the title of the policy and the heading on page 35 of the Plan**
- **Renumber Sites 1, 2, 3 and 4 as “A, B, C and D”**
- **Revise paragraph 16 on page 42 of the Plan so that it reads: “This site *is not included in the SWDP as it is indicated on the SHLAA list as ‘availability unknown’, however contact has been made with the owner’s agent. The site’s size, at a density of 30 dwellings to the hectare would allow a development of about 9 properties of mixed property sizes and types. The community’s preference is for the site to be developed for affordable housing and therefore the site is allocated for affordable housing.*”**
- **Incorporate [existing] Sites 2, 3 and 4 into the Hanley Swan Development Boundary shown on page 37 of the Plan updating Map 4 to include Sites 2, 3 and 4 making sure that the Sites 2 and 4 are clearly indicated as “*allocations for housing development*” and that Site 3 is clearly indicated as “*allocation for affordable housing*” on the revised Map 4**
- **Delete the last paragraph of the policy that begins “The boundary to sites allocated...”**
- **Add a new paragraph to the supporting text after paragraph 5 on page 35 of the Plan which reads: “*The boundary to sites allocated for development outside and adjoin the existing development boundary will form the basis of an extension to the existing development boundary. The revised development*”**

*boundaries for Hanley Castle and Hanley Swan are shown on Maps 4 and 5 respectively.”*

- **Change the last sentences of paragraph 10 on page 40, paragraph 14 on page 42 and paragraph 17 on page 44 of the Plan to read: “This site is outside of but adjacent to the *current* development boundary of Hanley Swan *which is revised by this Plan.*”**
- **Delete Site 7 from the policy and remove any references to it including the map from the Plan**
- **Add a sentence to the start of the policy which reads: “*The following sites, identified on Maps [insert numbers] are allocated for housing development:*”**
- **Add to the policy after each site that is retained the following information: Site 1 “*approximately 16 units*”; Site 2 “*approximately 10 units*”; Site 3 “*approximately 9 units*”; Site 4 “*approximately 3 units*”**
- **Title all the maps that accompany each [retained] site and add a key to each**
- **Delete the “n.b.” from underneath Policy MnGr 7 in its entirety**

## **Policy MnGr 8 Siting of Local Businesses**

The supporting text explains that the Parish has six existing business/industrial parks together with a disused incinerator site and a site at Blackmore Park.

The policy lists the six areas and Blackmore Park defining them on the accompanying Map 6 on page 51 with the incinerator site shown on Map 7 on page 52 of the Plan. The sites are identified rather confusingly to my mind and I found the maps difficult to decipher. Modifications are made to address these concerns in the interests of providing a practical framework as required by national policy and guidance.

The sites are all located outside the main villages. As a result the policy seeks to restrict new business premises to these existing centres. Policy SWDP 12 supports the expansion of existing employment sites in rural areas where it is demonstrated that intensification of the existing site is not practical or viable. In contrast this policy seeks to restrict new businesses to within the boundaries of existing employment sites to prevent expansion into open countryside.

The supporting documentation for the Plan explains that given the number of sites and their vacancy rates, intensification is the way forward. However, the evidence for this policy is somewhat inconsistent; the assessments in Supporting document, Part two indicate that firstly three of the sites are fully let and secondly there is little scope on most for intensification. In addition, it is clear that the owners have been approached,

but it would appear that no more detailed work of their requirements has been carried out to support this element of the policy. In addition there is no indication of the potential for expansion on those sites identified with some scope or how this might relate to the overall strategy or provision in the rural areas.

The NPPF supports economic growth in rural areas. It advocates a positive approach to sustainable new development to create jobs and support all types of business.<sup>31</sup> The policy has identified the six sites pragmatically and supports the development of Blackmore Park which is subject to Policy SWDP 54 and is a large site and supports Use Classes B1 and B8 at the incinerator site. I regard this to be a positive approach in line with the NPPF.

I consider the evidence put forward is inconsistent to justify the stance of Policy MnGr 8 which seems to be at odds with the SWDP which has economic prosperity and the economic role as one of its three primary areas of focus.<sup>32</sup> However, I note the concerns of the community and that the reasoned justification to Policy SWDP 12 indicates that the provision of new rural employment sites should be considered favourably provided there is no harm to the integrity of the settlement or landscape character. I therefore recommend modifications to address these issues including some to the supporting text to bring it in line with the changes to the policy itself.

MHDC point out that paragraph 7 of the supporting text is not correct. A modification is therefore made in the interests of accuracy to address this concern.

The fourth bullet point of paragraph 21 on page 55 is also incorrect and should be deleted. Policy SWDP 2 makes specific reference to Policy SWDP 12 in relation to open countryside and therefore there is no contradiction between the two SWDP policies.

- **Renumber each of the sites clearly and sequentially (some consequential amendments may be required as a result)**
- **Improve the quality of Maps 6 and 7 and clearly identify each of the sites by their new number/name**
- **Amend the policy to read:**

**“Other than home based businesses, new business premises should *normally* only be developed within the boundaries of the existing business centres shown on Maps [insert map numbers] which are:**

- **Hanley Workshops**
- **Merebrook Industrial Estate**
- **Willow End Park**
- **Acorn Business Centre**

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<sup>31</sup> NPPF para 28

<sup>32</sup> Page 11 of the SWDP

- Cygnet Business Centre
- Walnut Trading Estate (opposite incinerator)

Intensification within the boundaries of these sites *will be preferred*. *The expansion of these sites into the open countryside will only be permitted if it can be demonstrated intensification is not viable or practical and where the effects of any such expansion would be acceptable.*

The Parish Council supports the further development of the Blackmore Park site (as per SWDP 54) as this is a brownfield development offering considerable space to expand employment opportunities.

Additionally proposals for the industrial / commercial development (Use classes B1 or B8) of the old incinerator site in Hayler's End will be supported provided they are limited to within the original boundaries of the site when it was operational (*See Map [insert Map number]*)

Proposals for a change of use of existing premises to business purposes will not be approved if they will result in a detrimental impact upon local residents."

- Change paragraph 1 on page 49 to read:

"The parish currently has six existing industrial / business centres, plus a disused incinerator site and the SWDP 54 site at Blackmore Park. These are all situated outside the 30 mph. zone of Hanley Swan and away from the main residential settlement areas of Hanley Swan and Hanley Castle. The centres are either built on old wartime hospital sites, other brownfield sites or redundant farm buildings. They are all located in open countryside and outward expansion of these sites would be *likely to be* detrimental to that countryside, which is why with the exception of Blackmore Park, intensification of existing sites is *preferred*. *Additionally* there are many small businesses operating from a home base within the parish, including bed and breakfast accommodation for the tourism industry. The derelict incinerator site, having previously had planning permission for housing refused, has in 2016 obtained a certificate of lawful use pertaining to incineration."

- Amend the fifth sentence in paragraph 7 on page 53 of the Plan to read: "*SWDP 54 allocates 5.1 ha of land for B1, B2 and B8 employment uses.*"
- Delete the fourth bullet point of paragraph 21 which appears on page 55 of the Plan

## Policy MnGr 9 Heavy Goods Traffic

This policy seeks to ensure that traffic generated by Use Classes B2 or B8 or other uses generating heavy traffic has an acceptable effect. The supporting text is explicit in not wishing to prohibit such uses but rather ensure their effect is acceptable through, if appropriate, the submission of Transport Statements.

Although MHDC point out, rightly, that the NPPF<sup>33</sup> refers to those developments that generate “significant amounts of movement” being supported by a Transport Statement or Assessment, this policy specifically refers to heavy goods vehicles and the supporting text explains further when such assessments will be sought indicating it will only apply to those developments with a significant impact.

Given the local road infrastructure, the concern raised by the community and local evidence that shows excessive traffic speed, the policy provides an appropriate balance of promoting economic development whilst ensuring that developments generating a significant amount of traffic have an acceptable impact and takes sufficient account of the NPPF<sup>34</sup> and will help to achieve sustainable development. It meets the basic conditions.

MHDC points out that the reference to Policies SWDP 53 and 55 on page 57 of the Plan are not relevant as both sites fall outside the Plan area. As a result, these references should be deleted in the interests of accuracy.

- **Delete the references to Policies SWDP 53 and 55 on page 57 of the Plan**

## Policy MnGr 10 Disused or Redundant Buildings

Reuse of redundant or disused buildings is supported by this policy subject to six criteria. The criteria refer to enhancing the setting of the building, appropriate design, compatibility with neighbouring uses and the building is capable of reuse without major reconstruction or substantial alteration or extension. Although the supporting text refers to a preference for employment or leisure purposes, the policy does not restrict any conversions to these uses.

The NPPF supports the growth of businesses in rural areas through the conversion of existing buildings<sup>35</sup> and supports housing where such development would reuse redundant or disused buildings and lead to an enhancement of the immediate setting.<sup>36</sup> The policy will help to achieve sustainable development. It is a local expression of Policy

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<sup>33</sup> NPPF para 32

<sup>34</sup> *Ibid* paras 32, 34

<sup>35</sup> *Ibid* para 28

<sup>36</sup> *Ibid* para 55



SWDP 8 which, amongst other things, supports conversion of existing buildings where the scale is appropriate to the location or an existing business is supported.

However, the wording used in the policy does not provide the practical framework sought by national policy and guidance. A modification is made to address this. With this modification the policy will meet the basic conditions.

- **Change the word “may” in the first sentence of the policy to “will be”**

### **Policy MnGr 11 Assets of Community Value**

The supporting text lists 10 potential assets of community value, but recognises that their designation needs to be undertaken by a formal process subject to approval by MHDC. It might be appropriate for this proposed list of assets to also appear as a community aspiration. The policy therefore deals with any such assets once and if any are approved.

The policy is in two parts. The first element supports any development that would enhance the viability or community value of any such assets. This is ‘blanket’ support for development that could result in otherwise unacceptable development being granted permission. It could, for instance, be argued that a residential development or addition of a tourist attraction be the means to enhance an asset’s viability and I am confident that this was not the intention of this part of the policy. It therefore requires some amendment and the inclusion of a caveat which I pick up from the main issues of concern to the community to ensure it provides the practical framework for decision making sought by national policy and guidance.

The second element seeks to set out the circumstances in which the asset could be lost. It reads oddly to my mind and therefore in the interests of providing clarity and a positive and more flexible framework for decision making in line with national policy and guidance, a modification to the second element is also recommended.

Subject to these modifications, the policy will meet the basic conditions.

- **Add the proposed list of potential assets of community value as a community action point**
- **Add at the end of the first paragraph of the policy “*provided that the effects on the local road network, residential amenity and the character and appearance of the locality are acceptable.*”**
- **Reword the second paragraph of the policy to read:**

***“The loss of an asset will only be permitted where it can be demonstrated that:***

- i. *the use no longer serves the needs of the community in which it is located; or*
- ii. *alternative provision of an equivalent or better nature is provided in an equally or more accessible location; or*
- iii. *in the case of commercial based community facilities it can be demonstrated that the use is no longer viable as evidenced by appropriate marketing of the property for a minimum of 12 months; and*
- iv. *the proposed use would be compatible with adjacent land uses.”*

### Policy MnGr 12 Developer Contribution Policy

This policy acknowledges the need for new development within the Parish to ensure that appropriate infrastructure is provided and sets out the priorities of the Parish Council. In order for the policy to provide the practical framework for decision making sought by national policy and guidance, some modification to it is recommended.

- **Insert the words “*by the Local Planning Authority*” after “...off-site infrastructure and facilities as required...” in the first sentence of the policy**
- **Delete the sentence which begins “In particular...” and replace it with “*Development proposals will also be expected to contribute as appropriate to the priorities of the Parish Council as initially noted below; but subject to subsequent revision by the Parish Council.*” [Retain existing four bullet points]**

### PCR 1 Community and Business Integration

This Parish Council Responsibility is clearly written.

## Section 6: Rural Environment Policies

### Policy RE 1 Sympathetic Design

This is a positively worded policy that seeks to encourage a high standard of design which respects local distinctiveness as well as addressing the connections between people and places and will help to integrate new development and achieve sustainable development. It is clear from the NPPF that the Government attaches great importance to the design of the built environment.<sup>37</sup> Moreover the Government regards good design as a key aspect of sustainable development.<sup>38</sup> The NPPF states that

<sup>37</sup> NPPF para 56

<sup>38</sup> *Ibid*

neighbourhood plans should develop robust and comprehensive policies that set out the quality of development that will be expected for an area and that these should be based on an evaluation and understanding of the area.<sup>39</sup> It reflects Policy SWDP 21. The policy makes reference to the Parish Building Design Guide. For these reasons it meets the basic conditions and no modifications are recommended.

## Policy RE 2 Settlement Identity

Policy RE 2 addresses new development in the Parish outside the development boundaries of the villages of Hanley Castle and Hanley Swan. It restricts development to a dwelling required by an agricultural or other worker in the countryside, rural exception sites for affordable housing or replacement dwellings. Extensions to existing dwellings are permitted as are conversions and reuse of existing buildings.

The premise of the policy seems to be to ensure that the separate identities of Hanley Castle and Hanley Swan are maintained. There seems to be a concern about ribbon development and development close to the Parish's boundary with other settlements particularly Upton upon Severn and Malvern.

It is a local expression of SWDP Policies SWDP 2, 18 and 19 although I note the latter two SWDP policies are not identified by MHDC as being strategic in nature.

However, in the interests of clarity, it is necessary to add a cross reference to Policy MnGr 10 in relation to the conversion or reuse of existing buildings.

In addition the final paragraph of the policy refers to the safeguarding of development boundaries. This is now superfluous and inappropriate because the Plan defines development boundaries and modifications have been recommended in this respect. The development boundaries put forward in the Plan will therefore endure until they are reviewed as part of the planning process.

- **Add at the end of the penultimate paragraph in the policy "*Disused or redundant buildings are subject to Policy MnGr 10.*"**
- **Delete the last paragraph of the policy in its entirety**

## Policy RE 3 Replacing Natural Features Lost Through Development

The premise of this policy is that i) any natural features lost through development should be replaced and ii) their replacement be an integral part of the development which should be design-led. However, it seems to assume that development that has

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<sup>39</sup> NPPF para 58

an adverse effect on trees, hedgerows or other natural features such as ponds cannot be resisted and may, inadvertently, result in the loss of important local features.

Therefore given the NPPF is clear that the planning system should contribute to and enhance the natural environment,<sup>40</sup> some modification to this policy is required to ensure it takes sufficient account of national policy and guidance and will help to achieve sustainable development.

There is a NB on page 69 of the Plan that seeks to explain the term “significant” in the policy; the suggested modification alters this word to important as it is not clear what significant might encompass. As a result the NB can be deleted.

- **Reword Policy RE 3 to read:**

***“New development should avoid the loss of or substantial harm to, important trees, orchards, hedgerows and other natural features such as ponds. Where such losses or harm are unavoidable, suitable mitigation measures that may include equivalent or better replacement of the lost features will be required. It is expected that any such mitigation will form an integral part of the design concept and layout of any development scheme and that development will be landscape-led and be appropriate in relation to its setting and context and ongoing management.”***

- **Delete the “Nb. ‘Significant’ does not equate to ancient or veteran trees.” on page 69 of the Plan**

## **Section 7: Built, Historic & Natural Environment Policies**

### **Policy BHN 1 Protection of Buildings or Structures on the Local List of Heritage Assets**

Recognising that the community can identify buildings or structures for inclusion on a local list, this policy seeks to retain and protect local heritage assets and ensure that any development affecting any such asset is appropriate.

It must be made clear though that the proposed list contained in Appendix B of the Plan is just that and a modification is recommended in the interests of clarity.

The NPPF refers to non-designated heritage assets which includes assets that are locally listed. It explains that the significance of a non-designated heritage asset should be taken into account in the determination of any planning application.<sup>41</sup> A balanced judgment will be needed having regard to the scale of any harm or loss and the significance of the asset.<sup>42</sup>

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<sup>40</sup> NPPF para 109

<sup>41</sup> *Ibid* para 135

<sup>42</sup> *Ibid*

The policy is generally clearly worded, but refers to “The Council” on two occasions; both may cause confusion as to which Council (the District or the Parish) is being referred to, but both are, in any case, superfluous.

Therefore the policy requires modification to ensure that it takes account of national policy in the NPPF in relation to the historic environment and in order to provide the practical framework required by national policy and guidance and to ensure that it will achieve sustainable development.

With the modifications detailed below, the basic conditions will be met.

- **Add the words “*The proposed list is included as Appendix B.*” at the end of paragraph 1 on page 72 of the Plan**
- **Change the first paragraph of the policy to read: “*Local heritage assets identified on the Local List should be protected or enhanced. In reaching a balanced judgment on the effect of a non-designated heritage asset, the significance of the heritage asset will be taken into account together with the scale of any harm to, or loss of, the heritage asset.*”**
- **Change the first sentence of the third paragraph in the policy to read: “*Development that involves the demolition or part demolition of buildings or structures on the Local List will be resisted.*”**
- **Change the third sentence in the third paragraph of the policy to read: “*In cases where demolition is unavoidable, provision will be made for any archaeological or historical interest to be appropriately recorded prior to any demolition or at an otherwise suitable stage in the works.*”**

## Policy BHN 2 The Environs of Heritage Assets

This policy seeks to ensure that any development in the Hanley Castle Conservation Area or within the “environs” of any heritage asset sustains or enhances the heritage asset, its role in contributing to a sustainable community and make a positive contribution to local character and sense of place.

Whilst the intention of the policy is understood and to be commended, there are a number of difficulties with the way the policy is worded.

The reference to “environs” is ambiguous. Whilst the setting of a heritage asset is a more commonly used and understood phrase, it is difficult for anyone reading the policy to be sure whether or not their proposal might fall within the “environs” of the heritage asset. I have thought whether an alternative word might work, but cannot find one.

Secondly, it is not clear how a development might “sustain or enhance” the heritage asset. This could perhaps be said to be seeking to echo the statutory duty for decision makers in Conservation Areas.

However, the statutory duty contained in the Planning (Listed Buildings and Conservation Areas) Act 1990 indicates that in considering whether to grant planning permission for development in relation to any buildings or other land in a conservation area the decision maker shall pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

The conservation or enhancement of the historic environment is reflected in the NPPF. One of the core planning principles in the NPPF is that heritage assets should be conserved in a manner appropriate to their significance.<sup>43</sup>

There are two important legal principles in relation to the statutory duty. These are that a neutral effect of preserving the conservation area i.e. a development that leaves the character or appearance unharmed is acceptable and that the effect on the conservation area as a whole should be considered in reaching any decision. Therefore to require that new development must add positively to the character of the Conservation Area does not accord with the relevant legislation and legal principles.

Thirdly, the reference to the heritage asset’s role in contributing to a sustainable community is ambiguous. The existing role would need to first be identified. This would be, in my view, difficult to do. The proposal’s impact on this would also be hard to quantify.

Fourthly, the development must make a positive contribution to local character and sense of place. This requirement goes beyond the statutory test described above for Conservation Areas.

The second paragraph of the policy, then seeks a judgment to be made on the public benefits of the proposal in addition to local heritage issues. This then adds a significant requirement for any development in the Conservation Area or in the “environs” of a heritage asset. Furthermore in reaching this judgment, the views of the community will be taken into account. It would be very difficult for proposers of development which might include a new dormer to an existing home or a new development of say five houses to know how to meet this onerous requirement.

I have carefully considered whether I can recommend any modifications to make the policy meet the basic conditions. I am mindful of the existing statutory duty that applies in Conservation Areas and the advice in national policy and guidance as well as District level policies about development that affects heritage assets. Given the multiple issues with this policy as currently worded, I have not been able to find a suitable way of modifying it that simply does not repeat these other tiers of policy.

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<sup>43</sup> NPPF para 17

Therefore I have reached the conclusion that there is no alternative but for me to recommend deletion of this policy.

- **Delete Policy BHN 2 in its entirety and its supporting text**

### **Policy BHN 3 Protection of the Archaeological Environment**

The Plan indicates that archaeological excavations have revealed evidence of Roman presence and medieval pottery industry in the Parish. This policy seeks to ensure that five known sites of archaeological interest, named in the policy and shown on Map 8 on page 77 of the Plan, are suitably taken into account. It also captures any other sites that come to light. The clearly worded policy takes appropriate account of national policy and guidance as well as Policies SWDP 6 and 24 (although this latter policy is not identified as strategic by MHDC) in relation to the local area and will help to achieve sustainable development. It therefore meets the basic conditions and no modifications are recommended.

### **Policy BHN 4 Preserving Ancient Trees, Woodland, Trees and Hedges**

This policy seeks to protect ancient trees and woodland. In addition any development that results in the loss of trees, parkland/wood pasture, woodlands and hedgerows is resisted. New native hedgerows are encouraged.

Policy SWDP 22 resists the loss or deterioration of ancient woodland or veteran tree unless need for and the benefits of the proposed development in that location clearly outweigh the loss or deterioration. This reflects the stance in the NPPF.<sup>44</sup> Therefore a recommendation to the policy is suggested to ensure that it takes account of the NPPF and generally confirms to the SWDP.

MHDC point out that the reference to “local input” in paragraph one on page 80 of the Plan would not provide the practical framework. I consider that this will signal to the development industry that engagement with the Parish Council is valued and that decision takers might take some benefit from local knowledge. In order to make this clearer, a modification is recommended.

- **Add at the end of the first sentence in the policy *“unless the need for, and benefits of, the development in that location clearly outweigh any loss.”***
- **In paragraph one on page 80 of the Plan change the sentence that begins “This is an instance where local input...” to *“It will be useful for the development industry and decision takers to engage with the Parish Council who have***

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<sup>44</sup> NPPF para 118

*detailed local knowledge of ancient trees, woodlands and hedges in the Parish at an early stage to ensure that such trees, woodlands and hedges are appropriately identified and to enable discussion about protection and retention and if appropriate, mitigation measures.”*

## Policy BHN 5 Protected Local Green Spaces

A number of Local Green Spaces (LGS) are proposed by this policy.

The NPPF explains that LGSs are green areas of particular importance to local communities.<sup>45</sup> The effect of such a designation is that new development will be ruled out other than in very special circumstances. Identifying such areas should be consistent with local planning of sustainable development and complement investment.

The NPPF makes it clear that this designation will not be appropriate for most green areas or open space. Further guidance about LGSs is given in PPG.

The proposed areas are shown clearly on the Map 10 on page 85 of the Plan with the exception of Ewe and Lamb Green. I visited all the areas on my site visit.

There are five areas in Hanley Swan:

**The Village Pond** and surrounds is a notable area in the heart of the village which makes an important contribution to the character and appearance of the village and is locally distinctive, valued as a focal point and area of recreation as well as for its water birds. It houses the community art project.

**The Village Green** is a grassed triangle of land at the heart of the village with important trees that makes an important visual contribution to the village and is locally distinctive. It is valued as a focal point and as a recreation area.

**Ewe and Lamb Green** is valued as a green and for its recreation.

**Village Hall Sports Field and Play Area** is adjacent to the next area and is a flat area of grass with goalposts, a play area and is adjacent to the Village Hall and its car park. It is valued for its sports and recreation facilities.

**Field behind the Primary School** is a well-defined area of grass with a pavilion type building on it to the rear of the School. It is valued as the school sports field and green play area.

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<sup>45</sup> NPPF paras 76, 77 and 78



There are three areas in Hanley Castle:

**Playing Field and tennis court area in front of High School** is valued for its recreational uses and its function in providing a green setting for the School.

**The Glebe Field** is an area with a hedge boundary that is home to a cricket area valued for its recreational use.

**Green Triangle outside the Three Kings** is a small triangle of land with a tree and seat. It is valued by the community as a focal point and has been the centre of events.

In my view, the proposed LGSs are sensibly and clearly defined. All are in reasonably close proximity to the community they serve, are local in character and are not extensive tracts of land and hold a particular local significance because of their beauty and contribution to the character and appearance of the Parish, historic significance in relation to the setting of the hamlets and tranquility. All meet the criteria in the NPPF satisfactorily.

I note all of the proposed LGSs in Hanley Swan and Hanley Castle with the exception of part of the Glebe Field are also identified as “Green Space” in the SWDP and subject to Policy SWDP 38 which is not identified by MHDC as a strategic policy. Policy SWDP 38 resists development unless certain exceptional circumstances are demonstrated. These include uses that do not compromise the quality and character of the area, the area is surplus to requirements and alternative provision is made. The designation of these spaces as LGSs would provide an additional layer of protection.

Turning now to the policy itself, its title could be simplified to “Local Green Spaces” in the interests of clarity.

The policy refers back to Map 10. It is clearly written, but does not permit any form of development. This then does not reflect the NPPF which indicates that the policy for managing development within a LGS should be consistent with policy for Green Belts. Whilst policy for Green Belts is generally regarded as restrictive, it is not prohibitive. The wording of the policy therefore requires revision so that the policy meets the basic conditions; in particular to ensure it takes account of national policy and guidance and helps to achieve sustainable development.

- **Include Ewe and Lamb Green on Map 10**
- **Delete the word “Protected” from the title of the policy, the heading on page 83 and Map 10 on page 85 of the Plan**
- **Change the first paragraph of the policy to read: “*Inappropriate development on the Local Green Spaces shown on Map 10 will not be permitted except in very special circumstances. The character and appearance of these Local Green Spaces, their contribution to the village townscape and their recreational value are of particular importance to the community.*”**

## Policy BHN 6 Sites of Biological Interest

Policy BHN 6 identifies a number of areas of “biological interest” which the policy seeks to protect and enhance. The sites are shown on Map 11 on page 88 of the Plan and described in the Plan using extracts from the Worcestershire Biological Records Centre.

The NPPF is clear that the planning system should contribute to and enhance the natural and local environment<sup>46</sup> and given the high value placed on these areas by the community, this policy takes account of national policy and will help to achieve sustainable development. As a result it meets the basic conditions and no modifications are recommended.

MHDC point out that the use of the word “some” towards the end of paragraph one on page 87 of the Plan is unclear. I tend to agree and recommend a modification to address this in the interests of clarity.

Paragraph 14 on page 90 of the Plan refers to the now superseded Local Plan. As a result this reference should be deleted in the interests of accuracy.

- **Change the last sentence in paragraph one on page 87 of the Plan to: “*This policy identifies the sites of biological interest to which this policy relates and these sites are shown on Map 11.*”**
- **Delete paragraph 14 on page 90 of the Plan in its entirety**
- **Consequential paragraph renumbering will be necessary**

## Section 8: Design Policies

### Policy Des 1 General Building Design Principles

This policy sets out a number of design principles. All are aimed at ensuring that new development is appropriate and respects the character and local distinctiveness of the area. In addition innovative design is encouraged. Reference is also made to historic farmsteads and agricultural buildings within the Parish. Finally, reference is made to the Parish’s Building Design Guide, described as a supplementary guidance document to the Plan.

It reflects Policies SWDP 6 and 21 adding a local layer of detail. It will help to achieve sustainable development and takes account of national policy and guidance which particularly seeks good design indicating it is indivisible from good planning.<sup>47</sup>

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<sup>46</sup> NPPF para 109

<sup>47</sup> *Ibid* para 56 and section 7

With one minor modification to improve the clarity, flexibility and practical application of the policy, it will meet the basic conditions.

Paragraph 9 refers to the policy as “supplementary” to a number of SWDP policies. This is not correct and so a modification is made to address this.

Paragraph 13 refers to housing data and Appendix E which I have already indicated does not appear to exist and recommended deletion of any references to it. There seems to be no correlation between this paragraph and the policy and for that reason, it is recommended that it be deleted.

- **Change the word “removed” in criterion vi. to “*minimised*”**
- **Change the word “supplementary” in paragraph 9 on page 93 of the Plan to “*complementary*”**
- **Delete paragraph 13 on page 93 of the Plan**
- **Consequential renumbering of paragraphs will be needed**

## **Policy Des 2 Renewable and Low Carbon Energy**

Renewable and low carbon energy schemes (apart from wind turbines) are supported by this policy subject to acceptable effects on visual amenity, living conditions and various other criteria. The policy is clearly worded and is a local expression that takes account of the NPPF’s drive to meet the challenge of climate change and can be viewed as a positive strategy promoting such energy whilst ensuring that adverse impacts are satisfactorily addressed,<sup>48</sup> generally conforms to the SWDP and in particular Policy SWDP 27 adding detail to it at the local level and will help to achieve sustainable development. It meets the basic conditions and no modifications are recommended.

## **Policy Des 3 Integrating New Developments with the Existing Community**

Community cohesion and a sense of wellbeing is promoted by this policy. Specifically it seeks to ensure that the design and layout of new developments over five units provide pedestrian, cyclist and other routes to enable connectivity. The policy promotes sustainable transport modes, promotes high quality and inclusive design and safe and accessible routes promoting healthy and cohesive communities. It is a local reflection of Policy SWDP 21. However, it could be worded with more clarity so that the practical framework sought by national policy and guidance is provided.

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<sup>48</sup> NPPF para 97

- Amend Policy Des 3 to read:

***“The design and layout of all new housing developments in excess of five properties must take every available opportunity to provide safe and convenient access for cyclists, pedestrians, the disabled and other users to village facilities including bus stops, schools and services and improve connections to other residential areas.”***

## Section 9: Traffic and Transport Policies

### Policy Trf 1 Highways and Traffic Principles

The Plan details the concerns of the community with regard to specific local transport related issues. These include traffic volumes, congestion, traffic speed and on-street parking. Policy Trf 1 sets out a series of principles that new development should take into account to ensure that any transport related impact from new development is acceptable. All the criteria are clearly worded and will promote sustainable transport. The policy is a local expression that is complementary to Policy SWDP 4. The policy meets the basic conditions and no modifications are recommended.

### Policy Trf 2 Footpaths/Bridleways/Cycleways

This policy supports development that improves the footpaths, cycleways and bridleways and their connections within the Parish. This is in line with Policies SWDP 4 and 21 that, amongst other things, respectively seek to improve walking and cycling infrastructure and improve connectivity.

The policy sets out when contributions might be sought. It promotes a safe cycle route between Hanley Castle and Hanley Swan and other improvements to the networks. In itself the policy supports the provision of sustainable transport and the other benefits that improvement to connections and links to key facilities can bring. However, the language used would, inadvertently, support any development that does this rather than otherwise acceptable development. A modification is made so that the policy provides a practical decision making framework.

The last paragraph of the policy refers to an action of the Parish Council and is not a development and use of land matter. As a result this should be deleted from the policy.

MHDC point out that paragraph 18 is not relevant in the context of this policy and I agree it should be deleted in the interests of accuracy.

- **Change the first sentence of the policy to read: “*New development is required to take every available opportunity to improve footpath, bridleway and cycle path provision and connections within the parish.*”**
- **Delete the last paragraph of the policy which begins “The Parish Council...”**
- **Delete paragraph 18 on page 104 of the Plan**
- **Consequential renumbering of paragraphs will be needed**

## PCR 2 - 7

This section of the Plan includes six PCRs. All are clearly worded. However to take account of the comments from MHDC, the following modifications are recommended. The first two relate to the need for the Plan and its actions to relate to matters within the Parish Council’s control and not to oblige other authorities to undertake work. The last seeks to ensure that there is clarity over the Parish Council action to bring it in line with the remit of the Plan.

- **In PCR 2 change the second paragraph to read “The Parish Council *will seek to work closely with District and County Councillors and the Highways Authority...*” [retain remainder of PCR as is]**
- **In PCR 3 change the last sentence to read “The Parish Council *will seek to work in conjunction...*” [retain remainder of PCR as is]**
- **In PCR 5 change the first sentence to read “The Parish Council will also make representations to MHDC that *developer contributions should also be applied to developments outside the NDP area, but which would affect the Parish.* This could apply...[retain remainder of PCR as is]**

## Section 10: Implementation of Parish Council Responsibilities

This section relates to the PCRs and other monitoring actions.

## Section 11: Glossary

A useful glossary is included. There are a number of definitions which I consider would benefit from revision in the interests of ensuring that the Plan provides a practical framework in line with the NPPF and these are recommended for modification below. I have used recognised sources of definitions such as the NPPF and the Planning Portal’s glossary to help with the wording of the recommended modifications. In relation to the

modification on “infill”, I have ensured that there is consistency between the modification and Policy MnGr 4.

I also recommend the deletion of the definition of “curtilage”. There is no legal definition of curtilage in planning and it is a matter for the court in each case to decide what falls within the curtilage of a particular building. Usually the criteria are the physical layout, the past and present ownership and the past and present use and function of the land.

- **Change the definition of “Backland” to *“Backland Development: “Development of 'landlocked' sites behind existing buildings, such as rear gardens and private open space, usually within predominantly residential areas. Such sites often have no street frontages.”***
- **Add at the start of the definition of “Green Infrastructure”: *“A network of multi-functional green space that could include...”* [retain as existing]**
- **Change the definition of “Infill” to *“Infill Development: the development of a usually small plot or parcel of land or a gap within an otherwise built up frontage or sites within the built-up area of the village where the site is closely surrounded by buildings.”***
- **Change the definition of “Planning Obligation” to *“A legally enforceable obligation entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal. Sometimes called “Section 106” agreements.”***
- **Delete the entry for “Curtilage”**

## Acknowledgements

No comments.

## Appendices

Appendix A contains details of listed buildings and structures. This needs to be future proofed and so the addition of a sentence to direct users of the Plan to the most up to date information is necessary.

Appendix B is the Local Heritage List. The status of the list needs to be clear and a modification is made to address this.

Appendix C is a list of the most important ancient trees.

- **Add to Appendix A a sentence that reads: “The information in this appendix reflects information and is correct at the time of writing the Plan. Up to date information should be sought from the local planning authority, the Parish Council or Historic England.”**
- **Add at the start of Appendix B a sentence that reads: “This is the proposed list of heritage assets that the Parish Council intend to put forward to MHDC for consideration on inclusion in the Local List. Policy BHN 1 would then apply to any heritage asset included on that Local List.”**

## 8.0 Conclusions and recommendations

I have recommended modifications to some of the policies and their supporting text for the reasons set out in detail above. Some of these modifications will also require the updating of accompanying or supporting documents such as the Building Design Guide which quotes from some policies that are recommended for modification or deletion where it has not been possible to modify these policies to meet the basic conditions.

Even though I have recommended a number of modifications to the Plan, these do not significantly or substantially alter the intention or nature of the Plan.

I am satisfied that the Hanley Castle Parish Neighbourhood Development Plan, subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined earlier in this report.

I am therefore pleased to recommend to Malvern Hills District Council that, subject to the modifications proposed in this report, the Hanley Castle Parish Neighbourhood Development Plan can proceed to a referendum.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Hanley Castle Parish Neighbourhood Plan area. I see no reason to alter or extend the Plan area for the purpose of holding a referendum and no representations have been made that would lead me to reach a different conclusion. I therefore consider that the Plan should proceed to a referendum based on the Hanley Castle Parish Neighbourhood Plan area as approved by Malvern Hills District Council on 21 July 2014.

*Ann Skippers* MRTPI  
Ann Skippers Planning  
20 August 2018

## **Appendix 1**

### **List of key documents specific to this examination**

Hanley Castle Parish Neighbourhood Plan (Submission Version) December 2017

Building Design Guide 2017

Basic Conditions Statement dated December 2017

Consultation Statement December 2017

Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA)  
Screening Opinions September 2017

Supporting Document Parts one and two

South Worcestershire Development Plan February 2016



## Appendix 2

### Letter to MHDC

Letter to David Clarke  
Planning Officer  
Malvern Hills District Council  
The Council House  
Avenue Road  
Malvern  
Worcestershire WR14 2AF

cc Hanley Castle Parish Council

10 July 2018

Dear David,

#### **Examination of the Hanley Castle Neighbourhood Plan**

I am writing to draw your attention to a recent judgment of the Court of Justice of the European Union.

In the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Court ruled that Article 6 (3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of appropriate assessment (AA) and that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage.

Earlier case law had established that reduction or avoidance measures could be taken into account when considering whether a plan or proposal would be likely to have a significant effect on a European site. However, the implications of the more recent judgment is that this is no longer the case.

I would therefore be grateful if the Council could consider the HRA Screening Report and advise me on whether it considers it to be legally compliant in the light of the judgment. If it is considered not to be legally compliant and to have fallen foul of the judgment, I would ask that the Council advises me of what further work would be required to rectify this, together with an indicative timescale for that work, including any further consultation.

I will clearly reach my own view on this matter as well. Once you have had an opportunity to consider what, if any, further work needs to be undertaken, I suggest that we agree a way forward for the examination of this Neighbourhood Plan.

Your early response would be appreciated. This letter is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI  
Independent Examiner